

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC E. HOYLE,

Plaintiff,

**REPLY DECLARATION**

v.

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

Civil Action No. 08-CV-347C

Defendants.

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**CHARLES C. RITTER, JR.**, hereby declares, under penalty of perjury:

1. I am an attorney admitted to practice before this Court and am a partner with Duke, Holzman, Photiadis & Gresens LLP, attorneys for the Defendants in this action. Duke, Holzman, Photiadis & Gresens LLP was substituted as counsel for Defendants in this action on or about May 12, 2010, in the place of the law firm of Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC.

2. I submit this declaration in reply to the declaration of K. Wade Eaton, Esq., dated October 15, 2010, and in further support of Defendants' motion for an Order compelling Plaintiff to:

(i) provide meaningful responses to Interrogatories 1, 2, 5, 6 and 7 of Defendants' First Set of Interrogatories dated September 10, 2009,

(ii) provide certain documents requested in Defendants' Notice to Produce, dated September 10, 2009,

(iii) produce sound recordings of telephone conversations made by Plaintiff in the weeks following his departure from Most Holy Family Monastery ("MHFM"), between and

among Plaintiff, Defendants, Joseph Myers and other unknown persons regarding Plaintiff's allegations against Defendants,

(iv) produce Plaintiff's writings, apparently intended to serve as transcriptions of the conversations between Plaintiff, Joseph Myers and Michael Lipscomb during their hotel stay immediately following their departure from MHFM, and

(v) produce a privilege log for the documents Plaintiff has withheld from production claiming privilege.

3. Inasmuch as Plaintiff's counsel produced a privilege log annexed to his declaration dated October 15, 2010 concerning this motion, Defendants withdraw the branch of this motion seeking same. Although Plaintiff's counsel advises that the production of the sound recording (No. iii, above) is forthcoming, they nonetheless remain outstanding and it is requested that the Court set a date for production.

**A. Plaintiff Should be Compelled to Respond to Interrogatories**

4. Plaintiff disputes that he should be required to provide meaningful responses to Interrogatories 1, 2 and 7 (Eaton Declaration ¶ 4), claiming that these inquiries, which concern Plaintiff's past and present religious beliefs, are "plainly irrelevant to the central issue in this case..." (Eaton Declaration ¶ 5).

5. While Plaintiff's counsel argues that the "central issue" in this case is whether Defendants misrepresented to Plaintiff their affiliation with the universally recognized and sanctioned Order of St. Benedict (See Eaton Declaration ¶ 5), it is far from the only issue in play and discovery should by no means be limited only to the one issue that Plaintiff deems central.

6. Of great significance to the instant motion, the Court in its May 2009 decision in denying Defendants' motion to dismiss on First Amendment grounds stated:

However, *if, after discovery and a narrowing of the issues*, the case later requires an interpretation of religious doctrine, the jurisdictional issue could be decided on a motion for summary judgment. *See Petruska v. Gannon Univ.*, 462 F.3d 294, 312 (3d Cir.2006), *cert. denied*, 550 U.S. 903, 127 S.Ct. 2098, 167 L.Ed.2d 813 (2007) (if resolution of claim raised Establishment Clause issues, court could later grant summary judgment on that basis).

Hoyle v. Dimond, 612 F. Supp. 2d 225, 230 (W.D.N.Y. 2009) (emphasis added).

7. Accordingly, Defendants are entitled to discovery of the information requested in Interrogatories 1, 2 and 7.

8. Likewise, Defendants are entitled to meaningful responses to Interrogatories 5 ("Identify the monasteries that you consider to be legitimate members of the Order of St. Benedict") and 6 ("Is St. Vincent's Archabbey in Latrobe, PA a legitimate Benedictine monastery at present, and was it a legitimate Benedictine monastery in 2005, at the time you entered Most Holy Family Monastery?").

9. Plaintiff has failed to identify the monasteries that **he considers** to be legitimate, in response to Interrogatory 5 and continues to fail and refuse to provide a simple "yes" or "no" answer to Interrogatory 6. Discovery on this topic is necessary because Plaintiff claims that he was misled into believing MHFM was a legitimate Benedictine Monastery.

10. The Interrogatory responses sought are also relevant and material to Defendants' Fifteenth Affirmative Defense, that Plaintiff at all relevant times was aware that MHFM was not a Novus Ordo "Benedictine Monastery."

