

No. H030122

**COURT OF APPEAL OF CALIFORNIA
SIXTH APPELLATE DISTRICT**

**THE HOLY SYNOD OF THE HOLY APOSTOLIC
CATHOLIC ASSYRIAN CHURCH OF THE EAST, et al.,**
Plaintiffs and Appellants,

vs.

ASHUR B. SORO et al.,
Defendants and Respondents.

APPELLANTS' AMENDED OPENING BRIEF

On Appeal from the Superior Court of Santa Clara County
Superior Court Case Nos. 1-05-CV054812
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INTRODUCTION

The Holy Apostolic Catholic Assyrian Church of the East¹ is an ancient hierarchical church.² It has been governed since 410 A.D. by a Holy Synod of bishops which serves as legislator, interpreter, and custodian of the Church's canon law.³ Under that law, all Church entities and property are under the control of the Holy Synod and the Patriarch, who is the administrative head of the Church.

When the Holy Synod appointed defendant Ashur B. Soro as a bishop of the Church, Soro took an oath of obedience to the Patriarch and to

¹ The "Church of the East" or "the Church." This term will include all plaintiffs and appellants in this case.

² II AA 474:13-15; Decl. of Rev. Paul Goda, S.J. ["The [Church] is not and cannot be deemed a congregational church. It is unequivocally a hierarchical church in all respects."]. The record on appeal includes an Appellants' Appendix in Lieu of Clerk's Transcript, consisting of pleadings and hearing exhibits, which will be referred to as "AA" and a Reporter's Transcript of the preliminary injunction hearing, which will be referred to as "RT."

³ The Holy Synod is headed by the Patriarch and composed of metropolitans (or archbishops) and bishops who preside over the Church's archdioceses or dioceses. (Facts, section 1(a).) As used in this brief, "bishop" and "bishops" will refer individually or collectively to the metropolitans and bishops who make up the Holy Synod. There were twelve members of the Holy Synod in 2005, including the Patriarch and eleven metropolitans and bishops. (RT 28:5-29:19.) References to the Statement of Facts sections below will be referred to as "Facts" followed by the section number. All other section references are to the Discussion sections below.

the canon law. The Synod entrusted to Soro the Church's Western California Diocese, and transferred into his care the spiritual lives of Assyrian Christians, as well as valuable real and personal property belonging to the Church.

When Soro later had a falling out with the Church, he began a series of vicious attacks on the Patriarch and the Holy Synod. The Holy Synod defrocked Soro and removed him as a bishop. Since his removal, Soro has defied the Patriarch's order that he relinquish the Church's corporation and property, and has threatened violence on anyone who would dare to enter *his* premises. With no other recourse, the Church brought suit.

Legally, the result called for by the undisputed evidence just described is straightforward and unremarkable. Soro was an agent of the Church. He was given control of a corporation and property for use in the Church's service. His authority was then terminated. Under established rules of agency and fiduciary law, he was required to account for and return what the Church had entrusted to him. Case closed.

Regrettably, this case remains very much open. Unwilling to accept the consequences of the Holy Synod's termination of his office and agency, Soro now claims that *he personally, or corporations controlled by him, own the Church's property*. Thus, what was originally given to him *in trust* for

use in the Church's ministry has somehow, according to Soro, been transformed into a *personal gift*.

To the continuing detriment of the Church and its faithful in Northern California, the trial court adopted Soro's view. Refusing the Church's application for preliminary injunction, it declined to direct Soro to account for or restore the Church's corporation or its property. The court's ruling was premised on numerous fundamental legal errors.

On the merits, the court:

- Disregarded the undisputed agency relationship between the Church and Soro and the legal consequences of its termination.
- Refused on bogus First Amendment grounds to apply the plain meaning of the Church's canon law of property, although that law was fully acknowledged and acceded to by Soro himself.
- Accorded undue significance to Soro's directorship of the Church's diocesan corporation, while ignoring the undeniable fact that his very directorship was an express trust under the control of the Patriarch and the Holy Synod and confined to duly authorized bishops of the Church.

In assessing the Church's need for interim injunctive relief, the court paid no attention to uncontradicted evidence that Soro:

- Ousted the Church from its cathedral, took its money, virtually destroyed its spiritual ministry to the Assyrian Christian Community; and then
- Used the Church's own resources to propagate a personal creed that undermined the Church's religious tradition and beliefs.

Soro has brought multiple lawsuits against the Church and its Patriarch. His relentless vendetta against the Church has now engulfed it in complex litigation and is absorbing hundreds of thousands of dollars in scarce Church resources. The Church has been constrained to appeal to this Court.

As the Church will show, there is no reason to forestall justice by postponing until trial the enforcement of the Church's indisputable legal and constitutional rights to its own property. The California law of agency, bolstered by this Court's decision in *Metropolitan Philip v. Steiger* (2000) 82 Cal.App.4th 923, 931, as followed in *Guardian Angel Polish National Catholic Church of Los Angeles, Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, 930-932, clearly establishes the Church's rights to an immediate return

of its property now held hostage by an ex-bishop who has proved himself a faithless and disloyal agent. The trial court's order should be reversed and this case remanded for entry of an appropriate preliminary injunction.

JURISDICTIONAL STATEMENT

The Church has appealed to this Court from: (1) an Order After Hearing on plaintiffs' motion for preliminary injunction, entered on February 23, 2006 (III AA 530-532); and (2) a subsequent Order Modifying Injunction, entered on April 20, 2006. (III AA 770.) The first order is appealable as an order denying in part and granting in part preliminary injunctive relief; the second is appealable on that ground and as an order that involves an appealable order. (Code Civ. Proc., §§ 904.1(a)(6), 906.) The appeal was timely filed as to both orders. (Cal. Rules of Court, Rule 2(a)(1) & (2); III AA 533, 765, 770.)

ISSUES ON APPEAL

The Church's appeal raises the following issues:

1. *The agency issues*
 - a. As a bishop who was actually engaged by the Church to represent it in a Diocese, was Soro the Church's agent, fiduciary, and trustee in his management of

Church corporations and in his control of Church property?

- b. When Soro's agency was terminated by the Holy Synod, was he obligated to relinquish control of the Church's corporation and account for and return the Church's property?

2. *The church property and free-exercise issues*

- a. Do "neutral principles" of California law establish Church ownership of diocesan property when the Church's governing documents so expressly provide?
- b. Did the trial court's failure to give legal effect to the express and legally cognizable provisions of the Church's governing documents violate its constitutional rights to free exercise of religion?

3. *The injunctive relief issue*

Is a Church entitled to effective pretrial injunctive relief when it has been: (1) deprived of access to its own property by a trespasser and converter; (2) denied the opportunity to conduct its Christian ministry using that property; and (3) forced to endure the occupation

and dissipation of that property by a defrocked bishop who actively undermines the Church's tradition and beliefs?

4. *The bond issue*

Did the trial court abuse its discretion when it required the Church to post a \$400,000 bond, while refusing the the injunctive relief it sought, in the absence of any evidence of harm to Soro should the injunction issue?

STANDARD OF REVIEW

The evidence before the trial court at the preliminary injunction hearing consisted of documents embodying the Church's canon law and Diocesan Constitution,⁴ various title and corporate records, the largely uncontradicted testimony of Bishop Mar Meelis Zaia, Secretary of the Holy Synod, about the Church's law and practice, and Soro's own admissions and descriptions of his ecclesiastical differences with the Church. The uncontradicted testimony of other witnesses who confirmed Soro's prior

⁴ The "Constitution" will be cited by article number followed by section number. All references will be to Chapter One of the Constitution unless otherwise stated. It is located at IV AA 876-913 and described in more detail in Facts, section 1(d) below.

loyalty and obedience to the Church and his acceptance of the Constitution supplemented and supported the primary evidence.

There was little, if any, conflict in the historical evidence and no substantial credibility issues. The parties differed sharply, however, in their characterizations of the legal effect of the documents and events. In light of the foregoing, the standards of review applicable to the trial court's orders are as follows:

The Order After Hearing. Although trial courts are traditionally accorded discretion in weighing conflicting evidence on preliminary injunction motions, "such discretion is not whimsical or unlimited, and the reviewing court should reverse an order denying a preliminary injunction to which a plaintiff is obviously entitled." (*Plumbing, Heating and Piping Employers Council of Northern California v. Howard* (1975) 53 Cal.App.3d 828, 835.)

When the material facts are undisputed and the plaintiff's entitlement to relief turns on the trial court's application of law, an order granting or refusing injunctive relief is subject to de novo review. Numerous decisions confirm the de novo standard. As the Court of Appeal stated in *People v. Miller Brewing Co.* (2002) 104 Cal.App.4th 1189, 1194:

“Ordinarily, an order denying a preliminary injunction is reviewed under the abuse of discretion standard. However, where . . . the factor of the ‘likelihood of prevailing on the merits’ depends upon a question of law . . . rather than upon evidence to be introduced at a subsequent full trial, the standard of review is whether the superior court correctly interpreted and applied the law, which we review de novo.”

(See also *San Diego Unified Port Dist. v. U.S. Citizens Patrol* (1998) 63 Cal.App.4th 964, 969; *California Ass’n of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143 Cal.App.3d 419, 426.)

Thus, a discretionary standard cannot be applied to defeat clearly established legal rights. “[A]n order denying [preliminary injunctive relief must be reversed where the trial court incorrectly applied the law to undisputed facts.” (*Glaser Bros. v. 21st Sales Co.* (1964) 224 Cal.App.2d 197, 205.)

