

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

v.

Civil Action No. 08-CV-347C

FREDERICK DIMOND, ROBERT DIMOND,
and MOST HOLY FAMILY MONASTERY,

Defendants.

ANSWER AND COUNTERCLAIMS

Defendants Frederick Dimond, Robert Dimond, and Most Holy Family Monastery (“MHFM”), by their attorneys, Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC, for their answer to plaintiff’s amended complaint, allege upon information and belief as follows:

1. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 1 of the amended complaint as those allegations state conclusions of law.

2. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 2 of the amended complaint.

3. Admit the allegation in paragraph 3 of the amended complaint that defendant Frederick Dimond resides at the Fillmore, New York address and is a citizen of New York and deny the characterization of Frederick Dimond's religious name as a "pseudonym."

4. Admit the allegation in paragraph 4 of the amended complaint that defendant Robert Dimond resides at the Fillmore, New York address and is a citizen of New York and deny the characterization of Robert Dimond's religious name as a "pseudonym."

5. Admit the allegations of paragraph 5 of the amended complaint.

6. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 6 of the amended complaint.

7. Admit the allegations of paragraph 7 of the amended complaint.

8. With respect to the allegations in paragraph 8 of the amended complaint, admit that the Certificate of Amendment was signed by Brother Michael Dimond (sued herein as Frederick Dimond) but deny the remaining allegations therein.

9. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraphs 9, 10, and 11 of the amended complaint as those allegations state conclusions of law.

10. Admit the allegations in paragraphs 12, 13, and 14 of the amended complaint.

11. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraphs 15, 16, and 17 of the amended complaint and specifically state that the website referenced therein speaks for itself.

12. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 18 of the amended complaint.

13. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 19 of the amended complaint and specifically state that the documents referenced therein speak for themselves.

14. Deny the allegations in paragraphs 20, 21, 22, and 23 of the amended complaint.

15. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 of the complaint.

16. With respect to the allegations of paragraphs 34 and 35 of the amended complaint, admit that plaintiff made the donations described therein and deny knowledge or information sufficient to form a belief with respect to the remaining allegations.

17. With respect to the allegations of paragraph 36 of the amended complaint, admit that plaintiff made two visits to MHFM, both before the end of August 2005, and one of which that lasted several weeks, but deny sufficient knowledge or information to form a belief with respect to the remaining allegations therein.

18. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraphs 37, 38, and 39 of the amended complaint.

19. With respect to the allegations in paragraph 40 of the amended complaint, admit that plaintiff became a resident of MHFM in September 2005, deny knowledge or information sufficient to form a belief with respect to the specific date, and deny the remaining allegations therein.

20. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 41 of the amended complaint.

21. With respect to the allegations in paragraph 42 of the amended complaint, admit that plaintiff donated 1,045,000 shares of Guinor Gold Corporation stock to MHFM but deny knowledge or information sufficient to form a belief with respect to the remaining allegations therein.

22. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 43 of the amended complaint.

23. Deny the allegations in paragraphs 44 and 45 of the amended complaint.

24. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 46 of the amended complaint.

25. Deny the allegations in paragraphs 47 and 48 of the amended complaint.

26. With respect to the allegations in paragraph 49 of the amended complaint, admit that Michael Lipscomb took up residence at MHFM in the fall of 2006

but deny knowledge or information sufficient to form a belief as to the characterizations contained in the remaining allegations therein.

27. With respect to the allegations in paragraph 50 of the amended complaint, admit that Joseph Myers took up residence at MHFM in the summer of 2007 but deny knowledge or information sufficient to form a belief as to the characterizations contained in the remaining allegations therein.

28. Admit the allegations in paragraphs 51 and 52 of the amended complaint.

29. Deny the allegations in paragraphs 53, 54, 55, 56, and 57 of the amended complaint.

30. With respect to the allegations in paragraph 58 of the amended complaint, admit that plaintiff made donations to MHFM but deny the remaining allegations therein.

31. Deny the allegations in paragraphs 59 and 60 of the amended complaint.

32. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 61 of the amended complaint.

33. Deny the allegations in paragraphs 62, 63, 64, 65, 66, 67, and 68 of the amended complaint.

34. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 69 of the amended complaint.

35. Deny the allegations in paragraph 70 of the complaint.

36. With respect to the allegations in paragraph 71 of the amended complaint, admit that plaintiff made donations to MHFM but deny the remaining allegations therein.

37. Deny the allegations in paragraphs 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, and 82 of the amended complaint.

38. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 83 of the amended complaint as they state conclusions of law.

