

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE,

Plaintiff,

v.

Civil Action No. 08-CV-347C

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

Defendants.

MOTION SEEKING INJUNCTIVE RELIEF

Pursuant to Local Rule 65(a)(2) and (b), defendants seek a temporary restraining order and/or preliminary and permanent injunction against the plaintiff, Eric E. Hoyle, directing the plaintiff to (1) return all confidential and proprietary records taken from MHFM, in any form; (2) destroy copies of any confidential and proprietary information taken from MHFM, in any form, including in electronic form such that plaintiff no longer has access to it or an ability to recreate it; (3) cease and desist from engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM; and (4) cease and desist from making defamatory statements against the defendants including that they stole money from plaintiff. The basis for these requests

are the defendants' counterclaims for conversion, breach of fiduciary duty, misappropriation, and defamation.

This motion is supported by the accompanying affirmation of Lisa A. Coppola, Esq., sworn to on June 9, 2007; and supporting affidavits of Frederick Dimond, sworn to on June 6, 2008; Gary Craft, sworn to on June 4, 2008; Gary Muehlbauer, sworn to on June 3, 2008; Keith McKay, sworn to on June 4, 2008; Peter de Niese, sworn to on June 4, 2008; Stephen Hand, sworn to on June 5, 2008; and Steven Margala, sworn to on June 4, 2008; and the supporting memorandum of law dated June 9, 2008, together with the defendants' answer with counterclaims filed on June 9, 2008.

Dated: June 9, 2008
Buffalo, New York

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SUPPORTING AFFIRMATION OF LISA A. COPPOLA, ESQ.

LISA A. COPPOLA, ESQ., being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the State of New York and am a member of Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC, attorneys for Frederick Dimond, Robert Dimond, and Most Holy Family Monastery (“defendants”) in this action. I am fully familiar with the facts set forth herein, and I make this affirmation under the penalties of perjury.

2. This affirmation is made in support of the defendants’ motion, pursuant to Local Rule 65(a)(2) and (b) for a temporary restraining order and/or preliminary and permanent injunction against the plaintiff, Eric E. Hoyle (“plaintiff”).

For the reasons that follow, it respectfully is submitted that the Court should grants the defendants' motion in its entirety.

PROCEDURAL HISTORY

3. This litigation concerns the plaintiff's donations made to Most Holy Family Monastery ("MHFM") in 2005 and his subsequent voluntary departure from MHFM on December 31, 2007. The plaintiff commenced this litigation with the filing of his summons and complaint on May 9, 2008. *See* Complaint (Dkt. 1).¹

4. Contemporaneously with the filing and noticing of this motion, the defendants joined issue with the filing of their answer on June 9, 2008. *See* Answer with Affirmative Defenses and Counterclaims (Dkt. 5).

5. In this action, the plaintiff claims that the defendants, Frederick Dimond and Robert Dimond held themselves out to be Benedictine monks and members of the Order of St. Benedict and that based on these representations he chose to join MHFM and make various donations totaling more than \$1 million. Dkt. 1 at ¶¶ 21, 38. The plaintiff further alleges that the defendants are neither members of the Order of St. Benedict nor Benedictine monks and, as a result, have no power to make the plaintiff a Benedictine monk as he claims to have been promised upon entering MHFM.

¹ References to "Dkt. ___" are to pleadings and/or papers filed online in the docket of this action.

See, e.g., Dkt. 1 at ¶ 31. In connection with these claims, the plaintiff demands judgment against the defendants in an amount in excess of \$1 million. Dkt. 1, ¶ 39.

6. Contemporaneous with the filing of this motion for injunctive relief, the defendants filed their answer (which provides the underlying factual and legal basis for the relief demanded herein in its defamation and conversion counterclaims) and also filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6). Because the allegations asserted in the answer including the counterclaims provide a sufficient jurisdictional basis for this Court to hear the defendants' claims, it respectfully is submitted that this Court can rule on the motion for injunctive relief and, if it deems the defendants' arguments to prevail, can also dismiss plaintiff's complaint and permit defendants' counterclaims to survive.

7. With respect to the motion for injunctive relief which this affirmation supports, defendants contend that the plaintiff's conduct and actions are so damaging that MHFM is likely to suffer irreparable harm if plaintiff is not enjoined. Accordingly, defendants respectfully request a temporary restraining order and/or a preliminary and permanent injunction against the plaintiff, requiring him to cease certain conduct and to return to MHFM all confidential and proprietary records as will be more fully described below.

8. When the plaintiff departed MHFM in December of 2007, he took MHFM's financial records and other proprietary information – materials to which the plaintiff had access only because of his integral role in the day-to-day operations of MHFM. Since his departure, the plaintiff has engaged in a campaign of unfair competition and defamation designed to cause irreparable harm to MHFM and its members. This campaign has included not only the publishing of defamatory statements and falsities against Frederick Dimond and Robert Dimond, but also the concerted use of MHFM's proprietary information for plaintiff's own benefit, to the detriment of MHFM and the individual defendants.

9. Your deponent recognizes that plaintiff is entitled to have and to share his opinions with respect to his religious beliefs. However, as will be demonstrated by this motion, plaintiff has used the confidential and proprietary records of MHFM to identify the individuals to whom he shared his beliefs and, in fact, has gone well beyond uttering opinions about religion. Rather, he has engaged in defamation per se, accusing the individual defendants of a crime.

8. The plaintiff's campaign has been successful to date, thus warranting this Court's issuance of a temporary restraining order and/or preliminary and permanent injunction requiring the plaintiff to (1) return all confidential and proprietary records taken from MHFM, in any form; (2) destroy copies of any confidential and

proprietary information taken from MHFM, in any form, including in electronic form such that plaintiff no longer has access to it or an ability to recreate it; (3) cease and desist from engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM; and (4) cease and desist from making defamatory statements against the defendants including that they stole money from plaintiff.

10. Defendants are prepared to post security for the issuance of such injunction or injunctions.

FACTUAL BACKGROUND AND HISTORY

11. MHFM is a monastery located in Fillmore, New York that is dedicated to practicing and teaching traditional Catholicism. It is a New York not-for-profit corporation. In an effort to fulfill its mission, MHFM presently and for many years has maintained a website on the worldwide Internet devoted to its beliefs and teachings. That website is located at www.mostholymonastery.com. *See* Affidavit of Frederick Dimond sworn to on June 6, 2008 (“Dimond Aff.”) at ¶ 2.

12. In addition to using its website to teach and reach out to others, MHFM also communicates and teaches through other Internet sites, traditional radio broadcasts, e-mail, telephone, and regular mail. Because its sole purpose is to assist and

teach interested members of the public, MHFM has for years engaged in these various outreach efforts and even maintains a toll-free telephone number where interested persons can call with questions about the monastery, its beliefs, and its teachings. In order to reach the numbers of individuals necessary to continue its work, MHFM is and has been spending approximately \$1,000 per day on its communications and outreach efforts. *See* Dimond Aff. at ¶¶ 3, 6.

13. After many years of outreach efforts, MHFM has developed a client base of more than 90,000 people. *See* Dimond Aff. at ¶ 5. This support base is comprised of donors, benefactors, supporters, and clients. *Id.* Interestingly, because of the Internet-based communications strategy employed by MHFM, such individuals are a geographically diverse group, hailing from as far away as Australia.

