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(Without waiver of defenses, jurisdictional or otherwise)

5 Attorney for *Istituto per le Opere di Religione* (IOR)
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 EMIL ALPERIN, *et al.*,

12 Plaintiffs,

13 vs.

14 VATICAN BANK, a/k/a INSTITUTE OF
15 RELIGIOUS WORKS or ISTITUTO PER LE
16 OPERE DI RELIGIONE (IOR), *et al.*,

17 Defendants.
18
19

Case No. C 99-04941 MMC (EDL)

**DECLARATION OF PROFESSOR
SETTIMIO CARMIGNANI CARIDI IN
SUPPORT OF DEFENDANT IOR'S
MOTION TO DISMISS FOURTH
AMENDED COMPLAINT FOR LACK
OF SUBJECT MATTER
JURISDICTION**

Date: July 28, 2006

Time: 9:00 a.m.

Court: The Honorable Maxine M. Chesney

20 I, Professor Settimio Carmignani Caridi, do hereby declare and state as follows:

21 **Introduction**

22 1. My name is Settimio Carmignani Caridi. I am a tenured *Ricercatore* (Researcher) and member
23 of the faculty of law at the Italian University of Rome, *Tor Vergata*. My business address is Settimio Caridi,
24 Department of Public Law, Faculty of Law, Università di Roma *Tor Vergata*, Via Orazio Raimondo, 18,
25 00173, Rome, Italy.

26 2. As set forth below, this declaration is based upon my expert knowledge of civil law legal
27 systems, Italian law, canon law, ecclesiastical law, the constitutional law of the Holy See and the particular
28 laws of the State of Vatican City.

1 **Qualifications and Professional Experience**

2 3. I am trained and teach in the disciplines of canon law, ecclesiastical law, Italian law, and the
3 various laws that make up the legal system governed by the Holy See. I am familiar with all of the
4 international accords between Italy and the Holy See. I am familiar with the international law principles of
5 sovereign immunity and have studied on a sustained basis sovereign immunity cases in both the United States
6 and Italy. I study comparative law and conflict of laws. I am familiar with the differences between the civil
7 law and the common law. I am a licensed lawyer in good standing in Italy.

8 4. Italian is my native language. As a legal professional and scholar, I work primarily in Latin
9 and Italian, but I read and follow relevant scholarship written in English, French and Spanish.

10 **Academic Degrees**

11 5. In 1979, I graduated with honours from the Law Faculty of the Italian University of Rome,
12 *La Sapienza*, where I received a perfect examination score (High Honors) defending my ecclesiastical law
13 thesis titled “Relations between State and Church in Polish Democratic Republic” under the direction of
14 Professor of Ecclesiastical Law, Pietro Gismondi.

15 6. In 1982, I received my *Licentia in Iure Canonico, magna cum laude* (Canon Law License)
16 at Gregorian Pontifical University, where I submitted a canon law thesis related to the development of the
17 moral subject in the decisions of *Sacra Congregazione del Concilio*.

18 7. In 1987, I received my doctoral degree in canon and ecclesiastical law, for which I wrote a
19 dissertation on entities of the Roman Curia and State of Vatican City, “*Criteri di distinzione tra organi ed*
20 *enti della Curia e dello S.C.V.*”

21 **Academic and Professional Activities**

22 8. From 1980 until 1992, I worked at the Supreme Court of Cassation (Italian court of last resort
23 for non-constitutional matters) in a research group called the *Giurinform Studio*, assigned to analyze case
24 law for the Court. I also received funding research in the same period from the *Consiglio Nazionale delle*
25 *Ricerche* (National Research Council), attached to the Ministry of Education and Italian University Ministry
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1 under the direction of Professors Gismondi, Ferrari, Mirabelli, Talmanca, Corecco, Mauro, Spinelli, Dalla
2 Torre, and Milano.

3 9. In 1982, I was awarded a three-year scholarship with stipend by the Catholic University
4 Centre by the Episcopal Conference of Italian Bishops, after which I received my doctorate from the Ministry
5 of Italian Universities.

6 10. In 1987, I won a public competition to become Researcher in canon law and ecclesiastical law
7 at the public University of Rome *Tor Vergata*, where I continue to teach.

8 11. For ten years, from November 21, 1991 to November 22, 2001, I served as Clerk on the
9 Italian Constitutional Court to the Honorable Justice Cesare Mirabelli, performing tasks similar to those
10 performed by clerks to Justices of the United States Supreme Court – research, writing, and preparation of
11 memoranda. After Professor Mirabelli was made Chief Justice, I also coordinated work for the assistant
12 clerks.

