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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

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12 **THE HOLY SYNOD OF THE HOLY APOSTOLIC** **CASE No.1-05-CV-054812**
13 **CATHOLIC ASSYRIAN CHURCH OF THE EAST;**
14 **MAR ODISHO, BISHOP OF THE HOLY** **PLAINTIFFS' PRELIMINARY**
15 **APOSTOLIC CATHOLIC ASSYRIAN CHURCH** **INJUNCTION HEARING BRIEF**
16 **OF THE EAST-DIOCESE OF WESTERN** **PA RT II: MEMORANDUM OF**
17 **CALIFORNIA; HOLY APOSTOLIC CATHOLIC** **POINTS & AUTHORITIES**
18 **ASSYRIAN CHURCH OF THE EAST-DIOCESE**
19 **OF NORTH AMERICA, ET AL.**

16

17 Plaintiffs

18 vs.

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20 **ASHUR B. SORO; SHIMSHON ANTAR AND DOES** **DATE: January 30, 2006**
1 THROUGH 10, **TIME: 1:30p.m.**
21 **DEPT: 22**

21 Defendants

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1 **INTRODUCTION**

2 Plaintiffs in this case are the Holy Synod of the Holy Apostolic Catholic Assyrian
3 Church of the East; Mar Odisho Oraham as Bishop of the Holy Apostolic Catholic Assyrian
4 Church of the East – Diocese of Western California; and the Holy Apostolic Catholic Assyrian
5 Church of the East – Diocese of North America, Inc., et al., (the “Church of the East” or the
6 “Church”). They are seeking preliminary injunctive and equitable relief to regain assets that
7 were misappropriated from the Church and are now being wrongfully withheld by defendant
8 Ashur B. Soro, a former bishop of the Church of the East. Plaintiffs’ assets consist of all the
9 real and personal property, including financial accounts held in the name of the Holy Apostolic
10 Catholic Assyrian Church of the East-Diocese of Western California, Inc., a California
11 Corporation (the Corporation).

12 Plaintiffs’ evidence will consist of canonical, corporate, real estate, and other
13 documents, as well as oral and written testimony, that will demonstrate that:

- 14 • All authority, including the ownership and control of all assets within the
15 Church of the East, lies where it always has since the Church’s founding in the
16 5th Century – with the Patriarch and the Holy Synod;
- 17 • The Patriarch and Holy Synod’s authority, ownership, and control were plainly
18 and unequivocally stated in the formation documents of the Church’s Western
19 U.S. dioceses and consistently reflected in all pertinent governing documents
20 until defendant Soro, acting secretly and without authority, altered corporate and
21 title documents in order to misappropriate Church assets; and
- 22 • By acts of fraud and threats, defendant Soro has seized and retains control of
23 Church property, has used that property to pay and secure his personal expenses
24 and loans, and has prevented the faithful from worshiping in their parishes. He
25 will continue to waste and dissipate Church property and undermine the
26 Churches’ ministry pending trial in this action, unless enjoined by this court.

1 The principal issues the court will be called upon to decide on plaintiffs' motion are
2 three:

3 *First*, when a hierarchical church legally proclaims its absolute authority to own and
4 control property in formational and other governing documents, do neutral principles of
5 California law, applied in harmony with the First Amendment, require that this court recognize
6 and enforce that authority? And, as a sub-issue, is defendant Soro entitled to challenge his
7 removal as Bishop by the Synod and the Patriarch and to assert his former authority to keep the
8 Church's property?

9 *Second*, when a corporate agent and fiduciary, whether cleric or layperson, surreptitiously
10 commits unauthorized acts, secretly transfers corporate assets, and refuses to account for his
11 conduct of corporate affairs, is relief in equity available to the defrauded principal?

12 *Third*, what kind and scope of relief will serve to prevent further misappropriation and
13 protect Church assets pending trial on the merits?

14 Plaintiffs respectfully submit that the law and evidence will show that the first two issues
15 must be answered affirmatively, the sub-issue negatively, and the third addressed with a broad-
16 based preliminary injunction insuring that defendant Soro and his cohorts cannot retain control
17 and custody of churches and church monies, currently in his embrace, while waiting for the case
18 to heard on its merits.