14. As a monastery, MHFM relies solely on the goodwill of its supporters to make donations in order to sustain itself and continue its work. Although the monastery does sell items such as books, pamphlets, and DVDs – all geared toward teaching the traditional Catholic faith – these items are sold at either a break-even cost or in many cases a loss, in order to reach the overall mission of broadly disseminating its message. Dimond Aff. at ¶ 4. Therefore, without the support of its donors and benefactors, MHFM would cease to exist. *Id.*

15. The Superior of MHFM is the defendant, Frederick Dimond (“Brother Michael”). Brother Michael first entered the MHFM community in July of 1992 as a postulant. Dimond Aff. at ¶ 7. Brother Michael eventually became the Superior of MHFM when its former superior passed away. He has remained a monk in that community since entering it nearly sixteen years ago. *Id.*

16. In early 2005, the plaintiff placed numerous telephone calls to MHFM. As with many MHFM supporters and benefactors, the plaintiff had studied MHFM’s website which then (and now) contained many of the monastery’s writings on ecclesiology. When the plaintiff contacted MHFM in the spring of 2005, he demonstrated an interest in the teachings and beliefs of MHFM and its overall mission and work. Dimond Aff. at ¶ 8. In addition to exhibiting interest in MHFM, at that time the plaintiff also indicated an overall concern about what he perceived as the possibility of an impending economic collapse in our country. The plaintiff informed Brother Michael that he had been storing large quantities of canned goods and bottled water in preparation for what the plaintiff believed to be an imminent economic collapse. Dimond Aff. at ¶ 9.

17. After numerous telephone conversations with Brother Michael and Brother Peter (sued in this action as Robert Dimond), the plaintiff decided to visit the

monastery during the summer of 2005. At that time the plaintiff was living in North Carolina, so he traveled to New York State for the visit. Dimond Aff. at ¶ 10.

18. During the summer of 2005, the plaintiff visited MHFM on two separate occasions. The plaintiff's first visit took place in the early summer of 2005, when he stayed at the monastery for a few days. The plaintiff's second visit took place in August of 2005 and, that time, the plaintiff visited at the monastery for several weeks. Dimond Aff. at ¶ 10. During his visits to the monastery, the plaintiff was given full access to the community. Not only was he warmly welcomed by the monks at MHFM, but he was given access to the chapel, library areas, sleeping quarters, kitchen, and all grounds of the monastery. *Id.* During his visits to the monastery, the plaintiff had the opportunity to deepen his understanding of the teachings of MHFM, that is, traditional Catholicism. No one hid anything from plaintiff.

19. After his numerous calls and visits to MHFM throughout the early part of 2005, the plaintiff expressed to Brother Michael an interest in joining the apostolate. In particular, the plaintiff expressed a desire to join MHFM. Dimond Aff. at ¶ 11. He reiterated his interest in the beliefs and teachings of MHFM and his concern about a pending economic collapse of the United States, and he communicated that he simply wanted to join the MHFM community. Dimond Aff. at ¶ 11. The plaintiff did not indicate that he preferred or desired to lead a Benedictine lifestyle – as opposed to any

other monastic lifestyle be it Dominican, Franciscan, or otherwise – he simply wanted to join the community. *Id.*

20. Following his visits to MHFM, the plaintiff began to express a serious interest in joining the monastery. Indeed, after several extensive telephone conversations with Brother Michael in August of 2005, the plaintiff sent an e-mail to Brother Michael on August 30, 2005 that outlined and addressed very detailed and specific matters to be resolved prior to the plaintiff's officially joining the monastery. Dimond Aff. at ¶ 12.

21. Not only did the plaintiff express his desire to join the monastery, but he wanted to do so as quickly as possible. Indeed, in his e-mail of August 30, 2005, the plaintiff informed Brother Michael that he wanted to and would be able to terminate the lease on his home in order to come to the monastery sooner than he originally had expected. Dimond Aff. at Exhibit A.

22. In addition to the logistics of his physical move to the monastery in Fillmore, New York, the plaintiff also addressed in this e-mail various “financial considerations” as he phrased them. *Id.* The plaintiff indicated that he wished to divest himself of all of his worldly possessions and give the vast majority of his financial holdings to MHFM as an outright gift. *Id.*

23. In anticipation of his joining MHFM and the apostolate, he made two separate donations to MHFM. Specifically, in April of 2005, the plaintiff donated \$700 by check. Dimond Aff. at ¶ 13. Thereafter, in May of 2005, the plaintiff donated \$65,000 by check. *Id.*

24. The plaintiff joined MHFM as a postulant in September of 2005. Dimond Aff. at ¶ 14. After entering as a postulant, the plaintiff very quickly became acclimated to life at the monastery. Although he did not take his first vows until more than two years later in November of 2007, the plaintiff became integrated into life at the monastery and the work of MHFM. Dimond Aff. at ¶ 15-16. Indeed, on many occasions, the plaintiff expressed his happiness with life at MHFM – even going so far as to say he never thought he could be so happy and wished to live out the rest of his days as a monk at MHFM. Dimond Aff. at ¶ 28.

25. After spending two full months at the monastery and living the life of a postulant, the plaintiff made a third donation to MHFM. In November of 2005, the plaintiff transferred shares of stock of Guinor Gold to MHFM. This donation, the value of which was \$1,233,100, was wired by the plaintiff to an M&T Securities brokerage account held by MHFM on or about November 3, 2005. Dimond Aff. at ¶ 19. This donation was confirmed in writing through a letter from MHFM that the plaintiff

requested so he could take the maximum allowable tax deduction for his donation.

Dimond Aff. at ¶ 20.

26. As the plaintiff became a part of the community at MHFM, he was given greater and greater responsibility at the monastery. Upon entering the community, the plaintiff immediately began to participate in the daily activities of a religious: daily prayers, daily study and research, and communicating with MHFM supporters and benefactors. He quickly demonstrated advanced skills and capabilities in computer- and technology-related work and emphasized his knowledge of banking and investments.

Dimond Aff. at ¶ 22, 30.

27. Given the plaintiff's strength at technology, Brother Michael assigned plaintiff to develop and administer an online store for MHFM. This store was created so that MHFM supporters and donors could purchase materials online and even make donations. Dimond Aff. at ¶ 22. In order to communicate with individuals who placed orders from the online store or made donations to MHFM through this portal, the plaintiff created an e-mail account linked to the store. The address for that e-mail account was **store@mostholymonastery.com**. Dimond Aff. at ¶ 24. In addition to creating MHFM's online store, the plaintiff also set up Internet sales sites for MHFM on EBay, Yahoo, and Google. Dimond Aff. at ¶ 22.

28. For the vast majority of the technology-related work that the plaintiff performed at the monastery, he used an Apple laptop computer that he brought with him and donated to the monastery. Dimond Aff. at ¶ 25. Through the use of this laptop computer, the plaintiff was even able to set up routers and servers in order to connect all the MHFM computers. *Id.*; *see generally* Dimond Aff. at Exhibit C (including purchases for computers systems equipment and services made by plaintiff for MHFM).

29. In creating and operating MHFM's online store, the plaintiff used the Apple laptop computer. In order to perform his work, he downloaded all Internet orders that were placed by MHFM supporters and benefactors. Dimond Aff. at ¶ 25. In addition, the plaintiff also used the laptop to store the information from all telephone orders that were placed by MHFM supporters. *Id.* All of these orders, whether received via Internet or telephone, contained personal contact information given to MHFM by its geographically widespread community of supporters and benefactors. This private information was given by MHFM's supporters for the sole purpose of ordering materials or making a donation. This private information included the names, street and municipal addresses, zip codes, telephone numbers, and e-mail addresses for MHFM's more than 90,000 supporters, donors, and benefactors. Dimond Aff. at ¶ 25.

