

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

ERIC E. HOYLE,

Plaintiff,

v.

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

Defendants.

**DECLARATION IN OPPOSITION TO  
MOTION FOR LEAVE TO AMEND**

Civil Action No. 08-CV-347C

---

**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 the law firm Duke, Holzman, Photiadis & Gresens LLP, attorneys for the Defendants Frederick Dimond (“Brother Michael Dimond”), Robert Dimond (“Brother Peter Dimond”) and Most Holy Family Monastery (“MHFM”) (collectively “Defendants”) in this action.

2. I submit this declaration in opposition to Plaintiff Eric E. Hoyle’s (“Plaintiff”) motion for leave to serve a second amended complaint or an amended reply to counterclaim designated as a counterclaim.

3. With respect to the relief framed in the alternative in Plaintiff’s motion – to amend his Reply – this maneuver is no more than a back door attempt to reinstate the causes of action that have been dismissed or do not exist. The real purpose of this supposed amendment is to add “counterclaims” to the Reply, a practice not recognized or permitted under the Federal Rules of Civil Procedure because Plaintiff’s complaint has already been dismissed—there is nothing to amend. Because the purported “counterclaims” in the proposed Amended Reply

mirrors the “causes of action” contained in the proposed Second Amended Complaint, this opposition refers to both collectively as the “Proposed Amended Pleadings.”

4. Plaintiff’s motion should be denied in its entirety because it is nothing more than a disingenuous attempt to resuscitate causes of action that have been dismissed and assert a “new” breach of contract. The breach of contract claim, however, was the subject of extensive discovery, admitted by Plaintiff to be meritless, and addressed in the now dismissed Amended Complaint. Accordingly, the proposed amendments would be futile in light of this Court’s prior decisions and Plaintiff’s own admissions, and would only serve to prejudice Defendants by further drawing out this action for no legitimate reason.

## **BACKGROUND**

### **A. The Pleadings**

5. Plaintiff filed his original Complaint on May 9, 2008, alleging four causes of action: fraud, constructive fraud/negligent misrepresentation, unjust enrichment/constructive trust, and money had and received. (See, Item 1).

6. On March 10, 2009, Plaintiff filed an Amended Complaint adding six additional causes of action: mandatory accounting, violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962(c) and (d), deceptive trade practices, false advertising, and vicarious liability of MHFM. (See, Item 42). This pleading also included allegations about an alleged agreement between Plaintiff and Defendants for money to be returned to Plaintiff. (Item 42 ¶¶ 39, 44-45).

7. Defendants filed an Answer to the Amended Complaint on March 20, 2009 and interposed seven counterclaims: defamation/injurious falsehood, violation of the Lanham Act, interference with prospective advantage/tortious interference with contract, conversion, breach of fiduciary duty, misappropriation of trade secrets, and violation of the Electronic Communications Privacy Act ("ECPA"). (See, Item 43).

8. Plaintiff filed his reply to the counterclaims on April 9, 2009. (See, Item 44). It appears that Plaintiff did not seek or obtain leave of court to file a Reply as required under the Federal Rules.

**B. Dispositive Motions and Current Status**

9. Paper discovery and depositions in this action were completed in 2011.

10. In June 2012, the Court granted Defendants' motion for summary judgment dismissing the Amended Complaint in its entirety. (See, Item 106). Plaintiff then moved the Court to reconsider its decision dated June 22, 2012, and this Court denied said motion in November 2012. (See, Item 114). Simply put, Plaintiff no longer has a complaint to amend as his pleading and claims have been dismissed in their entirety.

11. In March 2013, the Court denied Defendants' motion for summary judgment with respect to their counterclaims and dismissed the counterclaims brought under the Lanham Act and Electronic Communications Privacy Act. (See, Item 116).

12. The only claims remaining in this action to be disposed of at trial are Defendants' counterclaims for: defamation, conversion, misappropriation of trade secrets, breach of fiduciary duty and interference with prospective advantage/tortious interference with contract.

13. Plaintiff's instant motion fails to identify the proposed amendments (i.e. what is "new"), why Plaintiff believes the amendments are necessary or supported at this time, and why Plaintiff waited years to assert these supposedly "new" claims. (See, Item 121, Declaration of Wynn L. Bowman, Esq., dated May 22, 2013, hereinafter "Bowman Dec.").

