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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
October 1, 2025
Christopher M. Wolpert
Clerk of Court

LAURA A. GADDY, et al.,
Plaintiffs - Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole,
Defendant - Appellee,

and

DOES 1-50,
Defendants.

GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, et al.,
Amici Curiae.

No. 23-4110

(D.C. No. 2:19-CV-00554-RJS)
(D. Utah)

ORDER

Before **HARTZ**, **PHILLIPS**, and **EID**, Circuit Judges.

This matter is before the court on Candice Kulbeth's motion for leave to file an amicus brief and on Appellant's petition for rehearing.

The motion for leave to file an amicus brief is granted. The clerk shall file the brief as of the date received.

Appellants' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX B

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
August 26, 2025
Christopher M. Wolpert
Clerk of Court

LAURA A. GADDY; LYLE D. SMALL; LEANNE R. HARRIS, individually and on behalf of all others similarly situated,
Plaintiffs - Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole,
Defendant - Appellee,

and

DOES 1-50,
Defendants.

GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS; NATIONAL ASSOCIATION OF EVANGELICALS; JEWISH COALITION FOR RELIGIOUS LIBERTY; BECKET FUND FOR RELIGIOUS LIBERTY,
Amici Curiae.

No. 23-4110

Appeal from the United States District Court for the District of Utah (D.C. No. 2:19-CV-00554-RJS)

Kay Burningham, Salt Lake City, Utah, for Plaintiffs-Appellants.

David J. Jordan, Foley & Lardner LLP, Salt Lake City, Utah (Wesley F. Harward, Foley & Lardner LLP, Salt Lake City, Utah, with him on the briefs), for Defendant-Appellee.

Gene C. Shaerr, Shaerr Jaffe LLP, Washington, D.C. (James C. Phillips and Justin A. Miller, Shaerr Jaffe LLP, Washington, D.C., with him on the brief), for Amici Curiae, General Conference of Seventh-Day Adventists, National Association of Evangelicals, and Jewish Coalition for Religious Liberty in support of Defendant-Appellee.

Noel J. Francisco, and David T. Raimer, Jones Day, Washington, D.C.; Eric C. Rassbach, The Hugh and Hazel Darling Foundation Religious Liberty Clinic, Pepperdine University School of Law, Malibu, California; and Samuel V. Lioi, Jones Day, Cleveland,

Ohio, filed a brief for Amicus Curiae, The Becket Fund for Religious Liberty, in support of Defendant-Appellee.

Before **HARTZ**, **PHILLIPS**, and **EID**, Circuit Judges.

EID, Circuit Judge.

Plaintiffs Laura Gaddy, Lyle D. Small, and Leanne R. Harris are each former members of the Church of Jesus Christ of Latter-Day Saints. They filed a putative class action lawsuit against the Church's religious corporation, Defendant Corporation of the President of the Church of Jesus Christ of Latter-Day Saints.[1] As relevant to this appeal, Plaintiffs asserted a claim pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961–1968, under two distinct theories. First, Plaintiffs base their RICO claim on the Church's alleged fraudulent misrepresentations about its history that its leaders allegedly do not sincerely believe. Second, Plaintiffs base their RICO claim on the Church's alleged fraudulent use of tithing payments. Below, the district court granted the Church's Federal Rule of Civil Procedure 12(b)(6) motion to dismiss Plaintiffs' second amended complaint based in part on the church autonomy doctrine and in part on a failure to sufficiently state the indictable acts underlying the civil RICO claim.

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[1] In this opinion, both the Church of Jesus Christ of Latter-Day Saints itself and Defendant Corporation of the President of the Church of Jesus Christ of Latter- Day Saints are referred to as "the Church."

We affirm. We hold that the church autonomy doctrine bars Plaintiffs' first RICO theory, because it improperly requires adjudication of ecclesiastical questions, namely, the truth or falsity of religious beliefs. On Plaintiffs' second RICO theory, we need not decide whether the church autonomy doctrine applies, because Plaintiffs' complaint fails to adequately allege the requisite causal link between the Church's alleged misstatements about how it would use tithes and the Plaintiffs' alleged injury.

I.

Gaddy, Small, and Harris spent much of their lives dedicating themselves and paying tithing payments to the Church of Jesus Christ of Latter-Day Saints. That all changed when the three discovered what they believed to be misrepresentations of the Church's history.

Following that revelation, in 2019, Gaddy filed a putative class action lawsuit on the theory that the Church intentionally misrepresents its history to induce membership. She brought six causes of action primarily based on three alleged misrepresentations involving: (1) the "First Vision," when the Church's founding prophet Joseph Smith saw God and Jesus Christ; (2) the origins of the Church's scripture, the Book of Mormon; and (3) the translation of another text, the Book of Abraham.[2] App'x Vol. IV at 239.

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[2] The six causes of action included: (1) common law fraud, (2) fraudulent inducement, (3) fraudulent concealment, (4) civil

The Church moved to dismiss. The district court granted the Church's motion and dismissed the complaint without prejudice, concluding that the Free Exercise and Establishment Clauses of the First Amendment (the "Religion Clauses") barred each of Gaddy's claims. Specifically, the district court relied on the long line of Supreme Court and Tenth Circuit precedent recognizing the church autonomy doctrine, which provides that churches have a "fundamental right" to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 241–42 (emphasis deleted) (quoting *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 656 (10th Cir. 2002)). Because the "falsity of religious beliefs was an essential element of each claim as pleaded," the district court held that the Religion Clauses required dismissal of Gaddy's complaint. *Id.* at 242.

Later in 2020, Gaddy filed her first amended complaint. Much of the complaint repeated what she had already alleged. However, among other things, she added new factual allegations related to locations of certain events in the Book of Mormon, the Church's history with polygamy, Joseph Smith's personal history, and the use of tithing funds. She also claimed that the Church committed common law fraud because its own leaders do not sincerely believe the versions of the Church's history, founding, and doctrines the Church teaches its members. In addition, Gaddy

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RICO (18 U.S.C. § 1962(c)), (5) intentional infliction of emotional distress, and (6) breach of fiduciary duty.

claimed that the Church falsely assures that tithing funds are used only for "Church expenses and humanitarian aid" and not other purposes, such as developing a for-profit commercial mall. *Id.* at 246 (quoting App'x Vol. I at 127).

Again, the Church moved to dismiss Gaddy's complaint. This time, however, the district court partially granted and partially denied the motion. The court dismissed the amended complaint to the extent it involved claims about the First Vision and the Books of Mormon and Abraham—claims the court had already rejected in its first order. And the court stated that the new facts about religious locations and polygamy would not allow Gaddy to circumvent the Religion Clauses, because the facts still required an impermissible adjudication of the truth or falsity of certain statements concerning the Church's religious beliefs.

Although dismissing many of her claims, the court allowed Gaddy's civil RICO claim to survive to the extent it was based on her new tithing theory. The court reasoned that the tithing theory was based on a "secular dispute" because it did not require examination of the veracity of the Church's beliefs on tithing. *Id.* at 252. Rather, the claim, according to the district court, required examination of the Church's specific statements concerning what its representatives said the tithing would pay for.

Gaddy did not proceed to discovery on her surviving RICO claim. Instead, in 2021, Small and Harris joined Gaddy, and together, they filed a second

amended complaint that spans 203 pages with 555 paragraphs. Aside from duplicating many of the claims, theories, and allegations of the prior pleadings, the revised complaint brought two new causes of action that relied on the same alleged misrepresentations. Other than those additions, Plaintiffs expanded on the facts and claims alleged "in almost encyclopedic detail—using tables, charts, artwork, and translation comparisons." *Id.* at 253.

For a third time, the Church filed a motion to dismiss.[3] And this time, the district court granted the motion to dismiss in full. Relying on the church autonomy doctrine, the court began by rejecting each of Plaintiffs' fraud-based claims aimed toward the Church's teachings and representations about the First Vision, translations of the Books of Mormon and Abraham, locations of events in the Book of Mormon, Church history, and Joseph Smith's personal history. As pertinent to this appeal, this doomed Plaintiffs' RICO claim to the extent it rested on alleged fraud pertaining to those matters.

Next, as relevant here, the court rejected Plaintiffs' RICO claim to the extent it was based on the alleged fraudulent use of tithing payments. On the tithing theory, the court found that Plaintiffs failed to

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[3] Before the district court could rule on the Church's motion to dismiss the second amended complaint, Plaintiffs also moved the court for leave to file a third amended complaint. The court denied the motion because amendment "would be futile and cause significant prejudice to the Church." App'x Vol. IV at 290–91.

sufficiently plead "a pattern of predicate acts" as a necessary element of their RICO claim. *Id.* at 284. The court reasoned that Plaintiffs failed "to allege even a single actionable instance of fraud, let alone two, because they do not allege any specific instances in which Plaintiffs relied on the Church's representations concerning tithing." *Id.*

Plaintiffs timely appealed.

II.

We review the district court's grant of a Rule 12(b)(6) motion to dismiss de novo. *Mocek v. City of Albuquerque*, 813 F.3d 912, 921 (10th Cir. 2015). We can affirm the district court's dismissal on any ground sufficiently supported by the record. *GF Gaming Corp. v. City of Black Hawk*, 405 F.3d 876, 882 (10th Cir. 2005).

Our "function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Sutton v. Utah State Sch. for Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999) (quotation omitted). At the Rule 12(b)(6) stage, "we must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Thomas v. Kaven*, 765 F.3d 1183, 1190 (10th Cir. 2014) (quotation omitted). But we need not accept as true a complaint's conclusory allegations, unwarranted inferences, or legal conclusions. *Mitchell v. King*, 537 F.2d 385, 386

(10th Cir. 1976); *Ryan v. Scoggin*, 245 F.2d 54, 57 (10th Cir. 1957).

Federal Rule of Civil Procedure 8(a)(2) sets out the general pleading standard, requiring a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." To meet this standard, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679.

Where a complaint alleges fraud, Federal Rule of Civil Procedure 9(b)'s pleading standard layers over Rule 8(a)(2)'s. In relevant part, Rule 9(b) provides: "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). This language requires a complaint alleging fraud to "set forth the time, place and contents of the false representation, the identity of the party making the false statements and the consequences thereof." *George v. Urb. Settlement Servs.*, 833 F.3d 1242, 1254 (10th Cir. 2016) (quotation

omitted).

III.

Plaintiffs appeal the district court's grant of the Church's Rule 12(b)(6) motion to dismiss Plaintiffs' civil RICO claim. Plaintiffs appeal the dismissal of their RICO claim based on two distinct theories of liability—one on fraudulent misrepresentations regarding the Church's history and another on the Church's fraudulent misuse of tithing payments.

To state a civil RICO claim, a plaintiff must adequately plead that (1) the defendant violated the RICO statute and (2) the plaintiff was injured "by reason of" that violation. 18 U.S.C. §§ 1962, 1964(c); *see Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 881 (10th Cir. 2017). A defendant violates the RICO statute when the defendant (1) invests in, controls, or participates in the conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity. *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006) (citing 18 U.S.C. § 1962(a), (b), & (c)). "Racketeering activity" is defined by statute to include indictable acts of mail and wire fraud as prohibited under 18 U.S.C. §§ 1341 and 1343, respectively. 18 U.S.C. § 1961(1)(B). "These underlying acts are referred to as predicate acts." *Tal*, 453 F.3d at 1261 (internal quotation mark omitted).

The predicate acts Plaintiffs allege here include mail and wire fraud. To sufficiently state a RICO claim based on mail and wire fraud, a plaintiff "must plausibly allege [1] 'the existence of a scheme or artifice to defraud or obtain money or property by false

pretenses, representations or promises,' and [2] that [the defendant] communicated, or caused communications to occur, through the U.S. mail or interstate wires to execute that fraudulent scheme." *George*, 833 F.3d at 1254 (quoting *Tal*, 453 F.3d at 1263).

As it did below, the Church seeks to interpose the church autonomy doctrine as a defense on both of Plaintiffs' RICO theories. The district court held that the church autonomy doctrine applied as to one of the theories.

The church autonomy doctrine "prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity." *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 655 (10th Cir. 2002) (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116–17 (1952)). The doctrine is rooted in the First Amendment's Religion Clauses,[4] *id.*, which together protect "the right of religious institutions 'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine,'" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020) (quoting *Kedroff*, 344 U.S. at 116), and "to discuss church doctrine and policy freely . . . with members and non-members," *Bryce*, 289 F.3d at 658.

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[4] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.

The church autonomy doctrine's protections can manifest in many ways. For example, the doctrine prevents courts and juries from "engag[ing] in the forbidden process of interpreting and weighing church doctrine." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969). Relatedly, the First Amendment precludes a court or a jury from "enter[ing] [the] forbidden domain" of inquiring into "the truth or verity of [ ] religious doctrines or beliefs." *United States v. Ballard*, 322 U.S. 78, 86–87 (1944); *see Van Schaick v. Church of Scientology of California, Inc.*, 535 F. Supp. 1125, 1142–43 (D. Mass. 1982). And as we held in *Bryce*, the church autonomy doctrine bars the imposition of civil liability based solely on the substance of ecclesiastical discussions between and among church leaders and members—there, statements regarding an internal church personnel matter and the doctrinal reasons for a proposed personnel decision, in the context of an internal church dialogue. 289 F.3d at 658–59.

"The church autonomy doctrine is not without limits, however." *Id.* at 657. The doctrine "does not apply to purely secular decisions, even when made by churches." *Id.* To ascertain whether challenged actions are "ecclesiastical or secular," we assess "whether the alleged misconduct is 'rooted in religious belief.'" *Id.* (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)). Put differently, to determine whether the doctrine is implicated as to a given claim, we must determine whether the dispute is, at bottom, "an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law," or a "purely secular

[one] between third parties and a particular defendant, albeit a religiously affiliated organization." *Id.* (quoting *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 331 (4th Cir. 1997)). This analysis "may present a most delicate question." *Yoder*, 406 U.S. at 215.

If the alleged misconduct is rooted in religious belief, then the conduct has "the protection of the Religion Clauses." *Id.* The church autonomy doctrine then kicks in as an affirmative defense to such a religiously rooted claim, and the claim fails. *See Bryce*, 289 F.3d at 654 ("If the church autonomy doctrine applies to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted."); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 195 n.4 (2012) (holding that the "ministerial exception" "operates as an affirmative defense to an otherwise cognizable claim"); *cf. Our Lady of Guadalupe*, 591 U.S. at 747 (conceptualizing the ministerial exception as a subset of "the general principle of church autonomy").[5] Conversely, if the alleged misconduct is *not* rooted in religious belief—such as where the challenged choice is "philosophical and personal rather than religious," or is "merely a matter of personal preference" and not "one of deep religious conviction, shared by an organized group," *Yoder*, 406 U.S. at 216—then the

[5] Because the church autonomy doctrine is an affirmative defense, the defense can only lie at the pleading stage where the factual basis for the defense "appears plainly on the face of the complaint itself." *Miller v. Shell Oil Co.*, 345 F.2d 891, 893 (10th Cir. 1965).

"purely secular" claim will survive the interposition of a church autonomy doctrine defense. *See Bryce*, 289 F.3d at 657.

With these standards in mind, we turn to the sufficiency of Plaintiffs' RICO claim. We analyze each of the two RICO theories—the (A) fraudulent misrepresentations of history theory and (B) fraudulent misuse of tithes theory—in turn.

A.

On their fraudulent misrepresentations RICO theory, Plaintiffs make several attacks on the factual accuracy of what the Church teaches its members. Plaintiffs claim that key historical events for the religion occurred differently than how the Church describes them canonically. Allegedly, by preaching false statements about its own history, the Church engaged in a "pattern of racketeering." And Plaintiffs add that the Church has hid some of its own history that would reveal alleged inconsistencies in the historical narrative. Had Plaintiffs known of these alleged misrepresentations, they say, they would not have committed to the Church.

As a representative example of these alleged misrepresentations—the example on which Plaintiffs focused at oral argument—Plaintiffs argue that the Church provided a false account of the translation of the Book of Mormon. The Church teaches that founding prophet Joseph Smith translated the Book of Mormon from gold plates with the help of God. Specifically, the Church teaches that the Book of

Mormon is a translation of scripture originally inscribed on gold plates in reformed Egyptian by ancient prophets. The Church instructs that an angel spoke to Smith and told him where to find the gold plates. And, particularly relevant to Plaintiffs' claim, the Church teaches that Smith translated the reformed Egyptian on the gold plates while looking at the plates through spectacles consisting of two transparent (or translucent) stones called "Urim and Thummim," "divine instrumentalities." App'x Vol. III at 77–78.

Plaintiffs allege that Smith did not use gold plates or spectacles to create the Book of Mormon. Instead, they allege that Smith dictated the Book of Mormon while looking at an opaque "brown seer stone" that was placed in a hat, while the gold plates were covered and not in Smith's view. *Id.* at 65, 78–79. Plaintiffs further allege that the Church has had the brown seer stone in its possession for over a century but concealed and denied the stone's existence from the public until recently. The concealment of the seer stone, Plaintiffs argue, was part of a concerted effort by the Church to conceal evidence of "what really happened." Oral Arg. Audio at 10:11–16; *see* Aplt. Br. at 26.

Ultimately, Plaintiffs want to hold the Church liable for teaching core beliefs that do not align with what Plaintiffs believe to be the historical truths of the religion. As Plaintiffs' counsel summarized the theory at oral argument, "what [the Church] had taught for decades was not true . . . . If we say that these are the correlated true facts about the Church and the history, and they're not, that's fraud." Oral Arg. Audio at

5:19–24, 6:22–32.

We conclude that the church autonomy doctrine applies to Plaintiffs' allegations about the Church's alleged misrepresentations and omissions about its history, because the dispute about the accuracy of the Church's representations is ecclesiastical, not "purely secular." *See Bryce*, 289 F.3d at 657. The misconduct alleged here—teaching Church members facts underlying and informing their religious beliefs in a way Plaintiffs say is incorrect—is religiously rooted, relating to core issues of faith. *See id.* (stating that a "dispute . . . about . . . faith" "is an ecclesiastical one" (quoting *Bell*, 126 F.3d at 331)). And Plaintiffs' allegations require a court to dive into deeply religious waters to assess whether foundational events for a religion occurred the way the religion teaches. In other words, Plaintiffs' theory hinges on the favorable resolution of "questions concerning the truth or falsity of [ ] religious beliefs," questions which civil courts and juries are incapable of, and precluded from, answering. *See Ballard*, 322 U.S. at 86–88. As the district court aptly explained in its first order, a court "can no more determine whether Joseph Smith . . . translated with God's help gold plates . . . , than it can opine on whether Jesus Christ walked on water or Muhammed communed with the archangel Gabriel." App'x Vol. I at 115. We must decline Plaintiffs' invitation to "enter [the] forbidden domain" of assessing the "truth or falsity" of religious beliefs and doctrine.[6] *See Ballard*,

[6] At oral argument, there was some suggestion that Plaintiffs' theory hinged not on the falsity of the Church's original

322 U.S. at 87.

Plaintiffs resist on four main grounds. None convinces.

First, Plaintiffs contend that the First Amendment only prohibits the adjudication of religious "beliefs," and they only seek to challenge religious "facts." *See* Aplt. Br. at 23–26. As far as we can tell, no court has adopted Plaintiffs' proposed belief–versus–fact reviewability dichotomy. That is likely so because the distinction is one without a meaningful difference in cases such as this. When it comes to religious claims about historical events, "facts" and "beliefs" are inextricably intertwined. *See* Christopher C. Lund, *Rethinking the "Religious-Question" Doctrine*, 41 Pepp. L. Rev. 1013, 1016 & n.16 (2014) (explaining that when religions "make theological claims about history," "theological and

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teachings, but just on the fact that there were accepted alternative versions of those events, and evidence to that effect was concealed. Even assuming *dubitante* that the complaint manages at the margins to forward this theory in a way that does not at all turn on the truth or falsity of any religious beliefs (the Church's canonical version or Plaintiffs' versions), *but see* Aplt. Br. at 21–26 (framing, consistently, the theory as one turning on the Church's original representations being false), we would still hold that such a theory is barred by the church autonomy doctrine. The dispute—now about how much the Church should have emphasized certain religious historical facts as part of its canon—still is not "purely secular." *See Bryce*, 289 F.3d at 657. This theory ultimately asks a court or jury to impart liability based on the substance of ecclesiastical discussions between church leaders and members, something the church autonomy doctrine serves to prevent. *See id.* at 657–58.

metaphysical questions" (questions of belief) and "temporal and empirical questions" (questions of secular fact) "inevitably overlap"). In that sense, Plaintiffs cannot plausibly say that the resurrection of Jesus Christ and the appearance of an angel to Muhammed are *only* religious facts and not *also* religious beliefs. These sorts of disputes regarding ecclesiastical claims about history cannot be adjudicated in civil, secular court. *Cf. Nayak v. MCA, Inc.*, 911 F.2d 1082, 1083 (5th Cir. 1990) (holding that a plaintiff could not bring a defamation suit claiming that the film *The Last Temptation of Christ* made false historical claims about Jesus Christ, because the court would have "to decide the 'correct' interpretation of the life of Christ"). As alleged in this case, the church autonomy doctrine applies with equal force to the challenged religious facts that the Church teaches its members.

Second, Plaintiffs argue that the Church must prove that it is "sincere" about its religious beliefs and teachings before the church autonomy doctrine applies. In the context presented here, we disagree. True, there is a difference between whether a belief is true and whether one truly believes it, both logically and in terms of civil court reviewability. *See United States v. Seeger*, 380 U.S. 163, 185 (1965). And generally, a party invoking their rights under the Religion Clauses must establish *both* that their beliefs are religious *and* that their beliefs are sincerely held. *See, e.g.*, *id.* (discussing this in the context of conscientious objectors to military service); *Mosier v. Maynard*, 937 F.2d 1521, 1526 (10th Cir. 1991) (discussing this in the context of a prisoner seeking accommodations). But

given the nature of Plaintiffs' RICO theory, the Church's sincerity is of no moment.

Where, as here, a fraud claim rests entirely on a representation of religious doctrine or belief, the functional relevance of the representor's sincerity falls away. A plaintiff alleging fraud must ultimately prove that a representation is false. *See George*, 833 F.3d at 1254; *Tal*, 453 F.3d at 1263. But, again, the truth or falsity of religious doctrine or beliefs is beyond the proper purview of secular courts and juries. *See, e.g.*, *Ballard*, 322 U.S. at 86–88. So even if the Church's leaders did not sincerely believe the religious teachings at issue here, the district court could not find for Plaintiffs on the indispensable element of their claim that those teachings are factually false (and/or that factually accurate versions of those teachings were suppressed). *See Ballard v. United States*, 329 U.S. 187, 196–97 (1946) (Jackson, J., concurring) ("[The federal criminal mail fraud statute] requires . . . a provably false representation in addition to knowledge of its falsity to make criminal mail fraud. Since the trial court is not allowed to make both findings, the indictment should be dismissed."); *Tilton v. Marshall*, 925 S.W.2d 672, 679 (Tex. 1996) ("[B]ecause the truth or falsity of a religious representation is beyond the scope of judicial inquiry, the sincerity of the person making such a representation is irrelevant when the religious representation forms the basis of a fraud claim. Whether the statement of religious doctrine or belief is made honestly or in bad faith is of no moment, because falsity cannot be proved."). Therefore, the church autonomy doctrine will apply to and bar Plaintiffs' fraudulent misrepresentations theory

regardless of the Church's sincerity in making the challenged representations.