39. Deny the allegations in paragraphs 84, 85, 86, 87, 88, 89, 90, 91, and 92 of the amended complaint.

40. Deny knowledge or information sufficient to form a belief with respect to the allegations in paragraph 93 of the amended complaint as those allegations state conclusions of law.

41. Deny the allegations in paragraphs 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, and 105 of the amended complaint.

42. Deny each and every allegation in the amended complaint not hereinbefore admitted, denied, or otherwise controverted.

FIRST AFFIRMATIVE DEFENSE

43. The claims in plaintiff's complaint are barred by the Constitution of the United States of America.

SECOND AFFIRMATIVE DEFENSE

44. The claims in plaintiff's complaint are barred by the Constitution of the State of New York.

THIRD AFFIRMATIVE DEFENSE

45. The claims in plaintiff's complaint are barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

46. The claims in plaintiff's complaint are barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

47. Plaintiff's complaint fails to state a cause of action upon which relief may be granted.

SIXTH AFFIRMATIVE DEFENSE

48. Plaintiff's fraud claim and his constructive fraud claim have not be adequately pled with particularity.

SEVENTH AFFIRMATIVE DEFENSE

49. This Court lacks subject matter jurisdiction.

EIGHTH AFFIRMATIVE DEFENSE

50. The damages alleged in the complaint were caused in whole or in part by culpable conduct attributable to plaintiff.

NINTH AFFIRMATIVE DEFENSE

51. Plaintiff has failed to mitigate his damages.

TENTH AFFIRMATIVE DEFENSE

52. Plaintiff alleges that there was an agreement between himself and defendants, or at least between himself and defendant MHFM, to return a certain sum of money to him, which was an agreement that was not to be performed within a year.

53. Defendants have specifically denied this claim.

54. No such agreement existed in writing, nor was there any note or memorandum thereof made in writing and subscribed by defendants; therefore plaintiff's action is barred by New York's Statute of Frauds.

ELEVENTH AFFIRMATIVE DEFENSE

55. Plaintiff's claims are barred by the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

56. Plaintiff donated money to MHFM without conditioning his donations. As such, the donations were unconditional.

57. MHFM relied on plaintiff's unconditional donations in conducting its business and affairs.

58. Furthermore, MHFM relied on plaintiff's unconditional donations to its great and profound detriment.

59. Plaintiff's claims therefore are barred by the doctrine of detrimental reliance.

THIRTEENTH AFFIRMATIVE DEFENSE

60. Plaintiff lacks standing to bring some or all of the claims asserted in his complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

61. Plaintiff alleges that the defendants engaged in mail fraud, wire fraud, and bank fraud.

62. Defendants specifically denied these claims.

63. Defendants' acts were undertaken in good faith and without the fraudulent intent necessary to constitute violations of the statutes under which some of plaintiff's causes of action are asserted.

FIFTEENTH AFFIRMATIVE DEFENSE

64. From the earliest time that plaintiff made contact with the defendants, he knew that MHFM was not a Novus Ordo "Benedictine" monastery.

65. From the earliest time that plaintiff made contact with the defendants, he knew that MHFM was a Benedictine monastery of the traditional Catholic faith.

66. At all relevant times, MHFM maintained a website identifying it as a Benedictine monastery of the traditional Catholic faith.

67. In the very article that plaintiff references in his complaint, entitled "Our Benedictine Community," defendants explicitly state that they do not regard as legitimate any Novus Ordo "Benedictines."

68. Plaintiff had full access to the website both before and after he came to live at MHFM.

69. As an additional example of plaintiff's knowledge about MHFM, in 2006, more than a year before he departed the monastery, plaintiff assisted defendants in connection with their authorship of a book entitled *The Truth about What Really Happened to the Catholic Church after Vatican II*. Plaintiff proofread this book to assist the defendants, and in doing so, he read it numerous times before it was published.

70. This book contains an entire section against the post-Vatican II "Benedictines" about which plaintiff was and is aware. As an example, at page 403 of the book, defendants explicitly say that they are not in communion with the post-Vatican II "Benedictines."

71. While living at MHFM, plaintiff translated into the Spanish language a number of documents that had been authored by the defendants.

72. While living at MHFM, plaintiff translated into the Spanish language at least one book authored by Brother Michael.

73. The documents and book that plaintiff translated from English language to Spanish language also indicate that the defendants are not in communion with post-Vatican II “Benedictines.”

74. These are but a few examples of the defendants’ consistent and transparent position with which plaintiff was familiar from the earliest contact he made with them.