30. In addition to storing contact information on individuals, the purchasing of items and the donations of funds typically occurred via a credit card transaction. As Brother Michael explains in his affidavit, the monastery did not use an online credit card processing service. Rather, it used a credit card machine housed at the monastery, requiring MHFM to collect from individuals their credit card numbers, expiration date, and cardholder's name. This information would be used to manually process – through the use of this credit card machine – either the purchase or the donation. This was a task for which the plaintiff was also responsible.

31. When orders or donations were made to MHFM by its many supporters, MHFM made it very clear to them, and to the plaintiff, that their private contact information would remain just that – private. Dimond Aff. at ¶ 26. Thus, in charging the plaintiff with the responsibility of operating the online store and Internet sales site, Brother Michael trusted the plaintiff to keep that customer information confidential and secure. *Id.* Given the plaintiff's devout traditional Catholic beliefs and his committed support of MHFM, Brother Michael had no reason to suspect that the plaintiff would use MHFM's private donor and supporter contact information for any reason other than what was directly necessary for MHFM's mission. *Id.* Indeed, even a mere five days before he departed the monastery, the plaintiff was still working closely with MHFM clients and passionately teaching about its beliefs and mission. *See* Affidavit of Stephen Hand sworn to on June 5, 2008 (“Hand Aff.”) at ¶ 2.

32. Given the expansive geographic reach that MHFM has had over the years, and the plaintiff's detailed work with supporter and benefactor contacts, purchases, and donations, the plaintiff likely had contact with thousands of MHFM supporters during the more than two years that he was at the monastery. Dimond Aff. at ¶ 27.

33. After living at the monastery and working towards MHFM's greater goal of teaching traditional Catholicism for more than two years, in the autumn of 2007, the plaintiff took his first solemn vows to become a monk. Between the time that he entered the religious community and the time he took his first vows more than two years later, the plaintiff played a critical role in the day-to-day operations of MHFM. Dimond Aff. at ¶ 27; *see also* Dimond Aff. at Exhibit C. As the Superior, Brother Michael depended on the plaintiff to a great extent. During his tenure at the monastery, the plaintiff served the monastery in his given roles extremely well. *Id.*

34. In addition to having extensive knowledge of computer-related work that he put to use in maintaining MHFM's databases of private customer and contact information, the plaintiff also had a great deal of knowledge about investments and investing. Dimond Aff. at ¶ 30. Given that he had served the monastery so well with his knowledge of computers, and in light of the trust that he had built up with

Brother Michael and the other religious at MHFM, Brother Michael asked the plaintiff to assist him with MHFM's investments. Dimond Aff. at ¶ 30.

35. Although Brother Michael sought out the plaintiff's assistance on MHFM's financial holdings, Brother Michael made clear that, as Superior, he made the final decisions on investment strategies. Therefore, it was his policy that plaintiff must consult Brother Michael regarding any banking or investment recommendations before any decision, including any purchase, sale, or other investment strategy, would be authorized. Dimond Aff. at ¶ 30. The plaintiff was happy to assist Brother Michael in this regard and agreed to consult Brother Michael accordingly. *Id.*

36. In November of 2007, the plaintiff approached Brother Michael regarding the status of MHFM's financial holdings. At that time, the monastery had various bank accounts with some local banks in Allegany County. It also had its investment account at M&T Securities at the local M&T Bank branch. Dimond Aff. at ¶¶ 29, 31.

37. The nature of the plaintiff's inquiry were the fees and expenses that attached to a full-service brokerage account. After some discussion, the plaintiff persuaded Brother Michael that it would be more economical for MHFM to keep its investment account in a less than full-service brokerage facility. Based on the plaintiff's

recommendation, in November of 2007, Brother Michael approved MHFM to apply for a brokerage account with Scottrade. Dimond Aff. at ¶ 31.

38. As the paperwork for the Scottrade account was being finalized, the plaintiff requested that he be permitted to act as a signer on the account so that he would have access to it in order to make trades or transfers for the betterment of MHFM's financial stature. *Id.* Because the plaintiff had been with the monastery for so long and had so fervently worked for and supported MHFM during that time, Brother Michael trusted that the plaintiff had the monastery's best interests at heart, and he approved this request. *Id.* After convincing Brother Michael to open a Scottrade account to hold all of MHFM's investments, the plaintiff – as a religious at the community – was granted full access to that account. This was given with the understanding that any trades, sales, or transfers of stock were to be approved by Brother Michael before a decision was made and effectuated. *Id.*

39. Once the Scottrade account was opened for MHFM, Brother Michael decided – at the urging of the plaintiff – to transfer all of MHFM's assets that had been held in the M&T Securities account into the Scottrade account. This took some time, and so it was not until December 31, 2007 that MHFM's investment assets – worth \$1.1 million – were transferred into the newly-opened Scottrade account. Dimond Aff. at ¶ 32. Brother Michael knew that the transfer was expected to take place,

but he did not know the anticipated exact date of it, because that information was not available in advance.

40. On December 31, 2007 – the very day that all of MHFM’s assets ultimately were transferred into the Scottrade account to which the plaintiff now had access – plaintiff began to exhibit rather unusual behavior. As noted by Brother Michael, he observed the plaintiff to be up until the very early morning hours of December 31, 2007. This was unusual because the plaintiff typically went to bed rather early. In addition, during the morning of December 31, 2007, Brother Michael overheard the plaintiff refer to himself as “Eric Hoyle” while speaking to an unknown person on the telephone. This also was unusual because while in the MHFM community, plaintiff had been known as Brother Edmund, a name he took in the long tradition of religious. *Id.*

41. Finally, while walking through the monastery on the morning of December 31st, Brother Michael observed the plaintiff walking about in his lay clothes, not in his typical habit. *Id.* Brother Michael then asked the plaintiff directly whether there was anything of significance going on. Plaintiff denied this, but then he stated that there was one thing to discuss, but that he would tell him later. *Dimond Aff.* at ¶ 33.

42. Now suspicious of the possible connection between the expected transfer of all MHFM’s investment assets into the Scottrade account and the plaintiff’s

unusual behavior, Brother Michael placed a call to Scottrade. He learned that MHFM's assets had in fact been transferred into the Scottrade account that very day. Dimond Aff. at ¶ 35. Not only did Brother Michael then learn that MHFM's assets had been transferred, but the representative from Scottrade went on to tell him that a sell order had been placed that same morning to sell all of MHFM's 60,000 shares of Central Fund of Canada stock. *Id.* As Brother Michael indicates, those assets were valued at approximately \$648,606. *Id.* The sell order was placed by the plaintiff. *Id.*

43. Although Brother Michael immediately placed a stop on the plaintiff's sale order, he was not entirely successful as some of MHFM's stocks had already been sold. *Id.*

44. It was at about this time that Brother Michael learned that plaintiff had actually left the monastery. Plaintiff gave no notice of his departure, even when directly asked by Brother Michael about his activities that day. Several hours after leaving the monastery, the plaintiff called MHFM and informed Brother Michael that he left because he had suddenly come to a realization that MHFM's teachings were sinful. He explained that in reading some literature, he became convinced that there were no Catholic Churches to which he – or anyone else – could attend in order to receive the Sacraments.