De novo review of documentary evidence. Under our Supreme Court’s landmark decision in *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, the interpretation and effect of writings are subject to de novo review in the absence of competent and conflicting extrinsic evidence that

seeks to interpret a genuine ambiguity in the text. (*Id.* at pp. 865-866; *Citizens For Goleta Valley v. HT Santa Barbara* (2004) 117 Cal.App.4th 1073, 1076.) When the parties' dispute is about the characterization of the evidence or inferences to be drawn from the writings, the Court of Appeal will conduct an independent review to arrive at its own interpretation. (*Parsons*, 62 Cal.2d at p. 866; *California Medical Assn., Inc. v. Regents of the University of California* (2000) 79 Cal.App.4th 542, 547-548, fn. 8.)

The rationale for the rules just described is that, in the absence of conflicting extrinsic evidence, there is nothing for the trial court to weigh and no reason for deference to the trial court's fact-finding capabilities. (*Davies Machinery Co. v. Pine Mountain Club, Inc.* (1974) 39 Cal.App.3d 18, 23.)

The de novo standard of review applies to legal documents of numerous kinds – including all those involved in this case. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238 [deed]; *Van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 562 [contractual documents that affected property conveyance]; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439-1440 [trust]; *Berke v. Tri Realtors* (1989) 208 Cal.App.3d 463, 467-468 [bylaws]; *Trustees of California State University & Colleges v. National Collegiate Athletic Assn.*

(1978) 82 Cal.App.3d 461, 475-475 [constitution and bylaws of unincorporated association].)

In *Samoan Congregational Christian Church in the United States v. Samoan Congregational Christian Church of Oceanside* (1977) 66 Cal.App.3d 69, 77, the appellate court reviewed de novo a church's bylaws and articles to determine whether those documents gave rise to a constructive trust imposing senior church control over local church property. The same issue is present here; the same standard is applicable.

The Order Modifying Injunction. The reviewing courts generally use the abuse of discretion standard in deciding whether a court correctly fixed the amount of the bond or determined other terms or conditions of injunctive relief. Even under that standard, reversals occur where the bond amount was not justified by evidence in the record or the terms of injunctive relief are manifestly unjust. (*Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14 [trial court abused its discretion in fixing inadequate bond amount]; *Hummell v. Republic Fed. Savings & Loan Assn.* (1982) 133 Cal.App.3d 49, 52 [trial court abused discretion in fixing excessive bond unsupported by evidence].)

STATEMENT OF FACTS

_____ Mindful of the standard of review, the Church will describe the undisputed evidence, noting any conflicts that might give rise to questions of weight or credibility.

1. The Church is governed by a Holy Synod which controls all Church personnel, corporations and property.

The Holy Apostolic Catholic Assyrian Church of the East, so named because it was originally located to the East of the Roman Empire, is an orthodox church of ancient origins. (RT 25:25-27; IV AA 880.) Disbursed from their homeland in the Middle East, its migrant and refugee members have settled in clusters throughout the world. (RT 25:21-27.)

The Church's modern ministry is international in scope, including archdioceses and dioceses in Iraq, India, Lebanon, Europe, Australia and New Zealand, the Eastern United States and Canada, the Western United States (presently including Southern California and Arizona), and Western California (presently including Northern California and Washington). (RT IV AA 884; RT 31:20-38:17.) The Western California Diocese is composed of parishes in Seattle, San Francisco, Ceres, San Jose, and Sacramento. (RT 282:13-17.)⁵

⁵ Ceres is a small town in the Central Valley near Modesto.

Bishop Mar Meelis Zaia, who serves as Secretary of the Holy Synod (RT 29:20-23), gave testimony and offered in evidence a series of official governing Church documents describing the Church's structure, authority, and property ownership under canon law. (See generally RT 59-89; 92-118; IV AA 854-913.) With a few exceptions that will be noted, no witness contradicted any of his testimony or disputed the meaning or authority of any document he discussed.

a. Headed by the Patriarch, the Holy Synod enacts and interprets the canon law and exercises supreme authority over all matters in the Church.

The Holy Synod is composed of the Catholicos-Patriarch, who always chairs its sessions, and the metropolitans (or archbishops) and bishops of all archdioceses and dioceses. (RT 26:13-27:13.) From its origins, the Synod has been the supreme governing body of the Church, “the legislator and the ultimate interpreter of the Canon Law,” while the Patriarch has acted as the Church’s “supreme administrator.” (RT 73:1-3; 224:22-24; 225:4-7; adopting description in Constitution, IV AA 857; 861-863.) Soro himself affirmed the Synod’s ultimate authority within the Church. (RT 144:17-19.)

The Holy Synod's decrees are canon law. (RT 44:3-4.) Canon law constitutes the "governing code of the Diocese," and is "authoritative and binding on local bishops and congregations." (IV AA 857, 862, Article Six, § 1.) Just as the Holy Synod appoints and consecrates bishops, so it has the power to defrock and remove them from office. (RT 224:17-227:1) The Synod also holds supreme judicial power to resolve disputes within the Church, including those involving its bishops. (RT 104:21-24; 226:16-227:1.)

b. Individual bishops exercise authority in their dioceses as the Patriarch's and the Holy Synod's representatives.

The Patriarch has "the highest spiritual, ecclesiastical and administrative authority in the total body of the Church including each and every Diocese." (IV AA 865 [Article Ten, § 1]; referred to at RT 74:9-16.)

Individual bishops are *representatives* of the Patriarch and the Holy Synod within their managing dioceses. (RT 73:1-27; 75:21-23; 103:8-15; IV AA 861, Article Two, § 2 ["Hence, the Bishop . . . being . . . *the duly appointed prelate serving the Diocese under the mandate of His Holiness the Catholicos-Patriarch, shall be the Patriarchal Representative and head*

*of the Diocese.”*⁶ (IV AA 863, Article Six, § 2 [“The Catholicos Patriarch shall be the highest governing authority in the Church, *represented by the* Diocesan Bishop as the governing authority of the Diocese.”].)

c. Synodical and patriarchal control extend to Church corporations and property.

Corporations. Each diocese is separately incorporated. The bishop manages its affairs from day to day, but under express patriarchal supervision in accordance with the canon law as interpreted and applied by the Holy Synod. (RT 73:1-3; 87:3-7; 147:3-8.) A decree of the Fourth Holy Synod, held in Baghdad in 1990 and attended by then-Bishop Soro, mandated as follows:

“Every diocese should be incorporated in a legal corporate structure of its own. *The diocesan bishop shall be the head of that particular corporation, under the leadership of the Catholicos Patriarch, and in accordance to the synodical (canon) law.*” (IV AA 952, Item VII (B).)⁷

⁶ All emphasis in quotations is added unless otherwise stated.

⁷ Soro apparently had no quarrel with this part of the canon law. He was present at the Synod, and admitted that this decree was adopted. (RT 161:14-163:2.) The previous year, acting as an officer of the Western U.S.A. Diocese, Soro signed and filed with the California Secretary of State an acknowledgment of an amendment to the corporate articles providing that the sole director of the diocesan corporation had to be a “duly

In accordance with the canon, when a bishop forms a diocesan corporation or deals with corporate property, he does so as the *Holy Synod's and Patriarch's representative*. (RT 103:12-20.)

Church Governance and Property. After it was forced to take legal action in 1985 to retrieve Church property illegally conveyed in Australia, the Holy Synod decided to adopt, as a part of the Church's canon law, a diocesan constitution to govern dioceses and parishes. (RT 60:8-62:14.) The Synod decreed that a constitution be developed, reviewed, and approved by the Patriarch on the Synod's behalf. (RT 63:1-9.) The final document was signed by the Patriarch and distributed to bishops, dioceses, and parishes in 1987. (See IV AA 854; RT 71:10-18; 152:14-16.)

The Diocesan Constitution provides in detail for both Holy Synod and patriarchal authority over all Church affairs and personnel, including bishops, dioceses, corporations, and property of all kinds. (IV AA 876-913, especially Article Two, § 2 [IV AA 861]; Article Six, §§ 1-2 [IV AA 862-863]; Article Ten, § 1 [IV AA 865]; Article Twelve, § 1 [IV AA 867].)⁸

appointed bishop” of the Church of the East. (RT 126:28-128:18; IV AA 915.)

⁸ Soro has not contended otherwise. Rather, as shown below, he disputes whether the Holy Synod validly authorized the Constitution, which is a question of law from the undisputed facts.

All church property is required to be “managed and maintained in accordance with [the] [C]onstitution.” (IV AA 868; Article Twelve, § 2.) Under its provisions: “Church properties (tangible and non-tangible) are owned by the Church,” and must “be registered under it[']s name, that is ‘The Holy Apostolic Catholic Assyrian Church of the East - Diocese of ‘Name [of diocese].’” (IV AA 867, Article Twelve, § 1.)

Because individual bishops serve in a subordinate role as representatives of the Holy Synod and the Patriarch, ultimate control of all Church property is firmly vested in them. As article twelve, section 1 of the Constitution provides:

“Members of the Holy Synod, that is ‘The Catholicos Patriarch, all Metropolitans and all Bishops shall be considered the official board of directors of all Church properties. Each Diocesan Bishop in his own jurisdiction shall be considered the representative of the Holy Synod in all legal matters concerning any transaction related to the Church properties in his Diocese.” (IV AA 867; partial emphasis added.)

Soro affirmed this provision of canon law. (RT 143:19-144:7.)

Under canon law and consistent Church practice, no diocese was authorized to transfer Church property without the written consent of the Patriarch, as well as the bishop's approval. (RT 80:8-14; IV AA 868, Article Twelve, § 3.) Soro himself received patriarchal permission to sell property located within a diocese. (RT 144:5-19; IV AA 942.)