14. Plaintiff's Proposed Amended Pleadings are substantially identical to Plaintiff's first Amended Complaint in that they seek to assert causes of action **that this Court has already dismissed** (see, Item 106) for fraud, constructive fraud/negligent misrepresentation, unjust enrichment/constructive trust, mandatory accounting, money had and received, deceptive trade practice, vicarious liability of MHFM. Plaintiff does purport to add a separate cause of action for breach of contract. However, this cause of action is futile because (a) its factual basis was part of the first Amended Complaint, (b) Plaintiff's own admissions establish such a claim to be devoid of merit, and (c) this Court's prior rulings.

### **DISCUSSION**

15. Although leave to amend is generally subject "freely granted" standard under F.R.C.P. 15 (a), that is not the case where the litigation has been pending for years, progressed through discovery, and the complaint has already been dismissed. The standard has been recognized to be "reversed"—i.e. leave is not freely granted – where a complaint has already been dismissed. The Tool Box, Inc. v. Ogden City Corp., 419 F.3d 1084, 1087 (10<sup>th</sup> Cir. 2005).

16. A district court properly denies a motion to amend pleadings where "it finds '[u]ndue delay, bad faith or dilatory motive on the part of the movant . . . undue prejudice to the opposing party . . . [or] futility of amendment'" Christine Falls Corp. v. Algonquin Power Fund, Inc., 401 Fed. Appx. 584, 588 (2d Cir. 2010) (holding the lower court did not abuse its discretion

in denying motion to amend complaint), quoting, Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 37 (2d Cir. 2002) (internal quotations omitted). All three alternative grounds for denying leave to amend are present in this case.

**A. Proposed Amended Pleadings- Undue Delay and Bad Faith**

17. Plaintiff has waited over four years to seek leave to amend his complaint. Discovery was long ago completed, and summary judgment was granted dismissing all of Plaintiff's claims a year ago in June 2012. Plaintiff's motion for reconsideration was denied in November 2012.

18. Leave to amend is properly denied where the motion for leave is "made after an inordinate delay" and there is "no satisfactory explanation" for the delay. Cresswell v. Sullivan and Cromwell, 922 F.2d 60, 72 (2d Cir. 1990). There can be no question that years of delay and waiting until after summary judgment has been granted constitute "undue delay." And, Plaintiff offers no explanation or justification for waiting until after discovery and dispositive motion practice were complete to bring the present motion.

19. Moreover, it is evident that the delay has been in "bad faith." Plaintiff pled the factual basis for his "new" breach of contract claim in the dismissed Amended Complaint, but chose to rely on causes of action for RICO violations, fraud, and misrepresentation rather than state a separate cause of action to pursue a breach of contract theory. These causes of action, if sustained, afforded Plaintiff the opportunity for far greater remedies and recoverable damages and, under New York law, causes of action for fraud and misrepresentation cannot be sustained where the parties relationship is governed by a contract.

20. Simply put, Plaintiff knew all the facts and information necessary to plead a breach of contract claim years ago. He included these factual allegations in his first Amended Complaint. However, he made a tactical decision to not expressly state a separately denominated cause of action asserting this theory. To delay asserting such a cause of action until after discovery is complete and summary judgment has been granted is “bad faith” which, by itself, warrants denial of leave to amend.

**B. Amendment to Assert “Benedictine” claims is Prejudicial and Futile**

21. The Second Circuit has held that it is proper to deny a late stage motion to amend a complaint aimed at resurrecting claims that have been dismissed by summary judgment. Arrowood Indem. Co. v. King, 669 F.3d 735, 742 (2d Cir. 2012).

22. Plaintiff contends, in nothing more than a bald conclusory fashion, that the Proposed Amended Pleadings do not “prejudice” Defendants. (Bowman Dec. ¶ 7). The Proposed Amended Pleadings are certainly prejudicial to Defendants as they attempt to resurrect claims that the Court has already dismissed after lengthy discovery to flush out the issues, and a detailed and comprehensive summary judgment motion. Moreover, resurrecting such claims will only serve to further delay disposition of Defendants’ counterclaims.

