

1 Rick Richmond (SBN 194962)
 rrichmond@larsonllp.com
 2 Matthew S. Manacek (SBN 312834)
 mmanacek@larsonllp.com
 3 Timothy C. Tanner (SBN 318081)
 ttanner@larsonllp.com
 4 Troy S. Tessem (SBN 329967)
 ttessem@larsonllp.com
 5 **LARSON LLP**
 555 South Flower Street, Suite 4400
 6 Los Angeles, California 90071
 Telephone: (213) 436-4888
 7 Facsimile: (213) 623-2000

8 Attorneys for Defendant
 THE CHURCH OF JESUS CHRIST OF
 9 LATTER-DAY SAINTS

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 JAMES HUNTSMAN,
 14 Plaintiff,

15 vs.

16 CORPORATION OF THE
 17 PRESIDENT OF THE CHURCH OF
 18 JESUS CHRIST OF LATTER-DAY
 SAINTS; and Does 1-10,

19 Defendants.

Case No. 2:21-cv-02504 SVW (SK)

*Assigned to the Hon. Stephen V. Wilson,
 Ctrm. 10A*

**DEFENDANT’S NOTICE OF
 MOTION AND MOTION FOR
 SUMMARY JUDGMENT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

*[Filed concurrently with Separate
 Statement; Declaration of Paul Rytting;
 Declaration of Rick Richmond;
 (Proposed) Order; and (Proposed)
 Judgment]*

Date: August 30, 2021
 Time: 1:30 p.m.
 Ctrm: 10A

Trial Date: None Set

22 **REDACTED VERSION OF DOCUMENT**
 23 **PROPOSED TO BE FILED UNDER SEAL**
 24

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 30, 2021 at 1:30 p.m., or as soon
3 thereafter as this matter may be heard, in Courtroom 10A of the above-entitled
4 Court, located at 350 W. 1st Street, 10th Floor, Los Angeles, California 90012,
5 before the Honorable Stephen V. Wilson, Defendant The Church of Jesus Christ of
6 Latter-day Saints (the “Church”) will, and hereby does, move the Court, pursuant to
7 Rule 56 of the Federal Rules of Civil Procedure, for an order granting summary
8 judgment in favor of the Church and against Plaintiff James Huntsman.

9 This motion is made on the grounds that there is no genuine dispute of
10 material fact regarding Plaintiff’s claim and that the Church is entitled to judgment
11 as a matter of law. Specifically, the Church is entitled to summary judgment
12 because: (1) the Church’s statements are true; (2) Huntsman cannot establish
13 reliance; and (3) the First Amendment prohibits Huntsman’s claim.

14 This motion is based on this Notice of Motion and Motion, the attached
15 Memorandum of Points and Authorities, the concurrently-filed Statement of
16 Uncontroverted Facts and Conclusions of Law, the supporting Declarations of Paul
17 Rytting and Rick Richmond, the pleadings and papers on file in this action, and any
18 other evidence and argument as may be presented at the hearing on the motion.

19 This motion is made following the conference of counsel pursuant to L.R. 7-3
20 which took place at the Status Conference on June 28, 2021.

21
22 Dated: August 9, 2021

LARSON LLP

23 By: /s/ Rick Richmond

24 Rick Richmond
25 Matthew S. Manacek
26 Timothy C. Tanner
27 Trov S. Tessem
28 Attorneys for Defendant
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS

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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiff James Huntsman seeks an extraordinary remedy—the refund of his
3 voluntary, unrestricted contributions to his former church, The Church of Jesus
4 Christ of Latter-day Saints (the “Church”)¹. Huntsman quit making contributions
5 and resigned from the Church because he had a crisis of faith and no longer believes
6 in certain religious doctrines or practices. Huntsman attempts to avoid the obvious
7 obstacles to seeking a refund by cloaking his claim in the garb of a fraud action. But
8 his effort fails for three reasons, entitling the Church to summary judgment.

9 *First*, and most important, summary judgment should be granted because the
10 statements by the Church on which Huntsman relies, are true. The first of the five
11 statements identified by Huntsman is the most specific, with the other four
12 following along in kind. The first statement was made by the Church’s then-
13 president with respect to a particular Church-financed project to invest in and
14 revitalize the area next to Church headquarters in downtown Salt Lake City, Utah,
15 known as the City Creek project. The president said the funding for the project
16 would come from “earnings of invested reserve funds” and from “commercial
17 entities” owned by the Church, rather than from “tithing funds.” The undisputed
18 summary judgment record confirms that the statement was entirely true: no tithing
19 funds were used. The undisputed evidence shows that the other allegedly fraudulent
20 statements are likewise true.

21 In contrast to the actual facts presented here, Huntsman’s fraud claim is not
22 based on any facts at all, but rests on unfounded speculation derived from a
23 document Huntsman read in the *Washington Post*. Huntsman had no personal
24 knowledge of any facts about the funding of the City Creek project at the time the
25

26 _____
27 ¹ Huntsman sued the Corporation of the President of the Church of Jesus Christ of
28 Latter-day Saints, the entity he tithed to. That entity has since been renamed to the
Church of Jesus Christ of Latter-day Saints, a Utah corporation.

1 Church’s statements were made, and he has none today. Nor does the *Washington*
2 *Post* document support his claim. There is nothing in that document that alters the
3 facts about how the project was funded.

4 We agree with the hope expressed by Huntsman in his complaint that “this
5 lawsuit will put an end” to the questions about how City Creek was funded, “once
6 and for all so that the Church can refocus its attention and efforts on following the
7 path of righteousness” rather than dealing with the distraction of a frivolous lawsuit.
8 (Compl. ¶ 30.) Summary judgment will do just that.

9 *Second*, although the Court need not reach this second ground, summary
10 judgment should also be granted because Huntsman cannot establish reliance on the
11 Church’s statements. Fraud claims must be pled and proved with particularity.
12 Fraud claimants cannot identify statements made years earlier and then later claim
13 they subjectively relied on those statements when the evidence shows such claimed
14 reliance is unreasonable and unjustified. Here, Huntsman regularly tithed and made
15 other contributions to his Church for all of his adult life until he lost his faith.
16 Huntsman makes vague allegations that he made his annual contributions over the
17 course of more than two decades because he believed none of them would be used
18 for long-term investments. But these allegations are an advocate’s afterthoughts.
19 Huntsman is a sophisticated businessman who grew up in an environment in which
20 the Church owned and operated many long-term investments and he began making
21 tithing contributions after the Church made clear its plan to invest some amount of
22 tithing contributions into reserve funds to save for a rainy day. Because Huntsman’s
23 purported reliance is unjustified, summary judgment is warranted on this ground as
24 well.