Third, Plaintiffs advance two related arguments to contend more broadly that the church autonomy doctrine should never apply in the context of fraud claims. They first argue that "given the state's interest in protecting the public against fraud, [the Church's] conduct should not be exempt from neutral fraud laws due to the [church autonomy doctrine]." Aplt. Br. at 31. This argument echoes in the Supreme Court's holding in *Employment Division v. Smith*, where the Court held that laws incidentally burdening individuals' religious practices need not satisfy strict scrutiny if the laws are neutral and generally applicable. 494 U.S. 872, 879 (1990). But as we explained in *Bryce*, *Smith*'s rule addresses the religious rights of individuals, whereas the church autonomy doctrine protects the rights of religious institutions. *Bryce*, 289 F.3d at 656–57. We thus held that "the church autonomy doctrine remains viable after *Smith*." *Id.* at 657; *see also Hosanna-Tabor*, 565 U.S. at 189–90 (holding that *Smith* did not preclude recognition of the ministerial exception, because "*Smith* involved government regulation of only outward physical acts," but *Hosanna-Tabor*, "in contrast, concern[ed] government interference with an internal church decision that affects the faith and mission of the church itself"). Hence, we conclude that the neutrality and general applicability of fraud laws do not thwart the church autonomy doctrine's application here.

Moreover, on these facts, the interest in fraud alone cannot carry the day. As the Supreme Court has

long recognized, the values underlying the Religion Clauses "have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance." *Yoder*, 406 U.S. at 214. Even though society has an interest in protecting against fraud, the Court has held that the Religion Clauses, and the values underlying them, take priority when the two conflict in the unique way they do here. *See Ballard*, 322 U.S. at 86–88 (precluding jury from assessing "truth or falsity" of religious doctrine or beliefs in mail fraud prosecution).

Plaintiffs next argue that the Supreme Court "has historically exempted fraudulent conduct" from protection under the church autonomy doctrine, leaning on language in the Supreme Court's decision in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). Aplt. Br. at 32. True, nearly a century ago, the Court in *Gonzalez* stated that the Religion Clauses insulate against secular court review of "purely ecclesiastical" matters "[i]n the absence of fraud, collusion, or arbitrariness." 280 U.S. at 16. But in *Serbian Eastern Orthodox Diocese of United States and Canada v. Milivojevich*, 426 U.S. 696 (1976), the Court explained that *Gonzalez*'s "suggested 'fraud, collusion, or arbitrariness' exception" to the church autonomy doctrine "was dictum only." 426 U.S. at 712. "And although references to the suggested exceptions appear[ed] in opinions" after *Gonzalez*, "no decision of th[e] Court ha[d] given concrete content to or applied the 'exception.'" *Id. Milivojevich* went on to address the "arbitrariness" prong of that dictum and held that the Constitution did not permit such an exception, because such an exception would "inherently entail inquiry

into" religious matters and thus "undermine the general rule that religious controversies are not the proper subject of civil court inquiry." *Id.* at 713.

Milivojevich had no occasion to expressly decide "whether or not there is room for marginal civil court review under the narrow rubrics of 'fraud' or 'collusion'" where churches "act in bad faith for secular purposes." *Id.* (some internal quotation marks omitted). Since *Milivojevich*, the Supreme Court has not applied or shined any more light on potential fraud or collusion exceptions.[7] Additionally, after *Gonzalez*, the Supreme Court held in the criminal fraud context that the First Amendment prevents court and jury adjudication of the alleged falsity of religious beliefs. *See Ballard*, 322 U.S. at 86–88.

Whatever might be left of *Gonzalez*'s dictum vis-à-vis a fraud exception, we decline Plaintiffs' invitation to afford it talismanic effect in this context. We are "bound by Supreme Court dicta *almost* as firmly as by the Court's outright holdings, particularly when the

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[7] The Court's only post-*Milivojevich* mention of a potential fraud exception in a merits case that we could locate came in a footnote in *Jones v. Wolf*, but that was only to say that the case there was not one that involved fraud. *See* 443 U.S. 595, 609 n.8 (1979). Yet another example of a "reference[] to the suggested exception[] appear[ing] in [an] opinion[]" that does not "give[] concrete content to or appl[y]" the purported exception. *See Milivojevich*, 426 U.S. at 712. And perhaps tellingly, there was no mention of any potential fraud exception in the Court's two most recent cases in the church autonomy space (in any opinion)—*Our Lady of Guadalupe*, 591 U.S. 732, and *Hosanna-Tabor*, 565 U.S. 171.

dicta is *recent* and *not enfeebled by later statements*." *Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996) (emphases added). *Gonzalez*'s dictum is neither. Indeed, *Ballard*'s square holding is that courts and juries cannot adjudicate religious truths, *see* 322 U.S. at 86–88, squarely proscribing review of an essential part of Plaintiffs' fraud theory here. *Gonzalez*'s dictum cannot control in this case.

Fourth and finally, Plaintiffs assert that because Church leaders did not secure Plaintiffs' "informed consent" before they joined the Church, the church autonomy doctrine cannot apply "since consent defines the limits of church autonomy." Aplt. Br. at 34. But Plaintiffs' argument that "[t]here was no informed consent" turns on their claim that the Church made "misrepresentations . . . about church origins" and history (because, the argument goes, if the Church had taught the "true" history, then Plaintiffs *would* have been fully informed). *Id.* (emphasis deleted). Again, these are disputes we cannot adjudicate. *See Ballard*, 322 U.S. at 86–88; *cf. Nayak*, 911 F.2d at 1083. Also, as one of the amici points out, precedent has not required *informed* consent. Rather, "the 'implied consent' of voluntary affiliation suffices in other contexts where the church autonomy doctrine applies." Becket Fund Amicus Br. at 26. As the Supreme Court has explained regarding religious associations:

> All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious

> bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.

Kedroff, 344 U.S. at 114–15 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729 (1871)).

For these reasons, to the extent Plaintiffs premise their RICO claim on a fraudulent misrepresentations of religious history theory, the church autonomy doctrine bars the claim.

B.

Plaintiffs' second RICO theory, its fraudulent misuse of tithing funds[8] theory, contains multitudes. Plaintiffs offer three separate sub-theories of liability in their operative complaint: (1) the Church represented that it would use tithing funds only for religious purposes, but used the funds for commercial purposes; (2) the Church made several fraudulent omissions about the commercial purposes for which it used tithing funds; and (3) the Church made affirmative representations that it would not use tithing payments for specific commercial projects, yet the Church did so anyway. By way of example, Plaintiffs' second, omissions sub-theory is based in part on alleged omissions about tithing payments being used to fund a firm called Ensign Peak Advisors

[8] As Plaintiffs allege, tithing funds are defined as donations to the Church totaling up to ten percent of a member's income. App'x Vol. III at 161.

and to bail out a company called Beneficial Life Insurance. And for their third sub-theory, Plaintiffs point to: (i) statements of the Church's former president, Gordon B. Hinckley, that tithing funds were not being used for the construction of City Creek Mall; (ii) two statements, printed in *Ensign Magazine* and the *Deseret News*, respectively, stating that no tithing funds were used for the development of the mall; (iii) a statement made by a Church representative to a Bloomberg Businessweek writer, that "not one penny of tithing goes to the Church's for-profit endeavors." App'x Vol. III at 113. Plaintiffs' theory is that they "would not have paid tithing had [they] known" the Church's true uses of those funds. *Id.* at 146, 149, 150.

We conclude that Plaintiffs have failed to plead sufficient facts to support a reasonable inference of causation between any of the challenged misrepresentations or omissions by the Church about how it would use tithing payments and the alleged harm Plaintiffs suffered. That renders Plaintiffs' second RICO theory, as alleged, implausible. As a result, we need not decide whether the church autonomy doctrine precludes the adjudication of this theory or the sub-theories.[9]

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[9] The en banc Ninth Circuit recently addressed a fraud case involving many of the same alleged misstatements about tithing at issue here, and the court affirmed the district court's grant of summary judgment to the Church. *See Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784 (9th Cir. 2025) (en banc). The majority of the en banc panel held that none of the statements amounted to a knowingly false representation of fact that could support a

The district court likewise concluded that none of these sub-theories survived Rule 12(b)(6) scrutiny, but the court arrived there differently. The court reasoned that "Plaintiffs fail[ed] to allege any single predicate act of mail or wire fraud because they fail to allege that they acted in reliance on any particular false statement in choosing to donate tithing." App'x Vol. IV at 286. The court explained that the second amended complaint did not "identify any instance in which [Plaintiffs] relied on a particular misrepresentation in choosing to pay tithing." *Id.* Instead, the court found that the operative complaint alleged only "in [a] conclusory manner" that Plaintiffs "would not have paid tithing" had they known certain things. *Id.* The court held that "[t]hese generalized allegations do not satisfy the heightened pleading standard imposed under Rule 9(b)." *Id.*

We agree with the district court that Plaintiffs

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fraudulent misrepresentation claim. *Id.* at 789–92. Its analysis did not "delve into matters of Church doctrine or policy," and so "the church autonomy doctrine ha[d] no bearing" on the majority's ruling. *Id.* at 792. Judge Bress, joined by three other judges, agreed with the majority but would have chosen to dispose of the appeal by first answering the church autonomy doctrine question and holding that the doctrine barred the claims. *Id.* at 792–800 (Bress, J., concurring in the judgment). Judge Bumatay went a step further, arguing that a court *must* first decide whether the church autonomy doctrine applies in a particular case because "the church autonomy doctrine operates as a limit on judicial authority itself." *Id.* at 800–14 (Bumatay, J., concurring in the judgment). The en banc majority's ruling that none of these statements could be considered false is not applicable in this case, because we do not reach that issue.

have failed to sufficiently allege their reliance on the alleged misrepresentations by the Church in suffering the alleged harm. And we agree that this failure is fatal to Plaintiffs' second RICO theory. But rather than hold, like the district court, that Plaintiffs' failure to sufficiently allege their reliance dooms this theory by way of a failure to allege the underlying predicate acts with particularity, we hold the inability to allege their reliance on these facts evinces Plaintiffs' failure to plausibly plead the distinct, but still necessary, element of their civil RICO claim that the alleged predicate acts *caused* the harm that Plaintiffs suffered.

A plaintiff's personal—or, first-party—reliance on a defendant's fraudulent misrepresentation is not an indispensable component of every predicate–act–fraud RICO claim. In *Bridge v. Phoenix Bond & Indemnity Co.*, the Supreme Court held that "a plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations." 553 U.S. 639, 661 (2008).

Nevertheless, a plaintiff's reliance remains relevant to RICO's causation—its "by reason of"—requirement. "Under RICO's 'by reason of' requirement, 'to state a claim . . . the plaintiff is required to show that a RICO predicate offense not only was a but for cause of his injury, but was the proximate cause as well.'" *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1088 (10th Cir. 2014) (quoting *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010) (plurality opinion)). "When a court

evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006).

Bridge itself both (1) underscores first-party reliance's relevance in the RICO causation inquiry and (2) indicates that such reliance might nonetheless be required to show causation in particular factual circumstances. In *Bridge*, the Supreme Court recognized a civil RICO claim where the defendants had submitted fraudulent documents to Cook County, Illinois, which was conducting property auctions, thereby giving the defendants an unfair advantage over the plaintiffs in securing property at those auctions. 553 U.S. at 642–44. The Court ruled that the plaintiffs could proceed with the lawsuit even though it was Cook County, and not the plaintiffs, that had relied on the misrepresentations. *Id.*

The Court emphasized that its holding was not one "that a RICO plaintiff who alleges injury 'by reason of' a pattern of mail fraud can prevail without showing that *someone* relied on the defendant's misrepresentations." *Id.* at 658. "In most cases," the Court held, "the plaintiff will not be able to establish even but-for causation if no one relied on the misrepresentation." *Id.* "In addition, the complete absence of reliance may prevent the plaintiff from establishing proximate cause." *Id.* at 658–59.

The Court continued, "it may well be that a RICO plaintiff alleging injury by reason of a pattern of mail fraud must establish at least third-party reliance in

order to prove causation." *Id.* at 659. "But the fact that proof of reliance is often used to prove an element of the plaintiff's cause of action, such as the element of causation, does not transform reliance itself into an element of the cause of action[, n]or does it transform first-party reliance into an indispensable requisite of proximate causation." *Id.* (internal quotation marks omitted). Instead, the Court made clear, the analysis is case-dependent: "Proof that the plaintiff relied on the defendant's misrepresentations may in some cases be sufficient to establish proximate cause," just as "the absence of first-party reliance may in some cases tend to show that an injury was not sufficiently direct to satisfy § 1964(c)'s proximate-cause requirement." *Id.*

Consistent with the Court's "instruction that proximate cause is generally not amenable to bright-line rules," *id.*, we have understood the upshot as threefold. First, the plaintiff's personal reliance will not invariably be dispositive of the causation issue in every case. Second, such first-party reliance can itself establish causation. Third, such reliance might be required to establish causation in some cases. As we have synthesized the law post-*Bridge*,

> Although reliance is not an explicit element of a civil RICO claim, it frequently serves as a proxy for both legal and factual causation. But despite its usefulness as a stand-in for causation, strict first-party reliance is not a prerequisite to establishing a RICO violation. Nevertheless, in cases arising from fraud, a plaintiff's ability to show a causal connection between defendants'

> misrepresentation and his or her injury will be predicated on plaintiff's alleged reliance on that misrepresentation. Put simply, causation is often lacking where plaintiffs cannot prove that they relied on defendants' alleged misconduct. Ultimately, . . . proving reliance is necessary [where] it is integral to [p]laintiffs' theory of causation.

CGC Holding Co., 773 F.3d at 1088–89 (citations and internal quotation marks omitted). Swapping out the references in that quotation to "proving," "establishing," and "showing" for "alleging" or "pleading" provides the proper framing of the issue for motions at the pleading stage of a case.

Turning to this case, we find that Plaintiffs' theory of causation wholly hinges on their reliance on the Church's alleged lies and failures to correct those alleged lies about how tithing payments were to be used. Plaintiffs' postulation that they "would not have paid tithing had [they] known tithes were used for commercial [purposes]," App'x Vol. III at 146, 149, 150, turns on their personal, or, first-party, reliance on the Church's representations and omissions. *See also* Reply Br. at 22 (recognizing that "third[-]party reliance doesn't apply"). Therefore, in this case, Plaintiffs plausibly alleging their "reliance is necessary because it is integral to Plaintiffs' theory of causation." *CGC Holding Co.*, 773 F.3d at 1089 (brackets and quotation omitted).

Here, Plaintiffs do not allege sufficient facts to plausibly plead their reliance. Plaintiffs merely allege

that they "relied on the [Church's] representations as to how their tithing is used" in making continued tithing payments, App'x Vol. III at 163; *see, e.g.*, *id.* at 185 ("Plaintiffs relied on these misrepresentations lacking a full and fair disclosure that [the Church] used their tithing for commercial purposes, in deciding whether or not to donate to the Church."), without providing factual content to plausibly support such reliance. Nowhere in their 203-page operative complaint do Plaintiffs allege that, after hearing a particular statement that the Church would not use tithing funds for commercial activities, Plaintiffs affirmatively decided to continue making tithing payments that they would not have otherwise paid.[10] As the Eleventh Circuit has persuasively held, plaintiffs in reliance-based causation cases like this

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[10] The complaint also alleges that Plaintiffs had been paying their full tithes for other reasons, as part of their Church membership, "in order to obtain and maintain a temple recommend, and/or be baptized." App'x Vol. III at 163. This undercuts proximate causation between the tithes and the alleged fraud about the use of tithes. *Cf. Anza*, 547 U.S. at 459 (finding civil RICO proximate causation inadequately pled in part because the asserted injury "could have resulted from factors other than [the defendants'] alleged acts of fraud").

Plaintiffs indeed allege that they relied on the Church's misrepresentations and material omissions about Church history and doctrine in paying tithes. And logically, that might support a broader reliance theory. But for the reasons we have already explained, any claim based on those sort of representations (necessarily hinging on the truth or falsity of religious beliefs) is barred by the church autonomy doctrine. This RICO theory must stand solely on reliance on the Church's statements and omissions about tithing use.

one do "not adequately plead a RICO claim where their complaint assert[s] only the bald conclusion that the plaintiffs relied on a misrepresentation without showing how that reliance was manifested." *Ray v. Spirit Airlines, Inc.*, 836 F.3d 1340, 1349 (11th Cir. 2016). That is this case: Plaintiffs claim they relied on the misrepresentations and omissions in paying tithes, but Plaintiffs' complaint fails to provide enough facts to plausibly tether a direct link between any misrepresentation or omission about tithing use and Plaintiffs paying tithes that they would not have paid absent hearing such (uncorrected) representations—that is, causation between the alleged RICO violation and alleged injury. We thus agree with the district court that the complaint's allegations about reliance amount to little more than a "[t]hreadbare recital[]" of a (theory-specific) requirement "supported by mere conclusory statements," which "do[es] not suffice" to establish the plausibility that Rule 8(a)(2) requires. *Ashcroft*, 556 U.S. at 678; *see* App'x Vol. IV at 286.[11]

Plaintiffs contend that they have sufficiently alleged reliance. But they merely argue that they relied on the Church's alleged misrepresentations to "continue[] to believe that tithing was or would be used for the purposes that had always been represented."

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[11] As noted above, the district court treated this as a failure to allege reliance with particularity as required by Rule 9(b). We do not consider Rule 9(b)'s applicability to allegations of reliance in civil RICO cases predicated on mail and wire fraud, because we find that Plaintiffs' allegations of reliance are not plausible, as they must be, under Rule 8(a)(2).

Aplt. Br. at 47. That misses the point. The reliance here needs to directly link the Church's misrepresentations with Plaintiffs paying tithes they would not have paid had they not heard those misrepresentations. It is not enough to just draw a link between Church misrepresentations and Plaintiffs' belief of those misrepresentations. "The mere fact of having been misled does not ineluctably give rise to a RICO cause of action unless the act of misleading the plaintiffs actually caused them injury in their business or to their property that they would not otherwise have suffered." *Ray*, 836 F.3d at 1350. Even if the Church's representations misled Plaintiffs, that does not mean that Plaintiffs sustained their claimed injury of making continued tithing payments *by reason of* the Church's representations. And the complaint just does not allege enough facts to plausibly tether this necessary causal link.[12] Plaintiffs fall back

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[12] Plaintiffs' counsel tried to tether the necessary causal link at oral argument, asserting that Plaintiffs "might have researched more and left the [C]hurch altogether if [they had] known that [Church leaders] were not straight with [them] about the tithing." Oral Arg. Audio at 12:22–35. But Plaintiffs "did not make this argument in their appellate briefs. As a result, this argument is waived." *Lebahn v. Nat'l Farmers Union Unif. Pension Plan*, 828 F.3d 1180, 1188 n.8 (10th Cir. 2016).

But even considering the argument, we see no plausible factual basis for such a theory in the complaint. To the extent the complaint connects Church statements and omissions about the use of tithes with Plaintiffs' continued tithing payments through this would–have–done–research theory, it only does so through a number of speculative links in a conclusory causal chain. According to the complaint (giving it the *best* possible reading), after learning of the Church's true use of tithes, Plaintiffs would

on the argument that their "reliance is not an element" of RICO causation. *See* Aplt. Br. at 48. True (as we have already recounted), first- party reliance is not strictly required to establish RICO causation. *See Bridge*, 553 U.S. at 661. But in cases such as this where the plaintiff's chosen causation theory hinges on their personal reliance, we have held, such reliance *is* required. *See CGC Holding Co.*, 773 F.3d at 1089. Here, a first-party reliance requirement is a feature of the nature of Plaintiffs' chosen RICO theory.

Retreating further, Plaintiffs assert that the Church's "material omissions are a basis for" their theory proceeding even if their theory based on the Church's affirmative representations fails on reliance

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have (1) begun to question Church leaders, (2) done independent research regarding the Church (over the leaders' contrary direction), (3) uncovered damning information about the Church, and (4) chosen to leave the Church or surrender full membership. *See* App'x Vol. III at 178–79. But there are not enough facts alleged in the complaint to permit reasonable inferences to support each link in that causal chain. These "'naked assertion[s] devoid of further factual enhancement' do not 'raise a right to relief above the speculative level'" and thus do not suffice to state a claim. *See VDARE Found. v. City of Colorado Springs*, 11 F.4th 1151, 1173 (10th Cir. 2021) (first quoting *Iqbal*, 556 U.S. at 678; then quoting *Twombly*, 550 U.S. at 555).

And even if Plaintiffs' counsel managed to put some non-conclusory factual meat on the bone at oral argument, that cannot save this claim. Just as a plaintiff cannot "remedy [a] deficiency in [their] pleadings by adding new allegations in [their] appellate brief," *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1286 n.1 (10th Cir. 2019), a plaintiff cannot remedy insufficient pleadings through new facts provided at oral argument.

grounds. *See* Aplt. Br. at 50. Indeed, omissions are conceptually different from affirmative representations. And it might be an odd fit to say that Plaintiffs need to show their reliance on omissions (something not difficult to say about affirmative statements). But when we speak of reliance here, we are speaking about RICO causation. And basing a RICO claim on omissions does not excuse plaintiffs from adequately pleading but-for and proximate cause. *See, e.g.*, *CGC Holding Co.*, 773 F.3d at 1081, 1088–89 (discussing causation requirement in the context of a civil RICO claim based on misrepresentations and omissions). So to the extent Plaintiffs can be understood to argue anything different, such an argument is rejected.

For the first time in their reply brief, Plaintiffs suggest that "[g]iven a material omission, reliance is inferred." Reply Br. at 22 (emphasis deleted). They point to our decision in *CGC Holding Co.*, where we applied an inference of reliance in the context of finding predominance in a RICO class action at the Rule 23 class certification stage. *See* 773 F.3d at 1089–93. But by waiting until their reply to raise this argument, Plaintiffs have failed to preserve it for appellate review. "'It is our general rule . . . that arguments and issues presented at such a late stage are waived.' We will not address these belated contentions."[13] *McNellis v. Douglas Cnty. Sch. Dist.*,

[13] In any event, Plaintiffs' reliance on *CGC Holding* is misplaced, and our opinion in *CGC Holding* explains why. There, we held it was reasonably inferable from the plaintiffs' (would-be

116 F.4th 1122, 1136 n.11 (10th Cir. 2024) (quoting *Hill v. Kemp*, 478 F.3d 1236, 1250 (10th Cir. 2007)); *see*

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loan borrowers) payment of up-front fees to the defendants (would-be lenders) that the plaintiffs relied on the defendants' (ultimately unfulfilled) promises that they had the ability and intention to fulfill the loan payments. 773 F.3d at 1081, 1090–91. We also highlighted as supporting the inference claimed omitted facts going directly to "the alleged legitimacy of the counterparty to an agreement" (omissions about the mastermind's criminal past) and "the fact that all plaintiffs paid fees in exchange for a promise." *Id.* at 1090–91.