13 12. I am General Secretary of *Consociatio Internationalis Studio Iuris Canonici Promovendo*,
14 an international association of more than 500 canon law professors, mainly laymen, where my duties include
15 the responsibility for the agenda for that organization’s triennial meetings.

16 13. I am a member of the board of editors for *Quaderni di Diritto e Politica Ecclesiastica*, a
17 journal of law and ecclesiastical politics.

18 14. I teach general law courses, as well as courses at the masters level and specialty courses, in
19 public administration, communications and legal information systems.

20 15. I am member of the *Ordine degli Avvocati* (the Italian public law register of attorneys), and
21 am admitted to practice before the Italian Supreme Court of Cassation, the Italian Constitutional Court (court
22 with jurisdiction over constitutional questions), the *Consiglio di Stato* (court of administrative recourse from
23 first instance administrative law decisions), and the *Corte dei Conti* (court receiving challenges relating to
24 the accuracy of public accounts and expenditure).

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Subject Matter of this Declaration

16. Based upon my expert knowledge of the legal systems applicable within the Holy See and upon the territory of the State of Vatican City, defendant *Istituto per le Opere di Religione* (“IOR”) has asked me to give my expert opinion on, principally, the legal status of the IOR in the year 1999.

Materials Reviewed to Make this Declaration

17. I am familiar with all of the leading scholarly publications relating to the Holy See, the territory of the State of Vatican City, the canon law, Italian ecclesiastical law, and international law. All of the materials I rely upon to make this declaration are publicly available, and are not based upon any special access to documents or relation to any of the juridical subjects described herein. The most important materials I have reviewed are the following:

The Fourth Amended Complaint in the case of *Alperin v. Vatican Bank*.

Costituzione Apostolica Pastor Bonus (June 28, 1988) 80 *Acta Apostolica Sedis* (“AAS”) 841-930 (1988), in *Commento alla Pastor Bonus e alle norme Sussidiarie della Curia Romana*, P. Pinto ed., Città del Vaticano, Libreria Editria Vaticana (2003) (“*Pastor Bonus*”).

Costituzione Apostolica Regimini Ecclesiae Universae (Aug. 15, 1967) 59 AAS 885-928 (1967).

Codice di Diritto Canonico (Jan. 25, 1983), in *Commento al Codice di Diritto Canonico*, P. Pinto ed., Città del Vaticano, Libreria Editria Vaticana, (2001) (“1983 CODE”).

Trattato Laterano (Feb. 11, 1929) 6 AAS 209-271 (1929) (“Lateran Treaty”).

Legge Vaticana 26 novembre 2000, Legge fondamentale dello Stato della Citta’ del Vaticano [Law of Nov. 26, 2000, Fundamental Law of the State of Vatican City], in force as of Feb. 22, 2001.

Legge Vaticana 7 giugno 1929, n. II, Legge sulle fonti del Diritto.

Regolamento Generale della Curia Romana (Secretaria Status, Rescriptum ex Audientia SS.MI quo Ordinatio generalis Romanae Curiae foras datur) (Apr. 30, 1999).

La Curia Romana: Lineamenti Storico Giuridici, Niccolo’ Del Re, Città del Vaticano, Libreria Editrice Vaticana (4th ed. 1998).

Il Diritto Amministrativo della Chiesa, Francesco D’Ostilio, Città del Vaticano, Libreria Editrice Vaticana (2d ed. 1996).

Diritto dell’Organizzazione Ecclesiastica, Juan Ignacio Arieta, Milano, Giufrè Editore (1997).

1 *Chirographum quo nova ordinatio datur Organismo Istituto per le Opere di Religione* (Mar.
2 1, 1990).

3 *Adnexum Statuto, Istituto per le Opere di Religione* (Annex to 1990 Chirograph of Mar. 1,
4 1990).

5 *Costituzioni Generali e Statuti Generali, Ordine Dei Frati Minori* (Dec. 8, 2004) (“*Cost. Gen.*”).

6 *Slavorum Gentem: Quibus extinguitur Capitulum Ecclesiae Collegiatae S. Hieronymi*
7 *Illyricorum et Collegium Hieronymianum in Urbe erigitur* (Aug. 1, 1901).