75. At all relevant times, defendants told plaintiff and others that they were and are not affiliated with post-Vatican II “Benedictines.”

76. At all relevant times, plaintiff was fully aware of these facts.

77. Indeed, prior to coming to MHFM, plaintiff spent time at a Novus Ordo monastery and became so troubled by the teachings and conduct there that, ultimately, he departed.

78. On the Record in this action, plaintiff admitted that Brother Michael and Brother Peter (sued herein as Robert Dimond) long have stated - and he knew of – their belief that the Order of Saint Benedict as recognized and promoted by the post-Vatican II “Roman Catholic Church” does not conform to traditional Catholic doctrine and is not truly Benedictine. Dkt. 30 at ¶ 12.

79. Plaintiff has at all relevant times been fully aware that MHFM was not a Novus Ordo “Benedictine” monastery.

COUNTERCLAIMS AGAINST PLAINTIFF

JURISDICTIONAL ALLEGATIONS

80. The individual defendants are residents of the State of New York, each residing in the Town of Fillmore, New York.

81. MHFM is a not-for-profit corporation which was incorporated in the State of New York.

82. MHFM has its principal place of business in New York.

83. Upon information and belief, plaintiff is a resident of the State of North Carolina.

84. Plaintiff committed certain tortious acts within New York that caused damage to all defendants.

85. Plaintiff used the worldwide Internet to commit tortious acts that caused damage to all defendants.

86. Plaintiff sent emails and other electronic communications into New York State, and he knew or reasonably should have known that such communications would cause damage to all defendants.

87. Plaintiff committed tortious acts outside of New York State that caused damages to all defendants within New York State.

88. This Court has subject matter jurisdiction over the defendants' counterclaims pursuant to either federal question jurisdiction or diversity jurisdiction.

89. Venue is proper in this Court, because this is the Court in which plaintiff commenced this action.

HISTORY AND FACTS SUPPORTING COUNTERCLAIMS

90. From the earliest time that plaintiff made contact with the defendants, he knew that MHFM was not a Novus Ordo "Benedictine" monastery.

91. From the earliest time that plaintiff made contact with the defendants, he knew that MHFM was a Benedictine monastery of the traditional Catholic faith.

92. At all relevant times, MHFM maintained a website identifying it as a Benedictine monastery of the traditional Catholic faith.

93. In the very article that plaintiff references in his complaint, entitled “Our Benedictine Community,” defendants explicitly state that they do not regard as legitimate any Novus Ordo “Benedictines.”

94. Plaintiff had full access to the website both before and after he came to live at MHFM.

95. As an additional example of plaintiff’s knowledge about MHFM, in 2006, more than a year before he departed the monastery, plaintiff assisted defendants in connection with their authorship of a book entitled *The Truth about What Really Happened to the Catholic Church after Vatican II*. Plaintiff proofread this book to assist the defendants, and in doing so, he read it numerous times before it was published.

96. This book contains an entire section against the post-Vatican II “Benedictines” about which plaintiff was and is aware. As an example, at page 403 of the book, defendants explicitly say that they are not in communion with the post-Vatican II “Benedictines.”

97. While living at MHFM, plaintiff translated into the Spanish language a number of documents that had been authored by the defendants.

98. While living at MHFM, plaintiff translated into the Spanish language at least one book authored by Brother Michael.

99. The documents and book that plaintiff translated from English language to Spanish language also indicate that the defendants are not in communion with post-Vatican II “Benedictines.”

100. These are but a few examples of the defendants’ consistent and transparent position with which plaintiff was familiar from the earliest contact he made with them.

101. At all relevant times, defendants told plaintiff and others that they were and are not affiliated with post-Vatican II “Benedictines.”

102. At all relevant times, plaintiff was fully aware of these facts.

103. Indeed, prior to coming to MHFM, plaintiff spent time at a Novus Ordo monastery and became so troubled by the teachings and conduct there that, ultimately, he departed.

104. On the Record in this action, plaintiff admitted that Brother Michael and Brother Peter (sued herein as Robert Dimond) long have stated – and he knew of – their belief that the Order of Saint Benedict as recognized and promoted by the post-Vatican II “Roman Catholic Church” does not conform to traditional Catholic doctrine and is not truly Benedictine. Dkt. 30 at ¶ 12.

105. Plaintiff has at all relevant times been fully aware that MHFM was not a Novus Ordo “Benedictine” monastery.

106. No later than April of 2005, plaintiff contacted MHFM to inquire about its teachings and its community.

107. In response to plaintiff’s inquiry, Brother Michael spoke to plaintiff and invited him, if he wished, to visit MHFM in Fillmore, New York.