25 *Third*, summary judgment is also appropriate because the First Amendment
26 prohibits plaintiffs from using the courts as vehicles to conduct fishing expeditions
27 into how and why churches use their unrestricted, voluntary contributions to further
28 their useful purposes. Here, Huntsman appears to be interested in generating

1 publicity and embarrassing his former Church in whose doctrines and practices he
2 no longer believes. He has made no secret of his intention to attempt wide-ranging
3 discovery into how the Church uses the contributions it receives, naming the
4 Church’s three highest ecclesiastical authorities as people “likely to have
5 discoverable information” about the church’s “use of tithing funds.” (SUF 126.)
6 Any such discovery would be an impermissible intrusion on the Church’s First
7 Amendment-protected ability to use the voluntary contributions it receives as it sees
8 fit.

9 In the balance of this memorandum, we first provide context in background
10 sections about the Church and Huntsman. Next, we present the facts necessary for
11 summary judgment. Finally, in an argument section, we explain in more detail the
12 three reasons why summary judgment should be granted in this case.

13 **STATEMENT OF FACTS**

14 **A. Church Background Facts**

15 The Church of Jesus Christ of Latter-day Saints (the “Church”) is a Christian
16 religion, with its worldwide headquarters in Salt Lake City, Utah.

17 **1. Contributions to the Church**

18 Contributions to the Church come in several categories, including tithing, fast
19 offerings, missionary contributions, and humanitarian aid. (SUF 11, 12.)

20 **Tithing.** The principal contribution is tithing. (SUF 13.) Tithing is an
21 ancient religious practice that has biblical origins as far back as the book of Genesis,
22 which describes Abraham as providing tithes to the great High Priest Melchizedek,
23 who, in turn, gave Abraham a blessing from God for his faithfulness. (Genesis
24 14:18-20.) Tithing in the Church is supposed to reflect one-tenth of one’s annual
25 increase or income. (SUF 14; [Doctrine & Covenants 119:4.](#)) Devout Church
26 members consider tithing to be a law or commandment from God. (SUF 15.) As in
27 ancient times, once their annual tithing contributions are made, the Church and its
28 members believe in the biblical instruction that “all the tithe of the land . . . is the

1 Lord's; it is holy unto the Lord.” (Leviticus 27:30.) Church members believe that
2 the disposition of the tithes is determined according to God's “own voice” unto
3 those who are responsible to spend or invest the contributions. ([Doctrine &](#)
4 [Covenants 120:1.](#))

5 **Fast offerings.** Another form of contributions is known as fast offerings.
6 (SUF 12.) Fast offerings have similar ancient biblical origins (Deuteronomy 15:11;
7 Isaiah 58:6-12) and are intended to help feed and clothe those who are in need.
8 (SUF 16.)

9 **Missionary contributions.** A third form of contributions is for missionary
10 work. (SUF 12.) As recorded in the Bible's New Testament, the Church believes it
11 has a mandate to preach the gospel of Jesus Christ. (Matthew 28:19-20.)
12 Missionary contributions are intended to fund the Church's missionary efforts.
13 (SUF 17.)

14 **Humanitarian aid.** A fourth form of contributions is for humanitarian aid.
15 (SUF 12.) These contributions are meant to relieve the suffering of those who have
16 been subjected to unanticipated challenges, such as droughts, hurricanes, floods, etc.
17 (SUF 18.) This kind of contribution, too, has its roots in the biblical scriptures that
18 command God's followers to “love thy neighbor as thyself.” (Leviticus 19:18;
19 Matthew 22:39.)

20 **2. History of Church Investments**

21 The Church was founded in upstate New York in 1830 by a prophet named
22 Joseph Smith, who was directed by God to restore the Christian faith to its ancient
23 origins. (SUF 1.) After Joseph Smith's martyrdom, and led by Joseph Smith's
24 successor, Brigham Young, the general body of the Church migrated to the Utah
25 Territory in large numbers beginning in 1847 and continuing throughout the 1860s.
26 (SUF 2, 3.)

27 Early on, the Church used some of the contributions it received to construct
28 the well-known temple in downtown Salt Lake City and its adjoining tabernacle,

1 which has been the home for decades to the Mormon Tabernacle Choir, now known
2 as the Tabernacle Choir at Temple Square. (SUF 4.) That area of downtown Salt
3 Lake City is known as Temple Square. (SUF 5.) The Church’s worldwide
4 headquarters are located contiguous to Temple Square. (SUF 6.)

5 Brigham Young also recognized that the Church and its members needed to
6 become self-sufficient. (SUF 8.) During the era of the pioneer migration, Utah was
7 relatively unconnected to the rest of the country, especially before the
8 transcontinental railroad was completed with the joining of the rail lines on Utah’s
9 Promontory Summit in 1869. (SUF 7.) In addition to Temple Square, Brigham
10 Young began establishing numerous commercial enterprises. (SUF 8.) These were
11 also financed with contributions made to the Church. (*Id.*)

12 **B. Huntsman Background Facts**

13 Huntsman was born into a family of devout Church members and spent most
14 of his childhood in Utah. (SUF 51, 52.) His maternal grandfather, David Haight,
15 was a member of the Quorum of the Twelve Apostles, making him one of the
16 highest-ranking leaders in the Church. (SUF 53.) Huntsman’s grandfather was
17 serving in this high-level position in 2003 when Church President Gordon B.
18 Hinckley made statements about protecting the environment surrounding Temple
19 Square through the City Creek project. (SUF 54.) Huntsman’s father was also a
20 high ranking ecclesiastical leader in the Church. (SUF 55.) As an adult, Huntsman
21 considered himself to be one of the Church’s most devout members. (SUF 56.)