8 *Regolamento generale per il Vicariato di Roma* (July 1, 2000).

9 Publications

10 18. I publish scholarly articles in peer-reviewed journals on Italian law, canon law, the law of the
11 Holy See, international law, sovereignty, and representational capacity (agency). A partial list of my
12 publications is set forth in Attachment A to this declaration.

13 Introductory Notes

14 19. The following notations state important premises related to the contents of this declaration.

15 **Note on the Importance of Reference to Latin Texts to Analyze Law**

16 20. Latin is the official language of the Holy See, and legal texts of the first order are published
17 in Latin. These Latin texts are the authoritative source of law. For this reason, all translations relied upon
18 by a scholar must be compared to the original Latin text to determine the translation’s accuracy. With respect
19 to the documents whose authoritative texts are in Latin, I have made the necessary comparisons before
20 executing this declaration.

21 **Legal Status of Expert Opinion**

22 21. This declaration states my expert legal opinion. I am not an employee (*dipendente*) of the
23 Holy See and have no association with the IOR. Nor do I have any association with the Order of Friars
24 Minor, or the College of San Girolamo. This declaration is not an official statement of the Holy See or the
25 IOR, or any other entity. In the legal system of the Holy See, official statements of law are reserved to those
26 organs constitutionally empowered to make such statements.

27 **Concept of Canon Law**

28 22. Canon law, broadly construed, refers to that body of laws governing the legal relations of real

1 and fictitious persons in the canon law legal system, and describes the legal institutes that form that system.
2 The term does not simply refer to the “Code of Canon Law,” which provides the general structure for the
3 legal system within which “particular,” “special” and “constitutional” laws may also be elaborated. *See, e.g.*,
4 1983 CODE c.5 (Code of Canon Law in force suppresses prior codes, but allows creation of law interstitial
5 to the Code); 1983 CODE c.360 (stating that the Pope conducts affairs through the Roman Curia, which acts
6 in the name of and on behalf of the Pope, according to the norms of canon law and such particular laws as
7 may be enacted; the Roman Curia is composed of the Secretary of State and other Curial entities as
8 determined by statute and special laws); *Pastor Bonus*, *passim* (Papal constitution authorizing and describing
9 components of the Roman Curia); 1983 CODE c.455 (Episcopal Conferences elaborate their own norms,
10 subject to their compliance with the canon law); 1983 CODE c.598 (religious institutes establish activities
11 through their own constitutional structures). These laws are interpreted according to the hierarchical status
12 of the law, the principle of subsidiarity, the principles of statutory interpretation used in the legal system, and
13 the canon law’s received tradition. 1983 CODE c.6, § 2 .

14 **Authority and Constitutional Expression in the Holy See's Legal System,**
15 **and on the Territory of the State of Vatican City**

16 23. The Holy See is a sovereign confessional state governed by canon law and constitutional law.
17 Its sovereignty is recognized by other states throughout the world, including the United States. The political
18 form of the state is a monarchy. *See* 1983 CODE c.331-335.

19 24. Although the Holy See’s power is concentrated in the figure of the monarch, it is organized
20 through a stable, cognizable and predictable legal system whose institutional instrument is the Roman Curia
21 and certain Vatican state institutions. 1983 CODE c.360; *Pastor Bonus* art. 2, *et seq.*; *see also*, *Nuova Legge*
22 *Fondamentale dello Stato della Citta’ del Vaticano* (26 Nov. 2000) (in effect Feb. 22, 2001) (stating the law
23 of the State of Vatican City currently in force, but making no change from the previous law relevant to this
24 declaration). The elaboration and exercise of this power adheres to the principle of legality: powers within
25 the Curia are based upon written documents and the division of authority into executive, legislative and
26 judicial functions, each maintaining legally mandated degrees of separation. Judicial officers cannot make
27 law, legislative officers cannot adjudicate cases, and executive officers generally exercise administrative rather

1 than legislative and judicial functions. The right to challenge administrative decisions (“recourses”) and appeal
 2 judicial decisions include *de novo* review of issues of both fact and law. *See Pastor Bonus, passim*
 3 (describing the modern configuration of executive, legislative and judicial institutions within the Curia and
 4 the limitations on the competencies and jurisdiction of each); Del Re, *Curia Romana* 95-108 (describing
 5 congregations of the Roman Curia); and D’Ostilio, *Diritto Amministrativo*, 157-163 (describing curial
 6 organizations generally and limitations of competence of administrative agencies of the Roman Curia).