19 **SUMMARY OF FACTS**

20 Plaintiffs' evidence is stated in their Hearing Brief, Part One. This summary of the facts
21 will provide background for a discussion of the basic legal rules and principles that govern the
22 court's decision.

23 In order to comply with local state and federal regulations, The Church of the East, being
24 headquartered in Chicago, Illinois, filed articles of incorporation with the Illinois Secretary of
25 State on March 24, 1987 as a "Not For Profit Corporation". The enclosed is a declaration of the
26 attorney for the Church of the East of North America in Illinois, Mark Thomas, where he
27 describes the corporate structure of the Church and confirms that the Church of the East is in
28 "good standing" with the Illinois Secretary of State as evidenced by the certificate of good

1 standing attached to his declaration.
2

3 The Church of the East is a hierarchical church that exercises all authority, including
4 property ownership and control, through the Holy Synod of Bishops and the Catholicos-
5 Patriarch, Mar Dinkha IV. Carefully preserving its authority in governing documents, the
6 Church organized in corporate form a Diocese of Western California in addition to other local
7 bodies to carry out its ministry. Following proceedings before the Holy Synod confirmed by the
8 Patriarch, defendant Ashur B. Soro was duly removed as a bishop of the Church of the East and
9 a director of the Church's Diocese of Western California in November 2005, and was instructed
10 to relinquish control of all diocesan assets to the interim bishop, Plaintiff Bishop Odisho
11 Oraham.

12 Defendant Soro has defied the decision and direction of the Holy Synod and the
13 Patriarch, refused to relinquish control of Church assets, secretly appropriated money and
14 property, and used threats and acts of force to prevent plaintiffs and the members of local
15 parishes from regaining access to Church premises. Plaintiffs seek interim equitable relief to
16 protect their property and ministry from further destruction.

17 DISCUSSION

18 The Free-Exercise-of-Religion Clause of the First Amendment of the United States
19 Constitution positively forbids court re-examination of hierarchical church decisions that lie in
20 the realm of religious government, doctrine, discipline, or practice, and correspondingly
21 demands judicial deference to church tribunals with which the final authority of decision resides.
22 (*Jones v. Wolf* (1979) 443 U.S. 595, 604; *Serbian Eastern Orthodox Diocese v. Milviojevich*
23 (1976) 426 U.S. 696, 721-725.)

24 While courts are constitutionally permitted to apply "neutral principles of law" in
25 determining disputes about church property (*Jones*, 443 U.S. at p. 606; followed in California in
26 *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker* (1991) 115 Cal. App.3d
27 599, 614), this approach does not give free rein to disregard a senior church body's canons and
28 decisions. If deeds, corporate documents, and church constitutions reveal express trusts, rights

1 of reversion, or other legal ownership determinants, “the civil courts will be bound to give effect
2 to the result indicated by the parties [forming the church], provided it is embodied in some
3 legally cognizable form.” (*Jones*, supra, p. 606; see *Barker*, supra, at p. 614.) Indeed, it is
4 indispensable to the free exercise of religion that the legally-expressed authority of a church
5 hierarchy to control its property not only be acknowledged, but be fully enforced by the courts.
6 (*Jones v. Wolf*, supra, 443 U.S. at p. 602 [“[T]he [First] Amendment requires that civil courts
7 defer to the resolution of issues of religious doctrine or polity by the highest court of a
8 hierarchical church organization.”]; *Serbian Eastern Orthodox Diocese*. 426 U.S. at pp. 720-726
9 [upholding as binding under the First Amendment a decision of a senior church tribunal on
10 property issues related to the organization of a diocese]; *Presbyterian Church in the United*
11 *States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969) 393 U.S. 440, 447-
12 451 [court may not determine ecclesiastical questions by choosing between competing groups on
13 doctrinal grounds in the course of resolving property disputes without violating free exercise];
14 *Kedroff v. St. Nicholas Cathedral* (1952) 344 U.S. 94, 120-121 [in resolving church property
15 disputes when the “property right follows as an incident from decisions of the church custom or
16 law on ecclesiastical issues, the church rule controls.”].)