23. The Proposed Amended Pleadings seek to reinstate claims for fraud, constructive fraud/negligent misrepresentation, unjust enrichment/constructive trust, mandatory accounting, money had and received, deceptive trade practice, and vicarious liability of MHFM all of which were previously dismissed when the Court granted summary judgment.

24. This Court previously held that “... [P]laintiff’s claims are based on his assertion that the defendants misrepresented their status as Benedictine monks and the association of MHFM with the Order of St. Benedict.” (Item 106, June 22, 2012 Decision and Order at 14).

Plaintiff's Proposed Amended Pleadings are once again based on his Benedictine fraud/misrepresentation claims – claims that have already been addressed and dismissed. (See, Item 121, Ex. A at ¶¶ 31, 32, 42, 43, 44, 45, Ex. B).

25. A proposed amendment is futile when it “merely restates the same facts as the original complaint in different terms [or] reasserts a claim on which the court previously ruled ...” Mason v. Town of New Paltz Police Dep’t., 103 F.Supp.2d 562, 568 (N.D.N.Y. 2000)(citations omitted). Both circumstances are present here such that the all claims sounding in or relating to the allegations of misrepresentation or fraud are “futile” such that leave to amend should be denied.

**C. Amendment to Assert Breach of Contract Claim if Prejudicial and Futile**

26. Plaintiff's Proposed Amended Pleadings set forth a purported breach of contract claim: “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.... Plaintiff has suffered damages as a result of Defendants’ breach of the Agreement.” (Bowman Dec. Ex. A at p. 10 (Seventh Cause of Action), and Ex. B at p. 19 (Seventh Counterclaim)).

27. The proposed amendment to assert a breach of contract claim is prejudicial and futile.

28. The now dismissed Amended Complaint included the same claims about an alleged agreement to return money to Plaintiff as now presented in the Proposed Amended Pleadings. In the Amended Complaint, plaintiff alleged he was told by Defendants to identify in writing the amount of money he wanted returned to him in the event he departed MHFM and that he “executed a document” identifying the sum of \$750,000 and delivered it to Frederick Dimond.

(Item 42 ¶¶ 39, 44-45). These same allegations form the basis for the breach of contract claim in the Proposed Amended Pleadings. Accordingly, the proposed breach of contract claim should be denied as futile under the standard identified by the Court in Mason since the proposed amendment, at most, “merely restates the same facts as the original complaint in different terms....” Id., at 568.

29. The proposed amendment is also futile as Plaintiff’s proposed breach of contract claim merely “reasserts a claim on which the Court has previously ruled ....” In fact, this Court had twice observed that Plaintiff has failed to produce any evidence to support a claim for breach of contract.

30. First, this Court’s Order on June 22, 2012 granting summary judgment dismissing Plaintiff’s complaint (Item 106 at 24) stated that “Despite plaintiff’s assertion of a written document, **he has not produced a contract specifying an amount of money to be returned to him and has not pled a claim for breach of contract.**” (Emphasis added).

31. Second, upon ruling on Plaintiff’s Motion to Reconsider (Item 114), the Court stated that “To the extent that plaintiff now seeks to litigate the terms of an alleged written agreement, the court notes that **plaintiff failed to plead a contract claim** or **offer any evidence of a valid and enforceable contract.**” (Emphasis added).

32. Other than purporting to now assert a claim denominated for “breach of contract,” Plaintiff has not offered any new or different factual allegations, nor has he pleaded any new or different circumstances or identified even a shred of evidence to support the existence of a valid or enforceable contract. In sum, the Court has previously ruled on and rejected Plaintiff’s allegations of a purported contract claim and, as proposed, this claim is nothing more than a “repackaged” version of the “same facts” in the first Amended Complaint. For all of these



reasons, the proposal to file Amended Pleadings asserting a breach of contract claim should be denied as futile and prejudicial. Mason, at 568.

**D. Plaintiff's Admissions Demonstrate Amendment is Prejudicial and Futile**

33. Plaintiff's admissions during his deposition further establish that it would be prejudicial and futile to allow Plaintiff to resuscitate his case to assert a breach of contract claim.