2. As a bishop, Soro submitted to the Church's authority.

Soro's Oath of Obedience. When Soro was consecrated a bishop of the Church on October 21, 1984, he took an oath of obedience to the Patriarch and the canon law. (RT 34:13-19; RT 124:26-125:26.) In his testimony, Soro fully acknowledged his obligation of obedience, but claimed that duty had been abrogated in 2001 when the Patriarch and the Holy Synod placed themselves under an ecclesiastical anathema by declining to remove another bishop.⁹ (RT 125:15-17; 181:18-182:24; 185:25-27.)

Soro's Request for a Diocese of His Own. After initially serving with Bishop Mar Aprim Khamis in Western U.S.A., Soro asked the Patriarch in 1998 if the diocese of Western U.S.A. could be divided to form

⁹ An anathema is “[a]n ecclesiastical curse that prohibits a person from receiving communion (as in excommunication) and bars that person from contact with members of the church.” (Black's Law Dictionary (8th ed. 2004), p. 94.)

Western California, which Soro would administer. As he was told, his request required both a Holy Synod decree and Patriarch approval. (RT 158:6-24.)

Soro's request was ultimately granted. To implement the decrees of the Patriarch and the Holy Synod creating the Diocese of Western California, Soro resigned as Chief Executive Officer and a director of Western U.S.A. and appointed Bishop Khamis his successor, effective June 7, 1999. (IV AA 945; 947.) At Soro's request, Church property was transferred to Western California – of which he became sole director as provided in the 1990 synodical decree. (RT 157:16-22.)

Soro's Numerous Submissions to the Church's Authority.

Throughout his tenure as a bishop and until his falling out with the Church, Soro repeatedly expressed his submission to synodical and patriarchal authority, including their control over Church corporations and property. The record reveals nine examples:

1. *Soro's 1986 Australian Epistle.* Soro chastised wayward parish officers in Australia who had purported to sell Church property without patriarchal permission, telling them that their conduct was “not canonical” (i.e., in contravention of canon law) because all properties were

“under the supervision of the Holy Synod” and no sale could be made without the Patriarch’s consent. (IV AA 934.)

When confronted with his epistle at trial, Soro admitted that his statement of the canon law was correct at the time he wrote it, and affirmed the Holy Synod’s supreme proprietary authority as of that time. (RT 144:2-7, 17-19.)

2. *Soro’s Accession to the 1986 Diocesan Constitution.* Soro expressly acceded to the Constitution and acknowledged its binding effect in numerous ways:

a. *Soro Drafted the Constitution.* Soro himself was active in the writing of the Constitution as a member of a drafting committee of three bishops. (RT 61:22-26; 66:13-14; RT 152:17-153:13.)

b. *Soro Personally Received the Patriarch’s Decree Issuing the Constitution.* In 1987, the Patriarch signed copies of the Constitution in purple ink, and delivered one to each bishop, including Soro. (RT 71:10-18; RT 152:14-16.)

c. *Soro Voted to Receive, Adopt, and Enforce the Constitution.* Soro attended a Diocesan Committee Meeting in Chicago in May of 1987. (RT 136:12-14.) The Patriarch spoke at the meeting to a gathering which included then-Bishop Soro and Bishop Mar Aprim

Khamis, as well as priests and parish lay leaders. He explained the Holy Synod's approval of the Constitution, its mandatory character, and its binding effect on all dioceses and parishes. (IV AA 970.)

Along with everyone else present at the meeting, Soro voted in favor of a motion suggested by Bishop Khamis to:

“‘adopt’ and ‘receive’ the new Diocesan Constitution as recommended by the Holy Synod (copy enclosed) and also sign their names as representatives of their respective parishes, confirming the receipt and implementation of this constitution as decreed by the Holy Synod and as approved and sealed by His Holiness, Mar Dinkha IV, the Catholicos Patriarch.” (IV AA 971 [Meeting Minutes].)

Soro at no time objected to the motion, suggested that anything in it was incorrect, or said to anyone – whether at the meeting or any other time before this action was brought – that the Constitution had not been properly adopted. (RT 212:23-27; 214:1-12.)

d. *Soro Promised in Writing to Implement the Diocesan Constitution.* After the vote, everyone present, including Soro, personally signed a document formally receiving the Constitution. (IV AA 925-929.) This reception document recited that the assembled church members signed

their names “*in confirmation of receiving and implementing this constitution as decreed from the Holy Synod and as approved and sealed by [the Patriarch] . . . [further acknowledging] that this law must be carried out by each parish priest, clergy, committee and other legal representatives devolving their corporation to the new Diocesan corporation . . .*” (IV AA 925.)¹⁰

e. *Soro Acknowledged the Holy Synod’s and Patriarch’s Decision to Adopt the Diocesan Constitution.* Soro and all others present at the Diocesan Committee meeting also signed a document stating: “We the undersigned do hereby acknowledge the various decisions made by the hierarchy and the delegation on this Memorial Day Weekend, which minutes will be sent to each parish. We affix our signatures on this the 25th of May, 1987.” (RT 221:1-12; IV AA 930.)

Soro nowhere denied his signature on this document. Nor did he object then – or at any other time until his falling out with the Church – that

¹⁰ Soro admitted that the reception document bore his signature, but professed lack of recollection as to whether the reception language on its first page was attached to the document when he signed it. Father Mark Brown, who acted as secretary of the Diocesan Committee, was present with Soro at the Diocesan Committee meeting. He testified positively and unequivocally that he, Soro, and the others signed a two-page document with the reception language as the first page. (RT 211:17-212:11.) Nothing else makes sense. There would have been no point in Soro – or anyone else – signing a blank page.

the Constitution was not a valid part of the Church's canon law. In fact, Soro proclaimed to Father Brown at the Diocesan Committee Meeting: "This is a work of the Church." (RT 214:5-6.)

f. *Soro Implemented the Constitution.* Soro acted on his proclamation to Father Brown by implementing the Constitution in his own diocese – Western U.S.A. He amended the corporate articles to ensure that the diocesan corporation's director would always be a bishop of the Church. (IV AA 915; RT 127:2-16, 128:5-8.) He also appointed two corporate officers under the Constitution's authority. (IV AA 940; RT 148:16-20.) Finally, under his direction, the corporation adopted and applied the Constitution as its sole governing bylaws, transmitting them as such to the California Franchise Tax Board. (RT 208:14-16; 209:20-27.)

3. *Soro's 1988 Epistle to the Patriarch.* Soro wrote to the Patriarch on May 27, 1988 advocating the formation of a Church-wide corporation. (IV AA 936-938.) In the course of his letter, Soro acknowledged that he and other bishops were subordinate to the Patriarch, the Holy Synod, and to the Synod's properly-enacted canon law, stating: "The present by-laws of each diocese clearly demonstrate how the bishop as the head of the diocese is 100% under the synodal canons, the Holy Synod and the authority of the Catholicos-Patriarch." (IV AA 937; RT 147:1-

11.)¹¹ Soro argued that a Church-wide corporation would better protect Church property, explaining that Church properties were: “*not the parish’s or the diocese’s, rather they are the property of the corporation, that is, of the Holy Synod under the presidency of the Catholicos-Patriarch.*” (IV AA 936-937.)

4. *Soro’s Manipulation of the Western California Bylaws.*

Acting as sole director of Western California, Soro adopted on August 12, 1999 a set of bylaws that accurately reflect the Holy Synod’s ultimate authority to control the corporation. (IV AA 994-999.)¹²

Section 3.02 of Soro’s bylaws provided that the sole director had to be a “validly ordained Bishop from the Holy Apostolic Catholic Assyrian Church of the East.” (IV AA 917 & 994; Article III, § 3.02.) The director was eligible for reelection without term limit only if “he continue[d] to meet

¹¹ The Constitution so provides. (IV AA 861; 865; 867.)

¹² The bylaws were certified and sealed by the corporate secretary Samuel Dinkha as adopted by the Board of Directors (i.e, Soro) on August 12, 1999. (IV AA 999; RT 129:25-27.) A complete copy of the bylaws was introduced as Exhibit 35 attached to the declaration of Father Nenos Michael, Chief Financial Officer, who testified that they were adopted on August 12, 1999, as the secretary certified, and that he was not aware of any changes until after this suit was filed. (IV AA 987- 988; 994-999.) While admitting the secretary’s signature and certification, Soro expressed uncertainty that the bylaws were “the final version.” (RT 132:14-19; 131:16-18; generally 129-134.) As the evidence shows, they obviously were.

the qualifications required by Section 3.02.” (IV AA 922 & 995; Article III, § 3.05.) The director held office for life or until resignation or “removal.” (*Id.*, § 3.03.) Notice of the director’s resignation had to be given to the Patriarch, and any vacancy was to be filled by the Holy Synod. (IV AA 919 & 997; §§ 3.09; 3.10(b).)

After enacting the 1999 bylaws, Soro secretly changed them in 2004 to eliminate the requirement that the sole director be a bishop of the Church of the East. Under the new bylaws, Soro would serve for life. Removal was no longer allowed. (RT 204-205; II AA 273-274.)

3. Soro was removed as a bishop by the Holy Synod following an ecclesiastical dispute.

The Patriarch visited the Western California Diocese in January and February 2005 after receiving complaints from members of Mar Yosip Parish in San Jose that requested Soro’s removal or replacement as Bishop. (IV AA 777-778; RT 49:24-50:2.)

In response to the Patriarch’s visit, Soro wrote to him on April 2, 2005, accusing him of various ecclesiastical offenses and hurling numerous invectives. (IV AA 777-779.) He charged the Patriarch with transgressing the canon law by not suspending another bishop, encouraging parishioners to withhold financial support from the Church on account of their

complaints against Soro, and meeting with parish priests without Soro's presence. (IV AA 777-778.)

