

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE

Plaintiff,

vs.

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

Defendants

AMENDED

**REPLY TO ANSWER
AND COUNTERCLAIMS**

Index No. 08-cv-00347-JTC

Plaintiff, ERIC E. HOYLE, through his attorneys, Chamberlain D'Amanda Oppenheimer & Greenfield LLP, replies to the defendants' counterclaims as set forth below:

1. Admits the allegations set forth in paragraphs 80, 81, 82 and 83 thereof.
2. Denies the allegations set forth in paragraphs 84 and 85 thereof.
3. With regard to the allegations set forth in paragraph 86 thereof, admits that at various times he has sent emails and other electronic communications into New York State and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations.
4. Denies the allegations set forth in paragraphs 87, 88 and 89 thereof.
5. Admits the allegations set forth in paragraph 90 thereof.
6. As to the allegations set forth in paragraph 91 thereof, admits that, based on false and fraudulent statements made by the defendants, plaintiff believed that MHFM was a Benedictine monastery of the traditional Catholic faith.
7. Admits the allegations in paragraphs 92, 93, 94, 95, 96, 97, 98 and 99 thereof.

8. Denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 100 thereof.

9. Denies the allegations set forth in paragraphs 101 and 102 thereof.

10. With regard to the allegations set forth in paragraph 103, denies the allegations therein but admits that in 2002 plaintiff visited a monastery which accepted the Novus Ordo liturgy.

11. Denies the allegations set forth in paragraph 104 thereof.

12. Admits the allegations set forth in paragraphs 105, 106, 107 and 108 thereof.

13. With regard to the allegations set forth in paragraph 109, admits that he expected severe economic distress but denies the characterization of his storage of food and water as “hoarding.”

14. Denies the allegations of paragraph 110 thereof.

15. Denies the allegations of paragraph 111, except that he admits he was eager to participate in the public work of MHFM.

16. With regard to the allegations set forth in paragraph 112, admits that he visited MHFM on two occasions but denies the implication that defendants Frederick and Robert Dimond are Catholic Benedictine monks.

17. Admits the allegations of paragraphs 113 and 114 thereof.

18. Denies the allegations of paragraph 115 thereof.

19. Admits the allegations of paragraph 116 thereof.

20. Denies the allegations of paragraph 117 thereof.

21. With regard to the allegations set forth in paragraphs 118 and 119, admits that said transfers were made but further alleges that said transfers were made based on the false representations of the defendants that MHFM was a legitimate Benedictine monastery.

22. With regard to the allegations set forth in paragraph 120, admits that a transfer of stock in the approximate amount took place but denies that it was a donation or that it was made unconditionally.

23. Denies the allegations set forth in paragraph 121 thereof.

24. Admits the allegations set forth in paragraph 122 thereof.

25. With regard to the allegations set forth in paragraph 123, plaintiff admits that he brought certain personal property with him to MHFM, including an Apple laptop computer, but denies the remaining allegations set forth therein.

26. With regard to the allegations set forth in paragraph 126, admits that he agreed with the MHFM teachings and positions and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations thereof.

27. With regard to the allegations set forth in paragraphs 127 and 128, plaintiff lacks sufficient knowledge and information to form a belief as to the truth of the allegations set forth therein.

28. Admits the allegations set forth in paragraphs 129 and 130 thereof.

29. With regard to the allegations set forth in paragraph 131, denies that all customer and business information was to be kept confidential by MHFM policy as set and practiced by defendant Frederick Dimond but admits that the credit card information of customers was to be kept confidential.

30. With regard to the allegations set forth in paragraph 132, denies the allegations that all customer information was not to be shared outside of MHFM and lacks knowledge and information sufficient to form a belief as to whether the defendants trusted plaintiff to keep such information confidential.

31. With regard to the allegations set forth in paragraph 133, admits the allegations thereof except that he lacks knowledge and information sufficient to form a belief as to the allegation that the defendants trusted him.

32. With respect to the allegations set forth in paragraph 134, denies the allegations thereof except admits that plaintiff had access to online PayPal records and was given access to investment account records.

33. With regard to the allegations set forth in paragraph 135, admits that the defendants gave plaintiff access to some confidential and proprietary business records and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations thereof.

34. With regard to the allegations set forth in paragraph 136, denies knowledge and information sufficient to form a belief as to the truth of the allegations thereof.

35. With regard to the allegations set forth in paragraph 137, denies that a religious novitiate actually began or occurred at any point during his residence at MHFM but admits that certain clothing was provided to him during his residence at MHFM.

36. With regard to the allegations set forth in paragraph 138, admits that certain words were spoken on or about October 4, 2007 but further states that the words were spoken on the presumption that defendant Frederick Dimond was a legitimate Benedictine Superior of a

legitimate Benedictine monastery and that a valid novitiate had preceded the event, all of which were untrue.

37. With regard to the allegations set forth in paragraph 139, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

38. With regard to the allegations set forth in paragraph 140, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

39. With regard to the allegations set forth in paragraph 141, admits that he departed MHFM without notice to defendants Frederick and Robert Dimond on December 31, 2007. He denies that he failed to notify defendants of his dissatisfaction while living there.

40. Admits the allegations set forth in paragraph 142 thereof.

41. With regard to the allegations set forth in paragraph 143, admits that he determined that MHFM was practicing and teaching heresy on mass attendance but denies that the services in question were "Catholic" masses.

42. Admits the allegations set forth in paragraphs 144 and 145 but objects to the characterization of those events as Catholic Masses.

43. Admits the allegations set forth in paragraphs 146 and 147 thereof.

44. With regard to the allegations set forth in paragraph 148, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

45. Admits the allegations set forth in paragraphs 149 and 150 thereof.

46. With regard to the allegations set forth in paragraphs 151 and 152, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

47. Admits the allegations set forth in paragraphs 153, 154, 155, 156, 157, 158 and 159 thereof.

48. Denies the allegations set forth in paragraph 160 thereof.

49. With regard to the allegations set forth in paragraph 161, admits that he spoke to Steven Hand on or about January 12, 2008 and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

50. With regard to the allegations set forth in paragraph 162, admits that he knew Mr. Hand was a customer and/or a donor to MHFM but denies that he made false statements to Mr. Hand.

51. Denies the allegations set forth in paragraph 163 thereof.

52. Admits the allegations set forth in paragraph 164 thereof.

53. Denies the allegations set forth in paragraph 165 thereof.

54. Admits the allegations set forth in paragraph 166 thereof.

55. Denies the allegations set forth in paragraph 167 thereof.

56. Admits the allegations set forth in paragraphs 168 and 169 thereof.

57. Denies the allegations set forth in paragraph 170 thereof.

58. With regard to the allegations set forth in paragraph 171, admits speaking with David Burrow [sp?] but denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

59. Admits the allegations set forth in paragraph 172 thereof.

60. Denies the allegations set forth in paragraph 173 thereof.

61. Admits the allegations set forth in paragraph 174 thereof.

62. Denies the allegations set forth in paragraph 175 thereof.

63. With regard to the allegations set forth in paragraph 176 thereof, plaintiff admits that his statements indicated his belief that the defendants had defrauded UPS, but denies the remaining allegations thereof.

64. Admits the allegations set forth in paragraphs 177 and 178 thereof.

65. Denies the allegations set forth in paragraph 180 thereof.

66. With regard to the allegations set forth in paragraph 181, admits that he spoke to Steven Hand on or about January 12, 2008 but denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

67. Admits the allegations set forth in paragraphs 182 and 183 thereof.

68. With regard to the allegations set forth in paragraph 184, admits speaking with David Burrow [sp.?] but denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

69. Admits the allegations set forth in paragraph 185 thereof.

70. Denies the allegations set forth in paragraphs 186, 187 and 188 thereof.

71. With regard to the allegations set forth in paragraph 189, denies making any false statements and denies knowledge and information sufficient to form a belief as to the whether his statements caused the defendants to be exposed to public hatred, contempt, ridicule, and/or disgrace.

72. With regard to the allegations set forth in paragraph 190, denies that statements made were false but admits that said statements were referring to the defendants.

73. With regard to the allegations set forth in paragraph 191, denies that he made false statements and states that truthful statements were made to members of the public both

within and outside New York State, including some individuals residing outside the United States.

74. Denies the allegations set forth in paragraphs 192, 193 and 194 thereof.

75. With regard to the allegations set forth in paragraph 195, denies that he stated any falsehoods and denies knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth therein.

76. Denies the allegations set forth in paragraphs 196, 197, 198 and 199 thereof.

77. Denies the allegations set forth in paragraphs 201, 202 and 203 thereof.

78. With regard to the allegations set forth in paragraph 204, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

79. Denies the allegations set forth in paragraph 205 thereof.

80. Denies the allegations set forth in paragraphs 207, 208 and 209 thereof.

81. With regard to the allegations set forth in paragraph 210, admits that he knew of the defendants' relationships with the individuals with whom he spoke but denies that he lied about the defendants.

82. Admits the allegations set forth in paragraph 211 thereof.

83. With regard to the allegations set forth in paragraph 212, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

84. Denies the allegations set forth in paragraphs 213 and 214 thereof.

85. With regard to the allegations set forth in paragraph 216, admits the general statement but denies that the defendants had a right to possession of monies, stock and other items of value which the plaintiff transferred to them under false pretenses.

86. Admits the allegations set forth in paragraphs 217 and 218 thereof.

87. With regard to the allegations set forth in paragraphs 219 and 220, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

88. Denies the allegations set forth in paragraph 221 thereof.

89. With regard to the allegations set forth in paragraph 222, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

90. Denies the allegations set forth in paragraphs 223 and 224 thereof.

91. Denies the allegations set forth in paragraphs 226, 227, 228 and 229 thereof.

92. With regard to the allegations set forth in paragraph 230, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

93. Denies the allegations set forth in paragraph 231 thereof.

94. With regard to the allegations set forth in paragraph 233, admits that the ARC list, the S list and other data existed at MHFM but denies that the ARC list may properly be characterized as listing present supporters, donors and customers and denies that MHFM had an "EBay site."

95. With regard to the allegations set forth in paragraph 234, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

96. Denies the allegations set forth in paragraph 235 thereof.

97. Admits the allegations set forth in paragraph 236 thereof.

98. With regard to the allegations set forth in paragraph 237, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

99. Denies the allegations set forth in paragraph 238 thereof.

100. With regard to the allegations set forth in paragraphs 239 and 240, denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.

101. Denies the allegations set forth in paragraph 241 thereof.

102. With regard to the allegations set forth in paragraph 243, admits that he accessed electronic communications that were not readily accessible by the general public and denies the remaining allegations thereof.

103. With regard to the allegations set forth in paragraph 244, admits that some emails originated by him in January 2008 appeared to originate from the email address “store@mostholyfamily monastery.com” but denies that he intentionally misused or misrepresented his identity in sending those emails.

104. Denies the allegations set forth in paragraphs 245 and 246 thereof.

105. Admits the allegations set forth in paragraph 247 thereof.

106. Denies the allegations set forth in paragraph 248 thereof.

107. Denies allegations not heretofore admitted, denied or controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

108. The claims of the defendants’ counterclaims fail to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

109. Statements attributed to the plaintiff in the defendants’ counterclaims and which are alleged to have been false, if made, were true.

110. Statements attributed to the plaintiff in the defendants’ counterclaims and which are alleged to have been false, if made, were believed by the plaintiff to be true.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

111. This Court lacks subject matter jurisdiction over one or more of the defendants' counterclaims.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

112. Damages alleged in the counterclaims were cause, in whole or in part, by culpable conduct attributable to the defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

113. Defendants had failed to mitigate their damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

114. The defendants' counterclaims are barred by the doctrine of unclean hands.

AS AND FOR COUNTERCLAIMS

115. The plaintiff's counterclaims are based on the defendants' operation of Most Holy Family Monastery and sound in fraud, constructive fraud, unjust enrichment, monies had and received, deceptive trade practice and false advertising, and breach of contract.

FACTS

Eric Hoyle Learns of MHFM

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

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

118. 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.

119. 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.

120. 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.

121. The plaintiff sought information from the MHFM website, www.mostholymonastery.com, which stated that MHFM was a Benedictine monastery supervised by Brother Michael Dimond, O.S.B., a Benedictine monk.

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

123. 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.

124. 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.

