COPY

JEFFREY S. LENA, ESQ. CSB #189900
1152 KEITH AVENUE
BERKELEY, CALIFORNIA 94708-1607
Tel: (510) 665-1713/(510) 847-3181
Fax: (510) 665-1712
Email: jlena@attglobal.net
(Without waiver of defenses, jurisdictional or otherwise)

Attorney for Istituto per le Opere di Religione

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO

EMIL ALPERIN, et al. Plaintiffs, v. VATICAN BANK, a/k/a "INSTITUTE OF RELIGIOUS WORKS" or ISTITUTO PER LE OPERE DI RELIGIONE" (IOR), et al. Defendants.	NO. C99 4941 MMC **DEFENDANT IOR'S OPPOSITION TO PLAINTIFFS' NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING** Civ. L. Rule 3-13 28 U.S.C. § 1407

INTRODUCTION

Defendant Istituto per le Opere di Religione ("IOR") hereby responds to Plaintiffs' Notice of Pendency of Other Action or Proceeding ("Notice") dated June 24, 2002. The Notice is improper because (i) the cited cases involve neither the same subject matter nor the same parties and (ii) the Notice contains materials entirely beyond the permissible scope of Local Civil Rule 3-13. The Notice consequently should be stricken.

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I. Plaintiffs' Notice Does Not Meet the Requirements for Pendency of Another Action or Proceeding

Local Civil Rule 3-13 provides that the party must promptly file a notice of pendency whenever it

> knows or learns that an action filed or removed to this district involves all or a material part of the same subject matter and all or substantially all of the same parties as another action which is pending in any other federal or state court. . . .

None of the new cases cited by Plaintiffs meets any of these requirements.

A. *Dale v. Holy See*

Dale et al. v. Holy See, et al., United States District Court for the Southern District of Mississippi, Jackson Division, Case No. 3:01 CV 663BN ("*Dale*"), concerns rights to recovery in funds allegedly defrauded from seven insurance companies by one Martin Frankel. *Dale* involves none of the same plaintiffs or defendants as *Alperin*.[1] Because there is no party identity between these cases, Rule 3-13 does not apply.

In addition, the facts relating to the key issues of jurisdiction and liability on the merits are wholly dissimilar in *Dale* and *Alperin*. *Dale* involves an alleged fraud that occurred in the 1990's in the southern United States. *Alperin* involves the disposition of assets allegedly looted in the 1940's in Croatia. Given their fundamental factual differences, *Dale* and *Alperin* involve completely separate sovereign immunity issues.[2] The so-called "IOR connection" (Plaintiffs' Notice at 2:18 to 4:28) boils down to the notion that one of the defendants named in *Dale* had an account at the IOR (a non-party in *Dale*), a fact inapposite to the issues before this Court.[3]

In sum, there is no identity of parties, no factual overlap and no legal commonality on any of the issues briefed in this case. Rule 3-13 is thus inapplicable.

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[1] The Holy See – not the IOR – is a defendant in *Dale*.

[2] For example, *Dale* is unlikely to involve the critical issue of pre-1952 absolute immunity.

[3] The issues briefed to this Court are political question, comity, absolute immunity, FSIA immunity, statute of limitations, standing, and personal jurisdiction. Of those issues, whether the political question doctrine bars Plaintiffs claims has been argued and submitted, and is presently under consideration.

B. "Sexual Abuse Cases"

Similarly, Plaintiffs show no identity of parties, causes of action, or jurisdictional issues between *Alperin* and any of the abuse cases that they cite. None of the abuse cases is brought against the IOR, none has any of the same plaintiffs, none involves the conduct alleged in *Alperin* (or *Zivkovich*), and none involves similar sovereign immunity issues.[4] Further, Plaintiffs' mere *speculation* as to what defenses the Holy See may raise if it is ultimately served in these abuse cases provides no basis for the kind of identity of subject matter contemplated by Local Civil Rule 3-13.