17 In the present case, neutral principles and constitutional deference to hierarchical
18 decisions point to the same result with respect to the issues before the court, which plaintiffs
19 submit must be resolved as follows: *First*, as revealed by the deeds, corporate documents, and
20 the Church constitutions and canons, property ownership and control in the Church resides in
21 the Patriarch and the Holy Synod, and defendant Soro acted without authority in appropriating
22 the Church’s property to himself. As a former Bishop whose authority has been terminated, he is
23 not permitted to challenge his removal or to keep the Church property entrusted to his care.
24 *Second*, neutral principles of agency and fiduciary law require defendant Soro to surrender and
25 account for the corporate property he has taken, something he has defiantly refused to do. *Third*,
26 only this court’s urgent intervention by way of equitable relief divesting defendant of his
27 wrongful control of Church property will serve to protect that property and the ministry it
28 shelters pending trial in this action.

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5 **I. Whether Under Neutral Principles Or By Hierarchical Decision, the**
6 **Church's Property That Defendant Soro Has Usurped Belongs to the**
7 **Patriarch and the Holy Synod Whose Entreaties For its Return Have Been**
8 **Spurned by Him.**

9 Consistent with the principles of law stated above, the senior authorities of hierarchical
10 church bodies have generally won their property dispute cases in California courts. Two
11 conditions have combined to explain the few exceptional cases: (1) a faction of a local church
12 body or parish (usually a majority) resolved to disassociate itself from the senior body; *and* (2)
13 the relevant church formation documents dealing with property ownership (such as deeds and
14 corporate governance provisions) were equivocal in their statement of ownership by the senior
15 body, and allowed room for a finding that the local body actually controlled the property. As the
16 evidence will show, neither condition appertains here. A discussion of the cases follows.

17 In *Concord Christian Center v. Open Bible Standard Churches* (2005) 132 Cal. App.4th
18 1396, rev. den. Dec. 14, 2005, a case remarkably similar to this one, the senior church body of a
19 hierarchical church required all local bodies to conform to its constitution which specified
20 precise procedures for local withdrawal from affiliation. When a maverick pastor's
21 administration drove most members away from the local body and the pastor attempted in
22 violation of the constitution to disaffiliate the local body, the senior body removed the pastor,
23 placed the local body under supervision, and refused to recognize the former pastor's efforts to
24 lead the remaining members to disaffiliate. When the local body sued to claim church property,
25 the hierarchy prevailed and the Court of Appeal affirmed.

26 Rejecting the local body's argument that deference to the hierarchy's decisions was not
27 called for because the dispute centered on property and not doctrine, the appellate court held that
28 the hierarchy's decision revoking the pastor's credentials was conclusive and that an examination

1 of church documents under neutral principles revealed that the local body had not followed the
2 mandatory withdrawal procedures to which it had consented when it joined the church. (Id. at
3 pp. 1411-1413.)

4 ///

5 The same result is called for here. The Church of the East vests supreme authority in all
6 matters, including property ownership, in the Patriarch and the Holy Synod. (Testimony of
7 Bishop Zaia; church canons and governing documents; declarations of Reverend Professor Paul
8 Goda and Professor Dr. Valerie Karras.) The Patriarch and the Holy Synod decreed a Diocesan
9 Constitution for all dioceses in the Western Hemisphere in 1986. After describing the
10 hierarchical structure of the Church as emanating from its nearly 1600-year history and the
11 resulting “authoritative and binding” character of its canon law “on local bishops and
12 congregations,” the Constitution proclaimed the supreme authority of the Patriarch and the Holy
13 Synod throughout its provisions. (Article Two, section 2; Article Six, section 1; Article Ten,
14 section 1; Article Twelve, section 1.)

15 With respect to ownership of church property, the Constitution is unequivocal – the
16 Church owns and controls all property through the Patriarch and Holy Synod; the Bishop is
17 merely a local representative of the Church acting under supervision and authority:

18 “All existing properties (tangible and non-tangible) are owned by the Church and are to
19 be registered under its name, that is, ‘The Holy Apostolic Catholic Assyrian Church of
20 the East – Diocese of ‘Name.’ Members of the **Holy Synod**, that is ‘**The Catholicos**
21 **Patriarch, all Metropolitans and All Bishops**’ shall be considered the official board of
22 directors of all Church properties. Each Diocesan Bishop in his own jurisdiction shall be
23 considered the representative of the Holy Synod in all legal matters concerning any
24 transaction related to the Church properties in his Diocese.” (Id. at p. 16; emphasis in
25 original.)