Critically, we caveated our *CGC Holding* holding with the warning that "[t]his inference would not be appropriate in most RICO class actions." *Id.* at 1091 n.9. We explained, "the inference of reliance here is limited to transactional situations— almost always financial transactions—where it is sensible to assume that rational economic actors would not make a payment unless they assumed that they were receiving some form of the promised benefit in return." *Id.*

Our logic in *CGC Holding* thus does not hold with respect to Plaintiffs' fraudulent misuse of tithing theory here—that the Church lied about not using tithing payments for non-religious purposes and thereby caused Plaintiffs to continue to tithe. The Church using tithes only for religious purposes is not a sort of "promised benefit in return" that Plaintiffs directly receive. *Id.* The logic underpinning our *CGC Holding* inference might work, say, to a claim based on the theory that Plaintiffs paid tithes in return for some sort of personal economic gain. The logic might even work (though it would be an extension of *CGC Holding*) where the theory was that Plaintiffs paid tithes for promised personal religious gain (though such a theory might run into church autonomy doctrine difficulties, *cf. supra* n.10). Those are more easily put into the box of "transactional situations" that *CGC Holding* contemplates. All of this is to say that the case here is like "most" others in that an inference of reliance is "not . . . appropriate." *CGC Holding Co.*, 773 F.3d at 1091 n.9.

also Fed. R. App. P. 28(a)(8)(A) (requiring that the opening brief contain the "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

In sum, we agree with the district court that Plaintiffs fail to sufficiently allege reliance. Plaintiffs have not pled enough facts to support the reasonable inference that they relied on the Church's alleged misrepresentations and omissions in continuing to pay tithes. We hold that this defect renders implausible the necessary causation component of Plaintiffs' civil RICO claim—that they were injured "by reason of" a RICO violation by the Church—to the extent it is based on a fraudulent use of tithing funds theory. They thus have failed to state a claim upon which relief may be granted.

IV.

For the reasons stated above, we AFFIRM.

23-4110, *Gaddy v. The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*

PHILLIPS, J., concurring.

I agree with the majority to affirm the district court's dismissal of the second amended complaint. I write separately because I would also decide that the church autonomy doctrine does not apply to Plaintiffs' second civil RICO theory—that the Church fraudulently used tithing payments for commercial purposes. As discussed by the majority, the "church

autonomy doctrine prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 655 (10th Cir. 2002) (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116– 17 (1952)). But the church autonomy doctrine has a limit: it "does not apply to purely secular decisions, even when made by churches." *Id.* at 657.

"Before the church autonomy doctrine is implicated, a threshold inquiry is whether the alleged misconduct is 'rooted in religious belief.'" *Id.* (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)). In other words, we ask whether the dispute deals with "discipline, faith, internal organization, or ecclesiastical rule, custom or law," or with "purely secular" issues that merely involve "a religiously affiliated organization." *Id.* (citation modified). For the misuse-of-tithes theory, the Church argues that the adjudication of Plaintiffs' civil RICO claim would require Plaintiffs to prove "whether the Church's use of tithing funds really is for the Lord's work and to support other Church purposes as directed by the designated servants of the Lord." Resp. Br. at 41 (citation modified). According to the Church, resolving these issues "would impermissibly entangle a trial court in an ecclesiastical dispute[.]" *Id.* I disagree.

As I see it, Plaintiffs' misuse-of-tithes theory concerns only secular matters. Plaintiffs allege that the Church fraudulently represented how it would use its tithing funds. They cite various statements from

the Church and its leaders asserting that the Church used tithing funds solely for religious purposes, not commercial purposes. Plaintiffs allege that despite these statements, the Church used tithing funds to construct City Creek Mall, finance Ensign Peak Advisors, and bail out Beneficial Life Insurance Company. None of these alleged misrepresentations require us to decide the Church's religious teaching, faith, or doctrine. Instead, this case would resolve whether the Church injured Plaintiffs through a pattern of fraud by misrepresenting how it would use its tithing funds—a "purely secular" dispute. *Bryce*, 289 F.3d at 657; *see* 18 U.S.C. §§ 1961(1)(B), 1962, 1964(c); *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992).

In a recent case, an en banc panel of the Ninth Circuit rejected the church autonomy doctrine under similar circumstances. There, the Ninth Circuit reviewed whether another plaintiff could maintain a state-law fraud claim against the Church. *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 786, 789–90 (9th Cir. 2025) (en banc). For this fraud claim, the plaintiff also advanced a misuse-of-tithes theory, arguing that the Church used tithing funds for commercial purposes despite statements to the contrary. *Id.* And the plaintiff likewise cited the Church's funding of City Creek Mall, Ensign Peak Advisors, and Beneficial Life Insurance Company to support his theory. *Id.* at 786–87. In evaluating the fraud claim, the en banc panel reasoned that "nothing in [the] analysis of [the plaintiff]'s fraud claims delves into matters of Church doctrine or policy," so "the church autonomy doctrine

has no bearing here." *Id.* at 792. The Ninth Circuit's ruling reinforces my view that the tithing-fraud allegations in our case deal with purely secular matters.

I would therefore conclude that the church autonomy doctrine does not apply to the civil RICO claim's misuse-of-tithes theory. I join the majority in all other respects.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

[DATE STAMP]
FILED
United States Court of Appeals
Tenth Circuit
August 26, 2025
Christopher M. Wolpert
Clerk of Court

LAURA A. GADDY; LYLE D. SMALL; LEANNE R. HARRIS, individually and on behalf of all others similarly situated,
Plaintiffs - Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole,
Defendant - Appellee,

and

DOES 1-50,
Defendants.

GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS; NATIONAL ASSOCIATION OF EVANGELICALS; JEWISH COALITION FOR RELIGIOUS LIBERTY; BECKET FUND FOR RELIGIOUS LIBERTY,
Amici Curiae.

No. 23-4110
(D.C. No. 2:19-CV-00554-RJS)
(D. Utah)

JUDGMENT

Before **HARTZ**, **PHILLIPS**, and **EID**, Circuit Judges.

This case originated in the United States District Court for the District of Utah and was argued by counsel.

The judgment of that court is affirmed.

Entered for the Court

/s/

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LAURA A. GADDY, LYLE D. SMALL, and LEANNE R. HARRIS, individually and on behalf of all others similarly situated,
Plaintiffs,

v.

CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and DOES 1-50,
Defendant.

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND DENYING PLAINTIFFS' MOTION FOR LEAVE TO AMEND

Case No. 2:19-cv-00554-RJS-DBP

Chief District Judge Robert J. Shelby

Chief Magistrate Judge Dustin B. Pead

This case stems from the history, founding, and teachings of the Church of Jesus Christ of Latter-Day Saints, commonly known as the Mormon Church.

Plaintiffs Laura Gaddy, Lyle D. Small, and Leanne R. Harris were members of that religion for most of their lives. They bring this putative class action lawsuit against the Church's religious corporation, Defendant Corporation of the President of the Church of Jesus Christ of Latter-day Saints (the Church). Asserting numerous fraud-related claims, Plaintiffs generally allege the Church has intentionally misrepresented its founding to induce the faith of its members, even as its leaders hold no sincere religious belief in the versions of events they promote.

In two prior Orders, the court dismissed all or part of the first two complaints brought by Gaddy. Specifically, in the first prior Order (First Order), the court dismissed Gaddy's original Complaint primarily because litigating her claims would have required a legally impermissible inquiry into the truth of the Church's religious teachings and doctrines.[1] In the subsequent Order 236 (Second Order), the court granted in part and denied in part the Church's Motion to Dismiss Gaddy's Amended Complaint.[2] Again, the court found that litigating most of Gaddy's claims would require an impermissible inquiry into the truth of the Church's doctrine.[3] However, the court did

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[1] *See* Dkt. 33 (Memorandum Decision and Order Granting Motion to Dismiss) at 20. All citations to the docket refer to the page numbers in ECF.

[2] Dkt. 100 (Memorandum Decision and Order Granting in Part and Denying in Part Motion to Dismiss).

[3] *Id.* at 14–25.

not dismiss Gaddy's revised civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim to the extent it was based on the Church's statements concerning the use of tithing funds to construct a mall in downtown Salt Lake City.[4]

Rather than proceed to discovery on the surviving claim, Gaddy, along with new Plaintiffs Small and Harris, filed a Second Amended Complaint asserting seven claims against the Church, many of which were asserted and previously dismissed in the court's two prior Orders.[5] Now before the court is the Church's Motion to Dismiss Plaintiffs' Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).[6] For the reasons explained below, the Church's Motion is GRANTED.

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[4] *Id.* at 25–29.

[5] *See* Dkt. 110 (Second Amended Complaint).

[6] Dkt. 111 (Motion to Dismiss Second Amended Complaint). The Motion also moves in the alternative to strike allegations from the Second Amended Complaint that are non-secular in nature. *See id.* Because the court ultimately grants the Motion to Dismiss, it does not go on to consider the alternative requested relief.

BACKGROUND AND PROCEDURAL HISTORY[7]

The court first provides a brief factual background concerning the named Plaintiffs before turning to the lengthy procedural history of this case.[8]

I. Plaintiffs

Laura Gaddy was raised in the Church and remained a member for most of her adult life.[9] In early 2018, she found online material concerning the Church's founding, history, and doctrine that she believed conflicted with the Church's own teachings.[10] Unable to reconcile what she discovered with her continued participation in the Church, Gaddy ultimately relinquished her membership.[11] Gaddy is now in counseling to help manage the emotional

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[7] Because this case is before the court on a motion to dismiss, the court accepts as true all well-pleaded factual allegations in the Amended Complaint. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

[8] Because the court concludes that the First and Second Orders decide the outcome of most of Plaintiffs' repleaded claims, the court will recount, in some detail, allegations in previous complaints, arguments in previous motions to dismiss, and the court's prior rulings.

[9] *See* Dkt. 110 ¶¶ 302–324.

[10] *Id.* ¶¶ 325–27.

[11] *Id.* ¶ 329.

distress she experiences from her lost faith in the Church.[12]

Lyle Small was also a dedicated member of the Mormon Church for most of his life. He completed a two-year mission to Finland and paid tithing from age eight until his early fifties.[13] In 2019, he resigned from the Church after reading independent sources concerning Church history.[14]

Leanne Harris was also a lifelong member of the Church.[15] Personal tragedies in her life, including the untimely deaths of her son and oldest sister, led her to "double down" on her commitment to the Church.[16] Harris also discovered alleged misrepresentations concerning Church history, doctrine, and tithing payments in 2019, revelations she pleads "almost destroyed her."[17] She alleges she would not have donated tithing or dedicated herself to the Church had she been aware of the misrepresentations she

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[12] *Id.* ¶ 330.

[13] *Id.* ¶¶ 335–37.

[14] *Id.* ¶¶ 338–39.

[15] *Id.* ¶¶ 342–43.

[16] *Id.* ¶ 343.

[17] *Id.* ¶ 344–45.

discovered.[18]

II. Gaddy's Original Complaint

On August 5, 2019, Gaddy—then proceeding as the sole-named Plaintiff—filed this putative class action lawsuit against the Church.[19] Her original Complaint centered on the theory that the Church intentionally misrepresents its history and founding to induce membership.[20] Gaddy compared the Church's "false official narrative" of several foundational events with what she alleged are the "historically accurate" accounts.[21] Gaddy primarily focused on three of the Church's core teachings, alleging each was deliberately misrepresented: (1) a spiritual event when the founding prophet Joseph Smith saw God and Jesus Christ (known as the First Vision); (2) the origins of one of the Church's foundational books of scripture, the Book of Mormon; and (3) the translation of another canonical text known as the Book of Abraham.[22]

Based on these alleged misrepresentations, Gaddy brought six causes of action on behalf of herself

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[18] *Id.* ¶ 345.

[19] Dkt. 2 (Original Complaint).

[20] *See id.* ¶ 2.

[21] *See, e.g.*, *id.* ¶¶ 64–75.

[22] *See id.* ¶¶ 64–75 (First Vision), 76–91 (Book of Mormon), 92–101 (Book of Abraham).

and others similarly situated: (1) common law fraud, (2) fraudulent inducement, (3) fraudulent concealment, (4) civil RICO (18 U.S.C. § 1962(c)), (5) intentional infliction of emotional distress, and (6) breach of fiduciary duty.[23] Gaddy's original civil RICO claim rested on her theory that the Church had engaged in both mail and wire fraud by communicating these false teachings.[24] Gaddy's intentional infliction of emotional distress claim was also based on the Church's alleged doctrinal misrepresentations. To support this claim, Gaddy alleged the Church's pattern of "knowingly and repeatedly misrepresenting foundational facts of its organization" was outrageous and intolerable.[25] Finally, Gaddy brought a claim for breach of fiduciary duty. She alleged a fiduciary relationship arose between Church leaders and its members for "all matters spiritual," because of the "extraordinary influence" the Church exercised over its members.[26] Gaddy maintained the Church breached that duty by failing to "fully disclose the truth" concerning the Church's historical foundation.[27]

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[23] *See id.* ¶¶ 183–248.

[24] *See id.* ¶¶ 175–77.

[25] *Id.* ¶ 242.

[26] *Id.* ¶¶ 206, 208–10.

[27] *Id.* ¶¶ 218–19.

III. The Church's Motion to Dismiss Gaddy's Original Complaint

On August 27, 2019, the Church moved to dismiss Gaddy's original Complaint.[28] The Church argued the Free Exercise and Establishment Clauses of the First Amendment (the Religion Clauses) barred Gaddy's claims because each necessarily implicated the Church's fundamental religious doctrines and teachings.[29] The Church argued Gaddy's three fraud-based claims—common law fraud, fraudulent inducement, and fraudulent concealment—should be dismissed because adjudicating the claims would require the court to make an impermissible inquiry into the truth or falsity of the Church's religious beliefs.[30] Because Gaddy's remaining claims for civil RICO, intentional infliction of emotional distress, and breach of fiduciary duty were also dependent on an inquiry into the truth or falsity of the Church's teachings, the Church argued those claims should similarly be dismissed.[31]

Gaddy opposed the motion, arguing the Religion

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[28] Dkt. 6 (Motion to Dismiss Original Complaint).

[29] *See id.* at 12.

[30] *Id.* at 19 ("Ms. Gaddy's fraud claims would require an adjudication of whether the Church's teachings about Joseph Smith and its canonical scriptures are true.").

[31] *Id.* at 21–22, 25.

Clauses did not apply to the claims in her Complaint.[32] Gaddy contended her fraud-based claims survived the motion for three reasons. First, she disagreed that her claims challenged the Church's religious beliefs.[33] Instead, she insisted her claims challenged only the facts underlying the Church's beliefs about its founding, not the religious beliefs themselves.[34] Gaddy asked the court to distinguish between facts and beliefs, arguing, "[f]acts are susceptible to proof. Beliefs are not; if proven, beliefs become facts."[35] Second, Gaddy argued her fraud-based claims survived because the Church's proselytizing constituted conduct rather than belief.[36] Third, Gaddy cursorily argued that even if the court could not determine the truth or falsity of the Church's beliefs, it may nevertheless assess whether those beliefs are sincerely held.[37]

IV. First Order Granting the Church's First Motion to Dismiss

On March 31, 2020, in the First Order, the court granted the Church's motion and dismissed Gaddy's

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[32] *See* Dkt. 23 (Opposition to Motion to Dismiss) at 10.

[33] *See id.* at 6–7.

[34] *Id.*

[35] *Id.* at 9.

[36] *Id.* at 15–16.

[37] *Id.* at 16–17.

original Complaint without prejudice, concluding the Religion Clauses barred each of Gaddy's claims.[38] The Religion Clauses provide in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"[39] The court acknowledged "[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."[40] To effectuate these rights, "courts have long held that the truth or falsity of religious beliefs are beyond the scope of judicial review."[41] The court's ruling relied upon "the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government *as well as those of faith and doctrine*.'"[42] This is known as the church autonomy doctrine.

But the court also recognized in the First Order that the church autonomy doctrine "is not without

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[38] Dkt. 33.

[39] U.S. Const. amend. I.

[40] Dkt. 33 at 8 (citing *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990)).

[41] *Id.* (citing *United States v. Ballard*, 322 U.S. 78, 86–87 (1944); *Van Schaick v. Church of Scientology of Cal., Inc.*, 535 F. Supp. 1125, 1142 (D. Mass. 1982)).

[42] *Id.* at 9 (citing *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 655 (10th Cir. 2002) (quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)) (emphasis in original)).

limits."[43] Churches may not invoke the doctrine to shield purely secular decisions.[44] To determine whether the church autonomy doctrine applies in any given instance, courts must decide whether the dispute presented "is an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law, or whether it is a case in which we should hold religious organizations liable in civil courts for purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization."[45]

Applying these principles to Gaddy's original Complaint, the court concluded the Religion Clauses barred each of her claims.[46] The court dismissed Gaddy's three fraud-based claims because the falsity of religious beliefs was an essential element of each claim as pleaded.[47] Gaddy relied on three core religious teachings as the bases for her fraud-based claims: the First Vision, and the translations of both the Book of Mormon and Book of Abraham.[48] The court concluded

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[43] *Id.* (quoting *Bryce*, 289 F.3d at 657).

[44] *Id.*

[45] *Id.* at 10 (citing *Bryce*, 289 F.3d at 657 (citations omitted)).

[46] *See id.* at 20.

[47] *Id.* at 11.

[48] *See id.*

the First Amendment required dismissal of the fraud-based claims because their adjudication would require an examination into the truth or falsity of these core religious teachings.[49]

And each of Gaddy's arguments in opposition failed. First, the court rejected Gaddy's proposed distinction between challenging religious facts and religious beliefs, concluding "if all a plaintiff had to do to get around the First Amendment was to challenge the facts underlying a church's religious beliefs, the Religion Clauses would offer little protection against de facto referenda on churches' faith and doctrines."[50] Instead, the court relied on the distinction other courts use to determine whether it may adjudicate fraud claims against a church: whether the dispute is religious or secular.[51] Because Gaddy based her claims on alleged misrepresentations implicating the Church's fundamental religious teachings, the court concluded the dispute was religious.[52] The court also rejected Gaddy's argument that her claims challenged the Church's conduct, rather than its beliefs, recognizing "the Supreme Court has repeatedly confirmed that the free exercise of religion encompasses not only the freedom to believe, but also the right to profess those beliefs through

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[49] *Id.* at 11–12.

[50] *Id.* at 14.

[51] *Id.* at 13.

[52] *Id.*

proselytizing."[53]

The court also dismissed Gaddy's civil RICO and intentional infliction of emotional distress claims because, as pleaded, they necessarily implicated the veracity of the Church's teachings.[54] Gaddy predicated her civil RICO claim on mail and wire fraud, relying on the Church's alleged misrepresentation of facts related to Joseph Smith's First Vision, the Book of Mormon, and the Book of Abraham.[55] The court concluded the Church could be liable for these predicate racketeering acts only if the statements communicated were false.[56] Gaddy's intentional infliction of emotional distress claim also relied on the alleged falsity of the Church's teachings because her claim was based on the Church's alleged pattern of "knowingly and repeatedly misrepresenting the foundational facts of the

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[53] *Id.* at 15 (citing *Smith*, 494 U.S. at 877 ("The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."); *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (noting that the Free Exercise Clause "unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions")). The court declined to address Gaddy's argument concerning the sincerity of the Church's professed beliefs in its own teachings because, as Gaddy conceded at oral argument, the Complaint did not allege the Church's beliefs were insincerely held. *Id.* at 16.

[54] *Id.* at 17–18.

[55] *See* Dkt. 2 ¶¶ 236–38.

[56] Dkt. 33 at 17.

organization."[57] For these reasons, the court concluded these claims were barred by the First Amendment's Religion Clauses.[58]

Finally, the court dismissed Gaddy's claim for breach of fiduciary duty after concluding Utah has not established a legally cognizable fiduciary duty arising from purely ecclesiastical relationships.[59] Even if Utah recognized such a relationship, the court reasoned it could not define a standard of care that would apply to "a diversity of religions professing widely varying beliefs" without violating the First Amendment's Establishment Clause.[60]

V. Gaddy's First Amended Complaint

Gaddy filed her Amended Complaint on May 18, 2020.[61] Although more detailed than her original Complaint, many of the claims, theories, and allegations in the Amended Complaint were duplicative of her prior pleading. Gaddy again brought claims against the Church for common law fraud, fraudulent concealment, fraudulent inducement, civil RICO, and intentional infliction of emotional

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[57] *Id.* at 18.

[58] *Id.*

[59] *Id.* at 19.

[60] *Id.* at 20.

[61] Dkt. 37 (Amended Complaint).

distress.[62] Those claims continued to rely primarily on alleged misrepresentations concerning the First Vision, the Book of Mormon, and the Book of Abraham.[63]

But the Amended Complaint contained a handful of differences, including new factual allegations to support her common law fraud claim. Gaddy alleged the Church also misled members about its history with polygamy and about locations of certain events described in the Book of Mormon. Specifically, Gaddy alleged the Church historically taught members that certain events in the Book of Mormon happened on Hill Cumorah in upstate New York.[64] Recently, however, the Church has stated it does not take a position on the specific geographic locations of Book of Mormon events.[65] Gaddy also alleged the Church previously taught members the prophet Joseph Smith had only one wife,[66] but that Smith, in fact, had multiple wives.[67]

In addition to these new factual allegations,

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[62] *See id.*

[63] *See, e.g.*, *id.* ¶¶ 130–31, 133.

[64] *Id.* ¶ 132.

[65] *Id.* ¶ 138.

[66] *Id.* ¶ 134.

[67] *Id.* ¶ 140.

Gaddy's Amended Complaint included a theory of liability she previously argued in response to the Church's Motion to Dismiss but which she had not pleaded: Gaddy argued the Church should be held liable on her common law fraud claim because its own leaders do not sincerely believe the versions of the Church's history, founding, and doctrines the Church teaches its members.[68]

In addition to the new factual allegations and alternative theory of fraud liability, the Amended Complaint also advanced a new cause of action under the Utah Charitable Solicitations Act (UCSA).[69] Finally, the Amended Complaint included a new alternative theory of liability for Gaddy's civil RICO claim based on misrepresentations to members concerning the Church's use of tithing.[70] Gaddy pleaded, as an independent basis for RICO liability, that the Church misleads its members by falsely assuring them tithing funds are used only for "Church

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[68] *See, e.g.*, *id.* ¶¶ 2, 3, 141.

[69] *See id.* ¶¶ 150–66, 192–98. Gaddy also included a claim for "Breach of Duty of Disclosure" which was not included in her original Complaint. *See* Dkt. 2; Dkt. 37 ¶¶ 150–66. Gaddy argued the claim was distinguishable from her prior claim for breach of fiduciary duty. Dkt. 47 at 28. However, the court concluded that, as argued, this claim was indistinguishable from the repleaded fraudulent concealment claim, and the court did not separately address it. *See* Dkt. 100 at 13 n.80.

[70] *See, e.g.*, *id.* ¶¶ 2, 5, 6, 79, 200(C).

expenses and humanitarian aid."[71] For example, at the Church's semi-annual General Conference in April 2003, Gaddy alleged the Church's Prophet, Gordon B. Hinckley, made the following statement concerning the purchase and development of the for-profit commercial City Creek Mall in Salt Lake City, Utah:

I wish to give the entire Church the assurance that tithing funds have not and will not be used to acquire this property [City Creek Mall]. Nor will they be used in developing it for commercial purposes.[72]

Gaddy contended this representation was false, as "[s]everal billion dollars of [the principal tithing] fund was used for affiliated profit-making business entity expenses, including but not limited to the development of Salt Lake's City Creek Mall."[73] Gaddy alleged "[t]his lie was repeated at least twice over the years until City Creek [Mall] was opened."[74]

VI. The Church's Motion to Dismiss Gaddy's First Amended Complaint

In its Motion to Dismiss Gaddy's Amended

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[71] *Id.* ¶ 6.

[72] *Id.* ¶ 79.

[73] *Id.* ¶ 5.

[74] *Id.* ¶ 79.

Complaint,[75] the Church largely reiterated its previous arguments offered for dismissal of Gaddy's original Complaint, maintaining the Religion Clauses compelled dismissal of Gaddy's Amended Complaint for the reasons stated in the court's First Order.[76] The Church also argued Gaddy's new factual allegations, related to locations of events in the Book of Mormon, its history with polygamy, and its use of tithing funds, failed to save her claims because adjudicating fraud-based claims on these facts also required the court to determine the truth or falsity of the Church's religious teachings and beliefs.[77] Finally, the Church argued Gaddy's new claims, including the new civil RICO theory based on tithing use and the claim under the Utah Charitable Solicitations Act, required the same impermissible inquiry into the truth or falsity of the Church's religious beliefs.[78]

Gaddy opposed the Motion,[79] relying primarily on an argument she previously made in support of her original Complaint—that the Church's proselytizing

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[75] Dkt. 38 (Motion to Dismiss Amended Complaint).