22 **C. Summary Judgment Facts**

23 **1. Huntsman’s Understanding of Tithing**

24 As a boy and as a teenager, Huntsman learned about tithing from his parents
25 and from Church meetings he attended. (SUF 57.) He understood tithing to be a
26 commandment of God and is aware that tithing had its origins in the Bible.
27 (SUF 58.)

28

1 In early 1990, when he was 19 years old, Huntsman was ordained an Elder in
2 the Church and accepted an assignment to serve as a full-time missionary in
3 Germany for two years. (SUF 59.) As a missionary, Huntsman taught people that
4 tithing was a sacred law of God and that God would bless those who tithed.
5 (SUF 60.) Huntsman also taught people that tithing meant one-tenth of their
6 incomes and they should expect to make tithing contributions if they became
7 members of the Church. (SUF 61.)

8 Huntsman paid tithing for 22 years of his adult life, from 1993 until 2015.
9 (SUF 62-81; Compl. ¶ 16.) While he usually paid tithing directly, sometimes
10 Huntsman paid tithing through a family-owned entity known as Brownie Capital
11 LLC. (SUF 82.) Huntsman’s contributions to the Church were always voluntary,
12 with no restrictions on how those contributions could be used by the Church.
13 (SUF 83.) When Huntsman made tithing contributions, he believed he was obeying
14 one of God’s commandments and would receive blessings from God for doing so.
15 (SUF 84.)

16 Huntsman stopped making tithing contributions after his final contribution on
17 January 9, 2015. (SUF 85.) His decision to stop making tithing and other
18 contributions had nothing to do with how City Creek was funded because, in
19 Huntsman’s own words, whether tithing was used to fund City Creek “was not
20 discovered by me until 2019.” (SUF 86.) Instead, Huntsman and his family quit
21 making contributions in 2015 over a growing disillusionment with other doctrinal
22 aspects of the Church. (SUF 87.) Huntsman and his wife Marianne eventually
23 resigned their memberships from the Church in 2020 because, as he described it,
24 they “stopped believing certain doctrines unique to Mormonism.” (SUF 88.)

25 **2. Huntsman’s Awareness of the Church’s Investments**

26 The Church owns a number of separate corporations conducting various
27 commercial activities. By the time he was a teenager, Huntsman was aware of
28 several of the largest of these. For example, Huntsman was aware of the ZCMI

1 department store chain and visited the ZCMI Center Mall, which was one of the
2 largest shopping malls in Salt Lake City. (SUF 89.) Huntsman was aware that the
3 ZCMI investment was owned by the Church. (*Id.*) Huntsman was aware of the
4 Hotel Utah, which was a well-known hotel in downtown Salt Lake City and he was
5 aware that the Hotel Utah was owned by the Church. (SUF 90.) Huntsman was
6 aware of a chain of bookstores called Deseret Book, and he knew that Deseret Book
7 was owned by the Church. (SUF 91.) Huntsman was aware of the *Deseret News*,
8 which was one of two major newspapers in Salt Lake City, and he was aware that
9 the *Deseret News* was owned by the Church. (SUF 92.) Huntsman was aware of
10 the Deseret Gym which, at one time, was a popular gym in downtown Salt Lake
11 City, and he was aware that the Deseret Gym was owned by the Church. (SUF 93.)
12 Huntsman admits that he wondered about where the money came from to start and
13 fund these investments owned by the Church, but he never asked any Church
14 leaders. (SUF 94.)

15 **3. Huntsman's City Creek Claim**

16 Huntsman's claim in this case is specifically focused on the Church's funding
17 of the Church-financed project to acquire the real estate and facilitate the
18 development of a shopping center known as City Creek Center, and the Church's
19 financial support of Beneficial Life Insurance Company. (SUF 95-97.) Huntsman
20 says his claim is not based on a general complaint about tithing funds being used for
21 the Church's commercial activities. (SUF 98.)

22 Huntsman's fraud claim is based on five statements regarding the City Creek
23 project. (SUF 96.)

24 **Statement #1:** The first statement was made by the president of the Church,
25 President Gordon B. Hinckley, at a worldwide semi-annual general conference of
26 the Church in April 2003. (SUF 27, 106-107.) President Hinckley explained:

27 "Faith in the payment of tithes and offerings increases despite the
28 straitened economic circumstances in which we find ourselves. We are

1 able to go forward with the building of meetinghouses and temples,
2 with our vast education program, with the very many activities which
3 are conditioned upon the tithing income of the Church. I promise you
4 that we will not put the Church in debt. We will strictly tailor the
5 program to the tithing income and use these sacred funds for the
6 purposes designated by the Lord.

7 “I call attention to that which has received much notice in the
8 local press. This is our decision to purchase the shopping mall property
9 immediately to the south of Temple Square.

10 “We feel we have a compelling responsibility to protect the
11 environment of the Salt Lake Temple. The Church owns most of the
12 ground on which this mall stands. The owners of the buildings have
13 expressed a desire to sell. The property needs very extensive and
14 expensive renovation. We have felt it imperative to do something to
15 revitalize this area. But I wish to give the entire Church the assurance
16 that tithing funds have not and will not be used to acquire this property.
17 Nor will they be used in developing it for commercial purposes.

18 “Funds for this have come and will come from those commercial
19 entities owned by the Church. These resources, together with the
20 earnings of invested reserve funds, will accommodate this program.”

21 (SUF 27-28, 106-107; Compl., ¶ 17.) Huntsman did not hear this statement when it
22 was made, but claims he read the statement sometime following the conference.

23 (SUF 108.)

24 Huntsman’s allegation that tithing funds were used to acquire and develop
25 City Creek, rather than funds from earnings on invested reserves or from other
26 Church commercial entities, is based on his reading of an unverified and contested
27 document published by the *Washington Post* and nothing else. (SUF 109.)
28 Huntsman does not know either one of the two Nielsen brothers responsible for the

1 preparation of the document and does not know if they are honest men. (SUF 101-
2 102.)

3 **Statement #2:** The second statement about the funding of City Creek was
4 made by Presiding Bishop H. David Burton at an October 8, 2003 press conference,
5 as reported in the *Ensign* magazine: “None of this money comes from the tithing of
6 our faithful members. That is not how we use tithing funds.” (SUF 110; Compl.,
7 ¶ 19.) Huntsman claims he “would have read about” this press conference sometime
8 “after” the press conference occurred. (SUF 111-113.) Huntsman has no basis on
9 which to challenge this statement beyond the *Washington Post* document.
10 (SUF 114.)