26 As the evidence will show, the authority of the Constitution was expressly accepted by
27 ex-Bishop Soro, as a delegate to the Joint Diocesan Committee, as a signatory of corporate
28 formation documents of the Diocese of the Western United States, and on numerous other

1 occasions. Indeed, defendant Soro gave multiple assurances to the Holy Synod and the Patriarch
2 and every outward sign that he accepted their absolute authority in all matters, including property
3 ownership and transfer, until shortly before he was removed from the office of bishop.

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5 That defendant Soro can no longer exercise control over any of the Church's property has
6 been conclusively determined by the Holy Synod and the Patriarch (as the senior body in the
7 hierarchy) and is likewise reflected in the Diocesan Constitution's provisions on property
8 ownership. Nothing in any canon or other Church document suggests that ex-bishops can
9 continue to possess and control the Church's property. Indeed, every event in the Church's
10 1600-year history cries out against it. (1986 Constitution, pp. 4-6, 9.) Whether based on neutral
11 principles or in deference to the binding decision of a hierarchical church, defendant Soro must
12 relinquish control over property that he is no longer authorized to retain.

13 Defendant Soro's unlawful occupation of Church property is similarly confirmed by the
14 California church property cases preceding *Concord Christian Center*. In *Guardian Angel*
15 *Polish National Catholic Church of Los Angeles, Inc v. Grotnik* (2004) 18 Cal. App. 4th 919,
16 which involved a hierarchical church that, like the Church of the East, is in two stages of
17 communion with the Roman Catholic Church (see Reverend Professor Goda's Decl.), the court
18 held that a local church body's property reverted to the senior body after a parish board, acting
19 without authority under the governing constitution, voted to sever its ties with the senior body.
20 The court declared the actions of the parish board, which was elected without senior body
21 approval, unauthorized, null, and void. On the same reasoning, all acts of defendant Soro and all
22 documents executed by him purporting to transfer property or corporate authority into himself
23 directly transgress the 1986 Constitution that he himself accepted and proclaimed, and even
24 helped write. They are, by the same reasoning, legally invalid and unenforceable for any
25 purpose.

26 The Sixth Appellate District weighed in on the rights of a senior church body in a
27 hierarchical church in *Metropolitan Philip v. Steiger* (2000) 82 Cal. App.4th 923. Although there
28 was no reference to the senior body's governing documents in the local body's bylaws and the

1 local body declined to adopt a model constitution submitted by the senior body, the court found
2 that the local body had consistently submitted to the authority of the senior body and that the
3 senior body’s governing documents unequivocally revealed senior body ownership of church
4 property. (Id. at pp. 930-933.) The same, of course, is true here. Defendant Soro submitted to
5 the authority of the Patriarch and the Holy Synod and the 1986 Constitution and all Holy Synod-
6 adopted documents confirm its supreme authority over property.

7 But this case is even stronger than *Metropolitan Philip* because numerous documents at
8 all levels here confirm that authority. Moreover, consistent with the Sixth District’s holding,
9 defendant Soro’s arrogation of authority to dispose of the Church’s property placed in his care
10 as he saw fit – *even after termination of his office* – is unsupported by any neutral legal principle
11 and violative of the Church’s First Amendment free-exercise rights to determine its authorized
12 representatives without state oversight or interference. (Id. at pp.. 930-931.)

13 Finally, in the seminal case of *Korean United Presbyterian Church v. Presbytery of the*
14 *Pacific* (1991) 230 Cal. App.3rd 480, the Presbytery, acting as senior church body, recognized
15 the minority faction in a local body and ruled it was entitled to the ownership, use, and control
16 of church property. Reversing a judgment in favor of the pastor and a majority faction, the Court
17 of Appeal held that the trial court had committed three separate and independent legal errors in
18 its failures to:

- 19 • *First*, defer to the doctrinal and ecclesiastical decision of the Presbytery that the
20 “true church” was the minority faction despite the Presbyterian Book of Order’s
21 provision vesting the decision in that body;
- 22 • *Second*, follow California non-profit corporation law in recognizing the Book of
23 Order’s mandatory procedures for local church governance as part of the
24 corporate bylaws, and in declaring void local body action, including the present
25 lawsuit, that were in violation of the Book of Order; and
- 26 • *Third*, recognize and enforce the provision of the Book of Order declaring an
27 express trust on property held by local bodies in favor of the senior body that was
28 adopted to comply with *Jones v. Wolf*’s option allowing a senior body to assert

1 control over local property with a trust in favor of the senior body. (Id. at pp.
2 499-512.)