After the Patriarch responded to Soro's letter, Soro again went on a rampage on June 30, 2005, reiterating in another letter his accusations of "uncanonical and improper" conduct by the Patriarch. (IV AA 784) In his four-page, single-spaced missive, Soro leveled at the Patriarch more accusations of meddling in Soro's affairs, acting for personal glory, and remaining silent in the face on uncanonical acts. (IV AA 784-787.) He also criticized the Patriarch's manner of conducting religious services during a proposed upcoming visit to San Jose to celebrate Mass on July 12, 2005, and effectively told him not to come at all if he would not accede to Soro's demands. (IV AA 786-787.)

The Holy Synod convened in Chicago in November 2005 to deal with Soro's belligerent conduct. (RT 38:20-39:9.) Notice of the meeting was given to all metropolitans and bishops, including Soro. (See IV AA 805.) At the meeting, the Patriarch demonstrated to the Holy Synod's satisfaction that Soro's letters "did not contain any shred of truth." (IV AA 808.)

The Holy Synod unanimously decreed on November 7, 2005 that Soro be given a choice of: (1) accepting suspension and re-assignment to

another diocese, refraining from diatribes against the Holy Synod, and relinquishing the Church's property; or (2) resigning as a bishop. (IV AA 795-796.)

Soro responded to the Holy Synod's decree with open defiance and threats. He rejected the decree as "not canonical," and threatened action "by the police and the FBI" against anyone who dared to attempt recovery of Church property from him. He even told the Holy Synod that it would have to sue him to get the property back or take responsibility for "anything that should take place," suggesting the likelihood of violence. (IV AA 822.)

Because Soro had not elected the first option given to him in the Holy Synod's decree of November 7, 2005, he had necessarily chosen the second – loss of his office as a bishop. By a decree dated November 16, 2005, the Patriarch implemented the Holy Synod's action and confirmed that Soro had been defrocked. (IV AA 828-829.) The patriarchal decree removed Soro as an officer and director of all Church corporations and directed that he return Church property and records and that he provide a full accounting of financial matters. (IV AA 828.) The Patriarch appointed Bishop Mar Odisho Oraham, Bishop of Europe, as successor Bishop of the Western California Diocese. (IV AA 826.)

4. Soro refused to relinquish the Church's property.

Soro's threats to lock the Church out of its own property were not idle ones. Defendant Soro has refused to account for or return any of the Church's land, buildings, goods, funds, or accounts. (RT 289:18-27.) He has halted the church's ministry to youth and seniors. (RT 291:16- 292:6.)

Soro installed chain-link fences and blocked off entrances to the Church during the normal mass hours on November 6, 2005. Church members were verbally confronted by Soro's security force, and told to leave immediately; some were actually assaulted. (I AA 27:10-17; RT 324:18-23.) Police appeared in force at Mar Yosip Parish. (I AA 27:18-21.) Just a few days before Christmas, Soro's attorney posted a "keep out" notice on Church property warning that access without Soro's written permission was legally forbidden. (IV AA 985; RT 251:15-252:3; 291:1-6.)

After his defiance of the Church, Soro was recognized as a bishop by two rival churches – the Ancient Church of the East and the Chaldean Catholic Church. He has used, and continues to use, the Church's property to advance his personal agenda of merging the Church of the East with the Ancient Church of the East and the Chaldean Catholic Church, thereby undermining the ancient tradition and authority of the Holy Synod and the Patriarch. (I AA 135-138; 517:15-26.)

5. The Church filed suit against Soro to obtain its property.

When Soro refused to account for the Church's property, the Church brought its present suit to obtain restitution. The plaintiffs and appellants are: the Holy Synod, Bishop Mar Odisho Oraham as Bishop of the Church's Western California Diocese, a California non-profit religious corporation ("Western California"), the Church's Diocese of North America, an Illinois non-profit corporation ("North America"), and the Church's Diocese of Western United States, a California corporation ("Western U.S.A.").

The defendants and respondents are Ashur B. Soro, an individual ex-bishop of the Church, Shimshon Antar, an individual who serves as a financial officer of Western California, and the St. George Parish of the Holy Apostolic Assyrian Church of the East, a California non-profit religious corporation.

The Church's suit seeks to establish its rights to Church real and personal property now occupied by Soro. The original Complaint sought injunctive relief, accounting, damages for breach of trust, imposition of a constructive trust, and a decree quieting title to real property. (I AA 1-13.) Defendants demurred to the complaint. Following the preliminary injunction hearing, the Church filed a First Amended Complaint that included causes of action for breach of fiduciary duty, constructive fraud,

actual fraud, concealment, accounting, constructive trust, quiet title, ejectment, injunction, and declaratory relief. (III AA 534-568.)¹³

Defendants answered the First Amended Complaint. (III AA 569-597.)

6. The trial court refused any effective preliminary injunctive relief and has allowed Soro to retain possession and control of nearly all of the Church's property.

The Church applied for a temporary restraining order and preliminary injunction against Soro and his financial officer Antar restraining them from: (1) any transfer or encumbrance of Church real property; (2) any pledge, transfer, or disposition of Church money or personal property; (3) excluding plaintiffs, priests, or parishioners from Church property in the Western California Diocese; (4) withholding keys to Church property in the Diocese; (5) collecting money from parishioners of the Church; (6) denying access to Church records; and (7) collecting money

¹³ The original complaint included as a plaintiff the Church's Diocese of Western California, a California non-profit religious corporation, because that corporation was operated by Soro as an agent of the Church and remains under Church control despite Soro's seizure of it. (AA 1-2.) The First Amended Complaint deleted Western California as a plaintiff and joined it as a nominal defendant to compel Soro to relinquish corporate control to the Church. (AA 536:4-14.) The First Amended Complaint also adds an additional Church-controlled entity, St. George Parish, a non-profit religious corporation, that was not named as a defendant in the original complaint. (AA 536:15-24.)

from parishes in the Diocese. (I AA 11:8-26.) The Church also asked that defendants be ordered to return its property. (I AA 12:1-3.)

After multiple-session off-the-record appearances, Judge Neal A. Cabrina entered a stipulated temporary restraining order that, among other provisions, mutually restrained the parties from transferring or encumbering Church real property or transferring or removing personal property of the Diocese or its parishes “except in the ordinary course of business,” and directed a sharing of parish premises on an alternating basis. (I AA 203:6-204:13.)

Plaintiffs’ motion for a preliminary injunction was heard before Judge Kevin Murphy on January 30, 31, and February 1, 2006.

Plaintiffs’ legal position. Based on the evidence summarized above, plaintiffs contended that Soro was an agent, fiduciary, and trustee of the Church in his management of a Church corporation and receipt of Church property. When his agency was terminated, he was obligated to return what had been entrusted to him. Instead, he had withheld the Church’s property and crippled its religious ministry. (Facts, section 4.)

Soro’s legal position. Soro acknowledged his oath of obedience to the Patriarch, the Holy Synod’s supervening authority over Church corporations and property, and his own submissions to that authority during

his time as a bishop. He also admitted the accuracy of his own statements of Synod control of property as of the time they were made. (RT 147:1-11.) Soro differed, however, with the Church's legal position in four principal respects, contending that: (1) Soro no longer had to obey the Church and could seize its property because the Holy Synod was under an *anathema* (IV AA 784, 822; RT 44:24-25; 182:8-24; 185:20-27; 193:4-12; 195:9-12); (2) He was still a bishop because his removal was *uncanonical* (RT 182:8-24; 194:19-25); (3) Western California *belonged to Soro personally and he controlled its property* because he had formed it (RT 195:5-196:1; 203:26-204:5); and (4) the Diocesan Constitution was *never adopted* (RT 197:7-10; 375:8-19).

The Court's Denial of the Preliminary Injunction. The court denied the Church's motion for a preliminary injunction. (III AA 530-532; RT 392:6-10.) Making no mention of ex-Bishop Soro's status as an agent and declining to construe or apply any part of the Church's canon laws of property, the court ruled that Soro's self-created "articles [of incorporation] and bylaws suggest that the property is not the property of the Mother Church." (RT 391:28-392:2.) It also determined that "bank accounts" and

the “function of the m[u]twa” suggested that Church property was “local in nature.”¹⁴

The court further ruled that the Church would not suffer irreparable harm from the loss of its property, but that Soro would suffer “tremendous hardship” if he were required to return it. (RT 392:10-24.) Brushing aside Soro’s expulsion of the Church and its faithful, the court remarked that Soro (and not the Church) “would be ousted from the real property [he] was associated with.” (RT 392:18-21.)

Notwithstanding its refusal to grant the Church’s motion, the Court felt constrained to enter an order to prevent “more chaos.” (RT 393:8-13.)¹⁵

Under the court’s order, the parties were mutually restrained from

¹⁴ The mutwa is a local parish committee including the parish priest and laypersons elected by parish members. (IV AA 903; 906.) It is empowered to collect and disburse revenues in the work of the Church, and required to report its activities to the bishop. (IV AA 909, Chapter Two, Article Twelve, § 2.) It is subject to the bishop’s power to remove it from office. (IV AA 897; Chapter Two, Article One, § 4.) The bishop, in turn, can be removed by the Holy Synod, which controls all “tangible and non-tangible” Church property, including local bank accounts. (IV AA 890, Article Ten, § 1; 892, Article Twelve, § 1.) As shown above, church property within a diocese is under the immediate control of the bishop, but only as the representative and agent of the Patriarch and Holy Synod.

¹⁵ Although the court did not define “chaos,” the record reveals that Soro supporters interrupted the preliminary injunction hearing with improper outbursts, causing plaintiffs’ counsel to protest that his clients were not receiving a fair hearing. (RT 107:24-27.) The court did not eject obstreperous parties or take any other effective action against Soro’s supporters.

transferring, encumbering, or removing real or personal property or assets of Western California except in the “ordinary course of business.” (III AA 531:15-23.) “Ordinary course of business” was vaguely and broadly defined to include “among other things” payments for operation of facilities, debts, loans, and salaries. (III AA 531:20-23.) The order left Soro in full charge of the Church’s money and personal property throughout the diocese.

