

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

**DECLARATION OF
K. WADE EATON**

Index No. 08-cv-00347-JTC

K. WADE EATON, under the penalties of perjury, states the following:

1. I represent the plaintiff in this action and submit this Declaration in support of his application to have the court reconsider a portion of its Decision and Order dated June 22, 2012.

2. The basis of plaintiff's application, as more fully set forth in the attached Memorandum of Law, is that the court misconstrued the plaintiff's state law causes of action for unjust enrichment and money had and received to require that the defendants' acquisition of the plaintiff's assets was tainted by some unlawful or improper conduct by the defendant's.

3. My research into this issue has revealed that, under New York common law, the plaintiff need neither allege nor prove that the defendant engaged in any improper conduct in order to establish his cause of action for unjust enrichment or money had and received.

4. Accordingly, plaintiff respectfully requests that the court reconsider that portion of its Decision and Order dismissing the Third and Fifth Counts set forth in his Amended Complaint and deny the defendant's motion for summary judgment as to those counts.

Dated: July 13, 2012

K. Wade Eaton

K. Wade Eaton