11. Plaintiff's beliefs are material and relevant to his claims for fraud. Plaintiff asserts that Defendants misrepresented themselves to be followers of the Order of St. Benedict, and goes

so far as to cite this as a predicate act for a supposed cause of action under RICO. In contrast, Defendants claim they are a Benedictine Monastery and that Plaintiff Hoyle was well aware of their beliefs and positions regarding Catholic doctrine. At the very least, inquiry into this topic could lead to discoverable information as to the credibility of Plaintiff's claimed reliance on the alleged misrepresentation- i.e. what did Plaintiff believe then and what does he believe now.

12. Finally, it must be remembered that Plaintiff Hoyle filed this lawsuit and, based on his allegations, put in issue what he was told, what he relied on, and therefore what he believed then and now. Depending on what Plaintiff Hoyle discloses on this and related issues it may well be that no cause of action for fraud can survive.

13. A copy of Plaintiff's Amended Complaint in this action is annexed hereto as **Exhibit A**.

14. A copy of Defendants' Answer to the Amended Complaint in this action is annexed hereto as **Exhibit B**.

**B. Plaintiff Should be Compelled to Produce Tax Returns**

15. Defendants recognize that in general, a party will not be required to produce income tax returns in a particular action unless the record presents a strong necessity for such disclosure in order for the party to prove its cause of action or defense. *Niagara Falls Urban Renewal Agency v. Friedman*, 55 A.D.2d 830, 390 N.Y.S.2d 310 (4th Dept. 1976).

16. Where a strong showing of necessity is established, however, a party will be required to produce income tax returns. *Id.*

17. Defendants pleaded as their Twelfth Affirmative Defense that the donations by Plaintiff were unconditional and Plaintiff's intent and motivation at the time the gifts were made is a critical aspect of Defendants' defense.

18. The federal gift tax applies to transfers by way of gift whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. *See*, Bogert's Trusts and Trustees § 278.

19. A donor who makes a taxable gift has primary liability to pay the gift tax. *See* I.R.C. § 2502(c). Conversely, a transfer or donation to a charity may not be taxable and, in fact, may be the basis for a tax deduction if it is unconditional.

20. Plaintiff's tax returns should contain information particularly germane to this action: how Plaintiff treated the donations he made to Defendants for tax purposes, which is an indicative factor of whether Plaintiff possessed donative intent.

21. In fact, Plaintiff Hoyle has plead a claim that of the money he donated \$750,000 was supposed to be returned to him if he left the monastery. (Amended Complaint para. 45). However, Defendants claim that plaintiff Hoyle reported to them that he had extensive discussions with financial/tax advisers and that the gift/donation had to be unconditional-- i.e. he could not reserve the right to get any of the money back. Plaintiff Hoyle then informed Defendants that his donations to MHFM were of this nature- absolute and unconditional.

22. Attached hereto as **Exhibit C** is a copy of an April 6, 2006 email exchange Plaintiff Hoyle had with his financial/tax advisor discussing the transfers to MHFM. The text of this email demonstrates that Plaintiff's tax return, including whether he claims a charitable donation or filed a gift tax return, are material and relevant to the issue of whether or plaintiff Hoyle reserved the right to reclaim \$750,000 as alleged in the Amended Complaint.

23. Plaintiff's tax returns are thus material to the presentation of Defendants' affirmative defenses and are necessary in order for Defendants to fully explore sources of impeachment as to Plaintiff's allegations.

24. Here, Plaintiff made a gift to Defendants and only after having a change in his own religious beliefs seeks to take back the gift by crying a baseless claim for fraud.

25. The discovery sought to be compelled herein is essential to Defendants' defense of this action.

**WHEREFORE**, Defendants respectfully request that this Court grant an Order compelling Plaintiff to: (i) provide meaningful responses to Interrogatories 1, 2, 5, 6 and 7 of Defendants' First Set of Interrogatories dated September 10, 2009, (ii) provide certain documents requested in Defendants' Notice to Produce, dated September 10, 2009, (iii) produce sound recordings of telephone conversations made by Plaintiff in the weeks following his departure from Most Holy Family Monastery, between and among Plaintiff, Defendants, Joseph Myers and other unknown persons regarding Plaintiff's allegations against Defendants, and (iv) produce Plaintiff's writings, apparently intended to serve as transcriptions of the conversations between Plaintiff, Joseph Myers and Michael Lipscomb during their hotel stay immediately following their departure from Most Holy Family Monastery.

Dated: October 25, 2010

*/s/ Charles C. Ritter, Jr.*

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Charles C. Ritter, Jr.