45. Although the stated beliefs of MHFM are conservative and might fairly be characterized as controversial, this stated belief of plaintiff's – to the effect that attending any Catholic Church was heresy – constituted a significant departure from MHFM's conservative views and was, in fact, considerably more conservative.

46. When Brother Michael inquired about why the plaintiff left so abruptly and did not remain at the monastery in order to discuss his readings and new beliefs, plaintiff admitted that he had tried to authorize a transfer of MHFM's funds into his own account by telephone, but he had been rebuffed by Scottrade. Accordingly, he decided to drive to the Scottrade office in Rochester, New York to transfer the proceeds from the sale of MHFM's stock into his own account. Dimond Aff. at ¶ 39. After telling Brother Michael that he had been turned away from the Scottrade office, he demanded that Brother Michael give him \$483,000. *Id.*

47. After discovering that plaintiff had attempted to steal nearly \$700,000 worth of MHFM's assets, Brothers Michael and Peter conducted a search of the monastery to determine whether the plaintiff had stolen anything else when he departed. Dimond Aff., ¶ 40. It was at that time that Brother Michael discovered the plaintiff had taken many of MHFM's banking and investment records, including its historical investment records from M&T Securities, as well as an extensive volume of confidential and proprietary business information. *Id.*

48. With regard to MHFM's financial records, Brother Michael determined that plaintiff had taken MHFM's Scottrade records, M&T Securities investment account records, and MHFM's original Scottrade account application. *Id.* If this were not serious enough, the plaintiff also left the monastery with the Apple laptop computer that he typically used for his work with incoming orders, donations, and sales made through the online store and EBay site. Dimond Aff. at ¶ 41. Moreover, the plaintiff also had taken the monastery's flash drive that had considerable capacity and is thought to have contained extensive amounts of confidential and proprietary business records and intellectual property of MHFM. *Id.* This proprietary information taken by the plaintiff was not only confidential in the sense that MHFM assured its supporters and benefactors that such information would be closely held, but it was also private in the sense that many of MHFM's supporters and donors do not have publicly-listed telephone numbers, home addresses, or e-mail addresses. *Id.*

49. In the effort to maintain customer security as much as possible following the plaintiff's outright breach, Brother Peter immediately changed the password to the monastery's online store e-mail account. Not being satisfied that this was enough to protect customers and donors, Brother Peter canceled that account within a day or two. Dimond Aff. at ¶ 44. Unfortunately, act of care was not enough as the plaintiff managed to find a way to send e-mails to Brother Michael *and* MHFM

customers that appeared to originate from the MHFM online store (store@mostholyfamilymonastery.com) even though that account had already been canceled. Indeed, three e-mails the plaintiff sent to Brother Michael after the e-mail account was already closed appeared to have been sent from store@mostholyfamilymonastery.com. Dimond Aff. at ¶ 50 and Exhibit C.

50. Two days after deserting the monastery and taking with him its confidential and proprietary business information, the plaintiff approached the New York State Police and accused Brothers Michael and Peter of having stolen \$1.2 million from him. Not surprisingly, this false accusation prompted a telephone call to the monastery from New York State Trooper Larry LaRose. Dimond Aff. at ¶ 45. Brother Michael explained to Trooper LaRose that it had been the plaintiff who attempted to steal nearly \$700,000 worth of the monastery's money. Brother Michael also informed the trooper that it appeared that the plaintiff had also taken MHFM's bank account and brokerage records – something the plaintiff admitted when questioned directly by Trooper LaRose. Dimond Aff. at ¶ 47.

51. On January 3 and 4, 2008, the plaintiff returned some of MHFM's business records. Dimond Aff. at Exhibit C. On January 8, 2008, the plaintiff returned some of MHFM's bank and investment account records. The plaintiff also returned MHFM's flash drive at that time as well. Dimond Aff. at ¶¶ 41. Unfortunately, there is

no way to know whether the plaintiff duplicated some or all of the data he stole from MHFM prior to returning it. What is known, however, is that he did not have authority to take or duplicate that information, and that after January 8, 2008, the plaintiff continued to contact supporters of MHFM whose identities he would have known only from the records of the monastery. Dimond Aff. at ¶¶ 48, 53; *see, e.g.*, Affidavit of Stephen Hand, sworn to on June 5, 2008 (“Hand Aff.”), at ¶ 4; Affidavit of Keith McKay, sworn to on June 4, 2008 (“McKay Aff.”), at ¶ 4.

52. Not only did the plaintiff take MHFM’s financial records when he departed the monastery, but he also took an extensive amount of confidential customer and client information. Plaintiff’s theft of that proprietary information a breach of the trust given him by MHFM, and the manner in which he subsequently used and abused that information was an even greater breach causing irreparable damage to MHFM that justifies this Court’s intervention.

53. Shortly after the plaintiff left the monastery and while attempting to continue their mission of teaching the traditional Catholic faith, Brothers Michael and Peter began to learn that the plaintiff was doing much more than simply withholding their supporter and benefactor information. Indeed, not only did the plaintiff steal that information but he began to use that information to support an extensive campaign of defamation against MHFM and its members.

54. One client of MHFM whom the plaintiff contacted directly was Stephen Hand from Littleton, Massachusetts. Mr. Hand has executed an affidavit detailing his encounter with the plaintiff. *See* Hand Aff. In his affidavit, Mr. Hand notes that on December 26, 2007 he contacted MHFM to purchase a book. Hand Aff. at ¶ 2. During the ordering process he provided his personal address, telephone number, and e-mail address for use by the monastery *only*, not by the plaintiff. Hand Aff. at ¶ 3.

55. On January 12, 2008, Mr. Hand received an e-mail from plaintiff that was directed to him at his personal e-mail address. Hand Aff. at ¶ 4. In that e-mail, plaintiff explained that he was the one who had taken Mr. Hand's order several weeks earlier, that he had left MHFM, and that he urgently needed to speak with Mr. Hand. Hand Aff. at ¶ 4.

56. During the telephone conversation between plaintiff and Mr. Hand that ensued, plaintiff told Mr. Hand that he left MHFM because of a dispute he had with certain of the community's beliefs. Specifically, plaintiff informed Mr. Hand that he now believed that MHFM preached and practiced heresy by allowing its religious to receive the Sacraments at a Catholic Church. *Id.* In addition to explaining why he had left the monastery, plaintiff told Mr. Hand that another reason he departed was because

Brothers Michael and Peter had stolen money from him and another person. Hand Aff. at ¶ 6.

57. Given that plaintiff had spoken so passionately about MHFM when he had called to order materials only two weeks earlier, Mr. Hand was shocked that plaintiff was accusing Brothers Michael and Peter of criminal activity. *Id.* Indeed, it sounded to Mr. Hand that plaintiff had a personal vendetta against the monastery. *Id.*

58. Keith McKay, another client and customer of MHFM, also had a similar exchange with the plaintiff shortly after he departed the monastery. Prior to December 31, 2007, Mr. McKay had been a long-time supporter of MHFM and had made both purchases and donations throughout the years. Over time, he had provided the monastery with his personal address, telephone number, and e-mail address for ordering and gifting purposes *only*. See McKay Aff. at ¶ 3. Interestingly, the telephone number Mr. McKay provided to MHFM was not publicly listed under his name. Rather, that telephone number was listed under the name of his private business – the name of which he never supplied to the plaintiff. McKay Aff. at ¶ 3.