The Church was given exclusive use of Mar Narsai Church in San Francisco. Soro was given exclusive use of Mar Yosip Cathedral in San Jose where Soro continues to preside as bishop, notwithstanding his removal by the Holy Synod. (III AA 531:24-27.) The parties were directed to share the use of Saint George Church in Ceres. (III III AA 532:1-2.) Each party was directed to make only legal use of the property, and to maintain and provide financial records to the adverse party. (AA III 532:6-10.)

The court initially directed only one side – the Church – to post a \$750,000 preliminary injunction bond. (III AA 532:11-15.) Despite the Church’s further application pointing out the absence of evidence to support anything greater than a nominal bond, the court refused to reduce the bond amount below \$400,000. (III AA 764.) The Church was unable to post the

bond, and the injunction did not issue, although the parties are sharing Church facilities in an arrangement that approximates the order.

DISCUSSION

I. SORO'S REFUSAL TO ACCOUNT FOR AND RETURN CHURCH PROPERTY ENTRUSTED TO HIM IS CONSTRUCTIVE FRAUD AS A MATTER OF LAW.

The Holy Synod's case against Soro rested on three propositions – each of which was readily established as a matter of law by the evidence at the preliminary injunction hearing:

- Soro was a representative and agent of the Church acting under the supervision and control of the Patriarch and the Holy Synod.
- Soro's agency was terminated.
- Upon his termination, Soro violated his fiduciary duties as a trustee to: (1) relinquish his directorship of the Church's Western California Diocese; and (2) return all Church property entrusted to it.

A. Soro Was the Church's Agent.

Agency exists when a principal engages an agent to act on the principal's behalf and subject to its control. (*Van't Rood v. County of*

Santa Clara (2003) 113 Cal.App.4th 549, 571.) Soro was a bishop of the Church of the East who managed a diocesan corporation and Church property in order to carry on the Church's ministry. As such, he was the Church's agent.

1. Agency is manifested by the agent's consent to act for the principal under the principal's control.

"An agent is someone who represents another, called the principal, in dealings with third persons." (Civ. Code, § 2295; 3 Witkin, Summary of California Law (10th ed.2005) Agency and Employment, § 2, p. 40.) An actual agency exists when the agent is employed to represent the principal. (Civ. Code, § 2299.)

The two essential elements necessary to establish an agency are straightforward: "[1] manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and [2] consent by the other so to act." (*Van't Rood*, 113 Cal.App.4th at p. 571; see also *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579.) While actual agency typically arises by express agreement, it may also be implied from the parties' conduct and communications. (*Van't Rood*, 113 Cal.App.4th at pp. 571-573.)

When the essential facts are not in dispute, agency becomes a matter of law for the reviewing court. (*Id.* at p. 562; *Violette v. Shoup* (1993) 16 Cal.App.4th 611, 619; *Magnecomp Corp. v. Athene Co, Ltd.* (1989) 209 Cal.App.3d 526, 536, citing *Mantonya v. Bratlie* (1948) 33 Cal.2d 120, 128-129; CACI Jury Instruction No. 3703 [Sources and Authority].)¹⁶

California appellate courts have not hesitated to recognize agency as a matter of law, and to reverse contrary trial court findings, when the evidence revealed actual engagement of an agent by a principal. (See, e.g., *Borders Online LLC v. State Board of Equalization* (2005) 129 Cal.App.4th 1179, 1189 [evidence established as a matter of law that Borders acted as “Online’s authorized agent or representative”]; *Magnecomp*, 209 Cal.App.3d at pp. 536-537 [technical advisor authorized to purchase equipment]; *Transport Clearings-Bay Area v. Simmonds* (1964) 226 Cal.App.2d 405, 424-426 [business manager authorized to submit freight

¹⁶ This Court made a similar statement in upholding summary judgment in *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 642, fn. 19: “Although agency is generally a question of fact, the issue may be determined by the court without trial where the undisputed facts negate any such relationship.” The two appellate decisions cited by the Court – *Universal Bank v. Lawyers Title Ins. Corp.* (1997) 62 Cal.App.4th 1062, 1066 and *Magnecomp*, 209 Cal.App.3d at p. 536, evince an intent not to confine the rule merely to situations in which agency is negated. While *Universal Bank* upheld a summary judgment ruling no agency as a matter of law, *Magnecomp* reversed a trial court decision and declared an agency as a matter law based on undisputed evidence.

bills]; *Chalmers v. Ebbert* (1954) 128 Cal.App.2d 374, 379 [father of one lessor authorized to represent all lessors].) The requisites for agency as a matter of law under these cases are present in the undisputed evidence here.

2. As a bishop, Soro consented to act for the Church and under its control.

The Church appointed Soro its agent to act on its behalf – and subject to its control – in managing the Western California Diocese. When he was appointed a bishop by the Holy Synod, Soro took an oath of obedience to the Patriarch. (RT 125:12-26.)¹⁷ Under the Church’s canon law, Soro served as the patriarchal and synodical *representative* in the diocese to which he was assigned. (RT 103:8-15, incorporating IV AA 861, Article Two, § 2; 863, Article Six, § 2.) This is quintessential agency – an agent “represents” a principal in dealing with others. (Civ. Code, § 2295.)

As this Court has observed, “the hallmark of agency is the exercise of control over the agent by the principal.” (*F. Hoffman LaRoche v. Superior Court* (2005) 130 Cal.App.4th 782, 797.) And as our Supreme Court has explained: “The power of the principal to terminate the services of the agent gives him the means of controlling the agent’s activities. ‘The

¹⁷ The agent’s duty to obey the principal is a prime ingredient of agency. (Section III(B).)

right to immediately discharge involves the right of control.’” (*Malloy v. Fong* (1951) 37 Cal.2d 356, 370.)

The control-by-right-of-termination hallmark of agency is indisputably present here. Just as the Holy Synod appoints and consecrates bishops, so it can remove them from office. (RT 53-55; IV AA 865, Article Ten, § 1.) Soro himself conceded the Holy Synod’s power to terminate bishops. Indeed, he vilified the Patriarch and the other Synod members for declining to exercise that authority to remove another bishop whom Soro personally deemed no longer worthy of service. (IV AA 778; RT 186:20-187:21.)

Thus, although the trial court neglected to rule on plaintiffs’ central contention that Soro was their agent, it would have had no discretion to rule otherwise. There was no dispute about Soro’s role as a patriarchal and synodical representative or his subordinate authority. Soro was an agent as a matter of law.

B. Soro’s Agency Was Terminated.

Even if Soro had not conceded the Holy Synod’s authority to terminate his agency and authority as a bishop of the Church (see IV AA 778; RT 186-187), such a power would devolve on the Synod as a matter of agency law.

A principal may revoke an agency at any time unless the agent's power is coupled with an interest in the subject matter of the agency. (Civ. Code, § 2356(a); *Pacific Landmark Hotel, Ltd. v. Marriott Hotels, Inc.* (1993) 19 Cal.App.4th 615, 618-619 & fn. 2.)¹⁸ Termination of an agency cannot be prevented by the agent. Even an agency characterized as "irrevocable" may nonetheless be revoked. (*Woolley v. Embassy Suites, Inc.* (1991) 227 Cal.App.3d 1520, 1530.)

Soro's agency was terminated when, following the action of the Holy Synod effective November 11, 2005, the Patriarch informed Soro on November 16, 2005, that he was removed as a bishop. (IV AA 827-829.) The Holy Synod's decision was – unquestionably and as a matter of law – a valid exercise of the principal's right to terminate Soro's agency. (*Pacific Landmark, Ltd.*, 19 Cal.App.4th at pp. 619, 626-627 [reversing trial court's denial of preliminary injunction and holding as a matter of law that agency of hotel managing agent was properly terminated by hotel owner]; *Woolley*,

¹⁸ There is no question Soro's agency was not coupled with an interest. To be coupled with an interest, an agency must be: (1) held for the agent's benefit; (2) created to secure the agent's title or right of performance for the principal; and (3) created at the same time the duty to or title of the agency is created. (*Pacific Landmark Hotel*, 19 Cal.App.4th at pp. 626.) Although Soro's words and actions may reveal a contrary belief on his part, he was consecrated a bishop for the Church's benefit and not his own.

227 Cal.App.3d at pp. 1530, 1536 [reversing grant of preliminary injunction on similar grounds].)

C. Soro Breached His Fiduciary Duty By Refusing to Account For and Return Church Property.

As an agent, Soro owed a fiduciary duty to account for and return to the Church both the corporation and the properties that had been entrusted to his control. (Lab. Code, §§ 2861, 2862; Rest.2d Agency, §§ 382, 422 et seq.; *Holloway v. Thiele* (1953) 116 Cal.App.2d 68, 72.) “Upon termination of an agency relationship, the agent is under a duty to account for all he has received on behalf of the principal *and to return to the principal all which has been received on the principal’s behalf.*” (Rest.2d Agency, § 382 cmt. d; see also *Savage v. Mayer* (1949) 33 Cal.2d 548, 551.)

Once a principal demonstrates delivery of property to an agent, *the burden of proof shifts to the agent* to account to the utmost for all that has come into the agent’s possession, and to establish that he or she has properly managed or disposed of the property for the principal’s benefit. (*Kennard v. Glick* (1960) 183 Cal.App.2d 246, 251; see also *In re Niles* (9th Cir. 1997) 106 F.3d 1456, 1461-1462.) Soro defiantly refused to shoulder his burden, undoubtedly because he could not do so. He has committed a

willful, egregious, and continuing breach of his fiduciary duty to the Church.