[76] *See id.* at 3–5.

[77] *Id.* at 13–14.

[78] *Id.* at 18–19.

[79] *See* Dkt. 47 (Opposition to Church's Motion to Dismiss Amended Complaint).

constitutes conduct, not belief.[80] In a footnote, Gaddy also asserted she "[did] not waive" her previously argued distinction between religious facts and religious beliefs.[81]

Gaddy's opposition raised two new arguments why her re-pleaded claims survived the Church's Motion to Dismiss. First, to save her common law fraud claim, Gaddy argued her new allegations concerning the insincerity of the Church's expressed religious beliefs presented a threshold question of fact that could not be disposed of at the pleading stage.[82] Second, she argued her remaining repleaded claims survived because they relied on fraudulent omissions rather than misrepresentations.[83] Gaddy maintained that because her claims were based on material omissions instead of affirmative misrepresentations, the court could adjudicate the claims without examining the truth or falsity of the statements.[84]

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[80] *Id.* at 6–20.

[81] *Id.* at 6 n.1.

[82] *See* Dkt. 47 at 21–22.

[83] *Id.* at 27.

[84] *Id.* at 28.

VII. Second Order Granting in Part and Denying in Part the Church's Motion to Dismiss the Amended Complaint

On July 28, 2021, in the Second Order, the court granted in part the Church's Motion to Dismiss the Amended Complaint.[85] First, the court dismissed Gaddy's fraud-based claims to the extent they were based on theories of fraud already rejected in the First Order—that is, allegations concerning the First Vision, and the Books of Mormon and Abraham. Next, the court considered whether Gaddy's five repleaded causes of action—(1) common law fraud, (2) fraudulent inducement, (3) fraudulent concealment, (4) civil RICO, and (5) intentional infliction of emotional distress—survived, to the extent they were supported by new sets of factual allegations or new arguments. The court concluded neither the new facts nor her new arguments cleared the Religion Clauses bar recognized in the court's First Order.[86] Finally, the court considered the new USCA cause of action and the new theory undergirding the re-pleaded civil RICO claim—the Church's use of tithing funds. The court concluded the UCSA claim failed because it also required an impermissible inquiry into the truth or falsity of the Church's statements based on religious

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[85] *See* Dkt. 100.

[86] *See* Dkt. 100 at 11–12 ("Because a statement's falsity is an essential element of fraud claims, adjudicating these claims would require the court to do exactly what the Supreme Court has forbidden—evaluate the truth or falsity of the Church's religious beliefs." (citing *Ballard*, 322 U.S. at 86–87)).

facts and teachings.[87] But the new theory of civil RICO liability survived because it implicated secular, rather than religious, representations.[88]

As to Gaddy's new factual allegations concerning Hill Cumorah and Joseph's Smith's marriages, the court concluded they directly implicated the Church's core religious teachings. The court found that by adding facts concerning these issues, Gaddy attempted to accomplish indirectly what she could not do directly: attack the veracity of the Church's teachings about the Book of Mormon and its doctrines by challenging the accuracy of certain facts contained in the text. The court explained:

> [A] plaintiff may not, for example, challenge in a court of law religious beliefs that Noah built an ark, loaded it with his family and representative animals of the world, and was thereby saved from world-engulfing floods. Neither may a plaintiff circumvent this restriction by merely attacking religious accounts concerning the locations where Noah built the ark or where the ark came to rest. If religious events themselves sit beyond judicial purview, religious beliefs concerning the details of those events must enjoy the same protection. Religious beliefs concerning the details of events described in

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[87] *Id.* at 24–25.

[88] *Id.* at 25–29.

> The Book of Mormon, the Church's foundational text, may not be severed from beliefs about the events themselves. And whether described as the doctrine of polygamy, plural marriage, celestial marriage, or by another name, the Church's teachings concerning the issue and its practice are fundamentally religious in nature. Adjudicating Gaddy's re-pled claims based on these two new sets of factual allegations would require the court to evaluate the truth or falsity of the Church's religious beliefs.[89]

The court concluded the Religion Clauses prohibited this examination, and dismissed the claims based on these new factual theories.[90]

As to Gaddy's new argument, that her factual allegations presented a threshold question of fact concerning the sincerity of the Church's professed beliefs in its own teachings,[91] the court disagreed. While a showing of sincerity of religious belief is a threshold issue for litigants and prisoners under the First Amendment and the Religious Freedom

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[89] *Id.* at 15.

[90] *Id.*

[91] *See* Dkt. 47 at 22–23.

Restoration Act (RFRA),[92] the court noted the sincerity inquiry is necessary only in cases in which litigants seek a religious accommodation or an exception to a rule or law of general application.[93] The court found that rationale inapplicable to Gaddy's Amended Complaint because the Church had not raised the First Amendment bar as part of an effort to obtain religious accommodation or special exemption.[94] Moreover, even if the court engaged in the threshold inquiry, the claims would still fail because they required adjudication of the truth or falsity of certain statements concerning religious beliefs.[95]

The court also rejected Gaddy's new fraudulent omissions theory. Gaddy argued her repleaded claims should survive because liability could be based on the fraudulent omission of material facts, which did not require a determination of the truth or falsity of the

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[92] *See id.* at 22 (citing *United States v. Meyers*, 95 F.3d 1475, 1482–84 (10th Cir. 1996); *Snyder v. Murray City Corp.*, 124 F.3d 1349, 1352 (10th Cir. 1997) *vacated in part on reh'g en banc*, 159 F.3d 1227 (10th Cir. 1998); *United States v. Quaintance*, 608 F.3d 717, 722–23 (10th Cir. 2010)).

[93] Dkt. 100 at 15–16.

[94] *Id.* at 16. The court also disagreed with Gaddy's argument that the reasoning in two criminal cases, in which defendants raised the First Amendment as a defense to fraud charges, required the court to engage in a threshold inquiry of sincerity before considering the church autonomy doctrine as a defense to civil fraud charges. *See id.* at 17–19.

[95] *Id.* at 21.

underlying statements.[96] The court found this argument ignored the analysis required to adjudicate a Utah fraud claim based on omissions—it still would require an impermissible examination of religious doctrines and teachings to determine whether they were false or misleading absent additional disclosure.[97]

The court next examined Gaddy's UCSA claim.[98] Gaddy alleged the Church's solicitation of tithing violated the UCSA because the Church had intentionally concealed or omitted material facts about its history.[99] The Church contended this new claim failed because the UCSA does not provide a private cause of action,[100] and Gaddy's UCSA claim, as pleaded, necessarily required an impermissible evaluation of the truth of the Church's statements based on religious teachings and beliefs.[101] Assuming without deciding the USCA created a private cause of

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[96] Dkt. 47 at 27–28.

[97] Dkt. 100 at 22–23.

[98] The Utah Charitable Solicitations Act prohibits "[i]n connection with any solicitation . . . making any untrue statement of a material fact or failing to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading." UTAH CODE ANN. § 13-22-13(3).

[99] Dkt. 47 at 30–31.

[100] Dkt. 38 at 18 n.7.

[101] *Id.* at 18–19.

action, the court agreed with the Church: Gaddy's UCSA claim would require evaluating the truth of the Church's religious teachings.[102] The court noted the allegedly untrue or misleading facts Gaddy claimed the Church used to solicit tithing were related to Mormonism and the Church's key historical events.[103] The court found those facts "directly implicate[d] the truth of the Church's teachings," and inquiry into their veracity was barred by the Religion Clauses.[104]

Finally, the court evaluated Gaddy's repleaded civil RICO claim, based on a new theory of liability using statements by Church leaders that tithing funds would not be used for commercial purposes.[105] Gaddy alleged these statements were false because contrary to Church assurances, tithing funds were in fact used for commercial purposes, including for the development of the City Creek Mall in Salt Lake City, Utah.[106] Gaddy further alleged the Church made those misstatements through mail and wire communications, implicating RICO.[107] The Church contended the Religion Clauses barred Gaddy's tithing

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[102] Dkt. 100 at 24–25.

[103] *Id.* at 25 (citing Dkt. 37 ¶ 196).

[104] *Id.*

[105] *Id.* (citing Dkt. 37 ¶¶ 5, 6, 79, 200(c)).

[106] *Id.*

[107] *Id.* (citing Dkt. 37 ¶ 200(c)).

theory because "[t]ithing is rooted in the Bible," and therefore an examination of these teachings would entangle the court in an ecclesiastical dispute concerning the "proper use of the Lord's tithing funds."[108] The Church did not present any further argument concerning the viability of Gaddy's civil RICO claim.[109]

The court, noting again that the church autonomy doctrine only applies as a defense to alleged misconduct "rooted in religious belief" not "purely secular decisions, even when made by churches," found that the tithing theory was based on a secular dispute.[110] The court explained that the Amended Complaint did not challenge the Church's tithing doctrine, teachings or beliefs related to it. Rather, the Amended Complaint identified "specific factual statements allegedly made by the Church through its representatives concerning the Church's use of tithing funds and allege[d] those statements are false."[111] Therefore, to adjudicate the claim, the court would not be required to examine the truth or falsity of the Church's teachings concerning tithing, but instead whether the statements about the use of funds were

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[108] Dkt. 38 at 16.

[109] *See id.*

[110] Dkt. 100 at 27–28 (quoting *Bryce*, 289 F.3d at 657).

[111] *Id.* at 28 (citing Dkt. 37 ¶ 79).

true or false.[112]

Because the Church had not raised any challenge to the civil RICO claim other than its Religion Clauses argument, the court found the civil RICO claim survived, to the extent it was based on the tithing theory.[113]

VIII. Gaddy's Second Amended Complaint

Rather than proceed to discovery on her surviving claim, Gaddy again moved to amend her Complaint.[114] The Church filed a response consenting to Gaddy's request, pursuant to Federal Rule of Civil Procedure 15(a)(2).[115] On October 22, 2021, Plaintiffs filed the Second Amended Complaint.[116]

The Second Amended Complaint duplicates many of the claims, theories, and allegations from the prior pleadings. Gaddy (joined now by Small and Harris) again brings claims for fraudulent inducement, fraudulent concealment, violations of UCSA and civil RICO, and intentional infliction of emotional distress.

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[112] *Id.* at 28–29.

[113] *Id.* at 29.

[114] Dkt. 105 (Motion for Leave to File Second Amended Complaint).

[115] Dkt. 107 (Response to Motion for Leave to File).

[116] Dkt. 110.

The Second Amended Complaint also advances two new causes of action: fraudulent nondisclosure and "constructive fraud based on breach of promises of future performance."[117] All the claims rely on the same alleged misrepresentations concerning the First Vision, the Book of Mormon, the Book of Abraham, the Church's history with polygamy, the location of events in the Book of Mormon, and the Church's use of tithing funds.[118]

Notably, the Second Amended Complaint significantly expands from the first two Complaints, describing in almost encyclopedic detail—using tables, charts, artwork, and translation comparisons—the allegations concerning, among other things, the translation of the Book of Mormon,[119] Joseph Smith's polygamy,[120] and the Book of Abraham.[121] The Second Amended Complaint contains great detail about Church-commissioned artwork and films depicting the First Vision and the Translation of the Book of Mormon, including dozens of reproductions of such images.[122] Plaintiffs also expand their allegations

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[117] *Id.* ¶¶ 399–423, 451–62.

[118] *See generally id.*

[119] *See, e.g.*, *id.* ¶¶ 33, 66, 68, 149.

[120] *See, e.g.*, *id.* ¶¶ 40, 41, 216.

[121] *See, e.g.*, *id.* ¶¶ 37–39, 63, 73–78, 194–95.

[122] *See, e.g.*, *id.* ¶¶ 151, 156, 164, 213, 226, 232, 248, 253.

concerning Joseph Smith's life, providing a chart of alleged crimes and civil frauds he committed,[123] and alleging the Church concealed this history.[124] Plaintiffs also provide more allegations concerning the Church's history and governance.[125] In providing these more detailed allegations, the Second Amended Complaint has ballooned to 554 paragraphs over 203 pages.[126]

Plaintiffs also expanded their allegations concerning the Church's misrepresentations on tithing. Plaintiffs first lay out allegations concerning the Church's finances as they relate to tithing. Plaintiffs allege the Church's annual tithing receipts were "recently estimated to be $6–8 billion," and that a $1–2 billion surplus of funds "not needed for ecclesiastical expenses" "is invested and then used for commercial real estate and business development."[127] They provide a table detailing the Church's purported commercial and real estate investments, and allege the money for these projects came from "interest (if not principal) on tithing donations."[128] They further allege that tithing "was not used only for the Lord's or Church purposes

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[123] *Id.* ¶ 36.

[124] *Id.* ¶ 272.

[125] *Id.* ¶¶ 44–46, 49, 59.

[126] *See id.*

[127] *Id.* ¶ 9.

[128] *Id.* ¶ 8.

(reasonably interpreted as religious)[129] but a substantial portion of tithes, especially when compared to humanitarian aid of $1.3 billion from 1985–2010, was used for investment and commercial development purposes, including but not limited to City Creek Mall[,] bailing out Beneficial Life Ins. Co., and likely for" other projects.[130] Plaintiffs then include Church statements concerning tithing usage. They expand the allegation concerning Church President Gordon B. Hinckley's statement at the 2003 General Conference explaining the use of tithing funds on City Creek Mall:

> We have felt it imperative to do something to revitalize this area. But I wish to give the entire Church the assurance that tithing funds have not and will not be used to acquire this property. Nor will they be used in developing it for commercial purposes. Funds for this have come and will come from those commercial entities owned by the Church. These resources, together with the earnings of invested reserve funds, will accommodate this program.[131]

Plaintiffs allege a similar statement was printed in

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[129] These parentheses appear as brackets in the Second Amended Complaint. *Id.* ¶ 293. To avoid confusion, the court has substituted parentheses.

[130] *Id*. Paragraph 8 contains the table detailing the Church's alleged commercial and real estate investments.

[131] *Id.* ¶ 240.

Church-owned *Ensign Magazine*: "[n]o tithing funds will be used in the redevelopment [of downtown Salt Lake City]."[132] Plaintiffs further allege the Church-owned *Deseret News* printed a statement that "[m]oney for the project is not coming from [] Church members' tithing donations," but rather the money will come from the Church's "other real-estate ventures."[133]

Finally, Plaintiffs provide allegations linking tithing to the Church's religious beliefs and practices to illustrate the fraud and misrepresentation. They allege "[t]he definition of invested reserve funds was unknown to [them]," and they "assumed that it meant interest on business profits" because "[they] had always been taught that tithing was used for religious purposes."[134] Concerning Church teachings, Plaintiffs allege: "[d]ecisions to be baptized, remain a member of the organization and importantly for most, to further commit to the Church by serving as a full time mission[ary], and/or qualifying and renewing qualification for temple access and participation, are all conditioned upon paying a full 10% of one's income as tithing."[135] Plaintiffs further allege the Church "extorted that tithing not only by promising eternal salvation, and 'forever families' but by characterizing

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[132] *Id.* ¶ 244.

[133] *Id.*

[134] *Id.* ¶ 237.

[135] *Id.* ¶ 10.

payment of a full tithe as 'fire insurance' to ensure safety from apocalyptic burning at the Second Coming of Jesus Christ."[136]

IX. The Church's Motion to Dismiss Gaddy's Second Amended Complaint

On November 12, 2021, the Church filed the presently pending Motion to Dismiss Plaintiffs' Second Amended Complaint.[137] The Church argues, first, to the extent Plaintiffs' claims are based on religious teachings and beliefs concerning Joseph Smith, the First Vision, the Books of Mormon and Abraham, and Church History, the claims must be dismissed under the church autonomy doctrine, as previously explained in the court's First and Second Orders.[138] Second, the Church argues that each of Plaintiffs' claims, to the extent they are supported by a theory concerning tithing, fail as a matter of law.[139] Finally, the Church argues the Second Amended Complaint should be dismissed with prejudice, as Plaintiffs have had multiple opportunities to amend but continue to plead claims that are barred by the First Amendment.[140]

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[136] *Id.*

[137] Dkt. 111.

[138] *Id.* at 12–13.

[139] *Id.* at 13–26.

[140] *Id.* at 26.

With permission of the court,[141] and over the objection of the Church,[142] Plaintiffs filed an overlength Opposition Memorandum.[143] In it, Plaintiffs again argue that the church autonomy doctrine is "inapplicable" to the claims in the Second Amended Complaint.[144] Plaintiffs argue that the church autonomy doctrine "must be set in the context of an 'internal church dispute'" and the "conduct" at issue must be "rooted in religious belief."[145] Plaintiffs then provide an overview of "Relevant [church autonomy doctrine] Case Law,"[146] and argue the doctrine is inapplicable to the Second Amended Complaint because the alleged fraudulent acts are "not based on a voluntary internal church dispute," but rather on

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[141] Dkt. 117 (Order Granting Motion to File Overlength Memorandum).

[142] Dkt. 113 (Memorandum in Opposition re: Motion for Leave to File Overlength Memorandum).

[143] Dkt. 118 (Opposition to Motion to Dismiss the Second Amended Complaint).

[144] *Id.* at 6–23.

[145] *Id.* at 6; *see also id.* at 7–9 (citing *Paul v. Watchwoter Bible & Tract Soc. of New York, Inc.*, 819 F.2d 875, 878 n.1 (9th Cir. 1987); *Guinn v. Church of Christ of Collinsville*, 75 P.2d 766, 773 (Okla. 1989); *Wollersheim v. Church of Scientology*, 212 Cal. App. 3d 872, 893–98 (Cal. Ct. App. 1989), *cert. granted, judgment vacated sub nom. Church of Scientology of California v. Wollersheim*, 499 U.S. 914 (1991)).

[146] *Id.* at 9–13.

"[a]cts of concealment" that are not "interpretations of doctrine."[147] Plaintiffs again recite extensive case law arising in tort or in the RFRA context—most from out of state or out of circuit—to argue that the court can evaluate the Second Amended Complaint using "neutral principles" gleaned from generally applicable laws without violating the Religion Clauses.[148] Finally, Plaintiffs turn to a defense of the factual sufficiency of each claim in the Second Amended Complaint, focusing on the allegations concerning the Book of Mormon, Book of Abraham, Church history, and tithing.[149]

In its Reply Memorandum, the Church notes the Plaintiffs' church autonomy doctrine argument has already been ruled on twice. The Church maintains Plaintiffs cite the same cases and arguments but seek a different outcome.[150] The Church further argues the only new question is whether any of Plaintiffs' claims related to the tithing theory survive, and that because Plaintiffs fail to plead the required elements, those claims fail.[151]

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[147] *Id.* at 13–14. Plaintiffs also return to *Ballard*, again arguing its holding does not bar their fraud claims. *Id.* at 15–16.

[148] *Id.* at 16–23.

[149] *Id.* at 23–37.

[150] Dkt. 121 (Reply Memorandum in Support of Motion to Dismiss) at 1–2 (summarizing argument).

[151] *See id.*

X. Gaddy's Motion for Leave to File Proposed Third Amended Complaint

Before the court could rule on the Church's pending Motion to Dismiss the Second Amended Complaint, on January 28, 2022, Plaintiffs moved for leave to file a Third Amended Complaint.[152] Plaintiffs argue the Proposed Third Amended Complaint corrects issues identified by the Church's Motion to Dismiss the Second Amended Complaint.[153] Specifically, the Proposed Third Amended Complaint: (1) adds the basis for allegations made upon information and belief, (2) rewords the fourth cause of action as a claim for constructive fraud, (3) adds an "affirmative misrepresentation" from a 2012 tithing form, (4) adds new factual allegations supporting the claim Church leaders "do not believe what they teach," and (5) adds new allegations comparing the percent of annual tithing used for investment funds with the percent of tithing used for humanitarian aid.[154]

On February 25, 2022, the Church filed its Opposition to the Motion for Leave to Amend, arguing that it is within the court's discretion to deny a motion to amend where a plaintiff has had multiple opportunities to plead and that amendment, in this

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[152] Dkt. 122 (Motion for Leave to File Proposed Third Amended Complaint).

[153] *Id.* at 2.

[154] *Id.* at 3–8.

case, would be futile.[155] On March 14, 2022, Plaintiffs filed a Reply Memorandum, arguing the amendments were in response to continued discoveries concerning Church doctrine and tithing use, and that justice requires granting leave to amend.[156]

The Motion to Dismiss the Second Amended Complaint and Motion for Leave to File a Third Amended Complaint being fully briefed, the court resolves the issues based on the written memoranda, finding oral argument unnecessary.[157]

LEGAL STANDARDS

The Church moves to dismiss Plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(6).[158] "To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[159] A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the

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[155] Dkt. 126 (Opposition to Motion for Leave) at 3–10.

[156] Dkt. 128 (Reply in Support of Motion for Leave).

[157] *See* DUCivR 7-1(g). Accordingly, Plaintiffs' Request for Oral Argument, Dkt. 132, is denied.

[158] Dkt. 111 at 10.

[159] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

defendant is liable for the misconduct alleged."[160] In determining whether a complaint satisfies these criteria, the court will "assume the truth of the plaintiff's well-pleaded factual allegations and view them in the light most favorable to the plaintiff."[161]

When fraud is alleged, Federal Rule of Civil Procedure 9(b) imposes a heightened pleading standard. Under this standard, "a party must state with particularity the circumstances constituting [the] fraud or mistake."[162] Thus, Rule 9(b) generally requires a plaintiff "to identify the time, place, and content of each allegedly fraudulent representation or omission, to identify the particular defendant responsible for it, and to identify the consequence thereof."[163]

Additionally, claims implicating church doctrines may be barred by the First Amendment's Religion Clauses.[164] The Tenth Circuit analogizes such an argument to a government official's defense of

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[160] *Id.* (citing *Twombly*, 550 U.S. at 556).

[161] *Albers v. Bd. of Cnty. Com'rs of Jefferson Cnty., Colo.*, 771 F.3d 697, 699 (10th Cir. 2014).

[162] Fed. R. Civ. P. 9(b).

[163] *Hafen v. Strebeck*, 338 F. Supp. 2d 1257, 1263 (D. Utah 2004) (citation omitted).

[164] *See generally* Dkt. 111.

qualified immunity.[165] That is, if the Religion Clauses apply "to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted."[166]

Finally, Rule 15 states that leave to amend a complaint "should freely [be given] when justice so requires."[167] Justice requires leave to amend "[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief."[168] "However, justice does not require leave to amend when amendment would be futile."[169] An amendment is futile when the complaint, as amended, "would be subject to dismissal."[170]

ANALYSIS

First, the court addresses the Church's Motion to

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[165] *See Bryce*, 289 F.3d at 654.

[166] *Id.*

[167] Fed. R. Civ. P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962).

[168] *Foman*, 371 U.S. at 182.

[169] *Prisbry v. Barnes*, No. 2:17-cv-00723-DN-PMW, 2018 WL 1508559, at *3 (D. Utah Mar. 27, 2018) (citing *Castleglen, Inc. v. Resolution Tr. Corp.*, 984 F.2d 1571 (10th Cir. 1993)).

[170] *Jefferson Cnty. Sch. Dist. No. R-1 v. Moody's Invs. Servs., Inc.*, 175 F.3d 848, 859 (10th Cir. 1999).