59. In January of 2008, Mr. McKay received an unsolicited telephone call from plaintiff. Given that he had never known plaintiff personally, never authorized MHFM to use his contact information for a purpose other than purchasing materials and

making donations, and never informed MHFM of the name of his private business (under which his telephone number is listed), Mr. McKay was surprised that plaintiff had his private telephone number and that he used it to contact him directly. McKay Aff. at ¶ 4.

60. As he had done with Mr. Hand, plaintiff informed Mr. McKay that he had departed the monastery because of a dispute he had with certain religious beliefs. In addition, plaintiff also told Mr. McKay that he left because Brothers Michael and Peter were wrongfully withholding his money and had refused to return it to him. McKay Aff. at ¶ 7. Moreover, during this conversation plaintiff also directed Mr. McKay to his own personal website that had been, by then, created to dispute the teachings of MHFM. When at plaintiff's direction and urging Mr. McKay subsequently visited that site, he observed that the plaintiff was using his website to solicit donations from former MHFM customers and clients in the form of a link to a PayPal account. McKay Aff. at ¶¶ 6-7.

61. Unlike Messrs. Hand and McKay – who have still maintained communications with MHFM despite being told that Brothers Michael and Peter were thieves – there are many former supporters and benefactors of MHFM who have since turned their backs on the community. Indeed, as Brother Michael indicates, certain former supporters have explicitly contacted MHFM and instructed that the monastery is barred from contacting them. Dimond Aff. at ¶¶ 55-58. Not only have there been former supporters who no longer want contact with MHFM following plaintiff's unsolicited

contacts to them, but there are even more who longer donate to the community as they once did. *Id.*

62. Plaintiff was welcomed into MHFM's community in September of 2005 and quickly became integrated into monastic life and the inner workings of the community. Moreover, in time, plaintiff became an important part of MHFM's community outreach efforts. As a result of his passion for the beliefs and teachings of MHFM, his knowledge base and aptitude for technology, and the trust he developed with the Superior of the monastery, plaintiff eventually was given access to the monastery's financial records and its databases containing private information for MHFM's more than 90,000 supporters, donors, and benefactors (including, in some cases, their credit card information). Since absconding from the monastery in December of 2007 with MHFM's confidential and proprietary financial and customer – documents, information, and data that he was not authorized to take or duplicate – plaintiff has embarked on and continues a campaign of defamation and unfair competition against MHFM and its members.

63. As indicated by Brother Michael, that campaign has been successful to the extent that there are many supporters of the organization who have since ceased all communication and support. Unfortunately, given the physical and geographic scope of MHFM's client and customer base, it presently is impossible to determine the full extent of the damage caused by plaintiff's tactics. What is known, however, is that

plaintiff has exhibited no signs of ending his campaign anytime soon. If plaintiff is not enjoined, your deponent fears that he will destroy the monastery by eroding all of its financial support.

ARGUMENT

64. It is within this Court's wide discretion to grant a temporary restraining order and/or a preliminary and permanent injunction. The defendants recognize that they are obligated to demonstrate (1) the likelihood of irreparable harm, and *either* (2) a likelihood of success on the merits, or (3) a sufficiently serious question going to the merits combined with a balance of hardships that favor them.

65. The defendants will meet this burden so as to justify this Court's intervention in the form of a temporary restraining order and/or preliminary and, ultimately, permanent, injunction directing and ordering plaintiff to (1) return all confidential and proprietary records taken from MHFM, in any form; (2) destroy copies of any confidential and proprietary information taken from MHFM, in any form, including in electronic form such that plaintiff no longer has access to it or an ability to recreate it; (3) cease and desist from engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM; and (4) cease and desist from making

defamatory statements against the defendants including that they stole money from plaintiff.

POINT I

**MHFM HAS SUFFERED AND WILL
CONTINUE TO SUFFER IRREPARABLE HARM**

66. With regard to a movant's burden in support of its request for a preliminary injunction, courts have long recognized that the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that the movant is likely to suffer irreparable harm before a decision on the merits can be rendered. As discussed in the memorandum of law, in order to demonstrate irreparable harm, the moving party must be able to show that absent a preliminary injunction, it will suffer an injury that is neither remote nor speculative, but actual and imminent. Moreover, that harm must be one that cannot be remedied if a court waits until the end of trial to redress the harm by way of money damages or otherwise.

67. The sole purpose and function of MHFM is to teach the traditional Catholic faith and to promote the praise and worship of God. Dimond Aff. at ¶¶ 2-4. In order to sustain itself and perform its mission of teaching traditional Catholicism, MHFM relies upon not only the proceeds from the sale of its books, monographs, and DVDs – which are often sold at a loss – but also the goodwill of its supporters in the form of monetary donations. *Id.*

68. After years and years of teaching and reaching out to others, MHFM has developed an extensive client and supporter base of more than 90,000 people across the globe. This group of individuals represents people who have contacted MHFM to order materials, to make donations, or even to simply inquire about MHFM's beliefs and teachings. In order for MHFM to exist at all, it is critical for the monastery to maintain a positive relationship with these supporters and benefactors. Not only does the monastery rely on the donations of these individuals, but it depends on reaching new supporters in order to be able to continue its work. Dimond Aff. at ¶ 4. Without the support of these individuals, MHFM would be destroyed and its practice of religion destroyed as well.

69. After absconding from the monastery with its confidential and proprietary customer, client, and financial materials, plaintiff pursued a vicious campaign designed to convince supporters that Brothers Michael and Peter stole more than a million dollars from him. As has been shown, this campaign already has resulted in harm in that there have been many individuals who previously supported and donated to MHFM that have since ceased all contact – both personal and financial – with the monastery and no longer support the community in any form.

70. As demonstrated in the memorandum of law, the freedom to practice religion is a fundamental right guaranteed by the Constitution of the United States of America. The sole purpose and function of MHFM is grounded in that freedom. In order for MHFM to exercise that given right, however, it relies solely on support from outsiders. Without them, the monastery and its practice of traditional Catholicism would cease to exist.

71. By relentlessly pursuing his campaign against MHFM through the use of the records and information he stole, plaintiff already has caused harm to MHFM to the extent that he has caused former supporters to turn away from the organization with his lies. If he is permitted to continue on this path of destruction, he will most certainly cause the demise of MHFM for it has no source other than its supporters to sustain itself.

72. One additional point bears mention. As counsel to the defendants, I have attempted to circumscribe and limit the relief I am seeking on their behalf, because I appreciate that injunctive relief is somewhat extraordinary. That is why, for example, I have addressed only the defamatory comments made by plaintiff and not the religious debate in which he apparently is now involved. But the irreparable harm is occurring not only to the institution known as MHFM, but it is being perpetrated against Brother Michael and Brother Peter as well, particularly when plaintiff accuses them of

stealing from him. The accusation that a monk – a religious in the traditional Catholic Church – has stolen what is claimed to amount to a million dollars or more goes to the very heart of these men's calling. While the operation of a monastery may not be considered a business in the traditional sense, the legal authority that underlies defamation per se most certainly is implicated by plaintiff's conduct as there can be no doubt that plaintiff is competing with MHFM.

73. What defendants face is an apparently independently-wealthy man who shared the traditional Catholic beliefs of MHFM and, without warning, became convinced by the opinions of another writer that the religious practices of MHFM were not conservative enough. Indeed, he claims that the conduct of which he used to participate, namely attendance at certain Catholic Churches and receipt of Holy Communion, is heretical. Plaintiff is entitled to his opinion on this, but he should not be permitted to defame the individual defendants by accusing them of felony theft to their supporters as if the theft was a fact. It is for this reason that the application is made on behalf of the individual defendants as well as on behalf of the not-for-profit corporate defendant.