11 **Statement #3:** The third statement appeared in the *Ensign* magazine, but the
12 statement is not attributed to any particular person: “The Church first announced
13 three years ago it was planning to redevelop the downtown area to energize the
14 economy of the city that houses its headquarters and to bolster the area near Temple
15 Square. No tithing funds will be used in the redevelopment.” (SUF 115; Compl.,
16 ¶ 20.) Huntsman claims he read this statement sometime after it was published in
17 the December 2006 *Ensign* magazine, but he cannot remember when he read it.
18 (SUF 116) Huntsman has no basis on which to challenge this statement beyond the
19 *Washington Post* document. (SUF 117.)

20 **Statement #4:** The fourth statement appeared in the *Deseret News*
21 newspaper on March 27, 2007, but the statement is not attributed to any particular
22 person: “Money for the project is not coming from LDS Church members’ tithing
23 donations. City Creek Center is being developed by Property Reserve, Inc., the
24 Church’s real-estate development arm, and its money comes from other real-estate
25 ventures.” (SUF 118; Compl. ¶ 21.) Huntsman claims he read this 2007 statement
26 in the *Deseret News* on-line, but he cannot remember when he read it. (SUF 119.)
27 Huntsman has no basis on which to challenge this statement beyond the *Washington*
28 *Post* document. (SUF 120.)

1 **Statement #5:** The fifth statement appeared in the *Salt Lake Tribune*
2 newspaper on October 5, 2012, and is attributed to Keith B. McMullin, who was
3 (and is) the head of a Church-affiliated commercial entity known as Deseret
4 Management Corporation: “McMullin said not one penny of tithing goes to the
5 Church’s for-profit endeavors. Specifically, the Church has said no tithing went
6 towards City Creek Center.” (SUF 121; Compl., ¶ 22.) Huntsman claims he read
7 this 2012 statement in the *Salt Lake Tribune*, but he cannot remember when he read
8 it. (SUF 122.) Huntsman has no basis on which to challenge this statement beyond
9 the *Washington Post* document. (SUF 123.)

10 **4. Funding of City Creek Project**

11 Property Reserve, Inc. (“PRI”), a nonprofit 501(c)(3) organization, is the
12 Church affiliate primarily responsible for holding commercial real estate
13 investments as part of the Church’s reserves. (SUF 26.) PRI invests in commercial
14 real estate. (*Id.*) As part of the City Creek project, PRI granted much of the relevant
15 properties needed for the project. (SUF 48.) In addition, PRI also expended

16 [REDACTED]
17 [REDACTED] (SUF 49.) No tithing funds were used as part of PRI’s
18 expenditures. (*Id.*)

19 In September 1997, Ensign Peak Advisors, Inc. (“Ensign Peak”), a nonprofit
20 501(c)(3) organization, was incorporated as the Church’s primary investment
21 vehicle for reserve funds in stocks, bonds, and securities. (SUF 22.) As explained
22 by President Hinckley in 1991, Ensign Peak was created and exists to further the
23 Church’s principles in its financial operations: (1) the Church lives within its means;
24 and (2) the Church saves a fixed percentage of income for the future to build
25 reserves for a possible “rainy day,” i.e., to “weather the storm” in the event of
26 economic distress. (SUF 20-21.)

27 The Church provided Ensign Peak with an initial grant [REDACTED]
28 [REDACTED] (SUF 23.) Prior to that time Church reserves were managed and invested

1 by the Church’s Investment Securities Department. (SUF 24.) By the end of 2003,
2 Ensign Peak’s net assets had grown [REDACTED] (SUF 29.) The net
3 investment income, or earnings, for that year alone (2003) amounted [REDACTED]
4 [REDACTED] (SUF 30, 32.)

5 On January 1, 2004, following President Hinckley’s 2003 statement, Ensign
6 Peak created [REDACTED]
7 [REDACTED]
8 [REDACTED] (SUF 33.) As of April 30, 2007—before any
9 grants were issued from the Reserve Fund for City Creek— [REDACTED]
10 [REDACTED] (SUF 44.)

11 During the course of the City Creek project, Ensign Peak made grants [REDACTED]
12 [REDACTED] (SUF 46.) Tithing funds were not
13 part of the Reserve Fund used for the City Creek project. (SUF 37.)

14 In addition, Ensign Peak granted [REDACTED]
15 [REDACTED]
16 [REDACTED] (SUF 47.)

17 **5. Huntsman’s Beneficial Life Claim**

18 In addition to his City Creek allegations, Huntsman also asserts that tithing,
19 fast offering, missionary, and humanitarian aid contributions were improperly used
20 as a loan or other source of funding for the Beneficial Life Insurance Company.
21 (SUF 124.) Huntsman’s assertion is simply not true, but in any event, Huntsman
22 cannot point to statements by Church leaders that his contributions to the Church
23 would not be used to make any such additional investments in Beneficial Life,
24 which was ultimately owned by the Church and its nonprofit affiliates. (SUF 125.)

25 **LEGAL STANDARDS**

26 **A. Summary Judgment Standard**

27 Summary judgment is properly granted where, as here, “there is no genuine
28 dispute as to any material fact and the movant is entitled to judgment as a matter of

1 law.” Fed. R. Civ. P. 56(a). The movant bears the burden of establishing the
 2 absence of a genuine dispute of material fact, i.e., a fact that can affect the outcome
 3 of the case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Anderson v. Liberty*
 4 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Where the record taken as a whole could
 5 not lead a rational trier of fact to find for the non-moving party, there is no genuine
 6 issue for trial.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S.
 7 574, 587 (1986). After the moving party meets its initial burden to show the
 8 absence of evidence to support the non-moving party’s case, the burden shifts to the
 9 non-moving party to demonstrate that there are “genuine factual issues that properly
 10 can be resolved only by a finder of fact because they may reasonably be resolved in
 11 favor of either party.” *Anderson*, 477 U.S. at 250. If the non-moving party fails to
 12 submit sufficient facts showing genuine issues for trial, the moving party is entitled
 13 to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

14 **B. Standards Relating to Fraud Claims**

15 Under California law there are three relevant common law fraud theories: (1)
 16 fraudulent misrepresentation; (2) fraudulent concealment; and (3) promissory fraud.
 17 Huntsman’s fraud claim proceeds under two of them—fraudulent misrepresentation
 18 and fraudulent concealment—both of which Huntsman must plead and prove with
 19 particularity to satisfy Rule 9(b)’s “more exacting pleading requirement.”
 20 Fed. R. Civ. P. 9(b); *Lazar v. Grant*, 2017 WL 4805067, at *2 (C.D. Cal. June 22,
 21 2017); *Ebeid ex rel. U.S. v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010) (“In
 22 alleging fraud or mistake, Rule 9(b) requires a party to state with particularity the
 23 circumstances constituting fraud or mistake, including the who, what, when, where,
 24 and how of the misconduct charged.”).