3 All three propositions endorsed in the *Korean United Presbyterian* case are applicable
4 here. The decision of the Holy Synod and the Patriarch that defendant Soro is no longer
5 qualified to serve as bishop or as a director of a Church-controlled corporation is entitled to
6 deference under the Free Exercise Clause. Defendant Soro lacked authority to transfer,
7 encumber, or hypothecate Church property without the consent of the Holy Synod and the
8 Patriarch – an undisputable fact he repeatedly acknowledged by seeking that permission on
9 numerous occasions before he was removed from his positions as bishop and corporate director.
10 A trust arises here by virtue of the ownership and control of all assets by the Holy Synod and the
11 Patriarch and defendant Soro’s status as their agent and representative.

12 Against the array of authority discussed above, two solitary cases, both materially
13 different from this one in many ways, were lost by senior church bodies seeking to assert control
14 over local property. In *Protestant Episcopal Church v. Barker, supra*, four seceding local bodies
15 sought to take their property with them. The Court of Appeal allowed three to do so, but ruled in
16 the senior church body’s favor as to a fourth. As to the first three, the court noted that: (1) title to
17 the disputed property had, in all material cases, been held in the names of the local bodies since
18 their inception; (2) the property was not in any way alienated or subjected to restraint in any
19 local corporate document; and (3) the local body did not submit to the senior body’s constitution,
20 canons, or rules governing property ownership. In contrast, the fourth body declared itself
21 subordinate to the senior body in its own corporate documents, resolved to convey its property
22 on dissolution for the benefit of a senior church charitable fund, and subjected itself to a
23 diocesan canon promulgated before its formation declaring that property of a dissolving local
24 body reverts to the senior body.

25 The present case, of course, does not involve a local church body whose members want to
26 withdraw from affiliation with a senior body. Rather, it concerns a discredited and defrocked
27 cleric who seeks to control several million dollars worth of the Church’s property after it has lost
28 its trust and confidence in him and revoked his authority as its agent. To the extent, this dispute

1 is reminiscent of anything in *Barker*, defendant Soro, like the fourth local body, subjected
2 himself to the absolute authority of the Holy Synod and the Patriarch. He secretly
3 misappropriated the property they owned and controlled, and then brazenly denied the very
4 authority under which he had always willingly and obediently operated. He cannot in law,
5 equity, or simple fairness retain the fruits of his acts of conversion.

6 Nor does the more recent case of *California-Nevada Annual Conference of the United*
7 *Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal. App. 4th 754, aid
8 defendant Soro's quest to keep the Church's property he has wrongfully taken. That case, too,
9 involved a local body that voted by a majority to disaffiliate from the senior body. Nothing like
10 that happened here. No members of any of the parishes in the Western California Diocese have
11 voted or otherwise expressed a desire to separate themselves from the Church of the East.
12 Moreover, the senior body's claim to property ownership there was based entirely on an express
13 trust that the Court of Appeal ruled was revocable and was properly revoked by the local body.
14 Here the Church's ownership claim is based on binding corporate documents vesting title, as
15 well as all rights to control, in the Holy Synod and the Patriarch, with the local bishop as their
16 agent and representative. All of defendant Soro's defalcations transferring title and control to
17 himself through the execution of unauthorized documents transgress the Church's express title
18 and authority, violate defendant's fiduciary duties, and are thus void.

19 In summary, the California church property cases, fortified by U.S. Supreme Court
20 decisions, have allowed senior church bodies like the Holy Synod and the Patriarch, to preserve
21 full rights of ownership and control in local church bodies as long as the governing corporate
22 documents forming the local body recognize their authority. That unquestionably happened
23 here. In the 1986 Diocesan Constitution and numerous other documents that will be offered in
24 evidence, all bodies of the Church confirmed the supreme, absolute, and irrevocable authority of
25 the Holy Synod and the Patriarch as the board of directors controlling church property, as well as
26 the ultimate repository of ecclesiastical and theological authority in the Church of the East.
27 Whether based on an interpretation of these documents using neutral principles or on deference
28 to the highest authority in a hierarchical church, plaintiffs have a clear right to recover their

1 property from a former bishop who refuses to return it.