74. Given the damage that already has been inflicted, the damage that continues to accrue, and the fact that plaintiff has shown no sign of stopping his

campaign, defendants believe that they have shown that irreparable harm will befall MHFM and the individual defendants if an injunction does not issue.

POINT II

DEFENDANTS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR COUNTERCLAIMS.

75. Once the moving party has demonstrated irreparable harm, he or she must then establish *either* (1) a likelihood of success on the merits of the claims supporting the request for a preliminary injunction or (2) a sufficiently serious question going to the merits of those claims combined with a balance of hardships tipping in favor of that moving party.

76. As shown in the accompanying memorandum of law, in analyzing the likelihood-of-success test, courts have long recognized that burden does *not* obligate the moving party to meet its burden of proof on the underlying claims as a matter of law. Indeed, it is well-settled that a court is not required to decide the merits of the controversy. It is necessary *only* that the court find that the movant has presented a strong *prima facie* case to justify the discretionary issuance of preliminary relief.

77. In this case, the defendants respectfully request that this Court issue a temporary restraining order and/or a preliminary injunction directing the plaintiff to (1) return all confidential and proprietary records taken from MHFM, in any form;

(2) destroy copies of any confidential and proprietary information taken from MHFM, in any form, including in electronic form such that plaintiff no longer has access to it or an ability to recreate it; (3) cease and desist from engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM; and (4) cease and desist from making defamatory statements against the defendants including that they stole money from plaintiff. The basis for these requests are the defendants' counterclaims for conversion, breach of fiduciary duty, misappropriation, and defamation. Dkt. 5, ¶¶ 113-129, 145-161, and 162-171.

The Conversion Counterclaim

78. As outlined in the memorandum of law, in New York, conversion constitutes the unauthorized assumption and exercise of a right of ownership over goods belonging to another, to the exclusion of the rights of the actual owner. In order to succeed on a claim for conversion as a matter of law, the complaining party must be able to identify a specific piece of property that has been wrongfully converted by the alleged tortfeasor. Moreover, it must also be shown that a demand for the return of that property was made by the complaining party, and disregarded.

79. In the case at bar, it is clear that plaintiff has stolen both financial and proprietary business information from MHFM and its members. Indeed, in addition

to taking MHFM's Scottrade account records and applications, plaintiff also took MHFM's M&T Securities historical investment account records. Plaintiff admitted he stole these documents when questioned by New York State Trooper Larry LaRose. Dimond Aff. at ¶ 47. Although plaintiff did subsequently return *some* of these records, not all have been returned. Moreover, it is not known whether plaintiff has made duplicates of any or all of these business records.

80. In addition to stealing MHFM's financial records, defendants also have established that plaintiff absconded from the monastery with the personal contact information (and, in some cases, even the credit card information) of persons who were listed on MHFM's Arc List database and its S List database, comprising MHFM's more than 90,000 customers and clients. Given that plaintiff fled from the monastery with the Apple laptop computer he used to store all of that information and as well as other business and customer and benefactor communications, it also is likely that plaintiff still possesses many e-mails, orders, and other communications between and among MHFM and its supporters. Finally, given plaintiff's theft of MHFM's flash drive, the plaintiff could have downloaded and taken with him other sensitive and proprietary records of MHFM including various passwords and technology codes. Although plaintiff did subsequently return that flash drive, it is not known whether he duplicated or saved elsewhere some or all of the data contained on it.

81. As Brother Michael attests in his affidavit, following plaintiff's departure from the monastery and the discovery that he had fled with much of MHFM's confidential and proprietary business records, Brother Michael made several attempts to secure the return of these items in the good-faith effort of avoiding having to seek the intervention of the courts. Specifically, in mid-January, Brother Michael wrote to plaintiff, asked him to identify all items he had taken from the monastery, and to return any and all such items (including client information and computer files). Dimond Aff. at ¶ 62. That letter was ignored by plaintiff. *Id.*

82. In addition to MHFM's attempt to work with plaintiff himself to secure the return of all monastery items he had stolen, Brother Michael even attempted to work with the plaintiff's attorney, K. Wade Eaton, Esq. who had contacted him to discuss plaintiff's views. Indeed, throughout January and February of 2008, Brother Michael had several telephone conversations and e-mail exchanges with Attorney Eaton. Dimond Aff. at ¶ 63. He openly and vulnerably pursued these conversations with Attorney Eaton without contacting legal counsel, in the hope of resolving this matter with the plaintiff and convincing him to return all computer files, documents, materials, and other proprietary information he took from the monastery. *Id.* These efforts were unsuccessful. Not only has plaintiff continued to wrongfully withhold MHFM's proprietary information and intellectual property but, as will be addressed below, has continued to use that information to the great detriment of the monastery.

83. In light of the above, it is clear that plaintiff has and continues to exercise ownership of MHFM's proprietary information to the exclusion of MHFM. Although MHFM has made several attempts to secure the return of those documents, computer files, passwords, and other confidential and proprietary materials, plaintiff has either ignored or outright rebuffed these attempts. Accordingly, it is submitted that there is a likelihood that defendants would succeed on the merits of their conversion counterclaim so as to justify this Court's issuance of a temporary restraining order and/or preliminary and permanent injunction directing plaintiff to return all confidential and proprietary records taken from MHFM, in any form and to destroy copies of any confidential and proprietary information taken from MHFM, in any form, including in electronic form such that plaintiff no longer has access to it or an ability to recreate it. At a minimum, given the undisputed facts, there is a sufficiently serious question as to whether plaintiff committed conversion by exercising dominion and control over MHFM's property so as to justify such an order of this Court.

The Breach of Fiduciary Duty Counterclaim

84. It is axiomatic that shareholders, officers, and employees of a corporation have a duty to deal fairly, in good faith, and with loyalty to the corporation and other shareholders. Indeed, a fiduciary relationship exists between an agent and a principal, signifying a relationship of trust and confidence whereby the agent is bound to

exercise the utmost good faith and undivided loyalty toward the principal throughout the relationship.

85. In addition to fiduciary relationships having been found between and among officers, shareholders, and employees of a corporation and the corporation itself, courts also have recognized fiduciary relationships to exist where one party reposes confidence in another and reasonably relies on the other's superior expertise or knowledge.

86. Although it is widely accepted that a fiduciary duty exists during one's employment or work with a corporation (including not-for-profit corporations), it also has been recognized that the fiduciary duty can continue beyond the presence of a working relationship. In this regard, the courts have held that an employee's fiduciary duty also may include the duty to not exploit, to the detriment of the former employer, specific information obtained during the employment that either was technically confidential or was available to the fiduciary *only* because of the employment.

87. The premise behind a cause of action for breach of fiduciary duty is that – in the context of not-for-profit organizations – the directors and officers of those organizations are to discharge the duties of their respective positions in good faith and with that degree of diligence, care, and skill that prudent men would exercise under

similar circumstances. This is true of even volunteer directors who are not paid for their service.