25 ***Fraudulent Misrepresentation.*** “To establish a claim for fraudulent
 26 misrepresentation, the plaintiff must prove: (1) the defendant represented to the
 27 plaintiff that an important fact was true; (2) that representation was false; (3) the
 28 defendant knew that the representation was false when the defendant made it, or the

1 defendant made the representation recklessly and without regard for its truth; (4) the
2 defendant intended that the plaintiff rely on the representation; (5) the plaintiff
3 reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the
4 plaintiff’s reliance on the defendant’s representation was a substantial factor in
5 causing that harm to the plaintiff.” *Perlas v. GMAC Mortgage, LLC*,
6 187 Cal. App. 4th 429, 434 (2010).

7 ***Fraudulent Concealment.*** “The required elements for fraudulent
8 concealment are: (1) concealment or suppression of a material fact; (2) by a
9 defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended
10 to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the
11 plaintiff was unaware of the fact and would not have acted as he or she did if he or
12 she had known of the concealed or suppressed fact; and (5) plaintiff sustained
13 damage as a result of the concealment or suppression of the fact.” *Graham v. Bank*
14 *of Am., N.A.*, 226 Cal. App. 4th 594, 606 (2014).

15 **ARGUMENT**

16 Huntsman asserts a single claim for common law fraud, alleging that the
17 statements about the source of funds for the development of City Creek were false.
18 (SUF 95, 96.) He also alleges that the Church concealed that tithing funds would be
19 used to develop City Creek. (SUF 97.)

20 Huntsman is wrong. The statements were absolutely true and can be proved
21 with the indisputable evidence described in these moving papers. Huntsman’s claim
22 is based on nothing more than an unproven document he read in a newspaper, which
23 is an inadequate substitute for actual facts² and cannot justify Huntsman’s attempt to
24

25 ² Huntsman bases his allegation that tithing funds were used for City Creek “on
26 information and belief,” not on personal knowledge. *See* Compl. ¶ 23. Huntsman’s
27 deposition confirms that the sole basis for his fraud claim is the allegations in the
28 *Washington Post* document. (SUF 109, 114, 117, 120, 123.) Courts do not allow
plaintiffs to lift “allegations from other complaints” and use them to support claims

1 claw back his voluntary, unrestricted contributions, which are an irrevocable gift
 2 under California law.³ Huntsman’s fraud claim fails because the statements about
 3 the funding of City Creek were true. That alone is reason enough to grant summary
 4 judgment, and the Court should do so on that basis.

5 I. THE CHURCH’S STATEMENTS ARE TRUE

6 To prevail on a fraud claim, Huntsman must establish that the Church made a
 7 material false representation or concealed a material fact. *Perlas*, 187 Cal. App. 4th
 8 at 434; *Graham*, 226 Cal. App. 4th at 606. Here, Huntsman claims the Church lied
 9 about, and concealed, how it funded the City Creek project by alleging that the
 10 Church used tithing funds for the project.⁴ (SUF 95-97.) Huntsman points to five

11 _____
 12 for fraud because “allegations from other complaints are unproven and contested”
 13 and therefore present no facts. *See, e.g., In re Apollo Grp., Inc. Securities Litig.*,
 14 2011 WL 5101787, at *10, n. 5 (D. Ariz. Oct. 27, 2011); *Bennett v. H&R Block Fin.*
 15 *Advisors, Inc.*, 2005 WL 8178042, at *4 (N.D. Cal. June 1, 2005) (pleading based on
 16 unadjudicated administrative complaint did not meet particularity standard for
 17 securities and common law fraud); *Fraker v. Bayer Corp.*, 2009 WL 5865687, at *6
 18 (E.D. Cal. Oct. 6, 2009) (striking allegations lifted from FTC complaint because
 19 plaintiff did not independently acquire evidence to support fraud allegations and
 20 dismissing complaint because there were no other facts showing fraudulent
 21 conduct).

22 ³ *E.g., United States v. Alcaraz-Garcia*, 79 F.3d 769, 775 (9th Cir. 1996)
 23 (discussing elements of a gift). Huntsman made voluntary donations to the Church,
 24 divested his control of such funds with no restrictions, and did so with no
 25 expectation of a return from the Church. SUF 83; *see Taylor v. Taylor*, 66 Cal. App.
 26 2d 390, 399 (1944) (“A voluntary gift divests the donor of his property and invests
 27 the donee with title irrevocably.”).

28 ⁴ Huntsman also alleges that the Church fraudulently misrepresented that tithing
 funds would not be used for “the bailout” of Beneficial Life Insurance Company.
 Compl. ¶ 34. But Huntsman does not identify a single misrepresentation with
 respect to Beneficial Life. *See generally* Compl. Nor can he, as he admitted in
 deposition that he cannot identify statements by Church leaders that tithing funds,
 fast offerings, missionary contributions, or humanitarian funds would not be used to
 fund Beneficial Life. (SUF 125.) Consequently, Huntsman cannot proceed under a
 fraudulent misrepresentation theory as to Beneficial Life’s purported bailout. *See*
Jesse v. Malcmacher, 2016 WL 9450683, at *7 (C.D. Cal. April 5, 2016) (Wilson,

1 statements, beginning with the 2003 statement by then-President Gordon B.
2 Hinckley, who announced the City Creek project to the worldwide membership of
3 the Church. (SUF 27, 96, 106.) President Hinckley explained that the funds for the
4 City Creek project would come from two sources, which were “commercial entities
5 owned by the Church” and “the earnings on invested reserve funds.” (SUF 28.) He
6 also assured members that tithing funds would not be used. (SUF 28.) The other
7 four statements that Huntsman references follow in kind and reiterate that no tithing
8 would be used for the City Creek project. (SUF 110, 115, 118, 121)

9 What Huntsman alleges are false statements, were, in fact, true—both when
10 they were made and throughout the entire development of City Creek. In other
11 words, the Church did not use tithing funds for the City Creek project. Rather, what
12 President Hinckley explained would occur, did occur, because the City Creek
13 project received funding from PRI (a nonprofit entity affiliated with the Church that
14 invests in commercial real estate), from Ensign Peak, and [REDACTED]
15 [REDACTED] Each
16 source of City Creek funding is briefly addressed in turn.