Dismiss the Second Amended Complaint. Second, the court turns to Plaintiffs' Motion for Leave to File Third Amended Complaint.

I. Motion to Dismiss the Second Amended Complaint

The court first assesses Plaintiffs' seven claims to the extent they are based on repeated theories concerning the First Vision, Book of Mormon translation, Book of Abraham, Joseph Smith's history and practice of polygamy, and Church history. Next, the court assesses Plaintiffs' claims to the extent they are based on a theory of the Church's representations concerning the use of tithing funds.

A. Repeated Theories Concerning the Church's Religious History and Teachings

The Church again moves to dismiss Plaintiffs' claims "based on allegations regarding Joseph Smith's First Vision, the Book of Mormon, the Book of Abraham, and Church history."[171] The Church notes that Plaintiffs have again alleged that the Church's religious teachings concerning Joseph Smith, the Book of Abraham, and the Book of Mormon "are false," and that Plaintiffs have merely "continued to add more allegations about these topics."[172] Citing the court's

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[171] Dkt. 111 at 12.

[172] *Id.*

prior Orders, the Church argues that because the Religion Clauses prohibit inquiries into religious teaching, this includes challenges based on "the First Vision, translations of the Book of Mormon and Book of Abraham, locations of events described in the Book of Mormon, and the Church's history with polygamy."[173] Accordingly, the repleaded claims, to the extent they are based on these theories, must be dismissed.[174]

As noted, Plaintiffs' Opposition Memorandum discusses the church autonomy doctrine and argues it is not applicable to the claims in the Second Amended Complaint because those claims require only the application of "neutral principles of law" to the Church's alleged "acts of concealment."[175]

The court has twice considered and rejected Plaintiffs' arguments that fraud-based claims directed towards the Church's alleged misrepresentations and omissions concerning the First Vision, Church History, translations of the Books of Mormon and Abraham, and locations of events in the Book of Mormon are not subject to the church autonomy doctrine.[176] The court also previously rejected Plaintiffs' theory that they can

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[173] *Id.* (citing Dkt. 100 at 23).

[174] *Id.* (citing Dkt. 100 at 23).

[175] *See* Dkt. 118.

[176] *See* Dkt. 100 at 12 (incorporating First Order and rejecting repeated claims and arguments).

avoid the church autonomy doctrine by arguing the sincerity of the Church's beliefs or basing their claims on a theory of fraudulent omissions.[177] In their Opposition, Plaintiffs point to no newly decided case law or changes in circumstance that would require the court to revisit these conclusions.[178] Accordingly, to the extent the Second Amended Complaint and the parties' arguments concerning the sufficiency of that pleading overlap with factual allegations, arguments, and legal issues previously addressed, the court relies on and incorporates its prior Orders.[179] As such, the court grants the Church's Motion to Dismiss each claim to the extent Plaintiffs' theories arise from the Church's teachings and representations concerning the First Vision, translations of the Books of Mormon and

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[177] *Id.* at 15–23.

[178] Moreover, nowhere in their extensive re-litigation of the church autonomy doctrine do Plaintiffs address a central point of the court's prior Orders—namely, that falsity is a necessary element of each fraud-based claim Plaintiffs plead. To adjudicate those claims as Plaintiffs have pleaded them would require the court to determine whether the religious teachings, beliefs, and facts surrounding them that Plaintiffs allege are misrepresentations are, in fact, false. For reasons this court has explained, that inquiry is barred by the Religion Clauses. The court's prior Orders do not stand for the proposition that churches are generally immune from tort claims; rather, the court has been clear that the church autonomy doctrine "is not without limits." *See, e.g.*, Dkt. 33 at 9. But here, the claims fall well within those limits.

[179] *See* Dkt. 100 at 23 (adopting First Order).

Abraham, and Church history.[180]

The court will briefly address the Second Amended Complaint's expanded factual allegations concerning Joseph Smith's character, including his alleged history of lawsuits and prosecutions for fraud. As to these allegations, the Church argues, "[i]n light of this Court's previous orders, Plaintiffs and their counsel know perfectly well that such claims are barred by the First Amendment[.]"[181] Plaintiffs do not separately address these new allegations in their Opposition, instead focusing their argument on a general defense of the claims related to the Church's religious teachings and beliefs.[182]

The court concludes that allegations concerning Joseph Smith's alleged criminal history fail for the same reason the Amended Complaint's allegations concerning his practice of polygamy failed: religious teachings concerning details of religious events "may not be severed from beliefs about the events themselves."[183] By pleading even more facts concerning

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[180] This disposition also applies to Plaintiffs' expanded allegations concerning the Church's commission of artwork depicting the First Vision and translation of the Book of Mormon, as those allegations are entwined with the Church's teachings about the events themselves.

[181] Dkt. 111 at 13 n.3.

[182] *See generally* Dkt. 118.

[183] Dkt. 100 at 15.

Joseph Smith, Plaintiffs seek to have the court adjudicate the truth or falsity of the Church's beliefs and teachings concerning its founder by challenging the accuracy of facts surrounding those beliefs. But again, "[i]f religious events themselves sit beyond judicial purview, religious beliefs concerning the details of those events must enjoy the same protection."[184] Accordingly, to the extent Plaintiffs' claims rely on the Church's alleged misrepresentations concerning the life of Joseph Smith, those claims fail for the reasons already explained in the court's prior Orders.

B. Expanded Allegations Concerning Tithing

Next, the court turns to Plaintiffs' expanded theory of the Church's alleged misrepresentations concerning tithing funds. While the Amended Complaint contained the tithing theory only in the civil RICO claim, Plaintiffs' Second Amended Complaint incorporates the tithing theory into six of Plaintiffs' seven claims: fraudulent inducement, fraudulent nondisclosure, fraudulent concealment, constructive fraud based on breach of promise of future performance, violation of the UCSA, and civil RICO.[185] Plaintiffs do not include the tithing theory in their seventh claim for intentional infliction of emotional

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[184] *Id.*

[185] *See, e.g.*, Dkt. 110 ¶¶ 385, 408, 428, 455, 470, 484.

distress,[186] and accordingly that claim is dismissed in its entirety for the reasons stated above.

The Church has raised specific arguments as to the why the remaining six claims, based on a tithing theory, fail as a matter of law.[187] The court addresses the parties' arguments concerning each claim in turn.

1. First Claim: Fraud in the Inducement to Enter an Oral Contract

The court first summarizes Plaintiffs' allegations and the Church's arguments in favor of dismissal before analyzing whether Plaintiffs' fraud in the

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[186] *See id.* ¶¶ 536–543. Plaintiffs allege in the Seventh Claim that "[b]ut for [the Church's] misrepresentations as to *all but its tithing use*, Plaintiffs would not have committed to the [Church], nor paid tithing." *Id.* ¶ 539 (emphasis added). In its Motion to Dismiss, the Church argues "[i]t is unclear whether this claim attempts to assert a theory of liability related to the Church's use of tithing funds," but that if such a theory is asserted, it is defective for the reasons the Church argues as to the other claims. Dkt. 111 at 25–26. In opposition, Plaintiffs do not argue that they seek to incorporate the tithing theory into the intentional infliction of emotional distress claim but instead focus on the religious belief-based theories that the court has already dismissed. Plaintiffs argue the Church's misrepresentations about its history have caused members to suffer from "existential crises, suicidal ideation, destruction of familial relationships, insomnia, anxiety, and depression." Dkt. 118 at 36–37. Based on Plaintiffs' pleading and argument in Opposition, the court concludes that they do not seek to include the tithing theory in the intentional infliction of emotional distress claim.

[187] Dkt. 111 at 13–25.

inducement claim survives as it relates to tithing.

a. Plaintiffs' Allegations Concerning Tithing and the Church's Argument for Dismissal

Plaintiffs allege the Church used tithing for "the Lord's or Church purposes" and "humanitarian aid," as well as "investment and commercial purposes."[188] As to City Creek Mall, Plaintiffs allege the Church made representations that "no tithing was used for City Creek Mall and that tithing is (only) used for Church (reasonably interpreted as religious) purposes and activities," but that in fact, when those representations were made, "[o]n information and belief. . . [the Church] was using tithing for commercial real estate deals and commercial investments and other non-religious and non-charitable purposes."[189] Plaintiffs did not understand then- President Hinckley's statement that "invested reserve funds" had been used for the City Creek Mall development in actuality meant tithing funds had been used.[190] Similar representations that tithing was not used for commercial development "were false" because "upon information and belief," Church officials knew tithing "was used . . . for commercial purposes."[191] But because the Church

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[188] *Id.* ¶ 293.

[189] Dkt. 110 ¶ 366.

[190] *Id.* ¶ 375.

[191] *Id.* ¶ 381.

"required a full tithe in order to acquire and maintain temple recommends and/or be baptized and have ongoing access to an LDS[192] temple in order to ensure one's family is together in the afterlife and does not burn at the second coming of Christ," Plaintiffs relied on the Church's representations and were induced to enter an oral contract with the Church to tithe.[193] Plaintiffs were further induced by the Church's claim "tithing was used only for ecclesiastical purposes, meaning that it was used to . . . proclaim the gospel, perfect the saints, [] redeem the dead, and care for the poor and needy," not "for commercial endeavors to expand a business empire."[194]

In its Motion to Dismiss, the Church divides Plaintiffs' tithing allegations as to this claim into two categories: first, "general allegations about the Church's uses of tithing funds and whether those uses really are 'for the Lord's work,'"[195] and second, "specific allegations about the source of funds for the City

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[192] "LDS" is a shortened acronym referencing "Latter-Day Saints," a portion of the Church's full name.

[193] *Id.* ¶ 385. Plaintiffs further allege their reliance was reasonable, and they paid up to 10% of their income as a tithe "in order to obtain and maintain a temple recommend, and/or be baptized." *Id.* ¶ 393.

[194] *Id.* ¶ 390.

[195] Dkt. 111 at 15 (citing Dkt. 110 ¶ 233).

Creek project."[196]

First, as to the general allegations concerning tithing, the Church argues the allegations violate the First Amendment: "Plaintiffs ask this Court to determine whether the Church's use of tithing funds really is 'for the Lord's work' and 'to support other Church purposes as directed by the designated servants of the Lord,'"[197] an examination which would "impermissibly entangle this Court in an ecclesiastical dispute—the proper use of the Lord's tithing funds."[198] The Church specifically argues that Plaintiffs cannot meet the falsity element under this theory because determining the truth or falsity of whether tithing is "for the Lord's work" would violate the First Amendment.[199] Additionally, the Church argues the reliance element, as pleaded, would also require the court to enter impermissible First Amendment territory because Plaintiffs variously plead that (1) they relied on Church statements requiring tithing "as a condition of membership" in the Church and to

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[196] *Id.*

[197] *Id.* at 16 (citing Dkt. 110 ¶¶ 230, 233).

[198] *Id.*

[199] *Id.* The Church additionally argues that the Utah Supreme Court previously rejected the religious-commercial distinction Plaintiffs argue for in *Stone v. Salt Lake City*, 356 P.2d 631 (Utah 1960). Dkt.111 at 17. Because the court concludes this claim fails for other reasons, it does not address the religious-commercial distinction argument.

obtain a "temple recommend;" (2) they relied on the Church's teachings concerning the Book of Mormon and Joseph Smith in deciding to pay tithing and be baptized; and (3) they paid tithing based on the Church's characterization of tithing as "fire insurance to ensure safety from apocalyptic burning at the Second Coming of Jesus Christ."[200] The Church argues that there "is no way to determine upon what an individual would 'reasonably rely' in deciding to donate tithing without addressing the Church's religious teachings."[201]

Second, as to the tithing allegations connected to the funding sources for the City Creek Mall, the Church argues "Plaintiffs have not and cannot plead that the Church's statements about the source of funds for City Creek were false."[202] The Church notes Hinckley stated that "tithing was not used for the City Creek mall," but in the same statement clarified that "earnings of invested reserve funds" were used for the mall.[203] Because Plaintiffs pleaded the Church "has in fact used at least interest (if not principal) on tithing donations to fund commercial ventures," the Church argues they have not pleaded falsity because invested reserve funds refer to interest on tithing, and Plaintiffs "do not actually plead that tithing principal was

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[200] *Id.* at 18 (citing Dkt. 110 ¶ 10, 391).

[201] *Id.* at 19.

[202] *Id.*

[203] *Id.* at 19.

used."[204] The Church further argues that because a California district court recently rejected a similar claim in a different case at summary judgment, it is impossible for Plaintiffs to plead falsity in good faith.[205]

In opposition, Plaintiffs offer no substantive reply to any of these arguments. They devote only one page of their lengthy Opposition Memorandum to the fraudulent inducement claim—mostly arguing about theories, already dismissed, concerning the Book of Mormon translation.[206] Indeed, Plaintiffs provide only a two-sentence response to the Church's seven-page argument concerning why Plaintiffs' fraudulent inducement claim, based on the tithing allegations, fails: "Finally, despite [the Church's] claim, Plaintiffs did in fact allege City Creek statements were false. Tithing, even if limited to interest on tithing, was the original source of the reserve funds."[207] Plaintiffs do not respond to Defendants' argument as to why the general tithing allegations fail under the First Amendment.

b. Analysis

The court agrees with the Church that Plaintiffs' fraud in the inducement claim fails, not for running

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[204] *Id.* 205

[205] *Id.* at 20.

[206] *See* Dkt. 118 at 23–24.

[207] *Id.* at 24 (citing Dkt. 110 ¶¶ 381–82).

into a First Amendment bar on the falsity or reliance elements,[208] but for a more fundamental failure to plead the claim with the specificity required under Rule 9(b). Plaintiffs fail to identify specific actions taken or oral contracts entered into on the basis of any particular misrepresentations.[209] Because the court

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[208] For reasons more fully articulated in the Second Order, *see* Dkt. 100 at 26–28, the court is skeptical of the Church's argument that the First Amendment bars Plaintiffs' fraud in the inducement claim to the extent it is based on allegations concerning tithing. The court does not understand Plaintiffs' allegations to be that the Church's teachings concerning tithing were false. Rather, the court understands the allegations to be that the Church stated tithing was not used for commercial or investment purposes while, in fact, using tithing funds for just that. Those allegations could be adjudicated without evaluating the truth or falsity of the Church's religious teachings concerning tithing. Similarly, the court does not think this claim founders on the reliance element. Whether a reasonable person would have relied on the Church's representations concerning the use of tithing funds—and specifically, that tithing was not used for commercial purposes—is an inquiry that can be made without implicating the underlying nature of tithing doctrine.

[209] In considering the Church's argument that the Second Amended Complaint fails to allege fraud with the specificity required by Rule 9(b), the court expands its analysis beyond the two elements (falsity and reliance) the Church identifies as deficient. While the court typically will not look beyond the party's arguments when adjudicating a motion to dismiss, this is the third time it has considered a version of this complaint on the merits. *See* Dkt. 33; Dkt. 100. The court must balance its obligations to both allow plaintiffs ample opportunity to plead claims and to shield defendants from undue prejudice caused by the need to defend against successive pleadings. The court is also conscious of its duty to construe and administer the federal rules to "secure the just, speedy, and inexpensive determination of

concludes the Plaintiffs fail to plead fraud in the inducement on this more fundamental level, rather than separate the analysis into two categories as the Church does, the court evaluates Plaintiffs' allegations concerning tithing together.

To bring a fraudulent inducement claim under Utah law, a plaintiff must allege: "(1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage."[210] Utah courts have recognized that a plaintiff's failure to establish each necessary element of a fraud claim under the facts alleged in a complaint dooms the claim.[211]

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every action and proceeding." Fed. R. Civ. P. 1. Accordingly, the court takes a broader view of the Second Amended Complaint to determine whether any of the repleaded claims adequately state a claim under the governing standards.

[210] *Gerwe v. Gerwe*, 424 P.3d 1113, 1117 (Utah Ct. App. 2018).

[211] *See, e.g.*, *Franco v. The Church of Jesus Christ of Latter-Day Saints*, 21 P.3d 198, 208 (Utah 2001), *abrogated on other grounds by Williams v. Kingdom Hall of Jehovah's Witnesses*, 491 P.3d 852 (Utah 2021).

Under Federal Rule of Civil Procedure Rule 9(b), "a party must state with particularity the circumstances constituting fraud."[212] The Tenth Circuit has explained that Rule 9(b) requires a complaint alleging fraud to "identify the time, place, content, and consequences of fraudulent conduct," or more plainly, to "plead the who, what, when, where and how of the alleged [fraud]."[213] This accords with Rule 9(b)'s purpose "to afford defendant fair notice of plaintiff's claims and the factual ground upon which they are based."[214] In *George v. Urban Settlement Services*, the Tenth Circuit found fraud allegations unsatisfactory when the plaintiff only generally alleged that he "sometimes on specific dates, made phone calls . . . spoke with unidentified . . . employees who made false representations to him via phone, and received letters through the mail . . . containing false and misleading statements."[215] However, allegations identifying specific employees by name, specific dates when employees made false statements, and specific actions taken in reliance on those misrepresentations were

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[212] Fed. R. Civ. P. 9(b).

[213] *United States ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1171 (10th Cir. 2010) (internal citations and quotations omitted).

[214] *Koch v. Koch Indus., Inc.*, 203 F.3d 1202, 1236–37 (10th Cir. 2000) (internal citation and quotation omitted).

[215] 833 F.3d 1242, 1255–56 (10th Cir. 2016).

sufficient to state a claim for fraud.[216]

Plaintiffs' claim for "fraud in the inducement to enter an oral contract" fails to identify specific oral contracts that Plaintiffs entered into, on specific dates, with specific Church leaders, and in reliance on particular false statements. Rather, Plaintiffs only generally allege that "outsiders" as well as those who were "already members" made "[d]ecisions to be baptized," "remain a member," and "further commit . . . by serving as a full[-]time mission[ary]" or to "qualify[] and renew[] qualification for temple access and participation" based on the condition of paying 10% of their income as tithing, a sum the Church "extorted" with promises of "eternal salvation," "forever families," and the characterization of tithing as "fire insurance."[217] Plaintiffs also allege that the Church made false representations (concerning the use of tithing funds and other matters) "to induce all Plaintiffs to enter into an oral contract with [the Church] who offered an LDS temple recommend on the condition that Plaintiffs . . . commit to pay a full tithe."[218] Plaintiffs allege the "recommend is/was renewable upon the condition that Plaintiffs continue to pay a full tithe."[219] In short, Plaintiffs offer general allegations about the agreement to tithe, but fail to

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[216] *Id.* at 1256.

[217] Dkt. 110 ¶ 10.

[218] *Id.* ¶ 386.

[219] *Id.*

offer any specific allegations identifying an instance in which any Plaintiff agreed to pay tithing on the basis of a particular misrepresentation, by whom it was made, when it was made, and the like.

The closest the Second Amended Complaint comes to offering the specificity demanded by Rule 9 is by offering allegations describing certain interviews Church members had in which they either affirmed or recommitted to paying tithing. For example, Plaintiffs allege Church members undergo a confidential interview at age eight with Church leaders in which they are asked, among other things, about whether they can commit to paying tithing.[220] The Second Amended Complaint also alleges all members have a "temple worthiness" interview "as a young adult" in which they are asked if they "obey[] the law of tithing."[221] Plaintiffs allege that each year, they have a meeting with their bishop in December for "tithing settlement," but do not allege any specific December meeting with any specific person during which they chose to renew or recommit to paying tithing on the basis of any representations.[222] Finally, Plaintiffs generally plead "enter[ing] into ongoing oral contracts"

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[220] *Id.* ¶¶ 286–87. Notably, for each named plaintiff, this meeting happened long before specific alleged misrepresentations such as the President Hinckley statement. *See id.* ¶¶ 286, 336, 345 (stating Gaddy and Harris were teenagers at the time of the Hinckley statement and establishing Small was an adult).

[221] *Id.* ¶ 288.

[222] *Id.* ¶ 290.

to pay tithing "in order to obtain and maintain a temple recommend."[223] Plaintiffs do not allege if at any of these interviews they specifically chose to begin to pay tithing or to continue to pay tithing on the basis of any particular representation.

Indeed, Plaintiffs' allegations about their personal involvement with the Church are marked by general descriptions of their lifelong adherence, rather than identification of specific instances in which they relied on a misrepresentation in choosing to enter a particular oral contract with the Church. For example, the allegations about Gaddy discuss her lifelong devotion to the Church and continuing commitment, identifying no particular instance in which her decision to pay tithing was initially induced or even recommitted by way of a misrepresentation.[224] The allegations concerning Small state he was a "full tithe payer since age eight."[225] Plaintiffs allege Small "would not have paid tithing had he known tithes were used for commercial development," and further that he specifically heard the Hinckley statement, but does not allege any specific instance in which he chose or recommitted to paying tithing on the basis of any particular misrepresentation.[226] Similarly, Plaintiffs allege Harris "was just a teenager" at the time of the

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[223] *Id.* ¶¶ 393–94.

[224] *Id.* ¶¶ 302–34.

[225] *Id.* ¶ 337.

[226] *See id.* ¶¶ 335–41.

Hinckley statement, and that she "would not have paid tithing had she known tithes were used for commercial investment and development."[227] In short, while Plaintiffs generally allege they would not have paid tithing had they known what tithing funds were used for, they do not allege with specificity that they entered any particular oral contract while relying on any particular misrepresentation concerning tithing. And indeed, their allegations establish the opposite—Plaintiffs were lifelong, devoted members to the Church who paid tithing from a young age and until recently never wavered in their commitment.

In short, Plaintiffs' allegations much more closely resemble the insufficient allegations in *George*. Alleging that they entered into non-specific oral contracts once a year on an ongoing basis in reliance on "the Church's" statements about tithing is not sufficiently particular to make out a claim for fraud in the inducement to enter into an oral contract. As discussed, Plaintiffs must plead the who, what, when, where, and how of the alleged fraud. Plaintiffs have not identified which Church leaders specifically induced them to enter "ongoing oral contracts," when these alleged ongoing contracts were made, and whether they entered into the contracts on the basis of specific misrepresentations. Instead, as discussed, they allege they were lifelong, devoted members of the Church, and fail to allege any specific instance in which they committed to paying tithing on the basis of a misrepresentation. Moreover, this failure to allege

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[227] *Id.* ¶¶ 342–45.

with the necessary specificity is not because the information is within the Church's control. Quite the opposite—Plaintiffs have the best knowledge of their own experiences and whether there was ever a particular misrepresentation that caused them to enter a particular oral contract with the Church.

Because the circumstances of an alleged fraud must be pleaded with "enough specificity to put defendants on notice as to the nature of the claim,"[228] and Plaintiffs' Complaint fails to do so under the governing standard, the claim for fraud in the inducement to enter an oral contract must be dismissed.

2. Second and Third Claims: Fraudulent Nondisclosure and Fraudulent Concealment

Plaintiffs reassert in the Second Amended Complaint a claim for fraudulent concealment,[229] and assert a new claim for "fraudulent nondisclosure."[230] Plaintiffs maintain the difference between the two claims is that fraudulent nondisclosure does not

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[228] *United States ex rel. Polukoff v. St. Mark's Hosp.*, 895 F.3d 730, 745 (10th Cir. 2018) (citing *Williams v. Duke Energy Int'l, Inc.*, 681 F.3d 788, 803 (6th Cir. 2012)).

[229] Dkt. 110 ¶¶ 424–50.

[230] *Id.* ¶¶ 399–423.

require a showing of intent.[231] In its Motion to Dismiss, the Church correctly observes Plaintiffs' second and third claims are treated identically under Utah law.[232] Indeed, "Utah . . . does not draw a distinction between the torts of fraudulent nondisclosure and fraudulent concealment."[233] Accordingly, the court considers Plaintiffs' second and third claims together.