108. At that time, plaintiff told Brother Michael that plaintiff was searching for a community in which to live. He described himself as being profoundly concerned about an economic collapse in the United States and sought the refuge of a community such as MHFM.

109. Plaintiff also told Brother Michael that he had been hoarding canned goods and water in the event of an economic collapse which he believed was coming.

110. At that time, plaintiff expressed no particular interest, desire, or need to join a Benedictine community.

111. Rather, at that time plaintiff expressed solely that he was looking for a traditional Catholic community to join. Moreover, he expressed eagerness to participate in the work of MHFM which was to share its religious beliefs with people outside of the MHFM community.

112. During the summer months of 2005, plaintiff visited MHFM on two occasions. On the first occasion, plaintiff spent several days at MHFM. On the second occasion, plaintiff spent several weeks at MHFM. MHFM and its monks welcomed plaintiff both times.

113. During these visits to MHFM, plaintiff was invited to observe MHFM's community. For example, he was invited to visit the chapel, the living quarters, the kitchen, the outdoor land and natural space, and the areas where books, articles, and writings were stored.

114. During these visits to MHFM, and even prior thereto, plaintiff had access and opportunities to review, read, observe, and analyze the writings of the monks at MHFM, many of which also were readily accessible to plaintiff over the worldwide Internet.

115. At no time did any of the defendants hide any information from plaintiff regarding their community's status.

116. Subsequent to plaintiff's two visits to MHFM, plaintiff advised Brother Michael that he wished to join MHFM and live in the community in Fillmore, New York.

117. When he so advised Brother Michael, plaintiff advised that he wished to donate all his worldly possessions to MHFM. Plaintiff enumerated those assets as including personal property such as furniture, equipment such as a laptop computer, clothing (among other things), and cash and securities.

118. In or about April 2005, plaintiff made a cash donation to MHFM in the amount of \$700. The aforesaid donation was unconditionally made.

119. In or about May 2005, plaintiff made a cash donation to MHFM in the amount of \$65,000. The aforesaid donation was unconditionally made.

120. In or about November 2005, plaintiff made a donation of certain shares of stock to MHFM which were valued in the approximate amount of \$1.2 million. The aforesaid donation was unconditionally made.

121. Any donation that plaintiff made to MHFM was made unconditionally.

122. Plaintiff moved to MHFM in or about September 2005. His move into the MHFM community pre-dated the donation plaintiff made in or about November 2005.

123. At or about the time plaintiff moved to MHFM, he brought with him and donated to MHFM certain personal property including a white, Apple laptop computer.

124. When plaintiff entered MHFM to live, he became a postulant.

125. Once he was living at MHFM, plaintiff conducted himself in a manner consistent with the other religious who were residing at MHFM.

126. Prior to and while living at MHFM, plaintiff described himself as being in agreement with the teachings of MHFM. He also described himself as being in

agreement with the positions espoused by MHFM with respect to the traditional Catholic Church. Plaintiff told the defendants that he found great comfort in living the religious life within MHFM.

127. During his tenure at MHFM, plaintiff described himself to Brother Michael, who at all relevant times was the Superior of the community, as being the happiest he ever had been in his entire life.

128. During his tenure at MHFM, plaintiff said that he wished to live out his life at MHFM.

129. From the time plaintiff moved to MHFM in September 2005, plaintiff was involved in the routine life and responsibilities of a religious at MHFM. For example, he regularly engaged in prayer in the chapel and elsewhere. Plaintiff regularly assisted in the work of MHFM's Internet-based sales operation, taking online, telephone and mailed-in orders, processing and filling those orders, and downloading customer information from MHFM's website-based store, including credit card information.

130. Plaintiff also assisted in creating and administering MHFM's EBay sales store. In this regard, plaintiff had access to and did in fact download online orders and customer information.

131. In working on these sales efforts on behalf of MHFM, plaintiff knew or reasonably should have known that he was doing the work of MHFM and that the customer information that he viewed, downloaded, and saved was of a confidential nature.

132. Plaintiff knew or reasonably should have known that customer information and other sensitive business information of MHFM was not to be shared outside of MHFM and that it was entrusted to him because MHFM and its Superior, Brother Michael, trusted plaintiff to keep such information confidential.

133. During the course of plaintiff's tenure at MHFM, both MHFM and its Superior trusted plaintiff enough to permit him to assist in the banking and bookkeeping of MHFM.