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7 **II. Neutral Principles of Corporate and Agency Law Demand that Defendant**
8 **Soro Relinquish the Property Entrusted To Him and Account For His**
9 **Management of It.**

10 Even if this were not a church property case, plaintiffs would be entitled to prevail
11 against defendant Soro based on his former status and his continuing fiduciary obligations as an
12 agent and corporate director of corporations formed for the benefit of the Church of the East and
13 subject to the control of the Holy Synod and the Patriarch.

14 Defendant Soro was the “representative” of the Holy Synod and the Patriarch in dealing
15 with Church property. (1986 Constitution, Article Twelve, section 1.) This is a classic
16 description of an agent. “An agent is one who represents another, called the principal, in
17 dealings with third persons. Such representation is called agency.” (Civ. Code, § 2295.) The
18 duties and liabilities of an agent are well established:

19 “The agent is a fiduciary with respect to matters within the scope of the agency. . . [T]he
20 agent’s duties include ‘the duty to account for profits arising out of the employment, the
21 duty not to act as, or on account of, an adverse party without the principal’s consent . . . ,
22 and the duty to deal fairly with the principal in all transactions between them. . . The
23 agent owes the principal the duty of fullest disclosure of material facts concerning a
24 transaction which might affect the principal’s decision thereon. . . . The agent must
25 disclose whether he is acting on his own account or as an adverse party to the principal . .
26 . . The duty extends to all facts likely to affect the principal’s judgment. . . . The agent
27 also has . . . ‘the duty to account for profits arising out of the employment . . . Thus, any
28 profit made by an agent on behalf of the principal is owed to the principal . . . [T]he agent

1 is not entitled to make any secret profit out of the subject of the agency . . . All benefits
2 and advantages acquired by the agent as an outgrowth of the agency, exclusive of the
3 agent’s agreed compensation, are deemed to have been acquired for the benefit of the
4 principal, and the principal is entitled to recover such benefits in an appropriate action.””
5 (*Van de Camp v. Bank of America* (1988) 204 Cal. App.3d 819, 857-858; citations
6 omitted; see also *Fish v. Machado* (1996) 50 Cal. App.4th 1069, 1072 & Civ. Code
7 section 2322 ©) [agents are subject to the duties and liabilities of trustees].)

8 Corporate directors owe fiduciary duties similar to those of agents and trustees.

9 (*Interactive Multimedia Artists, Inc. v. Superior Court* (1998) 62 Cal. App.4th 1546, 1555-1556
10 [director’s fiduciary duties are based on powers held in trust and are subject to equitable
11 enforcement]; *Professional Hockey Corp. v. World Hockey Assn.* (1983) 143 Cal. App.3d 410,
12 414 [directors under obligations of trust and confidence]; *Mueller v. Macban* (1976) 62 Cal.
13 App.3d 258, 274 [breach of trust for directors to appropriate to himself corporate assets].)

14 As the evidence will show, defendant Soro breached each and every one of his duties as
15 an agent, director, fiduciary, and trustee of the Holy Synod and the Patriarch. He must now be
16 called upon to disgorge the property he wrongfully retains and to account for that property and
17 its proceeds.

18 **III. To Protect Plaintiffs, Their Property, and Their Ministry Pending Trial, the**
19 **Court Must Impose a Constructive Trust on Assets Wrongfully Held By**
20 **Defendant Soro and Issue A Preliminary Injunction and Other Necessary**
21 **and Appropriate Equitable Relief To Insure That No Further Dissipation of**
22 **the Church’s Property Will Occur.**

23 Plaintiffs are entitled to the imposition of a constructive trust in their favor as against
24 Bishop Soro for all church properties and church assets. (Civ. Code, §§2223; 2224.) A
25 constructive trust requires that three elements be satisfied: (1) existence of property or some
26 interest in property; (2) plaintiff’s right to that property; and (3) defendant’s wrongful acquisition
27 or detention of the property. (*Burlesci v. Peterson* (1988) 68 Cal. App. 4th 1062, 1067.) Both the
28 creation and imposition of a constructive trust are governed by equitable principles of restitution

1 and unjust enrichment. (Id. at p. 1067.)