"To prevail on a claim for fraudulent nondisclosure, a plaintiff must prove by clear and convincing evidence that (1) the defendant had a legal *duty* to communicate information, (2) the defendant *knew* of the information he failed to disclose, and (3) the nondisclosed information was *material*."[234] The court concludes it cannot adjudicate the duty or materiality elements without running afoul of the church autonomy doctrine.

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[231] *See* Dkt. 118 at 30.

[232] Dkt. 111 at 20–21.

[233] *Jensen v. Cannon*, 473 P.3d 637, 643 (Utah Ct. App. 2020). The *Jensen* court notes that a few other jurisdictions recognize a separate tort of fraudulent concealment, but is clear that Utah courts do not recognize a separate tort. *Id.* In their Opposition, Plaintiffs argue this analysis in *Jensen* is "confusing," and assert they can pursue separate fraudulent intent and fraudulent concealment claims. Dkt. 118 at 30. The court disagrees that *Jensen* is unclear on this point.

[234] *Jensen*, 473 P.3d at 642 (internal citations and quotation omitted).

a. Plaintiffs' Allegations and the Church's Arguments in Favor of Dismissal

In their claim for fraudulent nondisclosure, Plaintiffs allege they "entered into a business transaction" with the Church by paying tithing,[235] which created a "confidential relationship that gave rise to [the Church's] duty to disclose material facts,"[236] but the Church failed to disclose material facts concerning tithing's use for commercial development projects.[237]

In its Motion to Dismiss, the Church argues Plaintiffs cannot satisfy the duty element given the court's prior Orders recognizing no fiduciary duty has been recognized by Utah courts, and moreover, there is no legal precedent supporting the proposition that a church has a duty to publicly disclose the use of its funds.[238] The Church also argues Plaintiffs cannot plead the knowledge element because the Church publicly disclosed that "it invests a portion of its funds

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[235] Dkt. 110 ¶¶ 400–01.

[236] *Id.* ¶ 402.

[237] *Id.* ¶ 408. Plaintiffs also allege the Church violated its duty by failing to disclose material facts concerning Joseph Smith. *Id.* ¶¶ 404–16. These claims have already been dismissed as being barred by the church autonomy doctrine. *See supra* section 1(b) at 28–29.

[238] Dkt. 111 at 21.

for future use,"[239] and finally, Plaintiffs cannot plead the materiality element because that would require an impermissible inquiry into "what information is 'material' to a member of the Church in deciding whether to donate tithing."[240]

In opposition, Plaintiffs argue that the recent abrogation of *Franco v. The Church of Jesus Christ of Latter-Day Saints*, a 2001 case in which the Utah Supreme Court refused to recognize a fiduciary duty arising from ecclesiastical relationships,[241] "means that finding a fiduciary duty between the Brethren[242] and LDS members is not foreclosed."[243] In a paragraph that mostly focuses on Church officials' supposed duty to disclose facts about Joseph Smith, Plaintiffs identify

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[239] *Id.* Defendants also discuss *Stone v. Salt Lake City*, arguing it supports the proposition that donated funds to a Church not being "disbursed immediately and directly" does not give rise to a cause of action by a donor. *Id.* (citing *Stone*, 356 P.2d at 634). Plaintiffs distinguish this case in opposition, noting the plaintiff in *Stone* sought to enjoin two real estate actions but had not brought any cause of action for fraud. Dkt. 118 at 27. Because this claim fails for other reasons, the court does not address whether *Stone* separately precludes the claim.

[240] Dkt. 111 at 22.

[241] 21 P.3d at 205–06; *see also* Dkt. 33 at 18–20 (discussing *Franco*).

[242] In this context, "Brethren" refers to the Church's leadership.

[243] Dkt. 33 at 28.

additional factors supporting finding a fiduciary relationship:

> There are many factors which argue in favor of the Court finding a limited fiduciary duty in the relationship between the Brethren and Plaintiffs such that all material facts about the Church's founder, Joseph Smith, and how tithing is used should have been disclosed. Those factors are privity of contract, confidentiality, imbalance in knowledge, age, influence, bargaining power, etc., factors listed in *Yazd v. Woodside Homes Corp.*,[244] and an invitation to trust the Brethren[.] Combined, a limited fiduciary duty to disclose Smiths' legal history should be found.[245]

Plaintiffs then continue to argue, assuming a duty is found, that the Church should be subject to "commercial development requirements which Utah has found in real estate and other transactions."[246]

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[244] 143 P.3d 283, 286–87 (Utah 2006). Those factors appear to be: "[a]ge, knowledge, influence, bargaining power, sophistication, and cognitive ability. . . or where a 'special relationship' exists." *Id.* Notably, *Yazd* arises in the context of homebuyers bringing an action about a vendor, it does not analyze the potential existence of a legal duty between a church and its members. *See id.* at 285.

[245] Dkt. 118 at 28 (internal citations omitted).

[246] *Id.* at 29.

Plaintiffs conclude by arguing that a Sixth Circuit decision from 1924, *Hansel v. Purnell*,[247] should be considered "persuasive with regard to [the Church's] management style of hiring lawyers and business men, and those trained in organizational behavior, lack of professionally trained clergy . . . lack of an internal dispute system (with the exception of local disciplinary councils) and greed (net worth of $400 billion) while donating just 1.3 billion from 1985-2010."[248]

In reply, the Church argues Plaintiffs have offered no case law to support the argument that a church has a duty to publicly disclose the use of its funds, and Plaintiffs only make the unsupported claim that "Utah requires disclosure of all material facts in order to make representations not misleading."[249]

b. Analysis

The court agrees with the Church that Plaintiffs fail to state a claim for fraudulent nondisclosure on the tithing theory because Plaintiffs cannot show that a legal duty exists between the Church and its members requiring disclosure of material financial information.[250] The court has already determined that

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[247] 1 F.2d 266, 270 (6th Cir. 1924).

[248] Dkt. 118 at 29–30.

[249] Dkt. 121 at 9 (citing Dkt. 118 at 27).

[250] Because Plaintiffs fail to allege the duty element, the court declines to reach the question of whether Plaintiffs have

under Utah law there is no legally cognizable general fiduciary duty between a church and its members.[251] And despite Plaintiffs' invitation for the court to reconsider this holding in light of the abrogation of *Franco*,[252] the court does not find that *Franco*'s abrogation changes the analysis of the duty element.

In *Williams v. Kingdom Hall of Jehovah's Witnesses*,[253] the Utah Supreme Court abrogated the *Franco* decision in response to the United States Supreme Court's decision in *American Legion v. American Humanist Association*,[254] which in turn departed from the *Lemon v. Kurtzman*[255]

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pleaded facts supporting the knowledge or materiality elements.

[251] Dkt. 33 at 18–20. In support of the duty element of their nondisclosure claims, Plaintiffs argue only for a "limited fiduciary duty" requiring disclosure of material financial information. Dkt. 118 at 28. Because in their briefing Plaintiffs identify no other duty under Utah law requiring this disclosure, the court limits its discuss here to Plaintiffs' reliance on the existence of a fiduciary duty.

[252] Plaintiffs provide no argument or analysis for why the abrogation of *Franco* supports revisiting the court's holding on the duty element. *See* Dkt. 118 at 28.

[253] 491 P.3d 852 (Utah 2021).

[254] 139 S. Ct. 2067 (2019).

[255] 403 U.S. 602 (1971). The Establishment Clause test consisted of three steps to evaluate challenged governmental action under the Establishment clause: "first, the action must have a secular purpose, second, its principal or primary effect

Establishment Clause test.[256] The *Williams* court explained, following *American Legion*, that courts should not use the *Lemon* test when analyzing Establishment Clause cases, but rather, "focus on the particular issue at hand and look to history for guidance,"[257] or as Justice Kavanaugh said in concurrence, "identify an overarching set of principles" "based on history, tradition, and precedent."[258] Because *Franco* relied on *Lemon*'s excessive entanglement analysis, the case was abrogated by *Williams*.[259] The *Williams* court remanded the case for the district court to consider "history, tradition, and precedent to identify core Establishment Clause principles" to apply to the case.[260] The *Williams* court also noted that "the conclusion reached by the district court . . . may ultimately prove to be the correct one," but the conclusion simply had to be reconsidered in light of the

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must be one that neither advances nor inhibits religion, and third, it must not foster an excessive government entanglement with religion." *Williams*, 491 P.3d at 856 (citing *Lemon*, 403 U.S. at 612–13).

[256] 139 S. Ct. 2067 (2019).

[257] *Williams*, 491 P.3d at 857 (citing *American Legion*, 139 S. Ct. at 2087).

[258] *Id.* (citing *American Legion*, 139 S. Ct. at 2093 (Kavanaugh, J., concurring)).

[259] *See Franco*, 21 P.3d at 203.

[260] *Williams*, 491 P.3d at 859.

abandonment of the *Lemon* test.[261]

In the First Order, this court did not rely on the *Lemon* test in setting out overarching First Amendment principles; rather, it relied on the church autonomy doctrine—a doctrine that is rooted in history, tradition, and case precedent dating back to 1871.[262] In considering Gaddy's claim for a breach of fiduciary duty, the court noted the central issue with Gaddy's theory was that she cited no authority establishing that a legally cognizable fiduciary duty arises from purely ecclesiastical relationships.[263] The court then cited *Franco*, not for its analysis under the *Lemon* test but for the proposition that the Utah Supreme Court had declined to recognize a fiduciary duty arising from ecclesiastical relationships:

> Defining such a duty would necessarily require a court to express the standard of care to be followed by other reasonable clerics in the performance of their

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[261] *Id.*

[262] *See* Dkt. 33 at 9–10 (summarizing church autonomy doctrine history).

[263] *Id.* at 19. The court noted that Gaddy cited *Yazd* but did not find the case instructive because it arose in a commercial context. *Id.* at 19 n.105. Plaintiffs again argue the *Yazd* factors favor finding a limited fiduciary duty between Church leaders and Plaintiffs. Dkt. 118 at 28. Yet Plaintiffs provide no legal basis for applying the *Yazd* factors in the ecclesiastical context. *See id.* For this reason, the court sees no reason to revisit its former ruling and dismisses this argument as unpersuasive.

> ecclesiastic counseling duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. This is as impossible as it is unconstitutional.[264]

Once again, Plaintiffs cite no case law—in any jurisdiction—establishing or even suggesting that a legally cognizable fiduciary duty arises or could arise from ecclesiastical relationships.[265] Nor do Plaintiffs cite case law for the specific proposition that a church has a separate duty to publicly disclose the use of its funds. The fact that *Franco* was abrogated insofar as it applied the *Lemon* test does not suggest the Utah Supreme Court would now reach a contrary conclusion on these legal questions.

In short, because this court did not rely on the *Lemon* test in its prior Orders, and because the court is not convinced—and Plaintiffs have not cited any case law to the contrary—that the Utah Supreme Court would find the existence of a fiduciary duty arising in ecclesiastical relationships given the abrogation of *Franco*, the court declines to revisit its

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[264] *Id.* at 19 (citing *Franco*, 21 P.3d at 206).

[265] Plaintiffs' citation to *Hansel* is unavailing. That case does not provide any support for finding the existence of a fiduciary duty between a Church and its members. *See* 1 F.2d 266, 271–72 (6th Cir. 1924) (upholding district court decree against religious leader who molested young women).

prior Orders. Because Plaintiffs have failed to establish the Church owes them a legal duty in this context, the second and third claims for relief are dismissed.

3. Claim 4: Constructive Fraud Based on a Breach of Promises of Future Performance

Next, Plaintiffs bring a cause of action for "Constructive Fraud Based on a breach of promises of future performance," alleging, among other things, the Church "breached its promise never to lead Plaintiffs astray with respect to its representations" and it provided "less than full and fair disclosure" about its actions concerning Plaintiffs' tithing money.[266]

In its Motion to Dismiss, the Church argues "constructive fraud based on a breach of promises of future performance" is not a cause of action recognized under Utah law, and the allegations raised within this cause of action are duplicative of other claims.[267] In its Opposition, Plaintiffs assert that the Utah Model Jury Instructions show "constructive fraud" is a separate cause of action, citing Instruction CV 1805.[268] Plaintiffs also cite two Utah Supreme Court cases analyzing

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[266] Dkt. 110 ¶ 457.

[267] Dkt. 111 at 23.

[268] Dkt. 118 at 31 (citing Utah Model Civil Jury Instructions CV 1805: Promises and Statements of Future Performance).

"promises and statements of future performance" in the context of general fraud claims to argue this cause of action exists.[269] In reply, the Church points out that Instruction CV 1805 is "an instruction for one element of a general fraud claim."[270]

The court is unaware of any case law supporting the proposition that "constructive fraud based on a breach of promises of future performance" is an independent, recognized cause of action in Utah. Indeed, Instruction CV 1805 is provided in Chapter 1800 of the Utah Model Jury Instructions, which catalogues the model instructions related to general fraud claims.[271] Instruction CV 1805, "Promises and Statements of Future Performance," is merely illustrative of one way a plaintiff can show falsity in a general fraud claim.[272] Moreover, the cases Plaintiffs cite describe breach of a promise of future performance

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[269] *Id.* at 31 (citing *Hull v. Flinders*, 27 P.2d 56, 57 (Utah 1933); *Cerritos Trucking Co. v. Utah Ventures No. 1*, 645 P.2d 608, 610–11 (Utah 1982) (contract)).

[270] Dkt. 121 at 10.

[271] *See* Utah Model Jury Instruction CV 1801 (explaining the jury instructions following 1801, "Elements of fraud," provide "more information" about the basic elements of fraud enumerated in CV 1801).

[272] *See* Utah Model Jury Instruction CV 1805; *see also id.* CV 1802–06 (instructions for different ways to prove the falsity element of fraud).

in the context of general fraud claims.[273] Neither case supports the proposition that "constructive fraud based on a breach of promises of future performance" is a recognized cause of action in Utah.

Because "constructive fraud based on a breach of promises of future performance" does not appear to be a recognized cause of action in Utah, and Plaintiffs provide no support for the proposition it can stand alone as a cause of action, the court dismisses this claim.

4. Claim 5: Violation of Utah Charitable Solicitations Act

Next, Plaintiffs bring a cause of action for "violation of the Utah Charitable Solicitations Act" (UCSA), alleging the Church solicited tithing by saying it was required from members for full temple access to keep families together in the afterlife, while omitting that tithing was used for commercial projects.[274] In its Motion to Dismiss, the Church argues the UCSA does not create a private cause of action, but rather leaves enforcement to the Utah Attorney General's Office and the Division of Consumer Protection.[275] In opposition, Plaintiffs apparently concede the Church is right, providing only two sentences in response to the

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[273] *Hull*, 27 P.2d at 57; *Cerritos Trucking Co.*, 645 P.2d at 610–11.

[274] Dkt. 110 ¶ 467, 470.

[275] Dkt. 111 at 23 (citing Utah Code §§ 13-2[2]-3, 4).

Church's UCSA argument:

> Concededly, U.C.A. § 13-22-4 is vague. Assuming arguendo that [the Church] is correct, the statute at least demonstrates an intent by the State of Utah that churches are not exempt from a fair disclosure in the context of their solicitations, with damages which exceed those limited by the statute.[276]

The court construes Plaintiffs' Opposition to have conceded this claim. But even if Plaintiffs did not concede the claim, the court agrees with the Church that the UCSA does not create a private cause of action.[277] In *Siebach v. Brigham Young University*, the Utah Court of Appeals, addressing a preemption argument, held the UCSA does not *prevent* a donor to a charitable organization from bringing a cause of action for fraud arising from the donation.[278] However, nothing in the case, which analyzes the UCSA in some detail, suggests the UCSA creates a separate, private cause of action. Rather, the legal issue addressed was whether the UCSA could prevent a plaintiff from maintaining his own separate cause of action for

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[276] Dkt. 118 at 31–32.

[277] UTAH CODE ANN. § 13-22-3(2)(b) ("[T]he director may bring an action in the appropriate district court of this state[.]").

[278] 361 P.3d 130, 139–40 (Utah Ct. App. 2015).

fraud.[279]

Because the UCSA does not appear create a private cause of action, and because effectively Plaintiffs concede this point in their Opposition, the court dismisses Plaintiffs' claim for violation of the UCSA.

5. Claim 6: Civil RICO

Finally, Plaintiffs reassert their civil RICO claim, this time incorporating the broader tithing-based allegations described above in with a repleaded version of the sole surviving claim from the Amended Complaint—that the Church "engaged in a scheme or schemes to defraud [Plaintiffs] by concealing the fact that tithing was used for commercial purposes."[280] Plaintiffs allege the Church engaged in a "pattern of racketeering activity," including mail and wire fraud, in perpetuating the alleged fraud.[281] Plaintiffs further allege they suffered damages in reliance on the Church's affirmative misrepresentations that "no tithing was used for City Creek Mall, its omissions about commercial use of a substantial portion of tithing to bailout Beneficial Life Insurance and for the investment in, purchase and development of numerous commercial entities throughout the United States and

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[279] *See id.*

[280] Dkt. 110 ¶ 484.

[281] *Id.* ¶ 517.

the world."[282]

The court agrees with the Church that Plaintiffs have failed to plead a cognizable civil RICO claim.[283] "The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity."[284] "Racketeering activity is defined . . . as any 'act which is indictable' under federal law and specifically includes mail fraud, wire fraud and racketeering."[285] These underlying acts are referred to as "predicate acts."[286]

In its Motion to Dismiss, the Church argues that

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[282] *Id.* ¶ 532.

[283] The Church's earlier Motion to Dismiss the Amended Complaint raised no arguments concerning the merits of the Amended Complaint's civil RICO claim, because the Motion focused entirely on the church autonomy doctrine issue. *See* Dkt. 38. Because the court concluded the tithing claims in the Amended Complaint concerned a secular issue, and in the absence of any additional argument about the civil RICO claim, the claim survived. In its Motion to Dismiss the Second Amended Complaint, the Church supplies extensive arguments on why the civil RICO claim fails on the merits. Faced with a different pleading and different arguments in a Motion to Dismiss, the court reaches a different conclusion.

[284] *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006) (citing 18 U.S.C. § 1962(a), (b), & (c)).

[285] *Id.* (citing 18 U.S.C. § 1961(c)(1)(B)).

[286] *Id.*

to successfully plead a civil RICO claim, a plaintiff must sufficiently plead underlying claims (called "predicate acts"), and because all of Plaintiffs' underlying fraud-based claims fail, the civil RICO claim also fails.[287] Additionally, the Church argues that even if Plaintiffs adequately alleged an underlying predicate act, they have failed to allege a "pattern of racketeering activity," a necessary element of a civil RICO claim.[288] Finally, the Church maintains Plaintiffs have not identified any indictable conduct, which is also a necessary prerequisite for a civil RICO claim.[289]

In opposition, Plaintiffs first outline changes they will propose in a "Motion to Supplement,"[290] including identifying more misrepresentations on the part of the Church.[291] Next, Plaintiffs argue[292]—again[293]—that material omissions can support mail and wire fraud

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[287] Dkt. 111 at 24.

[288] *Id.*

[289] *Id.* at 25.

[290] As discussed above, Plaintiffs later filed a Motion for Leave to File Third Amended Complaint, which contains many of the changes discussed. *See* Dkt. 122.

[291] Dkt. 118 at 32.

[292] *Id.* at 33.

[293] *See* Dkt. 47 at 21–22, 25–26.

allegations as predicate acts to the civil RICO claim, "in addition to the affirmative misrepresentations of fraud re[:] City Creek."[294] Finally, Plaintiffs argue the question whether the phrase "earnings on invested reserve funds" was misleading is a fact question for a jury.[295]

Plaintiffs, in alleging the Church engaged in mail fraud and wire fraud, broadly incorporate all preceding allegations in the Second Amended Complaint.[296] The elements necessary to allege mail or wire fraud, as explained by the Tenth Circuit, are:

> To establish the predicate act of mail fraud, [Plaintiffs] must allege (1) the existence of a scheme or artifice to defraud or obtain money or property by false pretenses, representations or promises, and (2) use of the United States mails for the purpose of executing the scheme. The elements of wire fraud are very similar, but require that the defendant use interstate wire, radio or television communications in furtherance of the scheme to defraud. The common thread among these crimes is the concept of "fraud." Actionable fraud consists of (1) a representation; (2) that is false; (3) that is

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[294] Dkt. 118 at 35.

[295] *Id.* at 36.

[296] Dkt. 118 at 32. This incorporates 480 paragraphs of allegations.

> material; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent it be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance; (8) the hearer's right to rely on it; and (9) injury. Failure to adequately allege any one of the nine elements is fatal to the fraud claim.[297]

A "pattern of racketeering activity" must include at least two predicate acts.[298] And where the alleged predicate acts sound in fraud, a plaintiff must plausibly allege each predicate act with the particularity required by Rule 9(b).[299] Moreover, "while two acts are necessary, they may not be sufficient to establish a pattern."[300] Namely, the pattern element requires a plaintiff to show a relationship between the predicate acts as well as "the threat of continuing activity."[301]

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[297] *Tal*, 453 F.3d at 1263 (internal citations and quotations omitted).

[298] *See* 18 U.S.C. § 1961(5); *see also, e.g.*, *Deck v. Engineered Laminates,* 349 F.3d 1253, 1257 (10th Cir. 2003).

[299] *See, e.g.*, *Sullivan v. Univ. of Kan. Hosp. Auth.*, 844 F. App'x 43, 50 (10th Cir. 2021).

[300] George, 833 F.3d at 1254 (internal citations and quotations omitted).

[301] *Id.* (internal citations and quotations omitted).

In evaluating whether a Plaintiff has adequately pleaded a pattern of predicate acts, the Tenth Circuit cautions courts to be mindful of Rule 9(b)'s purpose of "afford[ing] a defendant fair notice of a plaintiff's claims and the factual grounds supporting those claims."[302] Courts may also consider whether pleading deficiencies "resulted from the plaintiff's inability to obtain information in the defendant's exclusive control."[303]

Plaintiffs have failed to allege with the necessary specificity a pattern of predicate acts supporting the civil RICO claim. Plaintiffs allege that the Church "engaged in a scheme or schemes to defraud [Plaintiffs] by concealing the fact that tithing was used for commercial purposes."[304] But Plaintiffs fail to allege even a single actionable instance of fraud, let alone two, because they do not allege any specific instances in which Plaintiffs relied on the Church's representations concerning tithing. In their Opposition, Plaintiffs identify specific allegations in the Second Amended Complaint concerning false statements about tithing:[305]

- The President Hinckley statement that tithing funds were not being used for the construction of

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[302] *Id.* (internal citations and quotations omitted).

[303] *Id.* (internal citations and quotations omitted).

[304] Dkt. 110 ¶ 484.

[305] *See* Dkt. 118 at 32.

City Creek Mall,[306]

- Two statements, printed in *Ensign Magazine* and the *Deseret News*, respectively, stating that no tithing funds were used for the development of the mall,[307]

- A statement made by Keith McMullin, "then a member of the Corporation of the President Bishropic" to Caroline Winter, a Bloomberg Businessweek writer, that "not one penny of tithing goes to the Church's for-profit endeavors."[308]

Plaintiffs also identify the above allegations along with the following as examples of "misleading omissions" concerning tithing:[309]

- Ensign Peak Advisors being funded with tithing,[310]

- The bailout of Beneficial Life Insurance using "$600 million of tithing (at least interest if not

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[306] Dkt. 110 ¶ 236.

[307] *Id.* ¶ 244.

[308] *Id.* ¶ 258.

[309] Dkt. 118 at 34.