88. In this case, it has been established that during his two-year tenure at MHFM, plaintiff was placed in a unique position that granted him access to extensive amounts of proprietary information critical to the continued existence of MHFM. Indeed, for an organization that survives solely on purchases made by and donations from its current supporters and the hope of future donations from other individuals, the personal and private information pertaining to those thousands of individuals is the information that predominantly secures the organization's continued ability to function. As explained by Brother Michael, without the support of outsiders, the monastery would cease to exist at all. Dimond Aff. at ¶ 66.

89. Because of his expertise in technology and his continued passion for MHFM and its beliefs, plaintiff was entrusted with the very information that guarantees MHFM's continued existence. As has been shown, since departing the monastery with most – if not all – of that information, plaintiff has continued to use and abuse that information to the detriment of MHFM. Plaintiff's concerted effort to destroy MHFM – perhaps because of his change in religious beliefs – has had success as many former supporters have ceased all contact with the monastery, and even more have stopped donating or purchasing materials.

90. Plaintiff's theft of MHFM's proprietary records and his use of the information contained in them for his own benefit and to the detriment of MHFM constitutes a breach of the duty he owed to MHFM as a result of his position within that community. Accordingly, there is a likelihood that MHFM will have success on its counterclaim for breach of fiduciary duty. At the very least, given plaintiff's theft of MHFM's confidential information and his use of that information to wage an unfair competition against the monastery, there is a serious question as to whether the defendants would be successful on this cause of action at trial so as to warrant this Court's intervention.

91. Based on the counterclaim for breach of fiduciary duty, it is therefore requested that this Court issue a temporary restraining order and/or preliminary and permanent injunction directing that plaintiff stop engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM and/or as a result of knowledge gained during his time living at MHFM.

The Misappropriation of Trade Secrets Counterclaim

92. In order to succeed on a cause of action for misappropriation of trade secrets, a claimant must demonstrate that it possessed a trade secret and the alleged tortfeasor used that trade secret in breach of a duty. With regard to the question of what constitutes a trade secret for purposes of this cause of action, courts have held that a trade secret is any formula, pattern, device, or compilation of information that is used in business and that gives the owner an opportunity to obtain an advantage over its competitors who do not know or use it.

93. In determining whether the information at issue constitutes a trade secret, several factors are considered including (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of the measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

94. In the case at bar, plaintiff stole customer and client databases from MHFM and has since used that information to the detriment of MHFM. Indeed, as established above, plaintiff clearly breached the fiduciary duty he owed to MHFM when

he stole that information and began to use it to harm the monastery. Thus, the remaining question to be answered is whether the defendants are likely to succeed on their claim that the information plaintiff stole constitutes a trade secret. MHFM's private and confidential client databases – generated only after years of work and hundreds of thousands of dollars in expenditures – certainly qualify as a trade secret so as to justify this Court's intervention.

95. As explained by Brother Michael, the function of MHFM, which is a not-for-profit corporation, is to teach and promote traditional Catholicism. Dimond Aff. at ¶ 65. In performing its work, MHFM relies solely on the support of its benefactors, customers, clients, and supporters. *Id.* 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. *Id.*

96. For these reasons, and in order to continue to ensure the existence and effectiveness of MHFM as a not-for-profit corporation, MHFM expends substantial resources to teach and promote traditional Catholicism and to generate more and more support. Indeed, in order to reach the numbers of individuals necessary to allow MHFM to continue its work, it has been spending approximately \$1,000 per day on its communications efforts. Dimond Aff. at ¶ 6. 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. Dimond Aff. at ¶ 3.

97. As a result of many years of reaching out and promoting its beliefs, MHFM has developed a client base of more than 90,000 supporters across the globe. Dimond Aff. at ¶ 5. The information that MHFM maintains with respect to each supporter and benefactor is confidential and private information. Indeed, as Brother Michael has noted, many of MHFM's supporters do not have publicly-listed telephone numbers, home addresses, or e-mail accounts. Dimond Aff. at ¶ 42. This has been confirmed by several MHFM supporters themselves. For example, in his affidavit sworn to on June 4, 2008, Mr. McKay confirmed that the private telephone number plaintiff contact him at after leaving the monastery is not publicly listed under his name. Rather, that telephone number is listed only under the name of Mr. McKay's private business, the name of which he shared with neither MHFM nor plaintiff. McKay Aff. at ¶ 3.

98. Similarly, in his affidavit sworn to on June 4, 2008, Mr. Craft confirmed that the address used by plaintiff to contact him after departing the monastery is not listed under his name. Importantly, Mr. Craft notes he only used that mailing address when ordering materials from MHFM as it was connected to the credit card he used for his purchase from MHFM. *See* Affidavit of Gary Craft ("Craft Aff.") sworn to

on June 4, 2008 at ¶ 4. Not surprisingly, yet another MHFM supporter contacted by plaintiff after leaving the monastery has expressed concern over whether plaintiff has his personal contact information and credit card information. *See* Affidavit of Gary Muehlbauer (“Muehlbauer Aff.”) sworn to on June 3, 2008 at ¶ 4.

99. As MHFM’s extensive database of customer and supporter information has been generated only after the monastery’s years and years of advertising, promotions, and significant expenditure of resources and finances, that information cannot be easily acquired or duplicated in any manner.

100. Given that the proprietary information taken by plaintiff was confidential information acquired by MHFM only after years of advertising and expending resources, and represents the veritable lifeblood for the monastery’s continued existence, the defendants believe that they can establish that this information constitutes a trade secret for purposes of this analysis. At a minimum, there has been enough proof tendered to at least raise sufficiently serious questions in that regard. Accordingly it is respectfully requested that based on their counterclaim for misappropriation of a trade secret, this Court issue a temporary restraining order and/or preliminary and permanent injunction directing plaintiff to (1) return all confidential and proprietary records taken from MHFM, in any form; (2) destroy copies of any confidential and proprietary information taken from MHFM, in any form, including in electronic form such that

plaintiff no longer has access to it or an ability to recreate it; and (3) cease and desist from engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM and/or from knowledge learned while at MHFM.

The Defamation Counterclaim

101. In order to succeed on a cause of action for defamation, a claimant must show that the alleged tortfeasor (1) made a false statement; (2) published without privilege or authorization to a third party; (3) constituting fault as judged by a negligence standard; and (4) that such publishing *either* caused special harm to the complainant or constituted defamation per se.

102. In addition to using MHFM's confidential and proprietary business records to its detriment since leaving the monastery, plaintiff has also taken it upon himself to levy false accusations against Brothers Michael and Peter. Specifically, on January 2, 2008, plaintiff went to the New York State Police and accused Brothers Michael and Peter of having stolen \$1.2 million from him and even demanded that a complaint be filed against them. Dimond Aff. at ¶¶ 45-46. Thereafter, plaintiff accused Brothers Michael and Peter of stealing and wrongfully holding his money and the money of another former monk at the monastery to several MHFM clients. Hand Aff. at ¶ 6; *see also* McKay Aff. at ¶ 7.

103. As shown in the accompanying memorandum of law, with regard to the question of defamation *per se*, courts have held that reputation injury to a person's business or to a company can constitute defamation *per se*, such that special damages need not be established, where the alleged defamatory statement imputes some form of fraud or misconduct.

104. Similarly, courts also have recognized that defamation *per se* can be found to exist in situations when the alleged defamatory statement imputes the commission of a serious crime, such as a felony. Under this standard, plaintiff has committed slander *per se* against the defendants.