134. As a result of the trust placed in plaintiff by each of the defendants, plaintiff was given access to MHFM's bank account records and its investment account records.

135. Brother Michael came to deeply trust plaintiff. Acting on that trust, he gave plaintiff access to the confidential and proprietary business records of MHFM.

136. At all times herein relevant, plaintiff knew or reasonably should have known that his access to MHFM's confidential and proprietary business records was for the purposes of doing business on behalf of MHFM, and was not for the purpose of personally benefiting plaintiff.

137. After living at MHFM for approximately one year, plaintiff started his novitiate. At about this time, plaintiff was given a monk's habit and clerical collar.

138. After living at MHFM for approximately two years, plaintiff took solemn, monastic vows before Brother Michael. This occurred on or about October 4, 2007.

139. At or around this time, plaintiff reiterated, as he often did, that he fully agreed with and understood the teachings of MHFM and that he was devoted to the work of MHFM.

140. At this time, plaintiff also said that he never imagined that he could be so happy.

141. After having spent more than two years at MHFM, during which time plaintiff did not notify any of the defendants of any dissatisfaction with the monastic

lifestyle or with MHFM in particular, plaintiff abruptly and without notice departed MHFM on December 31, 2007.

142. When reached by telephone thereafter, plaintiff advised MHFM that he departed because he no longer agreed with certain of MHFM's religious teachings.

143. In particular, plaintiff asserted that after a short period of study and introspection, he had determined that MHFM was practicing and teaching heresy, because MHFM condoned attending certain Catholic Masses.

144. Plaintiff said that attending Catholic Masses as he had done while living at MHFM was practicing heresy.

145. Plaintiff believed that attending Catholic Masses as he had done while living at MHFM was practicing heresy.

146. On and/or since December 31, 2007, plaintiff has stated and argued that he does not know of any acceptable Catholic Masses anywhere in the United States where MHFM and the religious who live there could attend.

147. Plaintiff also has stated that he does not know of any legitimate Catholic priests in the United States.

148. Plaintiff believes that all the priests he knows in the United States, who purport to be Catholic, are not Catholic.

149. Plaintiff also has stated that certain practices of MHFM and the individual defendants with respect to Mass are sinful.

150. Plaintiff believes that certain practices of MHFM and the individual defendants with respect to Mass are sinful.

151. Plaintiff cannot identify one church in the United States where he believes that it is acceptable for the defendants or anyone else to attend Mass.

152. Plaintiff cannot identify one monastery anywhere in the world that he considers to be a legitimate Benedictine monastery or a legitimate Benedictine order.

153. Plaintiff does not know of any person anywhere in the world whom he considers to be a legitimate member of the Order of St. Benedict.

154. Plaintiff left MHFM on December 31, 2007 with MHFM's confidential and proprietary business records including bank, investment account, customer, benefactor, and donor records. Such information was and is not readily or publicly available.

155. Plaintiff left MHFM on December 31, 2007 with other MHFM confidential and proprietary records and materials including but not limited to computer passwords, technology purchase information, phone system information, customer ordering data, customer information, and other data and intellectual property contained on a laptop computer, flash drive, and in hard copy. Such information was not readily or publicly available.

156. Beginning in or around December 31, 2007, plaintiff published and/or caused to be published certain statements about all the defendants.

157. In particular, plaintiff made statements to people that the individual defendants stole money from plaintiff.

158. In January 2008, plaintiff stated to Keith McKay that Brother Michael and Brother Peter were wrongfully holding his money and refused to return it to him.

159. At the time plaintiff made these statements of alleged fact to Keith McKay, he knew or reasonably should have known that Mr. McKay was a customer of and a donor to MHFM.

160. The statements made to Keith McKay were false and were intended to harm the individual defendants in their business and work. The statements were made with actual malice.

161. On or about January 12, 2008, plaintiff told Stephen Hand that Brother Michael and Brother Peter had stolen money from him and another person. He specifically accused the individual defendants of theft.

162. At the time plaintiff made these statements of alleged fact to Stephen Hand, he knew or reasonably should have known that Mr. Hand was a customer of MHFM and/or a donor to MHFM.

163. The statements made to Stephen Hand were false and were intended to harm the individual defendants in their business and work. The statements were made with actual malice.

164. Plaintiff has made similar and/or identical statements of alleged fact to other individuals whom he knew or reasonably should have known were benefactors of MHFM.

165. Plaintiff has made similar and/or identical statements of alleged fact to other individuals whom he knew or reasonably should have known were vendors of services to MHFM.