C. *Zivkovich v. Vatican Bank*

Although the cases of *Zivkovich v. Vatican Bank*, pending in the Northern District of California, Case No. 00-CV-4319 MJJ, before Judge Martin J. Jenkins and *Alperin*, before this Court, do involve similar facts and overlapping legal theories, both this Court and the *Zivkovich* Court have declined to treat these two cases as related.[5]

II. Plaintiffs' Suggestion That the Cases Be Subject to Multi-district Litigation Treatment Is Procedurally Improper and Has Been Brought for Improper Purposes

A. Procedural Impropriety

Plaintiffs assert that they "believe" that the above-referenced cases should be transferred to a single district pursuant to 28 U.S.C. § 1407 to resolve several issues described as "common." Plaintiffs' beliefs aside, any motion made under § 1407 must be brought as a noticed motion before the Panel for Multidistrict Litigation, not before this Court. 28 U.S.C. § 1407(c)(ii). Plaintiffs' failure to do so renders their Notice procedurally improper.[6]

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[4] Like *Dale*, the "sexual abuse" cases are unlikely to involve the issue of pre-1952 absolute immunity. They are also unlikely to involve 28 U.S.C. § 1605(a)(3), the only FSIA exception Plaintiffs have pled.

[5] Related Case notices have been filed by defendant Order of Franciscans Minor in both *Zivkovich* and *Alperin*. *See* OFM's Notice of Pendency of Other Related Action dated August 16, 2000.

[6] Even if Plaintiffs had used the correct procedure, the issue would not even arguably be ripe. Defendant Holy See has not been served in either *Dale* or the "abuse cases."

B. Improper Purpose

The real purpose behind Plaintiffs' Notice would appear to be to insinuate additional argument into the *Alperin* record. *See, e.g.*, Notice 2:18 to 4:28 and 6:14-19. This material has nothing to do with Plaintiffs' pendency notice and appears to be an improper attempt to influence proceedings already submitted. *See supra* note 3; *see also* Civil L.R. 7-3(d) ("once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval"). All argumentative material contained in the Notice should be stricken as improper.

CONCLUSION

For each of the foregoing reasons, Plaintiffs' Notice should be stricken.

Dated: July 3, 2002

Respectfully submitted,

/For

Jeffrey S. Lena, Attorney for
Istituto per le Opere di Religione

ALPERIN et al., v. VATICAN BANK et al., Case No. C 99-4941 MMC

PROOF OF SERVICE BY MAIL

I am employed in the City of San Francisco, County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 Montgomery Street, Suite 1100, San Francisco, CA 94104.

On July 3, 2002 I served a copy the foregoing document described as:

DEFENDANT IOR'S OPPOSITION TO PLAINTIFFS' NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING

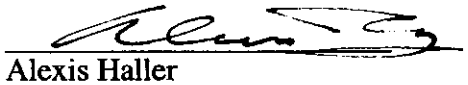
in the case entitled: **Alperin et al. v. Vatican Bank et al.**, Case No. C 99-4941 MMC, on all interested parties in this action through their counsel of record, by placing true and correct copies thereof addressed as shown below, as designated below:

XX **BY FIRST CLASS MAIL:**
I caused said document(s) to be deposited in the United States Mail in a sealed envelope with postage fully prepaid at San Francisco, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown on this declaration as follows:

RONALD E. MALLEN, Esq. Hinshaw & Culbertson 244 Jackson Street, Ste 300 San Francisco CA 94111	Attorneys for Order of Friars Minor
TOM EASTON JONATHAN H. LEVY LAW OFFICE OF THOMAS DEWEY EASTON 2782 NE Baroness Place Bend, OR 97701	Attorneys for Plaintiffs

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on July 3, 2002 at San Francisco, California.



Alexis Haller

RONALD E. MALLEN State Bar # 40928
JOANNA D. OPPERMAN State Bar # 197317
HINSHAW & CULBERTSON
244 Jackson Street, Suite 300
San Francisco, CA 94111
Telephone: (415) 362-6000
Facsimile: (415) 834-9070

Attorneys for Defendant ORDER OF FRIARS MINOR, erroneously sued as "THE FRANCISCAN ORDER (O.F.M.), a/k/a CROATIAN FRANCISCANS and CROATIAN CONFRATERNITY OF THE COLLEGE OF SAN GIROLAMO DEGLI ILLIRICI"

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

EMIL ALPERIN, et al., Plaintiffs, vs. VATICAN BANK, a/k/a "INSTITUTE OF RELIGIOUS WORKS" or 'ISTITUTO PER LE OPERE DI RELIGIONE" (IOR), et al., Defendants.	Case No. C99-4941 MMC **DEFENDANT ORDER OF FRIARS MINOR'S OBJECTION TO PLAINTIFFS' NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING** Third Amended Complaint Filed: September 1, 2000

Plaintiffs' Notice of Related Case ("Notice"), filed June 24, 2002, is procedurally and substantively improper. Simply put, it lacks merit. The Notice seeks to inform this Court of cases pending throughout the United States against the Holy Sea. However, with the exception of the *Zivkovich* matter which this Court was notified of previously, none of the cases referred to in the Notice are in any way related to this action.