# Exhibit A to Reply

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC E. HOYLE

Plaintiff,

vs.

FREDERICK DIMOND, ROBERT DIMOND,  
and MOST HOLY FAMILY MONASTERY,  
a New York Not-for-Profit Corporation

Defendants

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**AMENDED  
COMPLAINT**

**Index No. 08-cv-00347-JTC**

ERIC E. HOYLE, by his attorneys, Chamberlain D' Amanda Oppenheimer & Greenfield LLP, for his Amended Complaint against the defendants, alleges as follows:

**INTRODUCTION**

1. This is an action to recover damages and restitution from defendants, Frederick Dimond, Robert Dimond, and Most Holy Family Monastery. The plaintiff's claims are based on the defendants' operation of Most Holy Family Monastery and sound in fraud, constructive fraud, unjust enrichment, monies had and received, violation of the federal civil RICO statute, deceptive trade practice and false advertising.

**PARTIES**

2. Plaintiff, Eric E. Hoyle, resides in Winston-Salem, North Carolina and is a citizen of North Carolina.

3. Defendant Frederick Dimond resides at 4425 Schneider Road, Fillmore, New York and is a citizen of New York. He uses the pseudonym "Brother Michael Dimond."



4. Defendant Robert Dimond resides at 4425 Schneider Road, Fillmore, New York and is a citizen of New York. He uses the pseudonym “Brother Peter Dimond, O.S.B.”

5. Defendant Most Holy Family Monastery (“MHFM”) is a not-for-profit corporation formed pursuant to the New York Not-for-Profit Corporation Law and maintains its principal offices at 4425 Schneider Road, Fillmore, New York.

6. Upon information and belief, MHFM was formed on or about August 20, 1993 under the name Queen of Angels Corp. The original incorporators of Queen of Angels Corp. were Joseph A. Natale, Paul E. Wedekind, and Joseph J. Vennari, each residing at 261 Cross Keys Road, Berlin, New Jersey.

7. On February 27, 2001, a Certificate of Amendment to the Certificate of Incorporation to change the name of the corporation to Most Holy Family Monastery was filed with the New York Secretary of State.

8. Upon information and belief, said Certificate of Amendment was signed by Frederick Dimond using the pseudonym “Brother Michael Dimond, O.S.B.”

#### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this dispute pursuant to 28 USC §1332(a) (1). The plaintiff is a citizen of the State of North Carolina, and none of the defendants are citizens of the State of North Carolina. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

10. The Court also has subject matter jurisdiction over this dispute pursuant to 18 U.S.C. §1964.

11. Venue is properly laid in this judicial district pursuant to 28 USC §1391(a) (2) on the ground that a substantial part of the events or omissions giving rise to the claims occurred in

this district. Venue is also properly laid in this judicial district pursuant to 18 U.S.C. §1965 because the defendants are subject to personal jurisdiction in this judicial district and reside in this judicial district.

## **FACTS**

### **Defendants' Ongoing Activities**

12. On or before April 1, 2002, the Dimond defendants established a web site for MHFM with the internet address of "[www.mostholymonastery.com](http://www.mostholymonastery.com)" (hereinafter "the MHFM website"). They also established an e-mail address: "[mhfm1@aol.com](mailto:mhfm1@aol.com)."

13. From that time forward, defendant Frederick Dimond has continuously identified himself on the MHFM website as "Brother Michael Dimond, O.S.B."

14. Since on or about June 1, 2002, defendant Robert Dimond has continuously identified himself on the MHFM website as "Brother Peter Dimond, O.S.B."

15. Since on or about September 29, 2002, the Dimond defendants have continuously offered for sale various video recordings and publications to the general public.

16. Since May 30, 2003, the Dimond defendants have continuously displayed a hyperlink on the MHFM website to a document entitled "Our Benedictine Community." This document purports to describe the history of MHFM as a Benedictine community and to further identify defendant Frederick Dimond as Brother Michael Dimond, O.S.B., a Benedictine monk.

17. Since on or about May 26, 2004, the Dimond defendants have continuously displayed on the MHFM website a solicitation for financial support.

18. Between the summer of 2004 and the date this action was commenced, hundreds of thousands of individuals from various locations in the United States and around the world have viewed the MHFM website. Thousands have either made financial contributions to MHFM

in response to the solicitation contained there and/or purchased items advertised for sale on the MHFM website.