A constructive trust arises by operation of law where an agent acquires property in violation of fiduciary duties owed to a principal. (*Walter H. Leimert Co. v. Woodson* (1954) 125 Cal.App.2d 186, 189.)

Where an agent gains possession of property through his position as agent, title to the property is acquired on behalf of the principal, and the agent “is in no better position to deny the title of his principal than a lessee in possession attempting to deny the title of his landlord, or a vendee in possession attempting to deny the title of his vendor.” (*Whittaker v. Otto* (1961) 188 Cal.App.2d 619, 624.)

Soro’s willful refusal to account for and return the Church’s property – which he is now using for his own personal competing ministry – is a breach of his obligation as a fiduciary and trustee that amounts to constructive, if not actual, fraud. (Civ. Code, § 2322(c) incorporating Probate Code, § 16004 [trustee may not deal with trust property “for any purpose not connected with the trust”]; *Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 563; *Ramey v. Myers* (1958) 159 Cal.App.2d 82, 87-88.)

**_____D. Soro Illegally Conveyed the Mar Yosip Cathedral to
Western California.**

Property cannot be legally conveyed by a non-owner. (*Stanley v. Shierry* (1958) 158 Cal.App.2d 373, 376.) An unauthorized signature on a deed renders the attempted conveyance invalid. (*Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36, 41-42; *Calistoga Civic Club v. City of Calistoga* (1983) 143 Cal.App.3d 111, 115, 116-117.)¹⁹ Yet Soro affixed his own unauthorized signature to a deed purporting to convey to his corporation the Church's Mar Yosip Cathedral. And he now retains possession and control of it.

On November 24, 2003, Soro signed a deed that purported to transfer the property in San Jose on which Mar Yosip Cathedral stands from Western U.S.A. to Western California. (IV AA 964; Ex. 30.) At the time of the transfer, Soro had absolutely no authority to perform any act or to execute any instrument on behalf of Western U.S.A. *He had resigned as a director and officer of Western U.S.A. more than four years earlier on June*

¹⁹ The same rules apply to corporations. No transfer of property can be executed without the authority of the board of directors or a duly authorized officer or agent. (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 779-780; *Grant v. Hartman Ranch Co.* (1961) 193 Cal.App.2d 497, 501 [deed was "erroneously recorded" where conveyance was not authorized by all stockholders].)

4, 1999, appointing Bishop Mar Aprim Khamis as his successor. (IV AA 947.)²⁰

II. CHURCH PROPERTY AND FREE-EXERCISE CASES ALSO CONFIRM THAT SORO IS REQUIRED TO RETURN THE CHURCH’S PROPERTY.

The controlling church property cases, led by one recent decision of this Court, independently require that Soro return the Church’s property.

A. Neutral Principles of Law Require Soro to Restore the Church’s Property.

Recognizing that the First Amendment “prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice,” the United States Supreme Court has held that courts must apply “neutral principles of law as a means of adjudicating a church property dispute.” (*Jones v. Wolf* (1979) 443 U.S. 595, 602, 604.)

In deciding questions of church property ownership within the confines of the First Amendment, California courts generally consider: “(1) the deeds to the property, (2) the articles of incorporation of the local

²⁰ When called upon to explain his authority to execute a deed to Western U.S.A. property when he was not an officer, director, or agent of the corporation, Soro had nothing to say but that it was “in retrospect” (RT 169:28), whatever that may mean.

church, (3) the constitution, canons, and rules of the general church, and (4) relevant state statutes, if any, governing possession and disposition of such property.” (*Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, 621.)

The trial court refused to construe or apply provisions of the Church’s canon law of property, ruling that: “My job is not to resolve canon law.” (RT 390:23-24.) This was error. Provisions of “canon law” and general “church constitutions” that address questions of property ownership must be judicially construed and applied under neutral principles of law. (*Jones*, 443 U.S. 595 at pp. 602-603 [general church constitution]; *Metropolitan Philip*, 82 Cal.App.4th at p. 932 [model constitution, rules, canons]; *Korean United Presbyterian Church v. Presbytery of the Pacific* (1991) 230 Cal.App.3d 480, 487 [“Book of Order, which sets forth canon law”]; *Protestant Episcopal Church v. Barker*, 115 Cal.App.3d a p. 624 [express trust revealed in “canons of the Diocese”].)

As this Court has recognized, provisions found in the general or senior church’s governing documents “can override any right the majority of a local congregation might otherwise have to control the local church property.” (*Metropolitan Philip*, 82 Cal.App.4th at p. 931.) The Church respectfully submits that *Metropolitan Philip* controls the present appeal.

In *Metropolitan Philip*, this Court affirmed the trial court’s decision that a general church organization was the rightful owner of real property – notwithstanding that title was held in a local parish church. (82 Cal.App.4th at p. 925.) The parish church, under the leadership of Bishop Hardenbrook, was part of an alliance of parish churches known as the Evangelical Orthodox Church (EOC). (*Id.*) These churches decided to join the Antiochian Orthodox Christian Church (Antioch). (*Id.*)

As part of the proposed union, Antioch proposed a “model constitution” for adoption by the local parishes vesting their property in Antioch in the event of dissolution. (*Id.* at p. 927.) Bishop Hardenbrook’s parish did not sign the model constitution. When a majority of the priests and parishioners voted to leave Antioch, Metropolitan Philip excommunicated Hardenbrook, and Antioch’s Spiritual Court held that the parish’s property belonged to Antioch. (*Id.* at p. 928.)

The trial court awarded the property to Antioch notwithstanding four established facts: (1) title to the parish property was held in the name of a parish corporation formed before the EOC churches joined Antioch; (2) a majority of the priests and parishioners of the church had voted to leave Antioch; (3) the local parish never signed the model constitution; and (4)

the parish corporation bylaws did not even mention a higher ecclesiastical authority. (*Id.* at p. 925.)

Rejecting the parish’s arguments that the foregoing facts were conclusive, this Court found dispositive what it characterized as “unequivocal [evidence] that the [local parish] church and its leaders *submitted to the authority of Metropolitan Philip.*” (*Id.* at p. 932.) The parish’s submission was manifested in two ways. It “actually operated under a system like that set out in the model constitution,” and Bishop Hardenbrook had referred to the constitution as “our Parish Constitution.” (*Id.* at p. 927.)

The evidence of Soro’s submission to the Church’s authority is far more abundant and unequivocal than in *Metropolitan Philip*. *Soro took an oath of obedience to the Church*. He nowhere disputed his submission to the Patriarch’s and the Holy Synod’s authority. Nor did he deny that the canon law placed control of Church corporations and property firmly in patriarchal and synodical hands, and not in his own. (See Section II(A).)

Once Soro’s submission to supreme Church authority is established, the rule of *Metropolitan Philip* requires deference to the highest ecclesiastical tribunal whose decision is “binding and conclusive on the . . . court.” (*Id.* at p. 931; citing *Korean United Presbyterian Church*, 230

Cal.App.3d at pp. 500-503.) In Soro’s case, that tribunal is the Holy Synod which defrocked him and decreed through the Patriarch that he should return the Church’s property.

Metropolitan Philip is established California law. In *Guardian Angel Polish National Catholic Church of Los Angeles, Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, the Second District Court of Appeal applied *Metropolitan Philip* to reverse a trial judge who had refused to dispose of property as directed by a national church. The national church had claimed ownership when a schism developed in a local parish that had previously “manifested its intent to be part of the . . . [n]ational [c]hurch.” (*Id.* at p. 928.)

Guardian Angel also controls here. Soro’s consistent and repeated submissions to Church authority far exceeded the single one in *Guardian Angel*. Moreover, the canon law, including the 1990 Holy Synod decree governing Church corporations and the Constitution, “unequivocally” confirm the Holy Synod’s omnipresent authority over both corporations and property – whether or not schism has occurred. In accordance with

Guardian Angel and *Metropolitan Philip*, that authority should have been recognized and enforced by the trial court.²¹

**B. The Trial Court’s Order Violated the Church’s
Constitutional Free-Exercise Rights.**

The trial court’s failure to recognize the Holy Synod’s authority over Church personnel, corporations, and property, as revealed by canon law, violated the Church’s free-exercise rights. (U.S. Const., Amend. I; Cal. Const., art. 1, § 4.)

The United States Supreme Court has held that courts may apply “neutral principles of law as a means of adjudicating a church property dispute.” (*Jones v. Wolf* (1979) 443 U.S. 595, 602, 604.) But the High Court was careful in *Jones* to ensure that the “neutral principles” doctrine did not inhibit the free-exercise rights of hierarchical churches, stating that: “[T]he constitution of the general church can be made to recite an express trust in [its] favor. . . . *And the civil courts will be bound to give effect to the*

²¹ Other California church property cases similarly hold that a local church’s submission to the authority of a general or senior church body overrides deeds, bylaws, and other governing documents showing local church ownership and control of property. (*Korean United Presbyterian Church*, 230 Cal.App.3d at p. 502; *Bomar v. Mount Olive Missionary Baptist Church* (1928) 92 Cal.App. 618, 626.)

result indicated by the parties, provided it is embodied in some legally cognizable form.” (Jones, 443 U.S. at p. 606.)

And notwithstanding the “neutral principles” described in *Jones*, “civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, *internal organization, or ecclesiastical rule, custom, or law,*” including a bishop’s status as head of a church corporation holding property.” (*Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 709-710, 713.)