17 **PRI.** PRI is the Church’s affiliated nonprofit entity primarily responsible for
18 holding real estate investments. [REDACTED]
19 [REDACTED] (SUF 48.) PRI also expended [REDACTED]
20 [REDACTED] (SUF 49.) No
21 tithing funds were used as part of PRI’s expenditures. (SUF 49.)

22 [REDACTED]
23 [REDACTED] entirely funded by Ensign
24

25 J.). Nor does this allegation meet the requirements of fraudulent concealment, as the
26 Church did not conceal or suppress any material fact, i.e., any fact relating to how it
27 funded City Creek. *See Yu-Sze Yen v. Buchholz*, 2013 WL 1165013, at *5 (N.D.
28 Cal. Mar. 20, 2013) (granting summary judgment because plaintiff had “not
identified a false statement of material fact”).

1 Peak, a non-profit entity affiliated with the Church that was formed to invest the
2 Church’s reserve funds. (SUF 22; *see generally Stone v. Salt Lake City*, 11 Utah 2d
3 196, 200–201 (1960) (holding that investing donation funds does not divert them
4 from a church’s religious mission). Ensign Peak was created and exists to further
5 the Church’s principles in its financial operations as explained by President
6 Hinckley in 1991: (1) the Church lives within its means; and (2) the Church saves a
7 fixed percentage of income for the future to build reserves for a possible “rainy
8 day,” i.e. to “weather the storm” in the event of economic distress. (SUF 21.) It
9 was the earnings from the Church reserves managed by Ensign Peak that produced
10 the money used to fund the City Creek project. (SUF 42-43.)

11 The Church provided Ensign Peak with an initial grant [REDACTED]
12 [REDACTED] (SUF 23.) On December 31, 2003—after President Hinckley’s April
13 2003 statement—[REDACTED]
14 [REDACTED] (SUF 29.) During that same year, 2003, the
15 Church’s reserve funds [REDACTED] (SUF 30.)
16 Consistent with President Hinckley’s April 2003 statement, Ensign Peak allocated
17 [REDACTED] (SUF 32, 33.) As stated, the
18 Church’s [REDACTED] in 2003 was more than sufficient
19 to cover this allocation. (SUF 32.) Throughout the City Creek project, [REDACTED]
20 [REDACTED] continued to generate earnings, which the Church also used for City Creek.
21 (SUF 41.)

22 In 2007, the Church created a new nonprofit 501(c)(3) organization called
23 City Creek Reserve, Inc. (“CCRI”) to manage and hold the Church’s investment in
24 City Creek. (SUF 38.) CCRI owned and made further investments in City Creek
25 property, most of which it then rented to a separate for-profit company to operate
26 the shopping center. As a result [REDACTED] additional earnings, [REDACTED]
27 [REDACTED] available even before the first
28 dollar was disbursed to fund the City Creek project. (SUF 44.) [REDACTED]

1 (again, funded by earnings on reserve funds—not tithing) had a positive balance
2 during the entire life of the City Creek development and never required additional
3 funding. (SUF 44.) During the development of City Creek, [REDACTED] was
4 periodically drawn down as grants were made by Ensign Peak to CCRI to cover
5 development expenses. (SUF 41.) Between 2007 and 2012, Ensign Peak granted
6 [REDACTED] (SUF 46.) At the end of the City
7 Creek project (March 31, 2012), [REDACTED] had [REDACTED]
8 [REDACTED] (SUF45.)

9 In addition to the grants issued from [REDACTED], the Church also
10 authorized Ensign Peak to grant [REDACTED]
11 [REDACTED] (SUF 47.) [REDACTED]
12 [REDACTED]
13 [REDACTED] (SUF 47.) Notably, the earnings on the general reserve funds managed by
14 Ensign Peak in 2003 totaled [REDACTED] which was
15 more than enough to “accommodate [the City Creek] program,” just as President
16 Hinckley said. (SUF 30.) Simply put, because none of City Creek’s funding came
17 from tithing, all of the purported false statements identified in Huntsman’s
18 complaint are, in fact, true, meaning both of Huntsman’s fraud theories fail. *Jesse*,
19 2016 WL 9450683, at *7; *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,
20 1106 (9th Cir. 2003) (requiring plaintiff under Rule 9(b) to “set forth what is false or
21 misleading about” statements at issue “and why [they are] false”).

22 The Court could and should stop reading right here, put an end once and for
23 all to the frivolous claims of fraud about the funding of City Creek, and enter
24 summary judgment. We encourage the Court to do just that, but for the sake of
25 completeness, we also explain two other grounds on which the Court could grant
26 summary judgment.

27
28

1 **II. HUNTSMAN CANNOT ESTABLISH RELIANCE**

2 Huntsman cannot establish reliance because he fails to plead with
3 particularity when he heard or read the purported misrepresentations, and he fails to
4 establish actual and justifiable reliance on the statements made by Church leaders.