19. Attached hereto as Exhibit A is a compilation of documents evidencing over 400 purchases or donations to MHFM between September 16, 2006 and December 4, 2008 in which payment was effected by electronic means.

#### **The Order of St. Benedict**

20. The Order of St. Benedict is widely recognized as a Roman Catholic religious order of monastic communities that observe the Rule of St. Benedict. Within the order, each individual community (which may be a monastery, abbey, or priory) maintains its own autonomy, while the organization as a whole exists to represent their mutual interests.

21. The terms "Order of St. Benedict" and "Benedictine Order" are also used frequently to refer to the total of the independent Roman Catholic Benedictine abbeys.

22. The Benedictine Confederation, which was established in 1883 by Pope Leo XIII, is the international governing body of the order. Members of the Order of St. Benedict are permitted to use the suffix "O.S.B." after their names.

23. New Benedictine monks and monasteries come into being by permission of and association with existing Benedictine monks and monasteries.

#### **Eric Hoyle Learns of MHFM**

24. In the fall of 2003, Eric E. Hoyle was 22 years old and was teaching chemistry at a public high school in Edgewater, Maryland.

25. A primary focus of his private activities at that time was the search for religious doctrines that were true and good.

26. In 2004, believing that the Catholic Church held and taught the religious doctrines he was looking for, the plaintiff gave up his teaching position to pursue entrance into a seminary to become a priest.

27. The plaintiff's experiences, research and conversations with various individuals eventually led him to set aside his pursuit of priestly training and to study the Catholic religion on his own for a time.

28. In early 2005, while living a solitary life of prayer and study, the plaintiff learned of the existence of a Benedictine monastery in upstate New York going by the name Most Holy Family Monastery.

29. The plaintiff sought information from the MHFM website, [www.mostholymonastery.com](http://www.mostholymonastery.com), which stated that MHFM was a Benedictine monastery supervised by Brother Michael Dimond, O.S.B., a Benedictine monk.

30. The plaintiff contacted Frederick Dimond to learn more about MHFM and the procedures required for the plaintiff to become a Benedictine monk through MHFM.

31. Frederick Dimond told the plaintiff that MHFM's history dated to the 1960's when a Benedictine monk named Brother Joseph Natale ("Natale") was given permission by Archabbot Dennis Strittmatter of St. Vincent's Archabbey in Latrobe, Pennsylvania, to establish a Benedictine community and that such a community had been established by Natale in southern New Jersey.

32. Frederick Dimond further stated that someone had given land in upstate New York to Natale's Benedictine community in the early 1990's for the purpose of establishing a Benedictine monastery there.

33. Frederick Dimond also told the plaintiff that when Joseph Natale died in November 1995, Frederick Dimond had been elected Superior of MHFM and had supervised the move to its present location in 1997.

34. In reliance on information provided by Frederick Dimond, the plaintiff made a cash contribution of Seven Hundred (\$700.00) Dollars to MHFM on or about April 1, 2005. The transfer was made by delivery of check number 1014 from checking account number 218-2871-7 at USAA Federal Savings Bank.

35. The plaintiff made a further cash contribution to MHFM on May 2, 2005 in the amount of Sixty-Five Thousand (\$65,000.00) Dollars. The transfer was made by delivery of check number 1179 from checking account number 1087375695120 at Wachovia Bank, N.A.

36. The plaintiff made visits to MHFM in late June and again for several weeks beginning in mid-July 2005.

37. In reliance on his discussions with Frederick Dimond and his visits to MHFM, the plaintiff decided in September 2005 that he would seek to become a Benedictine monk under the auspices of Frederick Dimond and MHFM.

38. Frederick Dimond agreed to receive the plaintiff as a postulant and to undertake his training to become a Benedictine monk, conditioned upon the plaintiff's agreement to turn over most of his worldly possessions to MHFM.

39. Frederick Dimond conveyed to the plaintiff that the shedding of material possessions was a requirement of the Order of St. Benedict and MHFM. Frederick Dimond also told the plaintiff that the plaintiff must specify in writing what portion, if any, of money he would be transferring to MHFM must be returned to him should he leave MHFM.

40. Based on representations made by Frederick Dimond, the plaintiff took up residence at MHFM on September 27, 2005.

41. At that time, the plaintiff was the owner of approximately 1,350,000 shares of Guinor Gold Corporation.

42. On or about November 4, 2005, the plaintiff transferred 1,045,000 shares of Guinor Gold Corporation, valued at \$1,233,100.00 to MHFM. This transfer was made by wire from the plaintiff's account number 506-66358-1-3 at TD Waterhouse, Inc.