7 Juridic Persons

8 25. A general analogy between juridic persons in the civil law tradition and corporations in the
 9 common law legal tradition may be useful. A “juridic person” is a “fictitious” rather than a “natural” person
 10 and is similar to a “corporation” that is created for some particular purpose, as may be defined in the founding
 11 documents and further elaborated in its “by-laws” describing the corporate structure and function. Like the
 12 common law corporation, the juridic person is a legal mechanism through which organizations maintain a
 13 separate identity, structure, purpose, and legal independence.

14 26. Juridic persons are also classified as either “public” or “private.”

15 27. In the canon law, a public juridic person is an entity that comes into existence either *ipso iure*
 16 or is created by the specific grant of the competent authority. In either case, the entity’s legal purpose must
 17 include a mandate to pursue canonically appropriate public good. Public juridic persons are subject to the
 18 scrutiny of the creating authority, but act autonomously within the sphere of their competence, as defined
 19 by the juridic person’s own statutes and the grant of authority. 1983 CODE c.114, § 1 (providing that juridic
 20 persons may be created by a disposition of law, or by specific legal decree, by a competent authority and with
 21 a purpose that corresponds with the mission of the competent authority). The Code specifies that a public
 22 juridic person maintains a particularly close relationship to the competent authority that created it in order
 23 the public juridic person can be supervised to ensure that the public good is pursued. *See, e.g.*, 1983 CODE
 24 c.116.

25 28. The separate status of juridic persons is maintained through the creation of autonomous
 26 governing boards and regulations. This rule is uniform, but applied through different parts of the canon law,
 27

1 depending upon the nature of the institution. *See, e.g.*, 1983 CODE c.587 (institutes adopt “fundamental”
 2 norms relative to their internal governance and the activities of its members); *Regolamento generale per il*
 3 *Vicariato di Roma*, July 1, 2000 (setting forth regulations for the vicariate of Rome separate and distinct from
 4 those applicable to the Roman Curia); 1983 CODE c.243 (religious seminaries each adopt their own
 5 regulations according to the competent authority); 1983 CODE c.454-455 (episcopal conferences may make
 6 law not inconsistent with the Code of Canon Law); 1983 CODE c.573 (bishops are individually responsible
 7 for the administration of their own dioceses).

8 29. The sovereign’s powers are divided into pastoral, spiritual and temporal spheres. Temporal
 9 authority concerns the acquisition, retention, administration, and alienation of temporal goods. These powers
 10 are exercised by the various juridic persons within the Church, independently of the competent authority that
 11 created them, within the limits set by their founding statutes. Such canon law juridic persons are also typified
 12 by separate legal representation, and the power to represent and vindicate the rights of the juridic entity.

13 30. Juridic persons are first classified into two basic categories: aggregates of persons
 14 (*universitates personarum*) or of things (*universitates rerum*). 1983 CODE c.113. The competent authority
 15 – here, the sovereign – may create either.

16 **Legal Status of the IOR as of the Year 1999**

17 31. The IOR is a public juridic person constituted by the authority of the sovereign in conformity
 18 with the canon law, the law of the Holy See and the law of the the State of Vatican City. The legal status
 19 of the IOR is described in both sovereign law and legal commentary. *See, e.g.*, F. Finocchiaro, *Diritto*
 20 *ecclesiastico* 179 (Bologna 1986) (general overview of ecclesiastical law describing IOR); S. Lariccia, *Diritto*
 21 *ecclesiastico* 155 (3d ed. Padova 1986) (same); E. Vitali, *L’istituto per le opere di religione e il diritto*
 22 *italiano*, in GIUR. COMM. 514-28 (1987); F. Margiotta Broglio, *Enti centrali della chiesa e istituto per le*
 23 *opere di religione. Considerazioni sull’interpretazione dell’art. 11 del Trattato Lateranense*, in RIV. TRIM.
 24 DIR. E PROC. CIV. 543-53 (1988); F. Finocchiaro, *Enti centrali della chiesa cattolica*, in XII ENC. GIUR.
 25 TRECCANI 1-6; G. Dalla Torre, *Santa Sede e Enti Centrali Della Chiesa*, in XIII DIGESTO ITALIANO,
 26 Discipline Pubblicistiche 589-598.