2 In light of the evidence of defendant Soro's misappropriations and defalcations as a
3 fiduciary, the court must impose a constructive trust in order to protect the plaintiffs' lawful and
4 equitable interest in the subject properties that ex-Bishop Soro seeks to hijack for himself. (*Olson*
5 *v. Toy* (1996) 46 Cal. App. 4th 818, 823; *Hicks v. Clayton* (1977) 67 Cal. App.3d 251, 264.)

6 Among the examples of defendant's breach of his duties as an agent, fiduciary, and trustee, the
7 evidence will show each of the following:

- 8 • Defendant Soro transferred title to the San Francisco Parish Priest's residence into
9 his own name sometime in 2005. He thereafter obtained a \$511,000.00 loan in his
10 own name, securing this loan with the church residence as collateral in the form of
11 a deed of trust. He later obtained a \$200,000.00 line of credit, also in his own
12 name. Once again, church property secures this line of credit with a deed of trust.
13 All such transactions were surreptitiously conducted without the knowledge or
14 approval of the Holy Synod or the Patriarch.
- 15 • Defendant Soro also encumbered the San Jose Parish in the amount of
16 \$550,000.00. This loan was also secured without the knowledge or approval of the
17 Patriarch or Holy Synod. Furthermore, none of the members of the respective
18 parishes, nor the local priests, with the exception of the San Jose Parish, were ever
19 consulted prior to this unique form of high finance. (The San Francisco and San
20 Jose church properties in question were debt free before defendant encumbered
21 them. They are now encumbered in the amount of \$711,000.00 and \$550,000.00
22 respectively, for a total of over \$1.25 million.)
- 23 • Ex-Bishop Soro also falsified a deed for the San Jose Parish in 2003. Upon review
24 of the Corporation Grant Deed, the identity of the Grantor is noticeably unique. It
25 appears one corporation is deeding title in property to itself. However, EX-Bishop
26 Soro actually perpetuated a fraud by deeding the property that was in the name of
27 the Holy Apostolic Catholic Assyrian Church of the East Diocese of Western
28 United States to the Western California Diocese. The legal owner of the church

1 was the Diocese of the Western United States. Bishop Soro was not the Bishop nor
2 the acting officer of that corporation in 2003. He resigned as director was replaced
3 by the Holy Synod with Bishop Khamis in 1999. Only Bishop Khamis could have
4 legally conveyed title in this church.

5 Plaintiffs believe the illegal conduct by defendant Soro described above is merely the tip
6 of the iceberg. It reflects an unconscionable level of avarice and arrogance towards his former
7 diocese and Church. There are undoubtedly even more transgressions still concealed. Plaintiffs
8 are in desperate need to reclaim their lawful property in order to prevent any further illegal
9 conduct by defendant and his cronies. To allow him to remain in control of these assets now will
10 jeopardize all of the Church's property.

11 CONCLUSION

12 Defendant Soro's duplicity becomes most transparent in his letter to the Patriarch on May
13 27, 1988, where he feigns his obedience to the Holy Synod and the Patriarch: "*[W]hen, God*
14 *forbid, a legal danger comes upon the properties of the church in a parish or diocese, no one*
15 *person shall be able to take the properties because they are not the parish's or diocese's, rather*
16 *they are the property of the corporation, that is the Holy Synod under the presidency of the*
17 *Catholicos Patriarch.*"

18 Later in the letter, he further pretends submission to the Patriarch's authority, stating: "*The*
19 *present bylaws of each diocese clearly demonstrate how the bishop as the head of the diocese is*
20 *100% under the Synodal Canons, the Holy Synod and the authority of the Catholicos -*
21 *Patriarch.*"

22 Yet, now, the duty to obey has inexplicably vanished. According to the defendant, all the
23 Church's properties are somehow his personal assets. He was never under the authority of the
24 Holy Synod and the Patriarch, nor the Diocesan Constitution. Corporate documents and property
25 were always subject to his manipulation and control.

26 Defendant was right the first time. For the very reasons he gave in 1988, a preliminary
27 injunction should issue requiring him to relinquish control of all Church assets and property to
28 plaintiffs who, according to defendant himself, have always been entitled to them.

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Respectfully submitted;

Dated: _____

Robert Oushalem, Attorney for Plaintiffs