34. At his deposition, Plaintiff testified that the only reason he was entitled to recover any of the money he donated to MHFM was because of the alleged "Benedictine Fraud":

Q. What would be your basis for claiming that you want that money back?

A. Am I supposed to answer all this?

Q. **Factually, why do you think you're entitled to that back?**

A. **Because the organization presented itself fraudulently.**

Q. **In what respect?**

A. **About it being a Benedictine monastery.**

Q. Any other respect?

A. You said any other respect?

Q. You said it presented itself fraudulently about being a Benedictine monastery, which was your statement. **Is there anything else that the monastery did that you think warrants you getting this gift back?**

A. **I don't know.**

Q. **Not that you're aware of?**

A. **I wouldn't say that I can think of something right now.**

(Hoyle T. 215:9 – 216:5) (Emphasis added). Annexed hereto as **Exhibit A** is a copy of the pages containing the excerpts quoted herein from Plaintiff's deposition.

35. The Proposed Amended Pleadings allege – just as the first Amended Complaint alleged – that there was a document executed by Plaintiff stating \$750,000 would be returned to him on his departure from MHFM. (Item. 121 Ex. A ¶ 29; Ex. B ¶ 134).

36. However, Plaintiff testified that he does not have this alleged document, does not know what it said, or whether he or anyone on behalf of the Defendants signed it:

Q. All right. Let's just cut right to it. Your testimony was that in April of '06 you reached some sort of understanding with Brother Michael about how much money you would get back if you left?

A. Yes.

Q. And you claim that he then instructed you okay, type up a document memorializing that?

A. **No, he didn't instruct me to type it. And as it happened, I didn't type it.**

Q. **Did he ask you to prepare it? Or how did it come into being?**

A. **I don't recall what he said about it, if anything, but it came into being by my writing it with my hand.**

Q. You wrote out an agreement that purports to indicate you're supposed to get back seven hundred fifty thousand dollars if you left the monastery?

A. That was the import of the document. **I don't know that it said that, but what it said was that Most Holy Family Monastery had received from me that amount. And I was given the understanding that it was to be the official record of monies received from me that, as a matter of policy, would be refundable if I were to depart.**

Q. **Do you have a copy of that agreement?**

A. **No.**

Q. Do you remember what it said other than what you just described?

A. As best I recall, it didn't say anything besides what I described.

Q. And you wrote it out longhand?

A. Yes.

**Q. And you claim, then, that you signed it?**

A. I don't recall.

**Q. Do you recall whether Brother Michael signed it?**

A. I don't believe he did.

Q. Now, take a look at paragraph forty-five of your Complaint that's right in front of you. This is referring to that spring, 2006 time frame. You can look at paragraph forty-four right above it if you'd like. Okay? And it indicates with regard to your allegation that you were to designate money to be returned to you. You allege that you chose the amount of seven hundred fifty thousand dollars and that you executed a document stating that you would receive that if you left the monastery. Do you see that allegation?

A. Yes.

**Q. As you sit here today, is it fair to say that you don't remember whether or not you signed that document?**

A. No, I don't recall for certain whether I signed it or not.

**Q. Do you have any copies of that document?**

A. Not that I know of.

(Ex. A, Hoyle T. at 74-75) (emphasis added). Plaintiff does not remember whether he signed the alleged document, yet in his Proposed Amended Pleadings continues to represent that he purportedly did in fact execute it. (See, Item. 121 Ex. A ¶ 29; Ex. B ¶ 134).

37. Plaintiffs' testimony establishes there is no written or oral contract. Plaintiff has offered no argument or showing of merit to support the proposed amendments. In fact, the allegations of the Proposed Amended Pleadings are contrary to Plaintiffs' own sworn testimony.

38. Finally, the allegations of the now dismissed Amended Complaint together with Plaintiff's testimony reveal that he had possession of all the factual information to support the

breach of contract claim he now seeks leave to plead. He offers no explanation for his undue delay in raising this claim let alone why now, years later, he has decided such a claim has merit.