1 32. As the governing (“competent”) authority of the Holy See, the Pope authorizes the creation
 2 of new juridic persons on Vatican City State territory. On March 1, 1990, Pope John Paul II issued a
 3 chirograph¹ (“*Chirograph*”) and internal governing regulations (“*Statuto*”) giving the IOR its present form
 4 as a public juridic person. See 82 AAS 1619-20 (*Chirographum quo nova ordinatio datur Organismo*
 5 *Istituto per le Opere di Religione (Chirograph)*), 82 AAS 1621-29 (*Adnexum Statuto, Istituto per le Opere*
 6 *di Religione (Statuto)*) (1990).

7 33. As demonstrated by the content of the *Chirograph* and the *Statuto*, the IOR was not created
 8 by operation of a general law, and was not part of a general legislative scheme. Rather, it was created by and
 9 is subject to a “special law” specifically directed at the IOR’s creation and organization, and commanding
 10 the IOR to engage in activity of public benefit to the sovereign. *Chirograph, Statuto, passim; Pastor Bonus*
 11 art. 25, § 2 (describing the IOR as an institute governed by “special law”).² The sovereign was the original
 12 source of funds to establish and finance the operation of the IOR.

13 34. As a public juridic person with a mission defined by the sovereign, the IOR has the capacity
 14 and obligation to serve the public purposes set forth in its authorizing legal instrument. See, e.g., *Statuto* art.
 15 5 (providing that the IOR serve sovereign-mandated goals with oversight by a Commission of Cardinals
 16 appointed by the sovereign).

17 35. While juridically separate from the sovereign, the IOR is a creature of the sovereign; it is
 18 neither a citizen of the United States, nor it is created under the laws of any third country. See Italian
 19 Supreme Court of Cassation, Section V, 17 July 1987, n.3932 (acknowledging location of IOR on Vatican
 20 City State territory; its formation under the laws of the Holy See and the Vatican City State; and its immunity
 21 from the jurisdiction of Italian courts).

22
 23 ¹ A chirograph is a traditionally handwritten instrument through which the Pontiff expresses his will.
 24 In the Holy See’s legal system, the papal chirograph is law.

25 ² “[T]he procedure for approval [of a juridic person’s statutes] implies and means a control, on the
 26 part of the administrative authority (in a position of preeminence and prevalence), of the activity carried out
 27 by another subject (in a position of subordination), for the ends and within the bounds fixed by law.” I
 28 *Exegetical Commentary on the Code of Canon Law* 773 (Marzoa, et al. eds.).

1 36. The purpose of the IOR is to carry on activities that are *pias causas*, or for pious purposes,
2 consistent with the sovereign's public purposes. *See, e.g., Statuto, passim* (internal governing regulations
3 of the IOR requiring it to act for *pias causas*, a Holy See public purpose). The IOR cannot change its rules
4 of internal governance without permission of and final approval by the sovereign. *Chirograph* (creating IOR
5 as a canon law juridic person, limiting its authority to public acts, and requiring that all changes to the
6 governing statute be made by the sovereign, not the entity itself).

7 37. The IOR's public purpose is to "provide custody and administration of movables and
8 immovables transferred or entrusted to the same institute for the purpose of works of religion and charity."
9 *Statuto* art. 2, § 1. In conformity with its purpose, "[t]he Institute therefore accepts assets whose destination
10 is at least in part or in the future that of the previous section. The Institute can accept deposits of assets from
11 entities or individuals of the Holy See or of the State of Vatican City." *Id.* at § 2.

12 38. As a public juridic person, the *Statuto* authorizes the IOR to acts as a fiduciary of the
13 deposited funds for designated pious purposes, and as an autonomous pious foundation that directly carries
14 out the charitable purposes of the Holy See and the State of Vatican City.

15 39. Constitutional documents underscore the IOR's central institutional relationship with the Holy
16 See, and its public purpose. *Pastor Bonus* art. 25, § 2, describes the IOR as that "special institute established
17 and located within the Vatican State for managing economic assets committed to it and for administering
18 those that serve to sustain works of religion and charity . . ." *Id.* This constitutional status reflects the IOR's
19 central role within the Holy See's public law legal structure; indeed, authoritative IOR scholarship describes
20 the IOR as a Holy See "central entity." *See* Italian Supreme Court of Cassation, Section V, 17 July 1987,
21 n.3932 (acknowledging that IOR is a "central entity" under the oversight of the Holy See, on Vatican City
22 Territory, and enjoying immunity from the jurisdiction of Italian criminal courts); *see also, Statuto* art. 3
23 (noting that the IOR must serve the Universal Church, subject to the oversight of the Holy See). The IOR's
24 status has been recognized in bilateral treaties as well. *See, e.g., L'Accordo Amministrativo per*
25 *l'Applicazione della Convenzione di Sicurezza Sociale tra La Santa Sede e La Repubblica Italiana* (16 June
26 2000) (Agreement regarding the administration of social security between the Holy See and the Republic of
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1 Italy, recognizing the IOR as “one of the entities directly overseen by the Holy See”).