Agency, fiduciary duty, express trust, and corporate authority are neutral doctrines of California law applicable to churches and non-churches alike. The Church made Soro its agent and established its control over him and the Church’s property in “legally cognizable form.” As the Ninth Circuit has recognized, the free-exercise clause does not allow civil courts to “deprive religious organizations of all recourse to the protections of civil law that are available to all others. Such a deprivation [would] . . . leave religious organizations at the mercy of anyone who appropriated their property with an assertion of religious right to it.” (*Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar* (9th Cir. 1999) 179 F.3d 1244,

1248.) The trial court's decision left the Church at the mercy of Soro and his crusade for personal glory. It should therefore be reversed.

III. SORO'S CLAIM THAT HE PERSONALLY OWNS AND CONTROLS THE WESTERN CALIFORNIA DIOCESE AND THE CHURCH PROPERTY ENTRUSTED TO HIM IS LEGALLY SPECIOUS.

As an agent, Soro was not permitted to use or deal with the Church's property for "any . . . purpose unconnected with the trust" or to act adversely to its interest. (Civ. Code, § 2322(c), incorporating Prob. Code, § 16004(a); *Mendoza v. Rast Produce Co., Inc.* (2006) 140 Cal.App.4th 1395, 1405.) Seeking to avoid these solemn duties of agent and trustee, Soro claimed in the trial court that he *personally controlled* the Church's Western California Diocese and its property within that diocese.

Soro's claims are legal nonsense. He gave nothing for the property the Church conveyed to Western California. He did not buy it, take it as security, or receive it as a gift. The Church *entrusted to Soro* a Church

corporation and Church property to administer as part of the Church's ministry, not as a personal sinecure.²²

A. Soro's Recent Assertions of Personal Ownership Are Defeated by the Church's Canon Law to Which He Previously Submitted.

Significantly, Soro did not dispute either his subordination to higher Church authority under the canon law or the effect of the Holy Synod's 1990 decree establishing patriarchal control over diocesan corporations. As discussed in the previous section, this undisputed evidence, *standing alone*, defeats Soro's claim to ownership and control of Western California and the Church property entrusted to him.

B. The Diocesan Constitution Was Duly Adopted by the Church.

Soro did, however, dispute the binding force of the Constitution. In his attempt to undermine the Constitution, Soro maintained that: (1) the Holy Synod never adopted it; and (2) even if it did, *Soro himself* never made it part of *his* articles or *his* bylaws for Western California. Although,

²² Soro's other arguments – that he was entitled to defy the Church because the Holy Synod was under ecclesiastical anathema and he was wrongfully discharged as a bishop – are not judicially cognizable under free-exercise principles. On religious matters, the Holy Synod's decrees contrary to his position are binding. (See Facts 6; Section II(B) above.)

as noted in Section III(A), these assertions do not rid Soro of the rest of the canon law which demolishes his false claim, neither of Soro's assertions has a shred of legal merit in any event.

As Bishop Zaia testified without contradiction, the Holy Synod decreed that there would be a Constitution, and delegated to the Patriarch the authority to see to its drafting, execution, and promulgation. (RT 63:1-9; 70-71.) When the Constitution was issued by the Patriarch as the supreme administrator of the Church, it became part of the canon law and binding on all bishops, including Soro. (RT 101:15-20.)

Soro nowhere disagreed. Indeed, he could not truthfully have done so. He played a leading role in drafting the Constitution. He received a signed-in-purple ink copy from the Patriarch's own hand, and was present in Chicago in 1987 when its binding force was introduced as a corporate charter governing all North American dioceses and their parishes. (RT 66:13-14; 71:10-18; 136:5-137:20, 152-153.) Finally, Soro himself acknowledged, accepted, and implemented the Constitution in *six explicit ways*. (See Facts, section 2.)

Had Soro truly believed – as he now asserts – that the Constitution was never validly adopted, he surely would not have voted in favor of its implementation or signed multiple documents promising to enforce its

terms. Nor would he have remained silent while it was received and implemented in his diocese. His actions in 1987 speak more loudly – and more truthfully – than his words do now.

Soro's further assertion that the Constitution was somehow illegal because the Holy Synod did not ratify it before the Patriarch ordered its implementation is likewise unfounded. Under the Church's mode of governance, the Holy Synod's decree of authorization and the Patriarch's ensuing decree of implementation are canon law binding on all bishops. (RT 101:15-20, incorporating IV AA 857; 861-863.) As Soro himself admitted, synodical decrees are law within the Church. (RT 144:17-19.)

C. The Diocesan Constitution Became Part of the Corporate Bylaws of the Western California Diocese and Remains So.

Soro also maintained that, as Western California's sole director for life, he could do as he pleased in the governance of *his* corporation and *his* property. Soro has forgotten one vital detail. He was consecrated to be a loyal servant of the Church under its canon law – not a master of the Church empowered to rise above it.

Soro's directorship did not insulate him from the Church's authority over him as its agent. Soro has never questioned, nor could he question, the

Holy Synod's decree of 1990 that expressly: (1) required the director of Western California to be *a bishop of the Church*; and (2) placed him and other bishops *under patriarchal authority* as agents in their management of diocesan corporations.

Soro was permitted to head the Church's Western California Diocese only because he was a bishop of the Church. And Soro had *an absolute fiduciary duty to be loyal to the Church and to obey patriarchal instructions*, including orders to implement the Constitution as a part of the governing documents of the Western California Diocese. (*Channel Lumber Co. v. Porter Simon* (2000) 78 Cal.App.4th 1222, 1230 [agents are fiduciaries who "owe to the[ir] principal[s] the basic obligations of agency: loyalty and obedience," citing Rest.2d Agency (1958) § 14N, com. a, p. 80]; *Cross v. Bonded Adjustment Bureau* (1996) 48 Cal.App.4th 266, 277 [same]; see also *Rianda v. San Benito Title Guarantee Co.* (1950) 35 Cal.2d 170, 173 ["It is the duty of an agent to obey the instructions of his principal . . .].) When Soro ceased to be a bishop and defied the Church's authority, he forfeited his directorship.

Moreover, even without Soro's action as a director, the Constitution became – again by operation of law – Western California's governing bylaws. In a California religious corporation, "bylaws" include any "code

or codes of rules used, adopted, or recognized for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.” (Corp. Code, § 9150(a).) As demonstrated in section II(A) above, the Constitution was recognized by the Holy Synod – and Soro himself – as a code that governed the affairs of all Church corporations, including Western U.S.A., Western California, and any others Soro or anyone else might form.

In summary, Soro’s protestations against the Church’s authority over him, the corporation he formed, and the property entrusted to him are legally vapid. They do not alter the syllogism: Agents who refuse upon termination to return their principals’ property are in breach of fiduciary duty. Soro was such an agent. Therefore, Soro was – and remains – in breach of fiduciary duty.

IV. THE CHURCH OF THE EAST LACKS AN ADEQUATE LEGAL REMEDY TO SECURE THE RETURN OF ITS PROPERTY AND THE RESUMPTION OF ITS MINISTRY.

Under California law, the Church is entitled to regain control forthwith of Western California and the property it holds in trust for the Church. This follows for several reasons:

First, although Soro's agency and directorship of Western California has been terminated by the Holy Synod, he continues to misappropriate and waste the Church's personal property and to trespass upon its real property. The Church has no adequate remedy for Soro's ongoing injury to its assets except an immediate injunction ending his defalcation.

Second, the Church has been displaced not merely from a fungible parcel of real property, but from a religious ministry conducted in a consecrated sanctuary: Mar Yosip Cathedral in San Jose. Neither the Church nor its faithful can be recompensed at the end of a lawsuit for loss of their freedom to practice their religion for the months and years between now and final judgment.

Third, Soro is now using his position as a director of Western California and Church property to actively undermine the Church's teachings. Thus, the Church has not only lost its ministry, it has been forced to witness Soro's proselytizing on behalf of a rival creed using the Church's own resources.

A. A Preliminary Injunction Is Essential to Enforce the Express Trusts On Soro’s Corporate Office and the Church’s Property.

Code of Civil Procedure section 526(a) authorizes preliminary injunctive relief in a variety of circumstances applicable on the undisputed facts here, including: (1) “restraining . . . continuance” of a wrongful act; and (2) “[w]here the obligation arises from a trust.” (Code Civ. Proc., § 526(a)(1) & (7).) Soro is committing a continuing wrongful act and breaching an express trust by acting as a director and retaining and expending Church property after his removal by the Holy Synod. The court should have restrained his unlawful conduct.

Soro’s Directorship. The Holy Synod has the absolute legal right to elect the director of Western California. Under the 1990 Synodical Decree governing diocesan corporations, the head of the diocesan corporation is the bishop. (IV AA 952, Item VII (B); see Facts, section 1(d).) Soro is no longer the bishop of Western California Diocese, or indeed, a bishop of the Church at all. Bishop Oraham is now the diocesan bishop of Western California. (IV AA 826; RT 280:25-26.)

The trial court should have recognized Soro’s removal as a director and enjoined him from illegally acting as such. “Since directors hold a

position of trust, judicial power to remove them exists independent of statute.” (*Brown v. North Ventura Road Development Co.* (1963) 216 Cal.App.2d 227, 232; see also *Rossi v. Rossi* (1955) 134 Cal.App.2d 639, 642.)

California Corporations Code provisions also accomplish Soro’s removal as director of Western California. This follows for two independent reasons:

First, as explained above, the canon law, including the 1990 Holy Synod decree and the Constitution, became part of the *bylaws of Western California*, whether or not Soro formally implemented them, because it is the “code of rules used, adopted, or recognized for the regulation or management of the affairs of the corporation.” (Corp. Code, § 9150(a).)

Second, the Corporations Code independently authorizes the Holy Synod, or alternatively, the bishops who make up the Synod, acting as a “member” or as “members” of Western California, to remove Soro as a director.