[310] Dkt. 110-5 (Exhibit Declaration of David A. Nielsen).

principal),[311] and

- The creation of 13 companies "to deceive [the Church's] members and others about the amount of tithing it had accumulated and how LDS tithing is used."[312]

Plaintiffs argue, in conclusory manner, that these acts and omissions are "sufficient to be part of a RICO scheme."[313]

Even assuming Plaintiffs have alleged with sufficient specificity false, material misrepresentations that the Church intended to be acted upon,[314] Plaintiffs

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[311] Dkt. 110 ¶ 116; Dkt. 110-5 ¶¶ 9–10.

[312] Dkt. 110 ¶ 266.

[313] Dkt. 118 at 34.

[314] The court notes it is skeptical that any of these examples, save perhaps the President Hinckley statement, allege intent in a way that could satisfy the pleading standard under Rule 9(b). For example, Plaintiffs allege that misrepresentations about tithing appeared in "Defendant's publications," quoting a statement printed in *Ensign Magazine* that "[n]o tithing funds will be used" in the City Creek Mall project and a similar statement printed in the "[Church]-owned" *Deseret News*. *See* Dkt. 110 ¶ 244. However, nowhere in the Complaint do Plaintiffs allege that the Church controls the content of these publications, or that it had the specific intent to mislead members by placing specific statements in these publications. As such, it is unclear whether many of Plaintiffs' examples of alleged misrepresentations from the Second Amended Complaint would meet the intent element of fraud and therefore could be considered predicate acts of mail or

fail to allege any single predicate act of mail or wire fraud because they fail to allege that they acted in reliance on any particular false statement in choosing to donate tithing. As discussed above,[315] Plaintiffs fail to identify any instance in which they relied on a particular misrepresentation in choosing to pay tithing. Instead, the Second Amended Complaint states each Plaintiff was a lifelong member of the Church who paid tithing from a young age and further states, in conclusory manner, they would not have paid tithing had they known the truth about Church history and tithing practices.[316] These generalized allegations do not satisfy the heightened pleading standard imposed under Rule 9(b).

Because Plaintiffs fail to allege even a single predicate act of mail or wire fraud, the court agrees with the Church that Plaintiffs have failed to allege a "pattern" of predicate acts sufficient to plead a cognizable civil RICO claim. Accordingly, the claim fails and must be dismissed.

6. Conclusion

Each of Plaintiffs' seven claims are dismissed to the extent they are based on theories of the Church perpetuating a fraud based on teachings and

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wire fraud.

[315] *See supra* section 1(b).

[316] *See* Dkt. 110 ¶¶ 302–45 (allegations concerning each Plaintiffs' lifelong involvement in the Church).

representations about the First Vision, Book of Mormon Translation, Book of Abraham, locations of events in the Book of Mormon, Church history, locations in the book of Mormon, or Joseph Smith's personal history. These claims all fail for the reasons previously articulated in the First Order and Second Order. Plaintiffs' six claims resting on the allegations concerning tithing (all but the Intentional Infliction of Emotional Distress claim) are dismissed for the specific reasons given above. Accordingly, all of Plaintiffs' claims are dismissed in their entirety.

II. Motion for Leave to File Third Amended Complaint

Immediately after the Motion to Dismiss the Second Amended Complaint was briefed, but before the court could issue a decision, Plaintiffs filed a Motion for Leave to Amend, attaching a proposed Third Amended Complaint as an exhibit. The Motion identifies the following proposed changes: (1) the basis of allegations made upon information and belief are added, (2) the fourth cause of action is reworded as a claim for constructive fraud, (3) an affirmative misrepresentation from a 2012 tithing form is added, (4) new factual allegations are added supporting the claim Church brethren and general authorities "do not believe what they teach," (5) new allegations are added comparing the percent of annual tithing used for investment funds with the percent of tithing used for humanitarian aid.[317]

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[317] Dkt. 122 at 3–9.

Leave to amend should be "freely [given] where justice so requires,"[318] but justice does not require granting leave where amendment would be "futile."[319] The court concludes the Third Amended Complaint would be subject to dismissal and therefore the proposed amendment is futile.[320]

The primary failing of the Second Amended Complaint—which was also the primary failing of the original Complaint and Amended Complaint—is that the majority of Plaintiffs' fraud-based claims would require the court, in adjudicating the falsity element, to enter impermissible First Amendment territory. As to the allegations based on tithing payments, the Second Amended Complaint's fraudulent inducement and civil RICO claims failed to allege with the necessary specificity the actions the Plaintiffs took in reliance on alleged Church statements. The fraudulent nondisclosure claim failed to plead a legally cognizable duty, and the fraudulent concealment claim failed for being duplicative of the fraudulent nondisclosure claim. The "constructive fraud based on a breach of promises of future performance" claim failed for not being a recognized cause of action under Utah law. And the UCSA claim failed for not providing a private right of action.

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[318] Fed. R. Civ. P. 15(a)(2).

[319] *Prisbry*, 2018 WL 1508559, at *3.

[320] *See Jefferson Cnty.*, 175 F.3d at 85.

None of Plaintiffs' identified changes rectify the fatal flaws of prior complaints. The first set of identified changes add additional factual allegations to the complaint: a further basis for allegations made on information and belief, new allegations concerning affirmative misrepresentations on the 2012 tithing form, additional factual allegations that Church authorities do not believe what they teach, and allegations comparing the percent of annual tithing used for investments with the percent used for humanitarian aid. These additional allegations do not address the failures identified above—the failure to allege any specific instances in which Plaintiffs relied on a misrepresentation and took some kind of action or entered an oral contract on that basis.

Second, repleading "constructive fraud based on a breach of promises of future performance" as constructive fraud would also be futile. Because constructive fraud is a recognized standalone cause of action in Utah,[321] unlike "constructive fraud based on a breach of promise of future performance," the court will briefly address why this proposed new cause of action would be subject to dismissal. Constructive fraud requires two elements: "(i) a confidential relationship between the parties; and (ii) a failure to disclose material facts."[322] As to the first element, Plaintiffs allege a confidential relationship arose

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[321] *See Jensen v. IHC Hospitals, Inc.*, 944 P.2d 237, 339 (Utah 1997).

[322] *Id.*

between the Church and its members based on the Church's repeated "promise[s] to never lead them astray."[323] Plaintiffs include a table with several examples of Church leaders making this promise, nearly all in the context of religious proceedings such as the Church's annual general conference. The promise, as Plaintiffs plead it, was typically made as follows: "Brethren, keep your eye on the President of this Church . . . the Lord will never let his mouthpiece lead this people astray."[324] As to tithing, Plaintiffs allege the Church "breached that promise to never lead Plaintiffs astray with regard to its representations and less than full and fair disclosure of material facts about what it had done, was doing, and/or intended to do with respect to Plaintiffs' tithing."[325]

The first element, as pleaded, would be subject to dismissal for running afoul of the church autonomy doctrine.[326] To show a confidential relationship, a plaintiff must indicate "the circumstances are such that the defendant could exercise extraordinary influence over the plaintiff and the defendant was or should have been aware the plaintiff reposed trust and

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[323] Dkt. 122-1 (Proposed Third Amended Complaint) ¶ 452.

[324] *Id.* ¶ 144.

[325] *Id.* ¶ 458.

[326] Because the first element fails, the court does not address whether the materiality element could be adjudicated without offending the church autonomy doctrine bar.

confidence in the defendant and reasonably relied on defendant's guidance."[327] Thus, the court would have to determine that the Church "could exercise extraordinary influence" over its members, or that it should have been aware its members "reposed trust and confidence" in it, on the basis of its statements to members that "the Lord will never lead its mouthpiece astray."[328] For the court to make that determination, it would necessarily have to consider matters of "church government as well as those of faith and doctrine," an inquiry forbidden by the Religion Clauses.[329] Similarly, to determine whether Plaintiffs "reasonably relied on defendant's guidance," it would have to determine whether a reasonable person would rely on the statement "the Lord will never lead its mouthpiece astray," an inquiry that is also forbidden by the church autonomy doctrine because the court would have to consider the reasonableness of internal statements of religious doctrine.[330]

In short, none of the proposed changes in the Third Amended Complaint address the fatal flaws the court identified not just in the Second Amended Complaint, but in the original Compliant and

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[327] *Blodgett v. Marsh*, 590 P.2d 298, 302 (Utah 1978).

[328] Dkt. 122-1 ¶ 144.

[329] *Bryce*, 289 F.3d at 655.

[330] *See id.*

Amended Complaint.[331] The Third Amended Complaint would be subject to dismissal as well and on the same bases. Therefore, the court concludes amendment would be futile.

Moreover, in considering any motion to amend, the court must consider the balance between ensuring plaintiffs enjoy ample opportunity to plead their case and preventing prejudice to defendants who have to defend against multiple pleadings. If the court granted leave to amend in this case, that balance would decidedly tip and cause prejudice to the Church—if it has not done so already. Plaintiffs have had three opportunities to amend their complaint. Even when one claim survived Defendants' Second Motion to Dismiss, rather than proceed to discovery, Plaintiffs elected to replead several claims, and theories underlying those claims, that the court had previously rejected. In fact, Plaintiffs significantly expanded those claims, turning a sixty-five-page Amended Complaint into a two-hundred-page Second Amended Complaint. The Second Amended Complaint contained hundreds of paragraphs of allegations once again asking the court to adjudicate the truth or falsity of the Church's core beliefs—an inquiry the court twice before explained it could not undertake. Moreover, Plaintiffs failed to replead the tithing theory, the basis for the sole claim that survived the Second Motion to Dismiss, with the specificity required by Rule 9(b). The Third Amended Complaint, as discussed above, does not address these fatal flaws. Allowing further amendment

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[331] *See* Dkt. 33; Dkt. 100.

at this stage would be futile and cause significant prejudice to the Church.

Accordingly, the Motion for Leave to Amend is denied, and dismissal of the Second Amended Complaint is with prejudice.[332]

CONCLUSION

For the reasons stated above, the Church's Motion to Dismiss Plaintiffs' Second Amended Complaint is GRANTED. Plaintiffs' Motion for Leave to File the Third Amended Complaint and Request for Oral Argument are DENIED. The Second Amended Complaint is DISMISSED WITH PREJUDICE. The Clerk of Court is directed to close the case.

SO ORDERED this 28th day of March, 2023.

BY THE COURT:

/s/
ROBERT J. SHELBY
United States Chief District Judge

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[332] "A dismissal with prejudice is appropriate where a complaint fails to state a claim under Rule 12(b)(6) and granting leave to amend would be futile." *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006) (citation omitted).

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LAURA A. GADDY, LYLE D. SMALL, and LEANNE R. HARRIS, individually and on behalf of all others similarly situated,
Plaintiffs,

v.

CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and DOES 1-50,
Defendant.

JUDGMENT IN A CIVIL CASE

Case No. 2:19-cv-00554-RJS-DBP

Chief District Judge Robert J. Shelby

Chief Magistrate Judge Dustin B. Pead

It is ORDERED AND ADJUDGED that judgment is hereby entered in favor of Defendants.

SO ORDERED this 28th day of March, 2023.

BY THE COURT:

/s/
ROBERT J. SHELBY
United States Chief District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LAURA A. GADDY, individually and on behalf of all others similarly situated,
Plaintiffs,

v.

CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole,
Defendant.

MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS

Case No. 2:19-cv-00554-RJS-DBP

Chief Judge Robert J. Shelby

Chief Magistrate Judge Dustin B. Pead

This case stems from the history, founding, and teachings of the Church of Jesus Christ of Latter-day Saints, commonly known as the Mormon Church. Plaintiff Laura Gaddy was a member of that religion for most of her life. She brings this putative class

action lawsuit against the Church's religious corporation, Defendant Corporation of the President of the Church of Jesus Christ of Latter-day Saints (the Church). Asserting numerous fraud-related claims, Gaddy generally alleges the Church has intentionally misrepresented its founding to induce the faith of its members, even as its leaders hold no sincere religious belief in the version of events they promote.

In a prior order, the court dismissed Gaddy's original Complaint primarily because litigating her claims would have required an impermissible inquiry into the truth of the Church's religious teachings and doctrines.[1] Gaddy then filed an Amended Complaint in which she asserts seven claims against the Church, many of which were also asserted in her original Complaint.[2]

Now before the court is the Church's Motion to Dismiss Gaddy's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).[3] The Church argues the First Amendment's Religion Clauses foreclose Gaddy's Amended Complaint because each claim still requires the court to impermissibly interfere with matters of church faith and determine the

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[1] *See* Dkt. 33 (Memorandum Decision and Order Granting Motion to Dismiss) at 20.

[2] Dkt. 37 (Amended Complaint).

[3] Dkt. 38 (Motion to Dismiss Amended Complaint).

validity of the Church's religious teachings.[4] For the reasons explained below, the Church's Motion is GRANTED IN PART and DENIED IN PART.

BACKGROUND[5]

Gaddy was raised in the Church and remained a member for most of her adult life.[6] In early 2018, she found online material concerning the Church's founding, history, and doctrine that conflicted with the Church's own teachings.[7] Unable to reconcile what she discovered with her continued participation in the Church, Gaddy ultimately relinquished her membership.[8] Gaddy is now in counseling to help manage the emotional distress she experiences from her lost faith in the Church.[9]

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[4] *See id.* at 5.

[5] Because this case is before the court on a motion to dismiss, the court accepts as true all well-pleaded factual allegations contained in the Amended Complaint. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

[6] *See, e.g.*, *id.* ¶¶ 100, 102, 113.

[7] *Id.* ¶ 114–15.

[8] *Id.* ¶ 117.

[9] *Id.* ¶ 118.

I. Gaddy's Original Complaint

On August 5, 2019, Gaddy filed this putative class action lawsuit against the Church.[10] Her original Complaint was based on the theory that the Church intentionally misrepresents its history and founding to induce membership.[11] Gaddy compared the Church's "false official narrative" of several foundational events with what she alleged are the "historically accurate" accounts.[12] Gaddy primarily focused on three of the Church's core teachings, alleging each was deliberately misrepresented: (1) a spiritual event when the founding prophet Joseph Smith saw God and Jesus Christ (known as the First Vision); (2) the origins of one of the Church's foundational books of scripture, the Book of Mormon; and (3) the translation of another canonical text known as the Book of Abraham.[13]

Based on these alleged misrepresentations, Gaddy originally brought six causes of action on behalf of herself and others similarly situated for: (1) common law fraud, (2) fraudulent inducement, (3) fraudulent concealment, (4) civil RICO (18 U.S.C. § 1962(c)), (5) intentional infliction of emotional distress, and (6)

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[10] Dkt. 2 (Original Complaint).

[11] *See id.* ¶ 2.

[12] *See, e.g.*, *id.* ¶¶ 64–75.

[13] *See id.* ¶¶ 64–75 (First Vision), 76–91 (Book of Mormon), 92–101 (Book of Abraham).

breach of fiduciary duty.[14] Gaddy's original civil RICO claim rested on her theory that the Church had engaged in both mail and wire fraud by communicating these false teachings.[15] Gaddy's intentional infliction of emotional distress claim was also based on the Church's alleged doctrinal misrepresentations. To support this claim, Gaddy alleged the Church's pattern of "knowingly and repeatedly misrepresenting foundational facts of its organization" was outrageous and intolerable.[16] Finally, Gaddy brought a claim against the Church for breach of fiduciary duty. She alleged a fiduciary relationship arose between the Church leaders and its members for "all matters spiritual," because of the "extraordinary influence" the Church exercised over its members.[17] Gaddy maintained the Church breached that duty by failing to "fully disclose the truth" concerning the Church's historical foundation.[18]

II. The Church's Motion to Dismiss Gaddy's Original Complaint

On August 27, 2019, the Church moved to dismiss

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[14] *See id.* ¶¶ 183–248.

[15] *See id.* ¶¶ 175–77.

[16] *Id.* ¶ 242.

[17] *Id.* ¶¶ 206, 208–10.

[18] *Id.* ¶¶ 218–19.

Gaddy's original Complaint.[19] The Church argued the Free Exercise and Establishment Clauses of the First Amendment (the Religion Clauses) barred Gaddy's claims because each necessarily implicated the Church's fundamental religious doctrines and teachings.[20] The Church argued Gaddy's three fraud-based claims, for common law fraud, fraudulent inducement, and fraudulent concealment should be dismissed because adjudicating the claims would require the court to make an impermissible inquiry into the truth or falsity of the Church's religious beliefs.[21] Because Gaddy's remaining claims for civil RICO, intentional infliction of emotional distress, and breach of fiduciary duty were also dependent on the inquiry into the truth or falsity of the Church's teachings, the church argued those claims should similarly be dismissed.[22]

Gaddy opposed the motion, arguing the First Amendment's Religion Clauses did not apply to the claims in her Complaint.[23] Gaddy contended her fraud-based claims survived the motion for three reasons.

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[19] Dkt. 6 (Motion to Dismiss Original Complaint).

[20] *See id.* at ECF 12.

[21] *Id.* at ECF 19 ("Ms. Gaddy's fraud claims would require an adjudication of whether the Church's teachings about Joseph Smith and its canonical scriptures are true.").

[22] *Id.* at ECF 21–22, 25.

[23] *See* Dkt. 23 (Opposition to Motion to Dismiss) at 10.

First, she disagreed that her claims challenged the Church's religious beliefs.[24] Instead, she insisted her claims challenged only the facts underlying the Church's beliefs about its founding, not the religious beliefs themselves.[25] Gaddy asked the court to distinguish between facts and beliefs, arguing, "[f]acts are susceptible to proof. Beliefs are not; if proven, beliefs become facts."[26] Second, Gaddy argued her fraud-based claims survived because the Church's proselytizing constituted conduct rather than belief.[27] Third, Gaddy cursorily argued that even if the court could not determine the truth or falsity of the Church's beliefs, it may nevertheless assess whether those beliefs are sincerely held.[28]

III. Prior Order Granting the Church's Motion to Dismiss

In a March 31, 2020, Memorandum Decision and Order (the Prior Order), the court granted the Church's motion and dismissed Gaddy's original Complaint without prejudice, concluding the First Amendment's Religion Clauses barred each of Gaddy's

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[24] *See id.* at 6–7.

[25] *Id.*

[26] *Id.* at 9.

[27] *Id.* at 15–16.

[28] *Id.* at 16–17.

claims.[29] The Religion Clauses provide in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"[30] The court acknowledged "[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."[31] To effectuate these rights "courts have long held that the truth or falsity of religious beliefs are beyond the scope of judicial review."[32] The court's ruling relied upon "the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government *as well as those of faith and doctrine*.'"[33] This doctrine is known as the church autonomy doctrine.

But the court also recognized in its Prior Order that the church autonomy doctrine "is not without

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[29] Dkt. 33 (Memorandum Decision and Order Granting Motion to Dismiss). The Prior Order also sets forth additional factual background not separately repeated here.

[30] U.S. Const. amend. I.

[31] Dkt. 33 (MDO) at 8 (citing *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990)).

[32] *Id.* (citing *United States v. Ballard*, 322 U.S. 78, 86–87 (1944); *Van Schaick v. Church of Scientology of Cal., Inc.*, 535 F. Supp. 1125, 1142 (D. Mass. 1982)).

[33] *Id.* at 9 (citing *Bryce*, 289 F.3d at 655 (quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952))) (emphasis in original).

limits."[34] Churches may not invoke the doctrine to shield purely secular decisions.[35] To determine whether the church autonomy doctrine applies in any given instance, courts must decide whether the dispute presented "is an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law, or whether it is a case in which we should hold religious organizations liable in civil courts for purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization."[36]

Applying these principles to Gaddy's original Complaint, the court concluded the First Amendment barred each of her claims.[37] The court dismissed Gaddy's three fraud-based claims because the falsity of religious beliefs was an essential element of each claim as pled.[38] Gaddy relied on three core religious teachings as the bases for her fraud-based claims: the First Vision and the translations both of the Book of Mormon and Book of Abraham.[39] The court concluded

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[34] *Id.* (quoting *Bryce*, 289 F.3d at 657).

[35] *Id.*

[36] *Id.* at 10 (citing *Bryce*, 289 F.3d at 657 (quoting *Bell v. Presbyterian Church*, 126 F.3d 328, 331 (4th Cir. 1997))).

[37] *See id.* at 20.

[38] *Id.* at 11.

[39] *See Id.*

the First Amendment required dismissal of the fraud based claims because their adjudication would require an examination into the truth or falsity of these core religious teachings.[40]

And each of Gaddy's three arguments in opposition failed. First, the court rejected Gaddy's proposed distinction between challenging religious facts and religious beliefs, concluding "if all a plaintiff had to do to get around the First Amendment was to challenge the facts underlying a church's religious beliefs, the Religion Clauses would offer little protection against de facto referenda on churches' faith and doctrines."[41] Instead, the court relied on the distinction other courts use to determine whether it may adjudicate fraud claims against a church. That is, whether the dispute is religious or secular.[42] Because Gaddy based her claims on alleged misrepresentations implicating the Church's fundamental religious teachings, the court concluded the dispute was religious.[43]

The court also rejected Gaddy's argument that her claims challenged the Church's conduct, rather than its beliefs, recognizing "the Supreme Court has repeatedly confirmed that the free exercise of religion

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[40] *Id.* at 11–12.

[41] *Id.* at 14.

[42] *Id.* at 13.

[43] *Id.*

encompasses not only the freedom to believe, but also the right to profess those beliefs through proselytizing."[44]

Finally, the court declined to address Gaddy's argument concerning the sincerity of the Church's professed beliefs in its own teachings because, as Gaddy conceded at oral argument, the Complaint did not allege the Church's beliefs were insincerely held.[45] The court also dismissed Gaddy's civil RICO and intentional infliction of emotional distress claims because, as pled, they necessarily implicated the veracity of the Church's teachings.[46] Gaddy predicated her civil RICO claim on mail and wire fraud relying on the Church's alleged misrepresentation of facts related to Joseph Smith's First Vision, the Book of Mormon and the Book of Abraham.[47] But the court concluded the Church could be liable for these predicate acts only if the statements communicated were false.[48] Gaddy's

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[44] *Id.* at 15 (citing *Smith*, 494 U.S. at 877 ("The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."); *McDaniel*, 435 U.S. at 626 (noting that the Free Exercise Clause "unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions")).

[45] *Id.* at 16.

[46] *Id.* at 17–18.

[47] *See* Dkt. 2 (Original Complaint) ¶¶ 236–38.

[48] Dkt. 33 (MDO) at 17.

intentional infliction of emotional distress claim also relied on the alleged falsity of the Church's teachings because her claim was based on the Church's alleged pattern of "knowingly and repeatedly misrepresenting the foundational facts of the organization."[49] For these reasons, the court concluded these claims were barred by the First Amendment's Religion Clauses.[50] Finally, the court dismissed Gaddy's claim for breach of fiduciary duty after concluding Utah has not established a legally cognizable fiduciary duty arising from purely ecclesiastical relationships.[51] Even if Utah recognized such a relationship, the court reasoned it could not define a standard of care that would apply to "a diversity of religions professing widely varying beliefs" without violating the First Amendment's Establishment Clause.[52]

At bottom, Gaddy's original Complaint asked the court to adjudicate claims against the Church based on alleged misrepresentations of religious doctrine. Because her theories of liability depended upon the alleged falsity of the Church's teachings, the First Amendment placed Gaddy's dispute beyond the scope of judicial review.

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[49] *Id.* at 18.

[50] *Id.*

[51] *Id.* at 19.

[52] *Id.* at 20.