The action entitled *Dale v. Holy See* is a RICO lawsuit which has absolutely no relation to this Holocaust era reparations lawsuit. In addition, as is obvious, the sexual abuse lawsuits referred to in the Notice have absolutely no relation to this case.

Plaintiffs' argue that because all cases may potential deal with the issue of sovereign immunity as against the Holy Sea, they are related and should be consolidated or coordinated in some manner. However, that argument is akin to requiring all cases against Ford Motor Company, regardless of subject matter, to be combined in one court merely because Ford may assert a common defense in each lawsuit. Such argument

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is meritless and it is inconceivable that plaintiffs are asking this Court to coordinate unrelated cases in California, Florida, Missouri and Oregon.

The Order of Friars Minor ("OFM") filed a Notice of Related Case in both this action and the *Zivkovich* action to notify each judge presiding over the cases that identical complaints were pending. Those two cases involve the same defendants and identical allegations. However, the same argument cannot be made for the *Dale* case and the sexual abuse cases. They are in fact, unrelated, and have no bearing on the issues raised in *Alperin* and *Zivkovich*.

Plaintiffs claim that OFM "is so closely associated with IOR in this matter that there can be no undue prejudice to them by coordinate matters." (Notice, p. 7, lines 8-9). Besides lacking factual support, that statement is irrelevant and provides no basis for coordination for the select cases plaintiffs have identified. Both OFM and IOR have pending Motions to Dismiss based on threshold jurisdiction and justiciability issues in *Alperin* and *Zivkovich*. OFM would be irreparable prejudiced by any coordination with unrelated cases against the Holy Sea in other jurisdictions.

Plaintiffs' procedurally and substantively improper Notice should not be considered by the Court.

DATED: July 2, 2002

HINSHAW & CULBERTSON

By: Joanna D. Opperman

RONALD E. MALLEN
JOANNA D. OPPERMAN
Attorneys for Defendant
ORDER OF FRIARS MINOR

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Alperin, et al. v. Vatican Bank, et al.
United States District Court — Northern District of California
Case No. C99-4941 MMC

PROOF OF SERVICE

I am employed in the City and County of San Francisco. I am over the age of 18 years and not a party to the within entitled action. My business address is Hinshaw & Culbertson, 244 Jackson Street, Suite 300, San Francisco, California 94111.

On July 2, 2002, I served the within:

DEFENDANT ORDER OF FRIARS MINOR'S OBJECTION TO PLAINTIFFS' NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING

on the following attorney(s) of record and/or interested parties in the above referenced case by depositing a true and correct copy (copies) by the following means:

[X] **(BY MAIL)** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

[ ] **(BY OVERNIGHT DELIVERY)** I deposited such envelopes to be placed for collection and handling via Airborne Express following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for United Parcel Service ("UPS"). On the same day that material is placed for collection, it is picked up by UPS at San Francisco, California.

[ ] **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof from sending facsimile machine telephone number (415) 834-9070 to the following parties at the receiving facsimile machine numbers shown below.

[ ] **(BY HAND DELIVERY)** By hand delivery to the following persons as noted:

Thomas Dewey Easton/Jonathon Levy
Law Offices of Thomas Dewey Easton
2782 NE Baroness Place
Bend, OR 97701

Attorneys for Plaintiffs
Fax: (541) 317-9800

Jeffrey S. Lena
Law Offices of Jeffrey S. Lena
1152 Keith Avenue
Berkeley, CA 94708-1607

Attorneys for Defendant
'ISTITUTO PER
LE OPERE DI RELIGIONE" (IOR)
Fax: (510) 665-1712

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on July 2, 2002, at San Francisco, California.

David L. Guerrero

David L. Guerrero