105. Given plaintiff's own recognition that his donation to MHFM in November of 2005 was simply that – a donation – it cannot be disputed that his bald accusation that Brothers Michael and Peter stole \$1.2 million from him and also stole money from another is completely false. Moreover, plaintiff certainly did not have authority to make such a baseless and untrue allegation. As plaintiff's lies about Brothers Michael and Peter allege at the least fraud and misconduct and certainly qualify as false statements that they committed a felony offense – theft of \$1.2 million – plaintiff clearly committed slander *per se*. At the very least, the defendants have submitted enough *prima facie* evidence to demonstrate that they are likely to succeed on the merits

of this counterclaim as a matter of law. Thus, it is respectfully requested this Court issue a temporary restraining order and/or preliminary and permanent injunction directing the plaintiff to cease and desist from publishing or making defamatory statements against the defendants.

POINT III

**A BALANCING OF THE EQUITIES FAVORS
THE DEFENDANTS AND SHOULD RESULT
IN THE ISSUANCE OF INJUNCTIVE RELIEF.**

106. Even if this Court is convinced that defendants have shown both irreparable harm and a likelihood of success on the merits, it should nonetheless consider the equities, as they, too, overwhelmingly favor the defendants.

107. Plaintiff lived, worked, and engaged in recreation with the Brothers at Most Holy Family Monastery for over two years. He took solemn vows before the monastery's Superior less than eight weeks before suddenly departing. And then, apparently after some brief self-study, plaintiff summarily departed the community and took much of the monastery's lifeblood with him.

108. Plaintiff convinced two other religious to accompany him when he left on December 31, 2007. He did not warn his Superior of his impending departure, notwithstanding that he knew that he was being counted on for a significant

New Years Eve religious broadcast as well as other business matters. He took with him confidential and proprietary business records. He took passwords, information, and operational data that virtually shut down the monastery's work for several days.

109. As well, plaintiff tried to liquidate more than a half million dollars worth of the monastery's assets within hours of getting access to them by virtue of an investment account change that he had endorsed. He virtually ran off to another city in order to attempt to gain access to these funds. In the face of a direct inquiry from his Superior, plaintiff lied, telling him that there was nothing to report of his activities that day. And then he fled, nefariously and secretly.

110. That day – December 31, 2007 – was just the commencement of plaintiff's unwarranted attack on these defendants. He then used the monastery's records to reach supporters and benefactors across the United States and the world, telling them that Brothers Michael and Peter had stolen money from him and another person. He used the monastery's records to reach supporters whom he then solicited, telling them of his new website with its PayPal donation button. He even called the New York State Police and sought to have the individual defendants arrested for a felony – the alleged theft of over \$1 million dollars.

111. This plaintiff is a man who had lived, worked, and engaged in recreation with the individual defendants in close quarters and in close proximity for more than two years. He had taken solemn vows before one of them. He had worked side-by-side with both Brother Michael and Brother Peter in creating traditional Catholic outreach via the Internet in the form of radio and web video broadcasts. He had been permitted to have regular and sometimes intense contact with the faithful who would call the monastery with questions or concerns.

112. Not once prior to commencing this onslaught of destruction did plaintiff seek to engage in a dialogue with Brother Michael or Brother Peter. He did not talk to them nor did he warn them; instead, he tried to destroy them and the monastery that had protected and nurtured him for some 27 months.

113. The defendants recognize that theirs is not a garden-variety unfair competition claim. As their attorney, I contend it is much more. For it is the very definition of bad faith – of unclean hands – for this plaintiff to have chosen to wage his own personal, yet devastating, war against the monastery and the monks living there over the course of the last several months since his departure.

114. The defendants did nothing wrong. If the plaintiff's action survives the defendants' motion to dismiss on Establishment Clause grounds, which

defendants do not believe it will, then the defendants are confident that they will demonstrate to the Court's satisfaction that they are not liable to the plaintiff. Even if the plaintiff thought that he had a legitimate claim against the defendants, his obligation was to assert that claim in a judicial forum, not unfairly compete and defame the defendants in a scorched-earth effort to destroy them. Indeed, the record shows that plaintiff had an attorney as early as January; thus, he should not have been unilaterally using MHFM's confidential and proprietary records to contact its supporters and benefactors, cause them to reject the monastery, and erode the only source of continuing support it has.

115. Under the circumstances, the equities heavily weigh in favor of the defendants. Even if the plaintiff had a legitimate claim – which he does not – the proper course of action would have been to commence litigation, not slander the defendants and cause them irreparable harm by stealing their proprietary business records and then turning their benefactors against them. In balancing the equities, I urge the Court to consider the plaintiff's conduct since December 31, 2007. It adequately demonstrates that plaintiff has unclean hands; therefore, the balancing of the equities test favors the defendants.

116. For all these reasons, this Court should execute an injunction in favor of the defendants and against the plaintiff.

CONCLUSION

117. MHFM is a not-for-profit corporation whose purpose is to teach and promote the traditional Catholic faith as well as to promote the praise and worship of God. As a not-for-profit corporation and by virtue of its mission, MHFM relies solely on the donations and purchases of its supporters and benefactors to continue its work. Without them, MHFM could not survive.

118. Given the critical role that MHFM's supporters and donors play in the continued existence and functioning of the organization, MHFM's relationship with those supporters is vital. Damage to that relationship caused by the actions of this plaintiff in intentionally misappropriating trade secrets, converting confidential and proprietary business records, defaming the individual defendants, and unfairly competing with MFHM through the unauthorized and tortious use of its confidential records, will prove fatal to MHFM if permitted to continue during the pendency of this lawsuit.

119. Plaintiff was warmly welcomed into MHFM in the fall of 2005 after a rather extended period of consideration prior to entering the monastery. Immediately upon joining the community, plaintiff integrated himself into the monastery's life. This was due in part to plaintiff's expertise in technology and in part to the trust he created with the monastery's Superior through his passionate, supportive

work on behalf of MHFM. As plaintiff became more integrated into the day-to-day duties and activities at the monastery, he increasingly was given more responsibilities. These increased responsibilities gave plaintiff greater and greater access to the proprietary information that underlies the survival of MHFM.

120. When plaintiff suddenly absconded from the monastery on December 31, 2007, he stole much of the confidential and proprietary information to which he had been given access on the basis of his commitment to the monastery. Since that time, he not only has refused to return much of that information, but he has used it to support his relentless campaign of both defamation and unfair competition against MHFM and its members.

121. Plaintiff's campaign against MHFM has been successful in that he has turned many supporters and benefactors against the monastery completely. Many others have simply ceased offering financial support altogether. Although the full consequences of the plaintiff's wrongful actions cannot yet be quantified, what is certain is that plaintiff has shown no sign of stopping his activities. If he is permitted to continue in this manner he likely will destroy the monastery.

WHEREFORE, your deponent respectfully requests that this Court grant the defendants' motion in its entirety and issue a temporary restraining order and/or preliminary and permanent injunction directing plaintiff to (1) return all confidential and proprietary records taken from MHFM, in any form; (2) destroy copies of any confidential and proprietary information taken from MHFM, in any form, including in electronic form such that plaintiff no longer has access to it or an ability to recreate it; (3) cease and desist from engaging in any communication with anyone whose identity and/or contact information plaintiff knows as a result of the confidential and proprietary records that plaintiff took from MHFM or as a result of information he learned while at MHFM; and (4) cease and desist from making defamatory statements against the defendants including that they stole money from plaintiff.

Dated: June 9, 2008
Buffalo, New York

s/ Lisa A. Coppola
Lisa A. Coppola, Esq.