43. The plaintiff retained sufficient assets to pay his capital gains taxes for 2005.

44. In the late-spring/summer of 2006, Frederick Dimond renewed his request that the plaintiff specify in writing the amount of the plaintiff's transfers that must be returned to him if and when he left MHFM.

45. The plaintiff chose the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars, executed a document stating how much would be returned to him on his departure from MHFM, and delivered it to Frederick Dimond.

46. On or about September 12, 2006, the plaintiff made an additional transfer to MHFM of 37,400 shares of Central Fund of Canada from his USAA Investment Management Company brokerage account number 11590502. These shares had an approximate value of \$307,989.00 on the date of transfer.

47. Subsequent to his move to MHFM and the transfer of his assets to MHFM, the plaintiff learned that, contrary to Frederick Dimond's representations, he was not a member of the Order of St. Benedict and that MHFM was neither founded nor operated in accordance with the requirements of the Order of St. Benedict.

48. This revelation also meant that the plaintiff could not achieve the status of a Benedictine monk through his association with the Dimond defendants or MHFM.

49. In the late fall of 2006, Michael Lipscomb took up residence at the MHFM location with the intention of becoming a Benedictine monk under the auspices and mentoring of the Dimond defendants.

50. In the summer of 2007, Joseph Myers took up residence at the MHFM location with the intention of becoming a Benedictine monk under the auspices and mentoring of the Dimond defendants.

51. On December 31, 2007, the plaintiff left MHFM.

52. On the same day, Lipscomb and Myers also left MHFM.

53. Subsequently, representatives of the plaintiff demanded the return of all property turned over to MHFM, including the \$1,606,789.00 previously “donated” to MHFM.

54. The defendants have refused to comply with the demand that all funds and personal property, or their monetary equivalent, previously transferred to the defendants be returned to the plaintiff.

55. Upon information and belief, Robert Dimond actively assisted and conspired with Frederick Dimond in misrepresenting to the plaintiff the facts regarding MHFM’s status as a Benedictine monastery and the status of himself and defendant Frederick Dimond as members of the Order of St. Benedict.

**COUNT I**

**(Fraud)**

56. Defendants Frederick Dimond and Robert Dimond intentionally made false representations to the plaintiff in an effort to persuade him to transfer all of his personal assets to them or to MHFM.

57. The plaintiff reasonably relied on the false representations made by defendants Frederick Dimond and Robert Dimond.

58. Based on his reasonable belief in the truth of the representations made by the Dimond defendants, the plaintiff transferred his personal assets, whose value exceeded \$1,606,789.00, to the defendants.

59. As a direct result of the defendants' fraudulent conduct, as hereinabove set forth, the plaintiff suffered damages exceeding \$1,606,789.00.

**COUNT II**

**(Constructive Fraud/Negligent Misrepresentation)**

60. As of September 27, 2005, the relationship between the plaintiff and the Dimond defendants had taken on the attributes of a fiduciary, confidential, or "special" relationship based on their superior knowledge of essential facts related to the plaintiff's desire to become a Benedictine monk.

61. By that time, the plaintiff had reasonably come to place his trust and confidence in the Dimond defendants and to rely on their good faith, sincerity, and knowledge in matters related to the plaintiff's desire to become a Benedictine monk.



62. The Dimond defendants possessed superior knowledge of essential facts related to the plaintiff's desire to become a Benedictine monk, to wit, that they were without authority or power to confer that status upon the plaintiff.

63. This information was not readily available to the plaintiff.

64. The Dimond defendants knew that the plaintiff was acting on the basis of the mistaken belief that Frederick Dimond possessed the authority to confer upon the plaintiff the status of a Benedictine monk.

65. The Dimond defendants were under a duty to disclose to the plaintiff that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk.

66. The Dimond defendants failed to disclose to the plaintiff that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk.

67. Had the Dimond defendants disclosed the fact that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk, the plaintiff would not have transferred assets of a value of \$1,541,089.00 to the defendants for this purpose.

68. The plaintiff suffered damage as the result of the failure of the Dimond defendants to disclose to the plaintiff that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk.

### **COUNT III**

#### **(Unjust Enrichment/Constructive Trust)**

69. During the summer of 2005, a relationship of trust and confidence arose between the plaintiff and the Dimond defendants, which resulted in the plaintiff's decision to take up residence at MHFM and to have defendants Frederick Dimond and Robert Dimond instruct him in the path to becoming a Benedictine monk.