166. At the times when plaintiff made these statements of alleged fact, *i.e.*, that defendants stole his money, he knew or reasonably should have known that these individuals were vendors, customers, benefactors, and/or donors to MHFM.

167. Plaintiff also made such statements, to the effect that defendants allegedly stole more than \$1 million from him, to a New York State trooper, Larry LaRose, on or around January 2, 2008. At the time, plaintiff was attempting with actual malice to have Brother Michael and Brother Peter arrested.

168. In addition, in the early part of 2008, plaintiff contacted the United Parcel Service (“UPS”), a business entity with which MHFM has business relations, and told UPS that MHFM had defrauded it.

169. At the time plaintiff made these statements of alleged fact to UPS, he knew or reasonably should have known that MHFM had business relations with UPS.

170. The statements made to UPS were false and were intended to harm the individual defendants in their business and work. The statements were made with actual malice.

171. In the early part of 2008, plaintiff also contacted David Burrow, owner of DPS Video, a business entity with which MHFM has business relations, and told Mr. Burrow that MHFM had lied to and cheated plaintiff.

172. At the time plaintiff made these statements of alleged fact to Mr. Burrow, he knew or reasonably should have known that MHFM had business relations with Mr. Burrow and DPS Video.

173. The statements made to Mr. Burrow were false and were intended to harm the individual defendants in their business and work. The statements were made with actual malice.

174. Upon information and belief, plaintiff made such statements, to the effect that defendants allegedly stole his money, to others who knew of MHFM and the

individual defendants. The defendants cannot identify each of these individuals, as that information is within the sole knowledge and control of the plaintiff.

175. The statements made by plaintiff as described herein were and are false.

176. Plaintiff's statements as described herein constitute statements that defendants, either individually or collectively, committed a serious felony offense or defrauded entities with which defendants do business. The statements made by plaintiff as described herein were made with the intent to injure the defendants in name, business reputation, and otherwise. Plaintiff made such statements with actual malice.

177. At some time after December 31, 2007, plaintiff created and maintained a website on the worldwide Internet at the URL www.genesis49.com. The website contained a PayPal "button" which visitors could click in order to send money to plaintiff.

178. When plaintiff contacted MHFM's benefactors to advise them about this website, he solicited donations and monies from such individuals. He did this verbally and in writing including the use of this PayPal solicitation button on his website.

FIRST COUNTERCLAIM
(Defamation/Injurious Falsehood)

179. Defendants repeat and reallege each of the foregoing allegations as if fully set forth herein.

180. On January 2, 2008, plaintiff stated to New York State Trooper Larry LaRose that Brother Michael and Brother Peter had stolen more than \$1 million from him.

181. On or about January 12, 2008, plaintiff told Stephen Hand that Brother Michael and Brother Peter had stolen money from him and another person. He specifically accused the individual defendants of theft.

182. In January 2008, plaintiff stated to Keith McKay that Brother Michael and Brother Peter were wrongfully holding his money and refused to return it to him.

183. In the early part of 2008, plaintiff stated to UPS that MHFM was defrauding it.

184. In the early part of 2008, plaintiff stated to David Burrow that MHFM lied to him and cheated him.

185. At other times not presently known to defendants but believed to be on and after January 1, 2008, plaintiff stated to individuals who were acquainted with the defendants that the defendants, particularly Brother Michael and Brother Peter, stole money from him.

186. At the times when plaintiff made the statements set forth above, they were false, and he knew them to be false.

187. Plaintiff made these statements with reckless disregard of their truth or falsity. In so doing, he acted with actual malice.

188. At the times plaintiff made the statements set forth above, he was acting negligently and/or grossly negligently.

189. By plaintiff's making the false statements set forth above, he caused the defendants to be exposed to public hatred, contempt, ridicule, and/or disgrace.

190. When the plaintiff made the false statements set forth above, he was referring to the defendants.

191. When the plaintiff made the false statements set forth above, he was making them to members of the public, both within and outside of New York State, including to some individuals residing outside of the United States.

192. By his conduct as aforesaid, plaintiff defamed Brother Michael (sued herein as Frederick Dimond).

193. By his conduct as aforesaid, plaintiff defamed Brother Peter (sued herein as Robert Dimond).

194. By his conduct as aforesaid, plaintiff defamed defendant MHFM.

195. Due to the nature of the falsehoods communicated to others by plaintiff, those hearing the statements understood them to mean that defendants were dishonest in their profession, business, and means of livelihood.

196. Such conduct of plaintiff as aforesaid constitutes *per se* defamation.

197. Plaintiff's conduct has and is causing irreparable injury to defendants. Defendants therefore are entitled to injunctive relief.