39. Based on Plaintiff's own admissions, and this Court's prior decisions, it is evident that Plaintiff's motion for leave to serve Proposed Amended Pleadings is wholly disingenuous and that the alleged amendments will be futile and prejudicial to Defendants by further delaying disposition of their remaining counterclaims.

**WHEREFORE**, the Defendants respectfully request that the Court deny in its entirety Plaintiff's motion for leave to serve a second amended complaint or an amended reply to counterclaim designated as a counterclaim; and grant such other and further relief as this Court deems just and proper.

Dated: June 11, 2013

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

# **Exhibit A**

ERIC EFIRD HOYLE

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.

---

Examination Before Trial of  
ERIC EFIRD HOYLE, Plaintiff, taken pursuant to the Federal  
Rules of Civil Procedure, in the law offices of DUKE,  
HOLZMAN, PHOTIADIS & GRESENS, LLP, 1800 Main Place Tower,  
Buffalo, New York, taken on February 8, 2011, commencing at  
10:20 A.M., before SUE ANN SIMONIN, Notary Public.

Sue Ann Simonin Court Reporting

421 Franklin Street  
Buffalo, New York 14202



(716) 882-8059  
Fax (716) 882-8099  
sascr.com

INDEX TO EXHIBITS

	Exhibits	For Identification
1		
2		
3		
4		
5	1 Amended Complaint	6
6	2 Answer and Counterclaims	6
7	3 Reply to Answer and Counterclaims	7
8	4 RICO Case Statement	7
9	5 Supplemental Response to	7
10	Defendants' First and Second	
11	Sets of Interrogatories to	
12	Plaintiff	
13	6 Package of Redacted Copies	7
14	of Handwritten Notes	
15	7 two-page E-mail Printout	7
16	8 four-page Letter to William	7
17	Pastille from Eric Hoyle	
18	dated March 23, 2004	
19	9 two-page E-mail Printout	7
20	10 three-page Letter to Rev.	7
21	Father John Fullerton from	
22	Eric Hoyle dated May 11, 2004	
23	11 one-page E-mail Printout	7
	12 six-page E-mail Printout	7
	13 two-page E-mail Printout	8
	14 sixteen-page E-mail Printout	8
	15 one-page E-mail Printout	105

1	16	two-page E-mail Printout	105
2	17	six-page E-mail Printout	105
3	18	one-page E-mail Printout	105
4	19	two-page E-mail Printout	105
5	20	six-page E-mail Printout	105
6	21	five-page E-mail Printout	105
7	22	five-page E-mail Printout	105
8	23	six-page E-mail Printout	105
9	24	five pages of Wachovia Credit Card Statements	105
10	25	Donation Letter dated April 6, 2005, with one attachment	106
11	26	Donation Letter dated June 13, 2005, with one attachment	106
12	27	Donation Letter dated March 27, 2006, with two attachments	106
13	28	Donation Letter dated October 1, 2007, with one attachment	106
14	29	Donation Letter dated April 7, 2006, with one attachment	106
15	30	Response to Defendants' Second Notice to Produce	106
16	31	2005 Schedule A - Itemized Deductions, with one attachment	229
17	32	2006 Schedule A - Itemized Deductions, with one attachment	229
18	33	Form 8283, Noncash Charitable Contributions	233
19			
20			
21			
22			
23			



1	34	four-page Website Printout	237
2	35	twenty-eight-page Website Printout	237
3	36	one-page E-mail Printout	237
4	37	one-page E-mail Printout	237
5	38	one-page E-mail Printout	237
6	39	fourteen-page E-mail Printout	237
7	40	two-page E-mail Printout	237
8	41	one page of Handwritten Notes	237
9	42	one page of Handwritten Notes	238
10	43	sixteen-page Website Printout	238
11	44	two-page Typewritten Document entitled Thoughts on the Order of St. Benedict	238
12			
13	45	Transcript of Recorded Conversation Between Eric Hoyle and Bridget Burrows	269
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			