5 **A. No Particularity.**

6 As an initial matter, Huntsman does not—and cannot—allege that he received
7 the specific representations identified in his complaint. This failure is dispositive
8 because “[a] party cannot be defrauded by misrepresentations which never reached
9 him and of which he had no knowledge at the time of his loss.” *Slakey Bros.*
10 *Sacramento v. Parker*, 265 Cal. App. 2d 204, 208 (1968). Indeed, Huntsman does
11 not remember when he read or heard the purported misrepresentations, but merely
12 asserts that he became aware of them at some point. (SUF 108, 112, 116, 119, 122.)
13 This, of course, is insufficient because it means Huntsman cannot show “with
14 particularity the who, what, when, where, and how of [his] reliance” and so his
15 claim must fail. *Barclays Capital*, 743 F. App’x at 783; *Veterans Rideshare, Inc. v.*
16 *Navistar Int’l Corp.*, 2021 WL 2206479, at *11 (S.D. Cal. June 1, 2021) (dismissing
17 fraud claims because plaintiff did not identify with particularity that he received,
18 read, and relied on alleged misrepresentations); *see also Great Pacific Securities v.*
19 *Barclays Capital, Inc.*, 743 F. App’x 780, 783 (9th Cir. 2018).

20 **B. No Actual Reliance.**

21 Actual reliance means a misrepresentation substantially influenced a
22 plaintiff’s decision to act. *Whiteley v. Philip Morris Inc.*, 117 Cal. App. 4th 635,
23 678 (2004). Actual reliance is judged subjectively given “a plaintiff’s particular
24 knowledge and experience.” *Hoffman*, 228 Cal. App. 4th at 1194. According to
25 Huntsman, he relied on the initial statement by President Hinckley and it, along with
26 the other identified statements, affected his decision whether to pay tithing each
27 year. (SUF 127.) This is an advocate’s afterthought. For more than two decades,
28 Huntsman’s devout faith in the Church led him to make tithing contributions.

1 (SUF 62-81.) Indeed, Huntsman’s tithing contributions began upon the completion
 2 of his missionary service in 1993, where he taught that tithing was a commandment
 3 from God and those who paid tithing would receive blessings from God. (SUF 84.)
 4 When Huntsman began making his tithing contributions in 1993, it was two years
 5 after President Hinckley announced in 1991 that the Church would set aside a
 6 portion of contributions to build a reserve. (SUF 62.) Huntsman’s tithing
 7 contributions continued unabated for more than two decades, only ending in 2015
 8 for reasons entirely unrelated to City Creek. (SUF 62-81, 85-87.) And when
 9 Huntsman resigned his membership in the Church in 2020—after the *Washington*
 10 *Post* document surfaced in 2019 on which he bases his claim—he did so because he
 11 stopped believing in the Church’s teachings, practices, and doctrine, citing primarily
 12 a non-tithing issue. (SUF88.) Measured against this factual backdrop, there is no
 13 triable issue on Huntsman’s actual reliance.

14 **C. *No Reasonable Reliance.***

15 Reasonable reliance means “(1) the matter was material in the sense that a
 16 reasonable person would find it important in determining how he or she would act;
 17 and (2) it was reasonable for the plaintiff to have relied on the misrepresentation.”
 18 *Hoffman*, 228 Cal. App. 4th at 1194 (citations omitted). Like actual reliance,
 19 reasonable reliance “is judged subjectively given a plaintiff’s particular knowledge
 20 and experience.” *Id.* A plaintiff cannot recover on a fraud claim when his conduct
 21 is unreasonable in light of his own intelligence and information. *Id.*

22 Here, Huntsman’s purported reliance is unreasonable. Huntsman’s family
 23 background and his service in Church leadership positions provided him with a
 24 certain level of sophistication about the Church. (SUF 51-61.) Huntsman was
 25 aware of several of the Church’s largest investments and even wondered where the
 26 money came from to fund these investments, but never inquired. (SUF 89-94.)
 27 Huntsman began making tithing contributions in 1993 after President Hinckley
 28 referenced the setting aside of funds for a rainy day in 1991—financed in part with

1 contributions—to make investments for the Church’s benefit. (SUF 62.) Taking all
2 of this together, it is unreasonable to conclude that Huntsman relied on the five
3 alleged misrepresentations when he was making his tithing contributions. *Oracle*
4 *Corp. v. Warranty Corp. of Am.*, 2005 WL 226163, at *3 (N.D. Cal. Jan. 28, 2005)
5 (finding that plaintiff’s reliance on misrepresentation was not objectively
6 reasonable).

7 For all of these reasons, Huntsman cannot establish reliance and his claim
8 fails for this reason, which is another reason to grant summary judgment.

9 **III. THE FIRST AMENDMENT PROHIBITS HUNTSMAN’S CLAIM**

10 Finally, Huntsman’s claim is independently barred by the First Amendment.
11 As Huntsman admitted in his deposition, his complaint is focused on the source of
12 funds used for City Creek. (SUF 95.) Yet that complaint remains littered with
13 references to the use of Church funds for what he calls “purely commercial”
14 endeavors. (Compl. ¶¶ 2, 29, 34, 35.) In other words, Huntsman is implicitly
15 asking the Court to second-guess the Church’s ecclesiastical priorities and to
16 endorse his own view on how the Church should spend and invest its donations.
17 (*Id.*) The First Amendment bars any such claim.

18 For 150 years, the Supreme Court has held that, under the First Amendment,
19 courts possess “no jurisdiction” to decide any matter that is “ecclesiastical in its
20 character.” *Watson v. Jones*, 80 U.S. 679, 733 (1871). Such questions include
21 “matters of church government as well as those of faith and doctrine.” *Kedroff v.*
22 *Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S.
23 94, 116 (1952). And on all such matters of ecclesiastical governance, courts must
24 defer to the judgments of religious organizations and their duly constituted
25 authorities. *See Serbian E. Orthodox Diocese for U. S. of Am. & Canada v.*
26 *Milivojevich*, 426 U.S. 696, 709 (1976).

27 Applying these principles, courts across the country have consistently held
28 that civil courts lack jurisdiction under the First Amendment to resolve complaints

1 about the use of church funds—that such ecclesiastical questions are beyond judicial
 2 review.⁵ As one court put it: “How a church spends worshippers’ contributions” is
 3 “central to the exercise of religion.” *Ambellu v. Re’ese Adbarat Debre Selam Kidist*
 4 *Mariam*, 387 F. Supp. 3d 71, 80 (D.D.C. 2019). That common-sense principle
 5 governs here.