198. By reason of plaintiff's conduct, defendants have suffered damages in an amount thought to exceed \$5 million.

199. Because plaintiff's conduct as aforesaid was made with actual malice and with deliberate intent to harm defendants, each defendant is entitled to an award of punitive damages against plaintiff in an amount to be set by a jury.

SECOND COUNTERCLAIM
(Violation of Lanham Act)

200. Defendants repeat and reallege the foregoing allegations as if fully set forth herein.

201. By his conduct as aforesaid, plaintiff made a false or misleading representation regarding the nature, characteristics, or quality of MHFM's services.

202. Plaintiff's representations were used in commerce in that, among other things, he used customer contact information to make them, he directed individuals to his competing website, he utilized a website-based PayPal link to make solicitations, and he unfairly competed with MHFM by making use of MHFM's confidential and proprietary business records.

203. Plaintiff's representations were made in the context of commercial advertising and/or promotion of his website and his newly-found religious beliefs.

204. Plaintiff's actions made MHFM and the individual defendants believe that they would be damaged by the representations.

205. By reason of this conduct, plaintiff violated the Lanham Act, 28 U.S.C. § 1125, *et. seq.*, and is thereby liable to defendants for actual damages, consequential damages, and attorneys' fees.

THIRD COUNTERCLAIM
(Interference with Prospective Advantage
and Tortious Interference With Contract)

206. Defendants repeat and reallege the foregoing allegations as if fully set forth herein.

207. With intent and knowledge, and with wrongful means as described above, plaintiff prevented defendant MHFM from sustaining its business relationship with donors and benefactors and prevented defendant MHFM from establishing new relationships with additional donors and benefactors.

208. In addition, with intent and knowledge, and with wrongful means as described above, plaintiff tortiously interfered with business agreements that MHFM had with others.

209. Plaintiff's conduct was perpetrated solely to harm defendants.

210. At all times plaintiff knew of defendants' relationships with the individuals with whom he spoke and to whom he lied about defendants.

211. Plaintiff intentionally interfered with such relationships by his conduct and communications.

212. Were it not for plaintiff's interference, defendants would have maintained such relationships, including those that in the past resulted in monetary donations to defendant MHFM.

213. Plaintiff's wrongful conduct caused damages to each defendant for which they are entitled to relief, both compensatory and punitive, in an amount thought to be in excess of \$5 million.

214. Because plaintiff's conduct has caused or is likely to cause irreparable damage, defendants are entitled to injunctive relief.

FOURTH COUNTERCLAIM
(Conversion)

215. Defendants repeat and reallege each of the foregoing allegations as if fully set forth herein.

216. As set forth above, MHFM owned certain proprietary and confidential business records and materials as of December 31, 2007. As well, MHFM owned certain assets by way of cash and securities, contained in an investment account at Scottrade. Defendant MHFM had the right of possession to that property.

217. On or about that date, plaintiff took certain property that rightfully belonged to defendant or defendants. In taking that property, plaintiff interfered with defendants' rights to it.

218. In taking MHFM's property, plaintiff exercised dominion and control over it.

219. Some or all of the property that plaintiff took from defendant MHFM constituted trade secrets of MHFM.

220. MHFM employed precautionary measures to protect the trade secrets that plaintiff took from its premises.

221. Plaintiff intended to take the property in question, and his conduct as aforesaid was gross, wanton, and/or deliberate and evinced a high degree of moral culpability.

222. Plaintiff's conversion of this property was unlawful.

223. Plaintiff's conversion of defendants' property was a substantial factor in causing damages to defendants.

224. Defendants were damaged in an amount thought to exceed \$5 million. Moreover, because plaintiff's conduct has caused irreparable harm, defendants are entitled to injunctive relief.

FIFTH COUNTERCLAIM
(Breach of Fiduciary Duty)

225. Defendants repeat and reallege the foregoing allegations as if fully set forth herein.

226. Plaintiff had a fiduciary duty to MHFM, and also to the individual defendants, particularly Brother Michael, his Superior, based on his entry in the monastery and his extended period of time living there.

227. This fiduciary duty included plaintiff's obligation to act in good faith and in the interests of MHFM during the period he resided there and was a member of the community.

228. This fiduciary duty continued even after plaintiff's departure on December 31, 2007.

229. As is described more fully above, plaintiff did not act in good faith, and as such, he breached the fiduciary duty owed to defendants, causing them great harm. Plaintiff's breaches of his fiduciary duties to defendants occurred when he took defendants' property without permission, when he made false statements about defendants' honesty and business conduct, and when he used the confidential and proprietary business information of MHFM to his own economic advantage and to MHFM's direct detriment.