2 **Location of the IOR**

3 40. The IOR is located in a government building within the State of Vatican City.

4 **Organizational Structure of the IOR**

5 41. The IOR has several administrative levels, each authorized and described by law. In order
6 from highest governmental oversight to daily operational responsibility, the levels are: (1) Cardinals'
7 Commission; (2) Prelate; (3) Oversight Council; (4) Directorate; and (5) Accounting.

8 42. **Cardinals' Commission.** The Cardinals' Commission is composed of five Cardinal Members,
9 each of whom is a government official holding high office within the Roman Curia, and each of whom is
10 appointed by the sovereign. This Commission forms the direct institutional link between the sovereign
11 government and the IOR. The Commission is headed by the Secretary of State of the Holy See, the Pope's
12 highest delegate for temporal affairs of this nature.

13 43. The Commission meets, by law, at least twice annually to review the IOR's compliance with
14 its internal statutory norms. The Commission also appoints and removes members of the Oversight Council
15 (whose function is discussed below) and appoints and removes the IOR's President and Vice-President. In
16 addition, the Commission: (a) deliberates as to the distribution of any available funds; (b) proposes to the
17 sovereign changes to the by-laws; (c) deliberates regarding the emoluments due to the Members of the
18 Oversight Council; (d) approves the appointment and the removal of the Director and of the Vice-Director
19 made by the Oversight Council; and (e) deliberates on any issue regarding the Members of the Oversight
20 Council and the Directorate. In maintaining plenary oversight authority over the IOR, the Cardinals'
21 Commission is legally mandated to pursue governmentally goals, but is not legally mandated to be involved
22 in IOR day-to-day activities or transactions. *See Pastor Bonus* art. 25, § 2 (describing the duty of the
23 Dicastrial Council of Cardinals for the Study of Organization and Economic Questions of the Holy See to
24 “consider the activities of the [IOR]” in its administration of “economic goods placed in its care.”).
25 Government officials are empowered to request information and records from the IOR. *Id.*

26 44. **Prelate.** Below the Cardinals' Commission sits the *Prelato*, or “Prelate.” The Prelate
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1 oversees the activities of the IOR, acts as Secretary to the Cardinals' Commission when it is in session,
2 attends the meetings of the Oversight Council, and provides an institutional link between the Cardinals'
3 Commission and the Oversight Council.

4 45. **Oversight Council.** The Oversight Council administers and manages the IOR, and supervises
5 its financial, economic and operative activities. The Oversight Council is convened by the President at least
6 once every three months, or when requested by two of its Members, and approves the IOR's operational
7 budget, submitted by the the Directorate, each year. After approval, the Oversight Council transmits the
8 budget to the Commission, with a report on the IOR's economic-financial situation and on how the activity
9 of the IOR complies with its bylaws. In addition, the Oversight Council: (a) formulates the general policy
10 lines and basic strategy for the activities of the IOR in harmony with its institutional ends; (b) defines the
11 criteria for the elaboration of yearly programs and objectives of the Directorate, and to approve its proposals;
12 (c) reviews the economic-financial activity of the IOR; (d) watches over the realization of programs and the
13 objectives that were set, with respect to investments and other activities; (e) defines the most appropriate
14 financial structure for the IOR and, in general, determines the best means to increase the IOR's patrimony
15 and assets in the context of adherence to economic-financial rules and in compliance with the purposes of
16 the IOR; (f) proposes to the Commission changes in the by-laws, as long as they are unanimously approved
17 by Council staff; (g) arranges for issuance of the regulations, which are required to provide a detailed
18 description of the powers and competencies of the Council and the Directorate General; (h) confers with the
19 Directorate; and (i) approves the Directorate's annual report.

20 46. **Directorate.** Below the Oversight Council is the Directorate, which consists of a Director
21 General and the Vice-Director. The members of the Directorate are appointed by the Oversight Council
22 subject to the approval of the Cardinals' Commission. The Directorate is responsible for the operational
23 activities of the IOR.