6 Huntsman’s claim is strikingly similar to the claim rejected in *Wolter v.*
 7 *Delgatto*, 2006 WL 664214 (Tex. App. 2006). The plaintiff there accused her
 8 church of conversion and misuse of donated funds in connection with a development
 9 project, arguing that the First Amendment did not bar her claim because it involved
 10 financial and not doctrinal matters. The court disagreed, rejecting plaintiff’s attempt
 11 to frame her claims “in civil terms” and explaining that the case concerned whether
 12 the church followed its own constitution when it became involved with a housing
 13 and urban development project. *Id.* at *2. The court thus concluded that her claims,
 14 “viewed substantively and considering the effect of their resolution by a civil court,
 15 relate to how and when [the church] may spend its resources and are thus
 16 ecclesiastical in nature.” *Id.* So too here.

17 As courts have held, a “determination of whether [the church’s] financial
 18 expenditures were proper ... requires an inquiry into whether the expenditures were
 19 justified in light of [the church’s] religious doctrines and practices”—just “the type
 20 of ecclesiastical inquiry courts are forbidden to make.” *In re Godwin*, 293 S.W.3d
 21 at 750. The complaint here questions the legitimacy of the Church’s religious
 22 beliefs and the truthfulness of the prophecies and revelations on which they are
 23

24 _____
 25 ⁵ See, e.g., *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 329 (4th Cir. 1997);
 26 *Ambellu*, 387 F. Supp. 3d at 80; *In re Godwin*, 293 S.W.3d 742, 750 (Tex. App.
 27 2009); *Harris v. Matthews*, 361 N.C. 265, 273 (2007); *Hawthorne v. Couch*,
 28 911 So. 2d 907, 910 (La. App. 2 Cir. 2005); *El Pescador Church, Inc. v. Ferrero*,
 594 S.W.3d 645, 658 (Tex. App. 2019); *Nunn v. Black*, 506 F. Supp. 444, 446
 (W.D. Va. 1981).

1 based. (Compl. ¶¶ 2, 6.) But as President Hinckley explained, Church leaders felt
 2 they had “a compelling responsibility to protect the environment of the Salt Lake
 3 Temple”—one of the Church’s holiest sites. (SUF 107). That is exactly the type of
 4 ecclesiastical decision-making that the First Amendment is designed to protect. *See*
 5 *also The Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith of*
 6 *Washington D.C. v. Beards*, 680 A.2d 419, 429 (D.C. App. 1996) (“[A] church’s
 7 financial regime, including any required reports to members, necessarily reflects an
 8 array of decisions about a member’s obligation to pledge funds, and about the
 9 leaders’ corresponding responsibility to account for those funds, that a civil court
 10 cannot arbitrate without entangling itself in doctrinal interpretations[.]”); *Hobbie v.*
 11 *Unemployment Appeals Com’n of Florida*, 480 U.S. 136, 144 n.9 (1987) (“In
 12 applying the Free Exercise Clause, courts may not inquire into the truth, validity, or
 13 reasonableness of a claimant’s religious beliefs.”); *Kedroff*, 344 U.S. at 116.⁶

14 More specifically, under these unique facts, this Court could not address
 15 issues relating to the Church’s alleged intent to defraud or Huntsman’s actual or
 16 justifiable reliance without first adjudicating the nature and status of Church
 17 doctrine and practice in light of its sacred religious history. This case does not
 18 involve a preacher’s one-time pitch to contribute money to local flood victims,
 19 where the money was actually spent on the preacher’s new office or vacation home.
 20 Tithing, by contrast, is a deeply engrained, longstanding Church doctrine and
 21 practice with a sacred history going back to the 1830s and indeed millennia earlier.
 22 The heart of Huntsman’s claim is that President Hinckley changed that doctrine and
 23

24 _____
 25 ⁶ As with Huntsman, any believer’s “[r]eligious behavior change induced by the
 26 mystery of faith cannot be proved or disproved” in a court of law, “which limits its
 27 scope of inquiry to tangible, rational and logical phenomena, comprehensible and
 28 explainable by human reasons.” *Molko v. Holy Spirit Assn.*, 46 Cal. 3d 1092, 1138
 (1988) (superseded by statute on other grounds) (Anderson, J., concurring and
 dissenting).

1 practice—and that he relied on that change—with a single statement whose
2 interpretation is hotly contested. We have shown that his statement was true—that
3 no tithing money went to the City Creek project—and thus that the fraud claim
4 necessarily fails without the need to address First Amendment issues. But if this
5 Court believes there is a disputed issue on that point and a potentially viable fraud
6 claim exists, the First Amendment bars any further adjudication because it would
7 require the Court to determine whether a true change to Church doctrine and
8 religious practice—one that both bound the Church’s future actions and one on
9 which Huntsman had reasonably relied as a faithful Church member—had indeed
10 been made.

11 For well over a century and a half, Church leaders had always had the
12 ecclesiastical authority to use member contributions as they felt inspired to advance
13 the religious mission and interests of the Church, its members, and the community.
14 Did President Hinckley suddenly abdicate that ecclesiastical authority? Was it
15 reasonable for a member like Huntsman to believe such a momentous religious
16 change had occurred? These questions are unavoidably entangled with questions of
17 religious doctrine, polity, practice, and history. Because the First Amendment
18 prohibits the Court from inquiring into such doctrinal and ecclesiastical matters—
19 even through the process of discovery—Huntsman’s claim cannot proceed. *See*
20 *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 958 (9th Cir. 2004) (finding that
21 the First Amendment prohibits an “evaluation of religious doctrine or the
22 reasonableness of the religious practices followed within the [religious institution].”)
23 (citations omitted); *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502
24 (1979) (declining to extend labor laws to Catholic parochial schools because even
25 “the very process of inquiry” regarding compliance with the law “may impinge on
26 rights guaranteed by the Religion Clauses” of the First Amendment).

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CONCLUSION

The challenged statements attributed to the Church were true; Huntsman cannot establish reliance; and his fraud claim will run afoul of the First Amendment. Accordingly, the Church’s motion for summary judgment should be granted.

Dated: August 9, 2021

LARSON LLP

By: /s/ Rick Richmond

Rick Richmond
Matthew S. Manacek
Timothy C. Tanner
Troy S. Tessem

Attorneys for Defendant
THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS