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

126. 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.

127. 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.

128. 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 (Agreement).

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

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

131. 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.

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

133. 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.

134. 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.

135. 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.

136. 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.

137. 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.

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

139. 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.

140. 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.

AS AND FOR A FIRST COUNTERCLAIM

(Fraud)

141. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 140.

142. Defendants Frederick Dimond and Robert Dimond intentionally made false representations to the plaintiff, including but not limited to that he could specify how much money would be returned to him if he left MHFM, in an effort to persuade him to transfer all of his personal assets to them or to MHFM.

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

144. 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.

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

AS AND FOR A SECOND COUNTERCLAIM

(Constructive Fraud/Negligent Misrepresentation)

146. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 145.

147. 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.

148. 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.

149. The Dimond defendants possessed superior knowledge of essential facts related to the plaintiff's desire to become a Benedictine monk, to wit, that they had no intention of returning any of the money that he transferred to MHFM.

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

151. The Dimond defendants knew that the plaintiff was acting on the basis of the mistaken belief that MHFM would return money he transferred to them if he left MHFM.

152. The Dimond defendants were under a duty to disclose to the plaintiff that they had no intention of returning any money to him if he left MHFM.

153. The Dimond defendants failed to disclose to the plaintiff that they would not return any money to plaintiff if he left MHFM

154. Had the Dimond defendants disclosed the fact that they would not return the money if he left MHFM, the plaintiff would not have transferred assets to the defendants.

155. The plaintiff suffered damage as the result of the failure of the Dimond defendants to disclose to the plaintiff that they would not return any money if he left MHFM.

AS AND FOR A THIRD COUNTERCLAIM

(Unjust Enrichment/Constructive Trust)

156. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 155.

157. 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.

158. 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, and if he left MHFM they would return money to him.

159. 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.

160. Defendants Frederick Dimond and Robert Dimond thereafter failed and refused to return the money when he left MHFM.

161. 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.

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

163. 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.

AS AND FOR A FOURTH COUNTERCLAIM

(Mandatory Accounting)

164. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 163.

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

166. These transfers were based on the plaintiff's false belief that the Dimond defendants would return money to him if he left MHFM.

167. 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.

AS AND FOR A FIFTH COUNTERCLAIM

(Money Had and Received)

168. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 167.

169. When the plaintiff transferred his assets to the defendants, he did so in the mistaken belief that the Dimond defendants would return money to him if he left MHFM.

170. Because the plaintiff transferred his assets while entertaining the mistaken belief that the Dimond defendants would return money to him if he left MHFM, the defendants ought not, in equity and good conscience, retain possession of the money and personal property transferred to them by the plaintiff.

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

AS AND FOR A SIXTH COUNTERCLAIM

(Deceptive Trade Practice)

172. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 171.

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

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

175. 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 would return money to him if he left MHFM.

AS AND FOR AN SEVENTH COUNTERCLAIM

(Breach of Contract)

176. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 175 eighth .

177. Defendants have failed to refund to plaintiff the money he specified would be returned to him if he left MHFM, and thus breached that Agreement.

178. Plaintiff has suffered damages as a result of Defendants breach of the Agreement.

AS AND FOR AN EIGHTH COUNTERCLAIM

(Vicarious Liability of MHFM)

179. Plaintiff hereby re-alleges and incorporates by reference the allegations in Paragraphs 1 – 178.

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

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

DEMAND FOR RELIEF ON COUNTERCLAIMS

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

1. as to the first counterclaim, judgment in the amount to be proved at trial, but not less than \$1,606,789.00;

2. as to the second counterclaim, judgment in the amount to be proved at trial, but not less than \$1,541,089.00;

3. as to the third counterclaim, 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 the fourth counterclaim, 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 the fifth counterclaim, 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 the sixth counterclaim, 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 the seventh counterclaim, judgment in the amount to be proved at trial, but not less than \$750,000, and pre-judgment and post-judgment interest; and as to the seventh counterclaim, actual damages, treble damages and attorney's fees; and

8. as to the eighth counterclaim, judgment against defendant MHFM in an amount to be proved at trial, but not less than \$750,000; and

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

Dated: May 22, 2013

/s/ Wynn L. Bowman
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