24 47. This relationship between the Cardinals' Commission, the Prelate, the Oversight Council, and
25 the Directorate is set forth in the *Chirograph* and the *Statuto* articulating the rules of IOR internal
26 governance. According to the *Chirograph* and the *Statuto*, the IOR is a public juridic person, which can
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1 contract and own property in its own name and which has its own legal representative, as specified by statute.

2 48. **Auditors.** Auditors operate under the Directorate and are officers of the IOR under the terms
3 of the *Chirograph* and *Statuto*, charged with monitoring the IOR's activities.

4 Function of the IOR

5 49. The IOR performs functions which are unique and not performed by other organs or
6 institutions of the Holy See or the State of Vatican City. *Compare, e.g., Pastor Bonus* art. 25, § 2 (describing
7 IOR as “special institute for managing economic assets placed in its care with the purpose of supporting
8 works of religion and charity”) with *Pastor Bonus* arts. 172 -175 (describing the functions of the
9 *Amministrazione del Patrimonio della Sede Apostolica* as an administrator of properties owned by the Holy
10 See to fund the Roman Curia, overseen through a different administration, activities which are distinct from
11 the IOR) and with *Pastor Bonus* arts.176-179 (describing, *inter alia*, the *Prefettura per gli Affari Economici*
12 as supervising and governing the temporal goods of the administrations that are dependent on the Holy See
13 and reviewing reports on the patrimonial and economic status of the Holy See, all activities distinct from the
14 IOR.)

15 50. The IOR statute authorizes functions on the territory of the Holy See to facilitate the
16 operation of government. *Statuto* art. 2. While the day-to-day operations of the IOR are by law managed
17 by the IOR itself, as a public juridic person, the IOR is legally required to follow governmental policy
18 directives articulated through the Cardinals' Commission. *Statuto* art. 8.

19 51. The IOR routes payments between certain Holy See agencies, a public function performed
20 for these tasks by no other entity on behalf of the Holy See. The IOR also finances Holy See religious works.
21 *Pastor Bonus* art. 25, § 2.

22 52. The IOR is legally empowered to operate the Holy See pension (“social security”) system for
23 its own employees, as well as all the other employees of the Holy See. *See, L'Accordo Amministrativo per*
24 *l'Applicazione della Convenzione di Sicurezza Sociale tra La Santa Sede e La Repubblica Italiana* (16 June
25 2000) (Administrative Accord for the Application of the Convention regarding Social Security between the
26 Holy See and the Republic of Italy, recognizing the IOR as “one of the entities directly overseen by the Holy
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1 See” and its role in the sovereign’s pension system).

2 53. The IOR performs a direct and public service function (*funzione di servizio*) for the Holy See.
3 The IOR’s founding documents do not authorize the retention of profit by the IOR.

4 54. By the terms of its founding documents and *Pastor Bonus*, the IOR carries out its activities
5 to promote sovereign goals. *Pastor Bonus* art. 25, § 2 (“economic goods placed in [IOR’s] care with the
6 purpose of supporting works of religion and charity.”); *Statuto* art. 2

7 55. The IOR is a limited depository institution. Depositors are essentially limited to Holy See
8 employees, members of the Holy See, religious orders, and persons who deposit money destined in whole
9 or in part for works of piety. *Statuto* art. 2

10 56. As a creature of the sovereign in the canonical system, where legal requirements are met, the
11 IOR could be wound up, or rededicated to other government purposes by legal act of the sovereign. *See*,
12 *e.g.* 1983 CODE c.120, § 1 (stating competent authority’s power to suppress a public juridic person); and 1983
13 CODE c.121 (stating competent authority’s power to cause the merger of one juridic person with another).

14 “Ownership” of the IOR

15 57. Paragraph 31 of Fourth Amended Complaint states that the IOR is “in fact the personal
16 property of the Pope.” Plaintiffs “contend” that the IOR “is in fact the personal property of the Pope in his
17 position as the ecclesiastical head of the Roman Catholic Church and its Easter Rites along with other non
18 sovereign shareholders.” Fourth Amended Complaint ¶ 31. As a matter of applicable law, this statement is
19 incorrect. Like every separate juridic person in the canon law system, the IOR cannot be the property of
20 another. *See, Statuto* (IOR has canonical juridical personality). It may be that plaintiffs’ confusion arises
21 from application of certain generalized common law concepts such as “stakeholder,” “shareholder,”
22 “associate” or “partner.” These terms are simply legally inapplicable to this entity. To the extent that
23 plaintiffs are contending that the Pope has a property right in any deposits by either natural or juridic persons
24 in the IOR, the statement is similarly invalid as a matter of applicable law. Autonomous entities within the
25 Church possess the right to acquire and use property. 1983 CODE c.1255 (stating that the all juridic person,
26 whether public or private can acquire, retain, administer, or alienate temporal goods according to legal right).

