

1 SUPERIOR COURT
2 COUNTY OF SAN BERNARDINO
247 West Third Street, Department S23
3 San Bernardino, California 92415

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 05 2022

BY *Monica Real-Ramos*
MONICA REAL-RAMOS, DEPUTY

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN BERNARDINO

10 BENJAMIN SERYANI, et al.,

11 Plaintiff,

12 vs.

13 THE HOLY SEE, A/K/A VATICAN CITY
14 STATE, et al.,

15 Defendants,

) Case No.: CIVDS1925212

) RULING ON PLAINTIFF'S MOTIONS FOR
) SANCTIONS

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18 This matter came before the Court for a hearing on Plaintiff's two motions for sanctions to
19 comply with the Court's prior orders to produce documents as to Defendant's Latin Patriarchate of
20 Jerusalem and American University of Madaba Company. The Court has reviewed and considered the
21 the briefs of the parties, as well as, the arguments of counsel and issues its ruling as follows:

22 **DISCUSSION**

23 At issue are two Motions for Terminating/Issue and/or Evidentiary Sanctions for Failure to
24 Comply with Court's Order to Produce Documents filed by Plaintiff against Defendants Latin
25 Patriarchate of Jerusalem and American University of Madaba Company who filed a joint Opposition to
26 the Motions.

27 The discovery is permitted solely for purposes of determining jurisdiction and has been ongoing
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1 for years – delaying the Motions to Quash filed in 2019.

2 **Statement of the Law – Motion for Terminating Sanctions, etc.**

3 Once a party has been ordered to answer discovery or to produce documents, more severe
4 sanctions are available for continued refusal to make discovery. (See, e.g., Code Civ. Proc., §§
5 2030.290, subd. (c) [motion to compel answers], 2030.300, subd. (e) [motion to compel further
6 answers].)

7 When a party fails to obey a discovery order, the court may impose whatever sanctions
8 are just, including: issue sanctions; evidence sanctions; terminating (or “doomsday”) sanctions;
9 contempt sanctions; and money sanctions—in addition to or in lieu of any other sanction.
10 Terminating sanctions may be issued in the form of an order against the party disobeying the
11 discovery order: striking the party’s pleadings or parts thereof; staying further proceeding by that
12 party until the order is obeyed; dismissing the party’s action, or any part thereof; or entering
13 default judgment against that party. (Code Civ. Proc., § 2023.030, subd. (d).) Factors that are
14 relevant to the imposition of terminating sanctions include the amount of time the party has had to
15 answer, the difficulty in obtaining answers, the materiality of the unanswered questions, whether
16 the party has acted in good faith and with reasonable diligence, whether the party was unable to
17 comply with the previous order of the court, and whether a sanction short of default would be an
18 appropriate remedy. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771.)

19 Before imposing a “terminating” sanction, courts should usually grant lesser sanctions. It
20 is only when a party persists in disobeying the court’s order that the ultimate sanction of
21 dismissing the action is justified. (*Deyo, supra*, 84 Cal.App.3d at p. 796.) “[D]ismissal of an
22 action as a discovery sanction is a drastic remedy which should be used sparingly.” (*Trail v.*
23 *Cornwell* (1984) 161 Cal.App.3d 477, 488–89.) There are constitutional due process limitations
24 on the power of courts, even in aid of their own valid processes, to order discovery sanctions that
25 deprive a party of his opportunity for a hearing on the merits of his claim. (*Newland v. Superior*
26 *Court* (1995) 40 Cal.App.4th 608, 614, citing *Midwife v. Bernal* (1988) 203 Cal.App.3d 57, 64.)

27 The Court may impose issue sanctions designating facts “shall be taken as established”
28 by the party adversely affected by the discovery misuse; or it may prohibit the party who
committed such misuse from supporting or opposing designated claims or defenses. (Code Civ.
Proc., § 2023.030, subd. (b).)

The Court may also prohibit the party who disobeyed the court order from introducing
designated matters in evidence. (Code Civ. Proc., § 2023.030, subd. (c) [evidence sanctions];
Deeter v. Angus (1986) 179 Cal.App.3d 241, 255 [exclusion of audio tape not produced in
response to discovery requests].)

1 Before severe sanctions such as terminating or evidence sanctions are imposed, the Court
2 must find a failure to comply with an order and that the failure was willful. (See *Vallbona v.*
3 *Springer* (1996) 43 Cal.App.4th 1525, 1545.) However, the Court’s decision to impose sanctions,
4 as well as its decision regarding *which* of the various sanctions to impose, lies entirely within the
5 Court’s sound discretion. (See *Pember v. Superior Court* (1967) 66 Cal.2d 601, 604.)

6 The main purpose of discovery sanctions is to enable the propounding party to obtain the
7 information sought rather than simply to punish a disobedient party or lawyer. It is an abuse of
8 discretion to impose sanctions solely for punishment purposes. (*Ghanooni v. Super Shuttle of Los*
9 *Angeles* (1993) 20 Cal.App.4th 256, 262.) A secondary purpose is to compensate the
10 interrogating party for costs and fees incurred in enforcing discovery. (*Deyo v. Kilbourne* (1978)
11 84 Cal.App.3d 771, 796.)

12 Discovery Dispute History

13 In the present case, the Motions to Quash were continued to allow Plaintiff Seryani the
14 opportunity to conduct jurisdiction discovery. The present motions for Termination Sanctions etc. are
15 based on Discovery Motion heard by the Court last year.

16 On July 8, 2021, Plaintiff Seryani filed: (1) Motion to Compel Attendance and Production of
17 Documents at Further Deposition of the Person Most Knowledgeable for The Latin Patriarchate of
18 Jerusalem (Anton Asfar); and (2) Motion to Compel Attendance at Deposition and Production of
19 Documents at Deposition of American University of Madaba Company’s Person Most Knowledgeable.¹
20 Specially appearing Defendant Latin Patriarchate of Jerusalem (“LPJ”), and specially appearing
21 Defendant American University of Madaba Company (“AUMC”) each opposed the respective motion
22 filed against them. Plaintiff filed replies.

23 *Latin Patriarchate of Jerusalem (LPJ) – Motion Background*

24 On April 6, 2021, at a continued hearing on Plaintiffs’ motion to compel the deposition of
25 Archbishop Pizzaballa, the parties reached an agreement whereby Defendants’ counsel agreed to produce
26 an alternate Person Most Knowledgeable (“PMK”) for Latin Patriarchate of Jerusalem (LPJ). Defendants
27 determined that person to be Anton Asfar (“Asfar”), the Director of Finance for LPJ. The parties agreed
28 to limit Asfar’s deposition to financial information regarding transfers from California residents to the

¹ A third Motion to Compel against another Defendant has apparently been resolved.

1 Equestrian Order of the Holy Sepulchre of Jerusalem and then to LPJ. After the parties met and
2 conferred, Seryani served a Notice of Deposition on April 30, 2021, wherein LPJ's PMK was asked to
3 appear for deposition and produce documents on May 6, 2021.

4 LPJ served objections but stated the PMK would appear subject to the objections. **Asfar was**
5 **deposed on May 6, 2021**, pursuant to the agreement of the parties. During and after the deposition, the
6 parties met and conferred about whether a further deposition would be needed, but on May 7, 2021,
7 counsel for LPJ stated that Asfar would not appear for any further deposition. The deposition transcript
8 was completed on May 10, 2021.

9 On July 8, 2021, Seryani filed Motions to Compel which were set for hearing on August 18,
10 2021. Seryani contended that at the deposition, Asfar refused to answer the following questions without
11 valid objection or justification:

12 1. "What was the amount of money that LPJ received from the **Grand Magisterium** in the year
13 2020?" [Depo. Trans., 18:20.]

14 2. "If there was funding from LPJ to the American University of Madaba in the year 2013,
15 wouldn't records of LPJ show that? ... So your answer is 'Yes,' if that amount of money was transferred,
16 it would be shown in the financial records of LPJ, correct?" [Depo. Trans., 83:24.]

17 Seryani also contended Asfar failed to produce documents in response to the following requests
18 for production:

19 **No. 13** – Produce all documents that comprise, evidence, or reflect each and every transfer of
20 money from The Equestrian Order of The Holy Sepulchre of Jerusalem, including but not limited to its
21 Western USA Lieutenancy, to LPJ during the Period.

22 **No. 21** – Produce all documents that comprise, evidence, or reflect any correspondence between
23 LPJ and The Equestrian Order of The Holy Sepulchre of Jerusalem, including but not limited to its
24 Western USA Lieutenancy, during the Period.

25 After full (and extensive) briefing and a hearing on the merits, the Court took the matter under
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1 submission following the August 18, 2021 hearing. A written ruling was filed on **October 8, 2021**, in
2 which the Court held that Seryani's counsel improperly attempted to expand the scope of the PMK
3 deposition beyond that which he had previously stated to the court and to opposing counsel and that the
4 disputed deposition questions went beyond the agreed-upon scope of the testimony to be provided by
5 LPJ's PMK.

6 Seryani's arguments were not well taken. As noted by LPJ, during the April 6, 2021 hearing,
7 there was extensive discussion about the necessity and scope of a deposition of LPJ's PMK. [See, Colella
8 Decl. – Motion to Compel, Exh. 1.] On these issues, Seryani's counsel made several statements and
9 representations regarding the proposed scope of the deposition. First, Seryani's counsel noted he was
10 simply following up on the court's earlier order regarding the Equestrian Order of the Holy Sepulchre of
11 Jerusalem wherein the court was allowing Seryani "on a limited basis to obtain financial information
12 about transfers from [the Equestrian Order] to LPJ." [*Id.*, at 2:8-12.] Counsel went on to state: "We
13 would like to take his deposition for the remainder that he is receiving funds from that Order, and that
14 really – we would narrowly confine the deposition of the archbishop to those very limited financial
15 means." [*Id.*, at 2:13-16.] After asserting that the deposition would be relatively short and he did not
16 "seek to invade any more than is necessary," Seryani's counsel again stated, "**We will narrowly focus**
17 **this to only find out the information to follow-up on the Equestrian Order's financial**
18 **contributions.**" [*Id.*, at 4:20-22, 5:13-15 (bold added).]

19
20 Notably, Seryani's counsel then stated:

21 In the past, we had had these broader questions, I understand. We don't believe we have
22 got truthful answers to them, but in any event, they were broader questions about the
23 church transferring money. We feel that because of this complex circuit of money, they
24 have plausibly denied our previous interrogatories with regard to funding from the church
25 basis [sic] in California, and they plausibly deny it because it all gets mixed together, and
26 then it goes to the Vatican, and who knows where it goes from there. [¶] The Equestrian
27 Order is a different organization, as we showed in our paperwork in that motion. That
28 entity, that organization, is solely committed for funding the Latin Patriarch [sic] of
Jerusalem. So we don't have these more complex issues of where the money goes, in

1 which pot, and so on and so forth, that we have been frustrated getting good answers to.
2 This is a very narrow transfer of money, which has been shown that the Equestrian Order
3 received \$2,000,000 every year in donations that are sent directly to the Latin Patriarch
4 [sic] of Jerusalem. So have a very specific source of funds, we have a very specific
5 purpose, we have a very narrow train of financial assistance of \$2,000,000 a year from
6 California to LPJ. We're focusing in now on exactly what we need in order to be able to
7 support jurisdiction.

8 [Id., at 6:16-7:12.]

9 Therefore, according to the representations made by Seryani's counsel, the Equestrian Order—
10 i.e., Western Lieutenancy—is the source of funding for LPJ, not the Grand Magisterium, and the Western
11 Lieutenancy is a “separate organization.” There was nothing in this cited discussion indicating that
12 Seryani's counsel also sought testimony regarding any fund transferred between the Grand Magisterium
13 and the Western Lieutenancy or between the Grand Magisterium and LPJ. Moreover, the statements
14 made by Seryani's counsel at the hearing seemingly contradicted the assertions made in the motion to
15 compel—i.e., that LPJ's funding comes from the worldwide Lieutenancies through the Grand
16 Magisterium. Even the meet and confer emails exchanged between Seryani's counsel and LPJ's counsel
17 before the deposition notice was served seemed to suggest that Seryani's counsel intended to limit the
18 deposition to transactions between the Western Lieutenancy and LPJ. [See, Spitz Decl. – Motion to
19 Compel, Exh. 1.] Therefore, the Court found Seryani's counsel improperly attempted to expand the scope
20 of the PMK deposition beyond that which he had previously stated to the Court and to opposing counsel.

21 Accordingly, the Court found the disputed deposition questions went beyond the agreed-upon
22 scope of the testimony to be provided by LPJ's PMK and denied that part of the Motion to Compel.

23 As for the disputed requested documents, although the requests appeared to be worded more
24 broadly than the agreed-upon scope of testimony, they did include the production of correspondence and
25 documents regarding money transfers between the **Western Lieutenancy and LPJ**. Since these
26 documents were within the scope agreed upon by the parties, the Court concluded that LPJ should be
27 compelled to produce them.
28

1 Following receipt of the Order, Plaintiff's counsel sought the documents ordered by the Court.
2 LPJ produced fifteen documents on November 22, 2021. LPJ contended that it did not have any
3 responsive documents to the Order, but in the hope of avoiding further dispute, it produced records in its
4 possession and control between it and the Grand Magisterium (based in Rome) reflecting financial
5 transactions (even though this was beyond the scope of the Order). LPJ had no responsive documents to
6 Demand No. 21, addressing "correspondence between LPJ and The Equestrian Order of The Holy
7 Sepulchre of Jerusalem."

8 In opposition, LPJ argues Seryani's production demands unreasonably expanded the scope of the
9 production the Court described in its Order. This is correct. The Court placed a limitation on the
10 documents, as noted above. This limitation was the result of concessions and representations made by
11 Plaintiff's counsel to the Court. Counsel may not now disregard his own representations and expand
12 discovery. The Opposition argument was well taken.

13
14 At the hearing, Seryani's counsel argued LPJ willfully misinterpreted the Court's prior Order and
15 that no bank records were produced. Counsel argued that LPJ's statement that there were no documents
16 from Western Lieutenancy directly to LPJ is unavailing and the "exact same argument we have had for
17 the past two years." (Transcript, 2/9/22, p. 3:8.) Counsel then argued:

18 We have shown through the deposition of Fouad Al-Twal, which has been provided to
19 this court. His deposition clearly states, and he was the Latin Patriarch for LPJ for many
20 years, the most important time period, all of the money from lieutenancies from around
21 the world go to the Grand Magisterium, which is simply the name for the headquarters of
22 the organization.

23 **There is no money from the Western Lieutenancy directly to the LPJ because it has**
24 **to all get sorted out by this council in Grand Magisterium that decides where the**
25 **money should go to each of the departments.** All this was explained in the deposition
26 of His Beatitude Fouad Al-Twal that, yes, **all the money goes from each of the**
27 **lieutenancies to this central headquarters in Rome, and from there it goes to LPJ.**
28 We already had extensive deposition and evidence from the local **Western Lieutenancy**
that they supply approximately \$1,000,000 each year to Rome. ...

[¶]

1 There's been a willful refusal to provide a single bank record of Grand Magisterium. We
2 don't have one single document from LPJ showing money it received from the Grand
3 Magisterium, which is what we asked for. We have asked for that from day one.
(Transcript, 2/9/22, pp. 3:9-25, 4:10-14.)

4
5 Counsel's argument for jurisdiction (and therefore good cause for production) is based on his
6 belief "It doesn't matter that it's not a direct transfer. It's a flow of money that supports jurisdiction, is
7 money coming from the Western Lieutenancy [California] flowing through the Grand Magisterium
8 [Rome] eventually reaching LPJ." (Transcript, 2/9/22, p. 4:16-20.)

9 Not so. By his own admission to the Court, Plaintiff's counsel has shown a break in the chain of
10 funds from California, and further, that (1) Californian donors cannot be assured their contributions will
11 go to LPJ, and (2) that LPJ cannot know the particular sources of all funds it receives from the Grand
12 Magisterium.

13
14 Counsel told the Court, "[t]here is no money from the Western Lieutenancy directly to the LPJ
15 because it has to all get sorted out by this council in Grand Magisterium [central headquarters in Rome]
16 that decides where the money should go" (Transcript, 2/9/22, p. 3:16-19.) Counsel further stated that
17 the funds from California (via the Western Lieutenancy, and indeed all lieutenancies) go to a council in
18 Rome (Grand Magisterium) which makes the determination as to where the funds should go. He further
19 stated that Fouad Al-Twal says clearly "that we get all our funding from the Grand Magisterium..."
20 (Transcript, 2/9/22, p. 5:11-12.)

21 LPJ has sufficiently responded to the requests – and its representations by its deponents that there
22 are no responsive documents to show funds flowing from California to LPJ in Jerusalem are sufficient to
23 establish that fact, and further, Plaintiff's counsel has conceded this fact in his representations to the
24 Court.

25
26 The Motion for Sanctions will be denied.

27
28 ///

1 *American University of Madaba Company*

2 On March 23, 2021, Seryani served a Notice of Deposition for the Person Most Knowledgeable
3 for American University of Madaba Company (“AUMC”). The notice stated the deposition would take
4 place on April 27, 2021. AUMC never served any objections to the notice.

5 On April 22, 2021, Seryani’s counsel’s office emailed AUMC’s counsel for an update regarding
6 the AUMC PMK deposition. The next day, AUMC’s counsel responded and stated he would “continue
7 to work on” finding an appropriate PMK for AUMC. However, there was no further communication
8 from AUMC’s counsel regarding the availability of a PMK, and no such person was ever offered to
9 appear at the deposition.

10 On July 8, 2021, Seryani filed the Motions to Compel which were set for hearing on August 18,
11 2021. After full briefing and a hearing on the merits, the Court took the matter under submission
12 following the August 18, 2021 hearing. A written ruling was filed on October 8, 2021, in which the Court
13 held that although a deposition notice was properly served, AUMC did not serve any written objections to
14 the notice. Accordingly, any objections were waived. AUMC also failed to seek to stay the deposition or
15 quash the deposition notice. Therefore, the Court compelled AUMC to provide a PMK to appear for
16 deposition and produce the requested documents.

17 Plaintiff Seryani contends that after meeting and conferring with counsel for AUMC, the
18 Defendant produced an individual named Jubran Salameh as its PMK for a November 11, 2021
19 deposition. This individual testified that he had been hired on October 27, 2021 to replace his
20 predecessor, Bishop William Shomali, a named defendant in this case. A single document was produced
21 in response to the production demands.
22

23 In opposition to the motion for sanctions, AUMC argues that it produced a PMK deponent and
24 documents, and therefore complied.
25

26 At the hearing, Plaintiff’s counsel argued that the PMK was not qualified, claimed he knew
27 nothing, refused to turn over documents he reviewed, and stated there were no bank records. (Transcript,
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1 2/9/22, p. 5:17-23.) Only one document was produced, which stated the organization's status.

2 (Transcript, 2/9/22, p. 5:24-25.)

3 In response, defense counsel explained they produced the only person they had who was an
4 employee of AUMC, the director. Further, the document produced pertained to the connection of LPJ to
5 AUMC and the initial contribution to the funding of the corporation. There were no other contributions
6 coming from LPJ and thus, no further documents to produce responsive to the demand. (Transcript,
7 2/9/22, p. 8:16-25.)

8 Although all objections were waived, the arguments indicate the Court's order with respect to
9 AUMC has been complied with and sanctions will be denied.

10 **DISPOSITION**

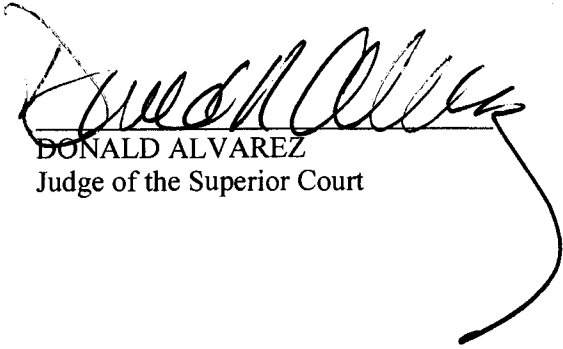
11 The Court rules as follows:

12 **Deny** the motion for sanctions as against the Latin Patriarchate of Jerusalem ("LPJ").

13 **Deny** the motion for sanctions as against American University of Madaba Company ("AUMC").
14

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16 Sanctions are inappropriate.
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20 Dated this 5th day of April, 2022

21 
22 DONALD ALVAREZ
23 Judge of the Superior Court
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1 **SUPERIOR COURT OF CALIFORNIA**
2 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO JUSTICE CENTER**

3 **IN THE MATTER OF:** BENJAMIN SERYANI, et al., Plaintiff.

4 v

5 THE HOLY SEE, A/K/A VATICAN STATE, et al., Defendants.

6 **CASE NO.:** CIVDS1925212

7 **PROOF OF SERVICE BY MAIL**

8 The undersigned hereby declares: I am a citizen of the United States of America, over the age of eighteen
9 years, employed in the above-named county, and not a party to nor interested in this proceeding. My
10 business address is 247 W. 3rd St., San Bernardino, California 92415. I am a Deputy Clerk of said County
and on the date shown below, served a copy of the following:

11 **COURT'S DECISION ON PLAINTIFF'S MOTIONS FOR SANCTIONS**

12 Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown
above, mailed to the interested parties addressed as shown below:

13 By Hand Delivery, I caused such document to be served on all parties to this action to the interested
14 parties addressed as shown below:

15 **ROBERT JOHN SPITZ**
16 204 N. San Antonio Ave
Ontario, CA 91762


CLARK & TREVITHICK
445 South Figueroa Street, 18th Floor
Los Angeles, CA 90071

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18
19
20 At the time of mailing this notice there was regular communication between the place of mailing and the
place(s) to which this notice was addressed.

21 I declare under penalty of perjury the foregoing to be true and correct.

22 DATED: April 7, 2022

23 BY:


Kathleen Mullaney, Administrative Assistant II