The Holy Synod qualifies as a “member” of Western California under Corporations Code section 5056(a) because it is a “person who, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of

all or substantially all of the assets of a corporation . . .” (Corp. Code § 5056(a).)²³ The Holy Synod holds the right under specific provisions of the “bylaws” (i.e., the canon law, 1990 decree, and Diocesan Constitution) to: (1) elect and remove directors who must be bishops of the Church; and (2) to dispose of Western California’s corporate assets which are Church property. (IV AA 861, Article Two, § 2; 868, Article Twelve, § 3; 951.)

In a corporation with fewer than 50 members, a majority of all members can remove a director without cause. (Corp. Code § 5222(a)(1).) Thus, the Holy Synod, acting as the sole “member” of Western California, or the bishops of the Synod acting as “members,” were authorized to remove Soro as director of the corporation without cause. They unquestionably did so. (Facts, sections 1(c) & 3.)

Soro’s Control of Church Property. Soro remains in breach of his fiduciary duty to account for and return Church property. He is, even now, expending the Church’s funds, using his personal property, and occupying its real property – without the slightest color of legal right and in defiance of a trustee’s duty not to use or deal with his principal’s property for his

²³ Under Corporations Code section 5056, “person” includes the Holy Synod as an unincorporated “association.”

own benefit or for any purpose unconnected with his trust. (Civ. Code, § 2322(c), incorporating Prob. Code, § 16004(a).)²⁴

When an agent acquires or uses for himself property belonging to his principal, he will be “compelled to convey [it] to the principal” – *even before final judgment in the action*. (*Gower v. Andrew* (1881) 59 Cal. 119, 124.) In *Gower*, the Supreme Court reversed the trial court’s denial of a preliminary injunction when an agent obtained a lease in a transaction that was contrary to the interest of his principal. The court directed a pendente lite injunction conveying the lease to the principal.

The same result is called for here. Soro wrongfully retains the Church’s corporation and property. The Church – not Soro – is legally and equitably entitled to the use and enjoyment of that property pending litigation. (*Heckmann v. Ahmanson* (1985) 168 Cal.App.3d 119, 134 [constructive trust does not depend upon absence of legal remedy; trial court properly issued preliminary injunction to protect proceeds of trust fund]; *Whittaker v. Otto* (1961) 188 Cal.App.2d 619, 625 [injunction issued to compel agent who wrongfully retained mining claim to convey it to his

²⁴ Application of Corporations Code provisions yields the same result. Assets of a religious corporation are impressed with a trust to the extent “bylaws” or “instruments of a superior religious body” so expressly provide. (Corp. Code, § 9142 (c)(2).) As the Church has shown, that is the case here.

principal]; see also Code Civ. Proc., § 572 [court may order delivery or deposit of deliverable property held “as trustee”] and *Marriage of Fithian* (1977) 74 Cal.App.3d 397, 401.)

Soro has no right to occupy or use Church property. He is, in practical as well as legal effect, no more than a recalcitrant trespasser. In *Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, the church terminated the defendant’s membership when she disrupted church services. When she persisted in her interference as a trespasser on the church’s property, the church filed suit and unsuccessfully sought preliminary injunctive relief. The Court of Appeal issued a writ of mandate commanding the misguided trial court to enter a restraining order against the defendant.

On the merits, the appellate court held as a matter of law that the defendant’s conduct as a persistent trespasser violated the church’s property rights, and was not protected free speech. On the question of interim harm, it ruled, also as a matter of law, that the church’s inability to conduct services or hold events on its property and the potential loss of members constituted irreparable harm – again as a matter of law – *mandating preliminary injunctive relief*. (*Id.* at pp. 1257-1258.)

Soro's continuing trespass on the Church's property has precluded it from conducting services or ministering to the faithful. Soro deserves no different treatment than the terminated and disruptive church member in *Church of Hollywood*. "[T]he right to exclude persons is a fundamental aspect of private property ownership . . . An injunction is an appropriate remedy for a continuing trespass." (*Allred v. Harris* (1993) 14 Cal.App.4th 1386, 1390; citations omitted.)

B. The Church and its Faithful Have Been Denied The Freedom to Practice Their Religion on Church Property and Have Been Forced to Financially Support Soro's Personal Pursuit of a Rival Ministry.

In addition to the irreparable harm attendant to deprivation of unique real property, this case involves the uniquely uncompensable injuries of disruption of the religious practice, observation, and freedoms of the Assyrian Church and its members.

After Soro's removal, members who had expressed their dissatisfaction with Soro's performance and conduct as bishop were effectively locked out. (RT 27:10-14; 28:1-3.) Mar Yosip Parish's entrances were blocked by chains during normal mass times. Members were confronted by Soro's followers and told to leave immediately. (I AA

27:15-17.) Locks were changed. (RT 275:13-25.) Violence was perpetrated against those not supporting Soro. (RT 324:18-23.)

Following Soro's threats to the Holy Synod to have police present at the parishes, police appeared at the parish. (I AA 27: 18-21; IV AA 822.) Priests of the Church no longer celebrate mass in the cathedral. (RT 321: 18-27; I AA 31: 14-16.) Indeed, Soro wrongfully terminated two of the Church's priests. (RT 282:18-28.) There is now no church ministry to youth, and seniors are not being given spiritual comfort by priests or a bishop of the Church. (RT 291:16- 292:6.) Because of Soro, the Church's ministry in Northern California is at a standstill.

All of the harm just described was established by uncontroverted evidence. None of it can be recompensed in money damages. A preliminary injunction should have been granted to restore the Church's ministry in Northern California, and the constitutional free-exercise rights of the Church and its members.

But the injury Soro has inflicted does not stop at deprivation of property, however devastating that may be. It extends to abuse and desecration of the Church's religious tradition – with the Church's own money.

The Church of the East is independently governed and has elected not to be in full ecclesiastical communion with any other church body. (I AA 135.) Soro has openly proclaimed his disagreement with this aspect of the Church's tradition, contending that the Patriarch should not be regarded as superior in authority to others and that the Church should join with other apostolic Catholic Churches. (I AA 135-138.)

Unable to convince the Holy Synod to adopt his position, Soro has now seized the Church's Western California Diocese and is using the Church's money and property to propagate his personal views. He has been recognized as a bishop by rival churches and has associated with them in ministry. (III AA 517: 20-26.)

Under the First Amendment, the Church cannot constitutionally be compelled to use its financial resources to advance Soro's personal beliefs in opposition to the Church's teachings. (*United States v. United Foods, Inc.* (2001) 533 U.S. 405, 410.) Yet this is precisely what the trial court's order accomplishes.

V. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO ORDER A NOMINAL BOND FOR THE CHURCH AND A SUBSTANTIAL BOND FOR SORO.

The trial court order refused to direct Soro to return the Church's property, and ordered the Holy Synod to post a \$400,000 bond for no more than the privilege of occupying the Church's property in San Francisco and having limited access to it in Ceres. Soro got the Church's money and nearly all its property. He was not required to post *any* bond.

The trial court's task in setting the amount of an injunction bond is to "estimate the harmful effect which the injunction is likely to have on the restrained party," and "to set the undertaking at that sum." (*Abba Rubber, Co.*, 235 Cal.App.3d at p. 14.) If no evidence of damage is presented or the probable amount of harm cannot be ascertained from the record, only a nominal bond should be required. (*Greenly v. Cooper* (1978) 77 Cal.App.3d 382, 390.)

The Holy Synod pointed out to the court the absence of any ascertainable damage to Soro, given notices of *lis pendens* on the property and Soro's lack of proof. It also demonstrated indigency, a ground for a nominal bond under Code of Civil Procedure section 995.240. (III AA 635:28-636:8; 645-647; 660:13-661:7.) Soro did not dispute any of the

Holy Synod's evidence or contentions in this respect, but merely asked the trial court to pick any amount it chose for the bond. (III AA 737:4-5.)

Deferring to Soro, the trial court conjured up two purely arbitrary and capricious sums, plucking \$750,000 and then \$400,000 out of thin air.

The unfairness of the court's order is exacerbated by the fact that Soro was left with all of the Church's money and personal property, which are easily dissipated, and not required to give *any* security. The trial court was thus manifestly insensitive to the realities and legalities even of its self-styled and limited "anti-chaos" order. The order should not be permitted to stand.

CONCLUSION

"[T]he mission of an agent is 'to fulfill,' and not to 'destroy.'" (*California Canning Peach Growers v. Harris* (1928) 91 Cal.App. 654, 661.) If an owner of any secular property – a home, apartment, or business – had transferred title or possession of that property to an agent to sell, maintain, or manage, and the agent had refused to return it, there would be no doubt of the outcome of the owner's lawsuit. The owner would be awarded preliminary and permanent injunctions expelling the trespasser and restoring the owner to title and possession.

As a religious institution whose ministry has been devastated by the lawless acts of a wayward, disobedient, and unfaithful former bishop, the Church of the East is constitutionally entitled to no less favorable treatment. The trial court's order should be reversed.

DATED: September 11, 2006

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 14(c)(1))

The text of this brief consists of 13,774 words as counted by the Corel WordPerfect version 10 word-processing program used to generate the brief. The entire brief is double spaced. The font is 13 point Times New Roman.

DATED: September 11, 2006

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PROOF OF SERVICE
STATE OF CALIFORNIA - COUNTY OF YOLO

I am employed in the City of Davis, County of Yolo, State of California. I am over the age of 18 and not a party to this action; my business address is: 2050 Lyndell Terrace, Suite 240, Davis, California 95616.

On September 12, 2006, I served the document(s) described as:
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Executed on September 12, 2006, at Davis, California.

- (STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Jaycie C. Gibney, CLA

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