INDEX TO DOCUMENT REQUESTS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Page, Line	Description
	116 11	Your entire journal, from the date you started keeping it through today
	126 7	Your entire journal, from the time you started keeping it until your last entry. That includes wherever they are, spiral notebooks, whatever
	138 8	Notes on loose pieces of paper as opposed to ones in a spiral binder
	141 8	Any pages during the intervening months that it appears to jump, from September, '07 to December 30th, '07
	162 10	Check your computer to see if you've had any correspondence to or from e-mail address embase-exchange@yahoo.com
	208 14	Fax that was put together jointly that went out to some sort of law enforcement
	250 1	Information from the website from before you joined or while you were at the monastery, and in particular a copy of the info on Our Benedictine Community section that was in effect in the summer of '05 through the time that you left in December of '07
	250 11	Any copy of the info on Our Benedictine Community pages of the website that you reviewed prior to joining the monastery or you're aware of that you had at the time you were there

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

APPEARANCES:

CHAMBERLAIN D'AMANDA,  
By K. WADE EATON, ESQ.,  
1600 Crossroads Building,  
Two State Street,  
Rochester, New York 14614,  
Appearing for the Plaintiff.

DUKE, HOLZMAN, PHOTIADIS & GRESENS, LLP,  
By CHARLES C. RITTER, JR., ESQ.,  
and ELIZABETH A. KRAENGEL, ESQ.,  
1800 Main Place Tower,  
Buffalo, New York 14202,  
Appearing for the Defendants.

PRESENT: Brother Michael Dimond  
Brother Peter Dimond

(The following stipulations were entered  
into by both parties.)

It is hereby stipulated by and between counsel  
for the respective parties that the oath of the  
Referee is waived, that filing and certification  
of the transcript are waived, and that all  
objections, except as to the form of the  
questions, are reserved until the time of trial.

(Whereupon, an Amended Complaint was then  
received and marked as Exhibit 1,  
an Answer and Counterclaims was then

1 received and marked as Exhibit 2,  
2 a Reply to Answer and Counterclaims was then  
3 received and marked as Exhibit 3,  
4 a RICO Case Statement was then received and  
5 marked as Exhibit 4,  
6 a Supplemental Response to Defendants' First  
7 and Second Sets of Interrogatories to Plaintiff  
8 was then received and marked as Exhibit 5,  
9 a Package of Redacted Copies of Handwritten  
10 Notes was then received and marked as Exhibit 6,  
11 a two-page E-mail Printout was then received  
12 and marked as Exhibit 7,  
13 a four-page Letter to William Pastille from  
14 Eric Hoyle dated March 23, 2004 was then received  
15 and marked as Exhibit 8,  
16 a two-page E-mail Printout was then received  
17 and marked as Exhibit 9,  
18 a three-page Letter to Rev. Father John  
19 Fullerton from Eric Hoyle dated May 11, 2004 was  
20 then received and marked as Exhibit 10,  
21 a one-page E-mail Printout was then received  
22 and marked as Exhibit 11,  
23 a six-page E-mail Printout was then received

1 and marked as Exhibit 12,  
2 a two-page E-mail Printout was then received  
3 and marked as Exhibit 13,  
4 and a sixteen-page E-mail Printout was then  
5 received and marked as Exhibit 14, for  
6 identification.)

7  
8 E R I C E F I R D H O Y L E,  
9 207 Lawndale Drive,  
10 Winston-Salem, North Carolina, 27104,  
11 after being duly called and sworn,  
12 testified as follows:

13  
14 EXAMINATION BY MR. RITTER:

15  
16 Q. Good morning, Mr. Hoyle. My name is Charles  
17 Ritter. I'm the attorney for Most Holy Family  
18 Monastery and the other Defendants in this case.  
19 I'm going to ask you some questions today. Have  
20 you ever been deposed before?

21 A. No.

22 Q. Okay. Just explain a few things. The court  
23 reporter here is going to take down my questions

1 Q. Okay. And that's a document that you typed up  
2 and had on your computer?

3 A. As best I recall, no.

4 Q. All right. Let's just cut right to it. Your  
5 testimony was that in April of '06 you reached  
6 some sort of understanding with Brother Michael  
7 about how much money you would get back if you  
8 left?