1 While the sovereign, as creator of a juridic person, may suppress it, or change its form, the sovereign – much
 2 less the Pope in some “personal” capacity – cannot simply deprive the autonomous juridic person of its
 3 canonical rights to the temporal goods it has acquired. 1983 CODE c.1256 (“The right of ownership over
 4 goods under the supreme authority of the Roman Pontiff belongs to that juridic person which has lawfully
 5 acquired them.”) As commentaries on the canon law make clear, canon 1256 restated the fundamental
 6 canonical principle *nemo iure suo sine culpa* (No one may be deprived of a right absent fault), and stands for
 7 the principle that no person – even the Pope – can lawfully deprive another of temporal goods legitimately
 8 acquired.

9 Juridic Status of the Order of Friars Minor

10 58. The Order of Friars Minor is a religious Order subdivided into separate juridic persons.
 11 Amongst these juridic persons are the entities which serve particular territories (*Provincali*) and the General
 12 Headquarters (*Generale*). Each member of the Order is associated with a particular House within a Province
 13 (*Locale*). Each of the above is recognized as separate juridic persons in the canon law.

14 59. Each of these separate juridic persons may acquire, administer, alienate, and use temporal
 15 goods independently, in accordance with universal law and the proper law of the Order. *Cost. Gen.* art. 244.

16 60. The General Chapter is governed by the constitutions and the general statutes, within the
 17 canon law framework. *Cost. Gen.* art. 188. Officers of the General Chapter cannot contemporaneously serve
 18 as officers of a Province. *Cost. Gen.* art. 179. The Provincial Minister, and other Province Officers, head
 19 each juridically separate Province. *Cost. Gen.* art. 179. The General Chapter, each Province, and each House
 20 appoints a legal representative for dealings with civil authorities. *Cost. Gen.* art. 246.

21 61. For those with legal seat in Italy, these separate juridic persons are also recognized in Italian
 22 law *ipso iure* in view of their canonical status, and accordingly appear in public registers of juridic persons.
 23 The OFM Headquarters, located in Rome, is not on Vatican City State territory, or on any extraterritorial
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1 holdings of the Holy See. *Trattato Laterano* arts. 13-16 and Attachment II. The General Chapter and each
 2 Provincial Chapter are juridic persons separate from the Holy See. With respect to the OFM Headquarters
 3 (House located in Rome), in Italian law, the separate juridic status during the relevant period is established
 4 by decree of the Kingdom of Italy, dated June 13, 1935, and registered in the Court of Accounts on August
 5 5, 1935, Register No. 365F n. 23-f. As a Royal Decree, this declaration has the force of positive public law
 6 (not merely private declaration by the juridic person itself) and cannot be challenged. *See also*, Italian
 7 Supreme Court of Cassation, Civil Section, Dec. 6, 2002, n.5458 (in action to hold Province liable for
 8 conduct of a House, both of which were recognized as separate juridic persons, Italian Supreme Court of
 9 Cassation held no civil responsibility of Province for actions of House.)
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 11

Juridic Status of the College of San Girolamo

12
 13 62. The College of San Girolamo merits comment, in light of the legally imprecise manner in
 14 which it is referred to in the Fourth Amended Complaint. The College of San Girolamo is a separate juridical
 15 entity, *Universitates Personarum*, recognized in both canon law and Italian law and is, *ipso iure*, legally
 16 autonomous from the Holy See, the IOR, and the OFM. The College has not been part of the Roman Curia,
 17 *Pastor Bonus, passim*; is not located on the territory of the Vatican City State, or territory having Holy See
 18 extraterritorial status under the Lateran Treaty, *Trattato Laterano* arts. 13-16 and Attachment II; and has
 19 been considered a subject of Italy since at least 1924. *Accord del 27 gennaio 1924*, in 45 *Gazzetta Ufficiale*
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 20 day of March, 2006, in Rome, Italy.


Settimio Carmignani Caridi

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