70. Defendants Frederick Dimond and Robert Dimond led the plaintiff to believe that they would, indeed, instruct him in the path to becoming a Benedictine monk.

71. In reliance on these promises made by the defendants, the plaintiff turned over to the defendants personal assets with a value in excess of \$1,541,089.00.

72. Defendants Frederick Dimond and Robert Dimond thereafter failed and refused to instruct the plaintiff in the path to becoming a Benedictine monk.

73. Under the circumstances of this case, the defendants, including MHFM, may not in good conscience retain the assets turned over to them by the plaintiff.

74. The defendants, including MHFM, have thereby been unjustly enriched in an amount in excess of \$1,541,089.00.

75. In order to protect the assets of the plaintiff, a constructive trust must be imposed on the assets turned over to the defendants by the plaintiff and the defendants must be ordered to return them to the plaintiff.

#### **COUNT IV**

##### **(Mandatory Accounting)**

76. The plaintiff transferred substantial sums to MHFM at a time when there existed a fiduciary relationship between him and the Dimond defendants.

77. These transfers were based on the plaintiff's false belief that the Dimond defendants were Benedictine monks and that MHFM was a Benedictine community.

78. The plaintiff is therefore entitled to a full and accurate accounting of all sums transferred to the defendants between September 1, 2005 and the present.

**COUNT V**

**(Money Had and Received)**

79. When the plaintiff transferred his assets to the defendants, he did so in the mistaken belief that the Dimond defendants had the authority to instruct him in the disciplines which would enable him to become a Benedictine monk.

80. Because the plaintiff transferred his assets while entertaining the mistaken belief that the Dimond defendants had the authority to instruct him in the disciplines which would enable him to become a Benedictine monk, the defendants ought not, in equity and good conscience, retain possession of the money and personal property transferred to them by the plaintiff.

81. Based on the foregoing, the defendants should return to the plaintiff the personal property transferred to them, or its monetary value.

**COUNT VI**

**(Violation of 18 U.S.C. §1962[c])**

82. The plaintiff has been injured in his property by reason of the Dimond defendants' direct and indirect conduct of and participation in the affairs of an enterprise engaged in, or whose activities affect, interstate or foreign commerce through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

83. The Dimond defendants are persons within the meaning of 18 U.S.C. §1961(3).

84. The enterprise whose affairs were conducted by the Dimond defendants is defendant Most Holy Family Monastery, a New York not-for-profit corporation.

85. The pattern of racketeering activity engaged in by the Dimond defendants consists of mail fraud, a violation of 18 U.S.C. §1341; wire fraud, in violation of 18 U.S.C. §1343; and bank fraud, in violation of 18 U.S.C. §1344.

86. Conduct of the Dimond defendants which constituted mail fraud, wire fraud and bank fraud, as set forth above, included making false representations to the general public, through the MHFM website, and to specific individuals through its sale and distribution, using the United States Postal Service, of publications and other media, that they are and have been members of the Order of St. Benedict and that MHFM was a Benedictine community, and depositing the checks issued by purchasers in payment for publications and other media sold by MHFM into one or more depository or investment accounts held in the name of MHFM.

87. Additional conduct of the Dimond defendants which constituted mail fraud, wire fraud and bank fraud, as set forth above, consisted of making false representations to the general public, through the MHFM website, that they are and have been members of the Order of St. Benedict and that MHFM was a Benedictine community, in conjunction with their solicitation of donations to MHFM and their receipt and deposit of funds received as a result of those solicitations, by check or by wire transfer, from donors in one or more depository or investment accounts held in the name of MHFM.

88. Additional conduct of the Dimond defendants which constituted mail fraud, wire fraud and bank fraud, as set forth above, consisted of making false representations to specific individuals, including the plaintiff, that they are and have been members of the Order of St. Benedict and that MHFM was a Benedictine community, in conjunction with their inviting such individuals to join MHFM for the purpose of becoming members of the Order of St. Benedict, the demand for and receipt of the personal property of said individuals, and the deposit of

financial assets, including checks issued by said individuals, in one or more depository or investment accounts held in the name of MHFM.

89. These schemes to defraud are all related, in that they are founded on the Dimond defendants' misrepresentations that they are members of the Order of St. Benedict and that MHFM is a Benedictine community.

90. The Dimond defendants have engaged in this pattern of racketeering activity continuously since the summer of 2002 or before, continue to do so to the present day and, without judicial intervention, will continue to do so into the future.