9 A. Yes.

10 Q. And you claim that he then instructed you okay,  
11 type up a document memorializing that?

12 A. No, he didn't instruct me to type it. And as it  
13 happened, I didn't type it.

14 Q. Did he ask you to prepare it? Or how did it come  
15 into being?

16 A. I don't recall what he said about it, if  
17 anything, but it came into being by my writing it  
18 with my hand.

19 Q. You wrote out an agreement that purports to  
20 indicate you're supposed to get back seven  
21 hundred fifty thousand dollars if you left the  
22 monastery?

23 A. That was the import of the document. I don't

1 know that it said that, but what it said was that  
2 Most Holy Family Monastery had received from me  
3 that amount. And I was given the understanding  
4 that it was to be the official record of monies  
5 received from me that, as a matter of policy,  
6 would be refundable if I were to depart.

7 Q. Do you have a copy of that agreement?

8 A. No.

9 Q. Do you remember what it said other than what you  
10 just described?

11 A. As best I recall, it didn't say anything besides  
12 what I described.

13 Q. And you wrote it out longhand?

14 A. Yes.

15 Q. And you claim, then, that you signed it?

16 A. I don't recall.

17 Q. Do you recall whether Brother Michael signed it?

18 A. I don't believe he did.

19 Q. Now, take a look at paragraph forty-five of your  
20 Complaint that's right in front of you. This is  
21 referring to that spring, 2006 time frame. You  
22 can look at paragraph forty-four right above it  
23 if you'd like.

1 dollars, in this lawsuit?

2 A. I don't recall. I don't recall.

3 Q. How can you not recall? Either you think you're  
4 owed the money or you're not.

5 A. Well, the reason is that this one, I can't  
6 remember if it fell in the statute of  
7 limitations, inside or outside the cutoff, the  
8 three years.

9 Q. What would be your basis for claiming that you  
10 want that money back?

11 A. Am I supposed to answer all this?

12 Q. Factually, why do you think you're entitled to  
13 that back?

14 A. Because the organization presented itself  
15 fraudulently.

16 Q. In what respect?

17 A. About it being a Benedictine monastery.

18 Q. Any other respect?

19 A. You said any other respect?

20 Q. You said it presented itself fraudulently about  
21 being a Benedictine monastery, that was your  
22 statement. Is there anything else that the  
23 monastery did that you think warrants you getting



1 this gift back?

2 A. I don't know.

3 Q. Not that you're aware of?

4 A. I wouldn't say that I can think of something  
5 right now.

6 Q. Is it your testimony, your claim under oath, that  
7 you gave this money because you thought Most Holy  
8 Family Monastery was a Benedictine monastery?

9 A. That was part of my understanding of what the  
10 place was. So in that sense, yes.

11 Q. That's not the question I asked you. You gave  
12 Most Holy Family sixty-five thousand dollars for  
13 the purpose of helping them to circulate their  
14 materials and their religious method, correct?

15 A. Yes.

16 Q. And in what respect was that gift in any way  
17 connected or conditioned on them being  
18 Benedictine?

19 A. It was connected with that because they claimed  
20 to be Benedictine; and if it were not true, then  
21 they would be an organization that was lying to  
22 me, in which case I wouldn't want to support  
23 them.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

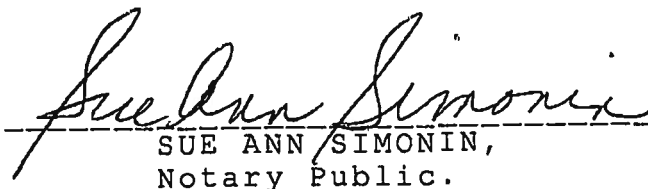
STATE OF NEW YORK)

SS:

COUNTY OF ERIE)

I, Sue Ann Simonin, a Notary Public in and for the State of New York, County of Erie, DO HEREBY CERTIFY that the testimony of ERIC EFIRD HOYLE was taken down by me in a verbatim manner by means of Machine Shorthand, on February 8, 2011. That the testimony was then reduced into writing under my direction. That the testimony was taken to be used in the above-entitled action. That the said deponent, before examination, was duly sworn by me to testify to the truth, the whole truth and nothing but the truth, relative to said action.

I further CERTIFY that the above-described transcript constitutes a true and accurate and complete transcript of the testimony.

  
SUE ANN SIMONIN,  
Notary Public.