230. Plaintiff's conduct caused an identifiable loss to be sustained by the defendants including but not limited to injuring the defendants' reputations, interfering with the relationships between defendants and others who were donors, benefactors, and customers of MHFM, and taking the defendants' business property without authorization.

231. As a result, and because plaintiff's breach of fiduciary duty is causing irreparable harm to defendants, defendants seek damages in an amount thought to be in excess of \$5 million, together with injunctive relief.

SIXTH COUNTERCLAIM
(Misappropriation of Trade Secrets)

232. Defendants repeat and reallege all foregoing allegations as if fully set forth herein.

233. The computer databases in which MHFM maintained information regarding its supporters, donors, and customers are called the Arc List and the S List. In addition, MHFM had other data, not necessarily recorded in either the Arc List or the S List, that reflected names, addresses, telephone numbers, and in many cases credit card information for individuals who purchased items from MHFM's store and/or from its EBay site.

234. In order to develop these lists, MHFM has spent approximately \$1,000 per day over the past several years on Internet advertising and other promotional support. These efforts include the use of the Internet, traditional radio broadcasts, e-mail, telephone (including the maintenance of a toll-free telephone number), and regular mail. This was a considerable expense to MHFM, but it was necessary in order for MHFM to spread its message and teach about traditional Catholicism.

235. MHFM's customers, supporters, and benefactors are not readily ascertainable outside MHFM's community as prospective donors or supporters to MHFM or as customers of MHFM's products (books, DVDs, and the like).

236. The data in the MHFM databases and computers was not shared publicly. MHFM guarded this information with electronic firewalls and the like to ensure it was secure.

237. These records and materials constituted trade secrets of MHFM, and, without authority, plaintiff took those trade secrets on or about December 31, 2007 and thereafter used them in breach of a duty to MHFM.

238. This proprietary information, which the plaintiff took without authority, permits plaintiff to compete directly with MHFM and, further, has allowed plaintiff to defame the individual defendants by telling MHFM supporters that Brother Michael and Brother Peter stole money from him and others.

239. In performing its work, MHFM relies solely on the support of its benefactors, customers, clients, and supporters. Because the monastery relies on the support of outsiders to perform its mission, if that support is destroyed, the monastery will be destroyed as well.

240. For these reasons, and in order to continue to ensure the existence and efficacy of MHFM as a not-for-profit corporation, MHFM expends immeasurable resources to reach out to and teach traditional Catholicism, and to generate more and more support.

241. As a result of plaintiff's conduct as aforesaid, MHFM has been damaged in an amount thought to exceed \$5 million; moreover, because plaintiff's conduct is causing irreparable harm, MHFM is entitled to injunctive relief on this claim.

SEVENTH COUNTERCLAIM
(Violation of the Electronic Communications Privacy Act)

242. Defendants repeat and reallege all foregoing allegations as if fully set forth herein.

243. By his conduct as aforesaid, plaintiff knowingly and intentionally accessed electronic communications that are not readily accessible by the general public. Moreover, plaintiff intentionally intercepted and endeavored to intercept electronic communications of MHFM and its benefactors, donors, and customers. Plaintiff then used and/or disclosed the contents of such electronic communications for his own benefit and to the great detriment of the defendants.

244. For example, after abruptly departing MHFM on December 31, 2007, plaintiff used his technical knowledge to send e-mails to MHFM's supporters and benefactors that purported to originate from the email address "store@mostholymonastery.com."

245. And as set forth above, plaintiff intercepted and procured for himself email and other electronic communications of MHFM and converted them for his own use.

246. At the time he was accessing, intercepting, and procuring defendant MHFM's electronic communications, plaintiff did not have authority to do so.

247. Defendant had taken reasonable steps to protect and secure its electronic communications systems such that it was not readily-accessible to the public at large.

248. By reason of plaintiff's conduct in violation of federal law, 18 U.S.C. § 2510 *et seq.*, defendant MHFM is entitled to injunctive relief, statutory damages, attorneys' fees, and expenses.

WHEREFORE, defendants demand judgment on each cause of action in an amount thought to exceed \$5 million, together with punitive damages, injunctive relief, attorneys' fees and expenses, and any other relief as the Court deems just and proper.

DEFENDANTS DEMAND A JURY TRIAL OF ALL MATTERS.

Dated: Buffalo, New York
March 20, 2008

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