91. The plaintiff has been injured in his property by reason of the Dimond defendants' violations of 18 U.S.C. §1962(c) in that he transferred personal property to the defendants of a value exceeding \$1,606,789.00 based on the fraudulent misrepresentations of the Dimond defendants that they were members of the Order of St. Benedict and that MHFM was a Benedictine community.

## **COUNT VII**

### **(Violation of 18 U.S.C. §1962[d])**

92. The Dimond defendants intentionally conspired and agreed to conduct and participate in the affairs of an enterprise engaged in, or whose activities affect, interstate or foreign commerce, through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

93. The Dimond defendants are persons within the meaning of 18 U.S.C. §1961(3).

94. The enterprise whose affairs were conducted by the Dimond defendants is defendant Most Holy Family Monastery, a New York not-for-profit corporation.

95. The pattern of racketeering activity which the Dimond defendants conspired to engage in, as set forth above, consists of mail fraud, a violation of 18 U.S.C. §1341; wire fraud, in violation of 18 U.S.C. §1343; and bank fraud, in violation of 18 U.S.C. §1344.

96. The Dimond defendants knew that the predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above.

97. As a direct and proximate result of the Dimond defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violation of 18 U.S.C. §1962(c), the plaintiff has been injured in his property in that he transferred personal property to the defendants of a value exceeding \$1,606,789.00.

### **COUNT VIII**

#### **(Deceptive Trade Practice)**

98. The conduct of the Dimond defendants heretofore alleged constitutes the engaging in a deceptive practice in violation of New York General Business Law §349.

99. The deceptive acts of the Dimond defendants have affected the public at large.

100. Plaintiff has been directly damaged by the Dimond defendants' deceptive practices, in that he transferred \$1,606,789.00 worth of personal assets to MHFM based on the false representation of the Dimond defendants that MHFM was a Benedictine monastery and that the Dimond defendants were Benedictine monks.

### **COUNT IX**

#### **(False Advertising)**

101. The conduct of the Dimond defendants heretofore alleged constitutes the engaging in false advertising in violation of New York General Business Law §350.

102. The false advertising committed by the Dimond defendants has affected the public at large.

103. Plaintiff has been directly damaged by the Dimond defendants' false advertising, in that he transferred \$1,606,789.00 worth of personal assets to MHFM based on the false advertisement of the Dimond defendants that MHFM was a Benedictine monastery and that the Dimond defendants were Benedictine monks.

**COUNT X**

**(Vicarious Liability of MHFM)**

104. The Dimond defendants' conduct as related herein was undertaken as representatives, employees or agents of MHFM and resulted in the unlawful enrichment of MHFM.

105. MHFM is vicariously liable to the plaintiff for any and all damages assessed against the Dimond defendants.

**DEMAND FOR RELIEF**

WHEREFORE, the plaintiff Hoyle prays for judgment against the defendants, jointly and severally, as follows:

1. as to Count I, judgment in the amount to be proved at trial, but not less than \$1,606,789.00;
2. as to Count II, judgment in the amount to be proved at trial, but not less than \$1,541,089.00;
3. as to Count III, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

4. as to Count IV, requiring an accounting of all moneys and things of value transferred by the plaintiff to any of the defendants, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

5. as to Count V, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

6. as to Count VI, actual damages, treble damages, attorney's fees and a permanent injunction prohibiting the Dimond defendants from engaging in conduct found to be unlawful;

7. as to Count VII, actual damages, treble damages, attorney's fees and a permanent injunction prohibiting the Dimond defendants from engaging in conduct found to be unlawful;

8. as to Count VIII, actual damages and attorney's fees;

9. as to Count IX, actual damages and attorney's fees;

10. as to Count X, actual damages, treble damages and attorney's fees; and

11. judgment for such other and further relief as the Court shall deem just and necessary, including interest, costs and attorney's fees.

Dated: March 10, 2009

CHAMBERLAIN D'AMANDA  
OPPENHEIMER & GREENFIELD LLP

/s/ K. Wade Eaton  
K. Wade Eaton, Esq.  
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TO: RUPP, BAASE, PFALZGRAF,  
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# Exhibit B to Reply

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ERIC E. HOYLE,

Plaintiff,

v.

Civil Action No. 08-CV-347C

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

Defendants.

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**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](http://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

**RUPP, BAASE, PFALZGRAF,  
CUNNINGHAM & COPPOLA LLC**  
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**TO: CHAMBERLAIN, D'AMANDA,  
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# Exhibit C to Reply

From: "Michael Trawick" <mtrawick@sstcpas.com>  
Subject: Re: Tax info  
Date: April 6, 2006 8:19:54 AM EDT  
To: "Eric Hoyle" <eric\_hoyle@yahoo.com>

Eric,

I received the information faxed by Brother Michael, attesting to the tax-exempt status of MHFM for New York State tax purposes. If MHFM is claiming exemption as a church, it is indeed considered exempt under IRC Section 501(c)(3), whether it has filed Form 1023 with the Internal Revenue Service requesting a determination letter, or not. In consequence, I can deduct as charitable contributions on your 2005 returns amounts you transferred to MHFM during 2005, under the following conditions:

1. You **must** obtain from MHFM a written acknowledgment describing the assets transferred, and the date of the gift, that indicates you received no goods or services (other than intangible religious benefits) in exchange for your gift to MHFM, in order to claim a tax deduction for the charitable gift.

2. No deduction can be claimed for funds to which you still have any legal claim. In other words, if MHFM is bound by legal agreement with you to return any assets you claim in the event you do not complete your novitiate, you cannot deduct the contribution of those assets until you no longer have such a claim. The gift must be complete, for legal purposes, in order for you to claim a tax deduction for same. If, on the other hand, the assets you transferred irrevocably belong to MHFM upon transfer, and will only be returned to you at the discretion of MHFM, even if you demand return of the assets, then you do have a completed gift, and a charitable deduction. The distinction here is more than semantics; you must have given up all ability to **enforce** control of the assets to claim the deduction, but you may retain the ability to request the assets back and still claim the deduction, as long as MHFM has the ability (even if not the inclination) to decline your request. Note that if the deduction is claimed, and any portion of the assets are subsequently returned to you, you will realize income to the extent of the value of the assets reclaimed.

The gift to Biblical Foundations International (Gerry Matatics) will be a taxable gift for gift tax purposes, and will require a gift tax return (although no tax will be due) unless the gift was to Gerry and his wife. I briefly reviewed his web site yesterday to confirm the tax status of BFI.

I will prepare tax projections this morning, estimating the amount of tax due for 2005 with and without a charitable deduction for the assets transferred to MHFM, so that I'll know what parameters I'm dealing with. In the meantime, please speak with Brother Michael and ascertain what portion of your transfer last year you and he believe represents a deductible charitable contribution under the aforementioned constraints. Also, once you have made that determination, please arrange for preparation of an acknowledgment with the "no goods or services..." language, and have a copy faxed to me at 336-765-0272 for your files here.

Regards,

Michael

----- Original Message ----- From: "Eric Hoyle" <eric\_hoyle@yahoo.com>  
To: "Michael Trawick" <mtrawick@sstcpas.com>  
Sent: Wednesday, April 05, 2006 2:37 PM  
Subject: Re: Tax info

Michael,

I mentioned the question of 501(c)(3) certification to Brother Michael, our superior, and he is faxing you some paperwork that certifies MHFM's tax exempt status in New York State. Hopefully it will be sufficient. Bro. Michael says he has not applied for a federal certificate and number, but that these are optional and would not establish tax-exempt status, only attest it further.

It would be possible for me to reclaim gifts if I were to leave the monastery at the conclusion of my novitiate, Sept. 27, or possibly at an earlier time if I were to leave (there is no vow to finish out the novitiate, if one chooses to leave). The amount I could reclaim is not fixed, but would be at least \$50,000 and probably much more. This should be a moot point because even if I do leave the monastery, I do not envision myself reclaiming the gift.

The income from the assets I gave goes to the monastery. In fact those assets, which were shares of Guinor Gold Corp, have been liquidated and invested differently.

One other thing to call to your attention: as stated in that paperwork I sent in, I gave \$20,000 cash to an organization called Biblical Foundations International (Gerald Matatics, Scranton, PA) which is NOT tax-exempt. Perhaps a gift tax liability there.

MHFM 000000803

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**ERIC E. HOYLE,**

Plaintiff,

v.

Civil Action No. 08-CV-347C

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

Defendants.

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**CERTIFICATION OF SERVICE**

I hereby certify that on October 25, 2010, I electronically filed the foregoing **papers** with the Clerk of the Western District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

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Dated: October 25, 2010

DUKE, HOLZMAN, PHOTIADIS  
& GRESENS LLP

*/s/ Charles C. Ritter, Jr.*

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