IV. Gaddy's Amended Complaint

Gaddy filed her Amended Complaint on May 18, 2020.[53] Although it is longer and more detailed than her original Complaint, many of the claims, theories, and allegations in the Amended Complaint are duplicative of her prior pleading. Gaddy again brings claims against the Church for common law fraud, fraudulent concealment, fraudulent inducement, civil RICO (18 U.S.C. § 1962(c)), and intentional infliction of emotional distress.[54] These claims continue to rely on alleged misrepresentations concerning the First Vision, the Book of Mormon, and the Book of Abraham.[55] But the Amended Complaint contains a handful of differences, including new factual allegations to support her common law fraud claim. Gaddy now alleges the Church also misleads members about its history with polygamy and about certain locations of events described in the Book of Mormon. Specifically, Gaddy alleges the Church historically taught members that certain events in the Book of Mormon happened on Hill Cumorah in upstate New York.[56] Recently, however, the Church has stated it does not take a position on the specific geographic

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[53] Dkt. 37 (Amended Complaint).

[54] *See id.*

[55] *See, e.g.*, *id.* ¶¶ 130–31, 133.

[56] *Id.* ¶ 132.

locations of Book of Mormon events.[57] Gaddy also alleges the Church previously taught members the prophet Joseph Smith had only one wife.[58] Gaddy alleges Smith had multiple wives.[59]

In addition to these new factual allegations, Gaddy's Amended Complaint includes the theory of liability she previously argued in response to the Church's motion to dismiss, but which she had not previously pled. Namely that the Church should be held liable on her common law fraud claim because its own leaders do not sincerely believe the versions of the Church's history, founding, and doctrines the Church teaches to its members.[60]

In addition to these new factual allegations and alternative theory of fraud liability, the Amended Complaint also advances two new causes of action, including a claim under the Utah Charitable Solicitations Act, and a claim for breach of the duty of full disclosure.[61] Finally, the Amended Complaint includes a new alternative theory of liability for Gaddy's civil RICO claim based on misrepresentations

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[57] *Id.* ¶ 138.

[58] *Id.* ¶ 134.

[59] *Id.* ¶ 140.

[60] *See, e.g.*, *id.* ¶¶ 2, 3, 141.

[61] *See id.* ¶¶ 150–66, 192–98,

to members concerning the Church's use of tithing.[62] Gaddy now pleads as an independent basis for RICO liability that the Church misleads its members by falsely assuring them tithing funds are used only for "Church expenses and humanitarian aid."[63] For example, at the Church's semi-annual General Conference in April 2003, Gaddy alleges the Church's Prophet, Gordon B. Hinckley, made the following statement concerning the purchase and development of the for-profit commercial City Creek Mall in Salt Lake City, Utah:

> I wish to give the entire Church the assurance that tithing funds have not and will not be used to acquire this property [City Creek Mall]. Nor will they be used in developing it for commercial purposes.[64]

Gaddy contends this representation is false, as "[s]everal billion dollars of [the principal tithing] fund was used for affiliated profit-making business entity expenses, including but not limited to the development of Salt Lake's City Creek Mall."[65] Gaddy alleges "[t]his lie was repeated at least twice over the years until City

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[62] *See, e.g.*, *id.* ¶¶ 2, 5, 6, 79, 200(C).

[63] *Id.* ¶ 6.

[64] *Id.* ¶ 79.

[65] *Id.* at ¶ 5.

Creek [Mall] was opened."[66]

V. The Church's Motion to Dismiss Gaddy's Amended Complaint

In its Motion to Dismiss Gaddy's Amended Complaint,[67] the Church largely reiterates its previous arguments offered for dismissal of Gaddy's original Complaint, maintaining the Religion Clauses compel dismissal of Gaddy's Amended Complaint for the reasons stated in the court's Prior Order.[68] The Church contends the Amended Complaint must be dismissed to the extent Gaddy relies on statements concerning the First Vision and the translations of the Book of Mormon and Book of Abraham because the court has already dismissed her fraud claims based on these allegations.[69] The Church also argues Gaddy's new factual allegations related to locations of events in the Book of Mormon, its history with polygamy, and its use of tithing funds fail to save her claims.[70] According to the Church, adjudicating fraud-based claims on these facts also requires the court to determine the truth or falsity of the Church's religious teachings and

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[66] *Id.* at ¶ 79.

[67] Dkt. 38 (Motion to Dismiss Amended Complaint).

[68] *See id.* at 3–5.

[69] *Id.* at 12–13.

[70] *Id.* at 13.

beliefs.[71] Finally, the Church argues Gaddy's new claims, including the new civil RICO theory based on tithing use and the claim under the Utah Charitable Solicitations Act, require the same impermissible inquiry into the truth or falsity of the Church's religious beliefs.[72]

Gaddy opposes the Motion,[73] relying primarily on an argument she previously made in support of her original Complaint but rejected in the court's Prior Order dismissing that Complaint. That is, Gaddy continues to maintain the Church's proselytizing constitutes conduct, not belief.[74] In a footnote, Gaddy also asserts she "does not waive" her previously argued distinction between religious facts and religious beliefs.[75] The court will neither revisit nor disturb its prior ruling dismissing Gaddy's original Complaint. To the extent the Amended Complaint and the parties' arguments concerning the sufficiency of that pleading overlap with factual allegations, arguments, and legal issues previously addressed, the court relies on and

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[71] *Id.* at 14.

[72] *Id.* at 18–19.

[73] *See* Dkt. 47 (Opposition to Church's Motion to Dismiss Amended Complaint). Because Gaddy did not include page numbers in her Opposition, the pagination refers to the page's position within the pdf file.

[74] *Id.* at 6–20.

[75] *Id.* at 6 n.1.

incorporates its Prior Order.[76]

Gaddy's opposition does, however, raise two arguments why her re-pled claims survive the Church's Motion to Dismiss that the court has not already addressed. First, to save her common law fraud claim, Gaddy argues her new allegations concerning the insincerity of the Church's expressed religious beliefs present a threshold question of fact that cannot be disposed of at this stage.[77] Second, she argues her remaining re-pled claims survive because they rely on fraudulent omissions rather than misrepresentations.[78] Gaddy maintains that because these claims are based on material omissions instead of affirmative misrepresentations, the court may adjudicate the claims without examining the truth or falsity of the statements.[79]

The court addresses below these two new arguments Gaddy advances to avoid dismissal of her re-pled claims, her new claim for violations of the Utah Charitable Solicitations Act, and her new alternative civil RICO theory of liability.[80]

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[76] Dkt. 33.

[77] *See* Dkt. 47 at 21–22.

[78] *Id.* at 27.

[79] *Id.* at 28.

[80] Gaddy's claim for breach of duty of disclosure was not included in her original Complaint. *See* Dkt. 2 (Original

LEGAL STANDARDS

"To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[81] A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[82] In determining whether a complaint satisfies these criteria, the court will "assume the truth of the plaintiff's well-pleaded factual allegations and view them in the light most favorable to the plaintiff."[83]

For the second time, the Church argues the First Amendment's Religion Clauses bar each of Gaddy's

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Complaint). Gaddy argues her claim for "Breach of Duty of Disclosure" is distinguished from her prior claim for breach of fiduciary duty. Dkt. 47 (Opposition) at 28. Gaddy states her claim for breach of the duty of disclosure "is in the context of where a partial disclosure has been made and a full disclosure must be made in order to avoid a misleading statement." *Id.* at 28. Arguing this claim is distinct from her previous claim for breach of fiduciary duty, Gaddy suggests this claim arises "in the context of a single discreet act of fraudulent concealment." *Id.* at 29. As argued, this claim is indistinguishable from her re-pled fraudulent concealment claim, and the court will not separately address it.

[81] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[82] *Id.* (citing *Twombly*, 550 U.S. at 556).

[83] *Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

claims. The Tenth Circuit analogizes such an argument to a government official's defense of qualified immunity.[84] That is, if the First Amendment applies "to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted."[85]

ANALYSIS

I. New Theories

Gaddy re-pleads five causes of action: (1) common law fraud, (2) fraudulent inducement, (3) fraudulent concealment, (4) civil RICO (18 U.S.C. § 1962(c)), and (5) intentional infliction of emotional distress.[86] As explained above, Gaddy's Amended Complaint includes two new sets of factual allegations and one new argument in support of these re-pled claims. Neither the new facts nor her new arguments clear the First Amendment bar recognized in the court's Prior

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[84] *See Bryce*, 289 F.3d at 654.

[85] *Id.* Additionally, a heightened pleading standard applies when fraud is alleged. Under this standard, "a party must state with particularity the circumstances constituting [the] fraud or mistake." Fed. R. Civ. P. 9(b). Thus, Rule 9(b) generally requires a plaintiff "to identify the time, place, and content of each allegedly fraudulent representation or omission, to identify the particular defendant responsible for it, and to identify the consequence thereof." *Hafen v. Strebeck*, 338 F. Supp. 2d 1257, 1263 (D. Utah 2004) (citation omitted).

[86] *See* Dkt. 37 (Amended Complaint).

Order.[87]

A. New Factual Allegations: Hill Cumorah and Joseph Smith's Marriages

Like her original allegations concerning the First Vision and translation of the Book of Mormon, Gaddy's new factual allegations relating to the locations of events described in the Book of Mormon and the founding prophet Joseph Smith's marriages directly implicate the Church's core religious teachings.[88] By adding facts concerning these issues Gaddy attempts to accomplish indirectly what she cannot do directly: that is, she seeks to attack the veracity of the Church's teachings about the Book of Mormon and its doctrines by challenging the accuracy of certain facts contained in the text. As this court previously explained, a plaintiff may not, for example, challenge in a court of law religious beliefs that Noah built an ark, loaded it with his family and representative animals of the world, and was thereby saved from world-engulfing floods. Neither may a plaintiff circumvent this restriction by merely attacking religious accounts concerning the locations where Noah built the ark or where the ark came to rest. If religious events themselves sit beyond judicial purview, religious

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[87] *See* Dkt. 33 (MDO) at 11–12 ("Because a statement's falsity is an essential element of fraud claims, adjudicating these claims would require the court to do exactly what the Supreme Court has forbidden—evaluate the truth or falsity of the Church's religious beliefs.") (citing *Ballard*, 322 U.S. at 86–87).

[88] Dkt. 37 ¶¶ 132, 134, 138, 140.

beliefs concerning the details of those events must enjoy the same protection.

Religious beliefs concerning the details of events described in The Book of Mormon, the Church's foundational text, may not be severed from beliefs about the events themselves. And whether described as the doctrine of polygamy, plural marriage, celestial marriage, or by another name, the Church's teachings concerning the issue and its practice are fundamentally religious in nature. Adjudicating Gaddy's re-pled claims based on these two new sets of factual allegations would require the court to evaluate the truth or falsity of the Church's religious beliefs. As explained in the Prior Order, the First Amendment prohibits that examination.[89]

B. New Theory of Liability: Sincerity of Belief

To avoid this prohibition, Gaddy contends her new factual allegations challenging the sincerity of the Church's professed beliefs in its own teachings present a threshold question of fact that the court cannot dispose of on a motion to dismiss.[90] She argues the Church must first demonstrate the sincerity of its belief in its teachings about its founding, history, and doctrines before it may invoke the church autonomy

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[89] *See* Dkt. 33 (MDO) at 11–12.

[90] *See* Dkt. 47 (Opposition) at 22–23.

doctrine.[91] The court disagrees.

Gaddy is correct that courts are required to evaluate the sincerity of religious beliefs as a threshold question for litigants and prisoners seeking to assert affirmative rights under the First Amendment and the Religious Freedom Restoration Act (RFRA).[92] It is well-established that claimants in these circumstances must demonstrate the sincerity of their religious belief before they may obtain relief.[93] However, courts engage in this inquiry of those seeking religious accommodation or exception to a rule or law of general application in these types of cases for the purpose of ensuring the government accommodate only genuine religious beliefs that are sincerely held.[94]

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[91] *Id.*

[92] *See id.* at 22 (citing *United States v. Meyers*, 95 F.3d 1475, 1482–84 (10th Cir. 1996); *Snyder v. Murray City Corp.*, 124 F.3d 1349, 1352 (10th Cir. 1997) *vacated in part on reh'g en banc*, 159 F.3d 1227 (10th Cir. 1998) (en banc); *United States v. Quaintance*, 608 F.3d 717, 722–23 (10th Cir. 2010)).

[93] *See, e.g.*, *Meyers*, 95 F.3d at 1482 (noting "[u]nder the RFRA, a plaintiff must establish, by a preponderance of the evidence" the sincerity of their religious belief); *Snyder*, 124 F.3d at 1352 ("The first questions in any free exercise claim are whether the plaintiff's beliefs are religious in nature, and whether those religious beliefs are sincerely held."); *Mosier v. Maynard*, 937 F.2d 1521, 1526 (10th Cir. 1991) (explaining sincerity analysis required for First Amendment claims by prisoners).

[94] *See id.*

This rationale is inapplicable here because the church autonomy doctrine is not an accommodation. It is not an exception to a law of general application. Rather, it is a "fundamental right of churches to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."[95] Here, the Church has not raised the church autonomy doctrine as part of an effort to obtain religious accommodation or special exemption. Thus, the reasoning behind the sincerity analysis applied in RFRA cases and to those plaintiffs asserting First Amendment claims, has no application here.

Gaddy also relies on two criminal cases where defendants raised the First Amendment as a defense to fraud charges.[96] The court disagrees either case supports a threshold inquiry of sincerity before applying the church autonomy doctrine as a defense to civil fraud charges based on the misrepresentation of religious facts.

Gaddy first cites *United States v. Rasheed*, in which two defendants were convicted of mail fraud for using the mail to spread fraudulent information about the "Dare to be Rich" program associated with the

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[95] *Bryce*, 289 F.3d at 655 (internal quotation marks and citation omitted).

[96] Dkt. 47 (Opposition) at 24–25 (citing *United States v. Rasheed*, 663 F.2d 843 (9th Cir. 1981), and *United States v. Ballard*, 322 U.S. 78 (1944)).

Church of Hakeem.[97] In that case, "[s]hortly after the Church of Hakeem was founded, Rasheed established the 'Dare to be Rich' program," teaching "if one donated money to the Church, one would receive an 'increase of God' of four times that amount within a particular period of time."[98] At the initiation of the program, Rasheed represented "the increases of God were from profits that the Church made on investments."[99] But the increases were actually coming from other members' payments into the program.[100]

The Ninth Circuit concluded an inquiry into the sincerity of the defendants' beliefs was critical to the analysis of their First Amendment defense, stating:

> [T]he issue in this case becomes whether [the defendants] held sincere religious beliefs in the allegedly fraudulent aspects of the 'Dare to be Rich' program. If they made assertions with knowledge of the falsity of those assertions, then they could not have been acting pursuant to sincere religious belief. It, therefore, is not a question of whether the 'Dare to be Rich' tenet is true or false. The focus is on the intent of [the defendants] in carrying out the program. It

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[97] *Rasheed*, 663 F.2d at 847.

[98] *Id.* at 845.

[99] *Id.* at 846.

[100] *Id.*

> is this distinction that is critical in our First Amendment analysis.[101]

The Ninth Circuit's approach on this issue is neither controlling nor persuasive. Importantly, *Rasheed* is a criminal case, implicating *mens rea*.[102] Beyond that, this court continues to believe for the reasons more fully explained in the Prior Order that the better inquiry in this context is whether the allegedly fraudulent statements are secular or religious in substance.[103] The outcome in *Rasheed* would have been the same using this approach, and it would have enabled the Ninth Circuit to avoid unnecessary entanglement with ecclesiastical disputes. The representation at issue in *Rasheed*—that the increases of God were "from profits made on investments"—is a secular representation the truth or falsity of which the court could inquire into without offending First Amendment principles.[104] Where *Rasheed* is not binding on this court and employs unpersuasive reasoning, the court declines to follow suit. Based on the weight of authority against such an approach, this court will not inquire into sincerity of belief prior to applying a church autonomy doctrine

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[101] *Id.* at 847.

[102] *See id.* at 845 (noting the defendants were changed under 18 U.S.C. §§ 1341, 1503, and 1623).

[103] Dkt. 33 (MDO) at 13 (citing *Bryce*, 289 F.3d at 657–58; *Ballard*, 322 U.S. at 86).

[104] *See Rasheed*, 663 F.2d at 846.

defense to fraud allegations in a civil lawsuit against a church based on religious representations and teachings.

Gaddy next cites *United States v. Ballard* to support her proposition that a threshold question of the sincerity of a defendant's religious belief in actions for fraud is appropriate before a defense of the First Amendment may apply.[105] The court does not agree *Ballard* supports this approach.

In *Ballard*, two defendants were convicted of mail fraud after using the mail to organize and promote the religious "I AM movement."[106] At trial, the parties agreed to withhold the issue of truth or falsity of the religious statements from the jury—"confin[ing] the issues [at that] phase of the case to the question of the good faith of respondents."[107] After the jury returned a guilty verdict, the defendants appealed, arguing the issue of truth or falsity was improperly withheld from the jury.[108] The Circuit Court of Appeals agreed, reversed the convictions, and ordered a new trial.[109] On appeal, the Supreme Court reversed the Circuit Court's decision, holding "the District Court ruled

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[105] Dkt. 47 (Opposition) at 24–25.

[106] *Ballard*, 322 U.S. at 79.

[107] *Id.* at 81.

[108] *Id.* at 82–83.

[109] *Id.* at 83.

properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of [the defendants]."[110] The Court refused to address the defendants' arguments "that the reversal of the judgment of conviction was justified on other grounds."[111] The court reasoned it was more "appropriate to remand the cause to the Circuit Court of Appeals so that it may pass on the questions reserved."[112] The holding of *Ballard* is limited to the question of whether truth or falsity of a religious belief should go to a jury—it did not address the propriety of a mail fraud conviction based on insincere religious representations.[113]

In a compelling dissent, Justice Jackson persuasively articulated the dangers of prosecutions based on the "misrepresentation of religious experience or belief."[114] He first noted the difficulty in separating "an issue as to what is believed from considerations as

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[110] *Id.* at 88.

[111] *Id.*

[112] *Id.*

[113] *See Ballard v. United States*, 329 U.S. 187, 201 (1946) (*Ballard II*) (Frankfurter, J., dissenting) ("[T]he case was remanded to the Circuit Court of Appeals without considering the question whether the First Amendment affords immunity from criminal prosecution for the procurement of money by false statements as to one's religious experiences.").

[114] *Ballard*, 322 U.S. at 92 (Jackson, J., dissenting).

to what is believable."[115] He went on to express concern with asking a jury to distinguish real religious experiences with "fancied ones" where "[s]uch experiences, like some tones and colors, have existence for one, but none at all for another."[116] Importantly, Justice Jackson questioned "what degree of skepticism or disbelief in a religious representation amounts to actionable fraud."[117] Recognizing religious adherents vary in how literally they read religious doctrines, he noted:

> Belief in what one may demonstrate to the senses is not faith. All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credility than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa Claus or Uncle Sam or Easter bunnies or dispassionate judges. It is hard in matters so mystical to say how

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[115] *Id.*

[116] *Id.* at 93.

[117] *Id.* at 93–94.

> literally one is bound to believe the doctrine he teaches and even more difficult to say how far it is reliance upon a teacher's literal belief which induces followers to give him money.[118]

These dangers apply with equal force here where the Church faces potential civil liability for alleged misrepresentations concerning matters of its core doctrine and history. The First Amendment's Religion Clauses bar secular courts from injecting themselves into disputes concerning church faith and doctrine.[119] Plaintiffs cannot circumvent this bar by purporting to reframe the same issue as one directed only to the sincerity of a church's beliefs about the religious doctrines they challenge. Unless or until the Tenth Circuit Court of Appeals or the Supreme Court instruct otherwise, this court continues to find the better reading of the great weight of authority on the issue confirms this approach. The court declines Gaddy's request to apply a threshold question of sincerity before reaching the Church's First Amendment defense.

Moreover, Gaddy's claims would fail even if the court engaged in a threshold inquiry into the sincerity of the Church's beliefs in its teachings. Gaddy argues "[i]f [a] Defendant [asserting a First Amendment defense] does not sincerely believe what is preached or

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[118] *Id.*

[119] *See Bryce*, 289 F.3d at 655.

taught, that satisfies both [] element[s] of common law fraud and is justification for no First Amendment protection as to those statements[.]"[120] That is simply incorrect. Falsity of a statement remains an essential element of a fraud claim.[121] And whether or not Church leadership believes any representations made, the First Amendment prohibits the next step, which requires the court to examine the truth or falsity of the First Vision, the translation of the Book of Mormon, the Book of Abraham, or Gaddy's new doctrinal challenges.[122]

While churches and religious organizations are not exempt from fraud laws, the critical issue underpinning the church autonomy doctrine is whether the dispute is secular or religious.[123] Where a

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[120] Dkt. 47 (Opposition) at 25.

[121] *See Webster v. JP Morgan Chase Bank, NA*, 2012 UT App. 321, ¶ 16, 290 P.3d 930.

[122] *See Ballard II*, 329 U.S. at 196–97 (Jackson, J., concurring) (noting criminal liability under the statute for mail fraud "requires, in my opinion, a provably false representation in addition to knowledge of its falsity to make criminal mail fraud. Since the trial court is not allowed to make both findings, the indictment should be dismissed."); *Tilton v. Marshall*, 925 S.W.2d 672, 679 (Tex. 1996) ("Whether the statement of religious doctrine or belief is made honestly or in bad faith is of no moment, because falsity cannot be proved.").

[123] *See In re The Bible Speaks*, 869 F.2d at 645 ("The [Free Exercise] clause does not allow purely secular statements of fact to be shielded from legal action merely because they are made

plaintiff brings fraud claims against a church based on religious issues of faith or doctrine, the First Amendment applies as a defense.[124] Here, Gaddy's common law fraud claim is based on ecclesiastical issues and implicates the Church's fundamental religious beliefs. Because the church autonomy doctrine applies to Gaddy's fraud allegations, she has failed to state a claim for common law fraud upon which relief may be granted.[125]

C. New Theory: Fraudulent Omissions

Gaddy next argues her re-pled claims for fraudulent inducement, concealment, civil RICO, and intentional infliction of emotional distress survive because they are based in part on fraudulent

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by officials of a religious organization."); *Molko*, 762 P.2d at 58 ("Our initial inquiry, then, is whether plaintiffs' actions for fraud implicate religious belief or religiously motivated conduct. If the former, the actions are barred. If the latter, further constitutional analysis is necessary.") (citation omitted); *Van Schaick*, 535 F. Supp. at 1141 ("Statements citing science as their source may provide the basis for a fraud action even though the same contention would not support such an action if it relied on religious belief for its authority.").

[124] *See Bryce*, 289 F. 3d at 657 (explaining the application of the church autonomy doctrine depended on "whether the defendants' alleged statements were ecclesiastical statements protected by church autonomy or purely

[125] *See id.* at 654.

omissions, as opposed to affirmative misstatements.[126] Fraudulent omissions, Gaddy argues, do not require a determination of the truth or falsity of the underlying statements because liability may be based on the omission of material facts.[127] Because her claims are based in part on material omissions, rather than falsity, she argues the First Amendment does not bar them.[128] This argument ignores the analysis required to adjudicate a Utah fraud claim based on omissions. At bottom, Gaddy's omission theory still requires the court to examine religious doctrines and teachings, and determine whether they are false or misleading absent additional disclosure. This draws the court directly into the entanglement with religious liberty that courts are instructed to avoid.

A material omission may amount to actionable fraud under Utah law where a party has a duty to disclose material information known to the party, yet remains silent.[129] That duty may arise when a speaker makes a material statement of fact that is misleading unless the speaker also includes "all material facts a

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[126] Dkt. 47 (Opposition) at 27.

[127] *Id.* at 27–28.

[128] *See id.* at 34 (arguing her fraud based claims "do[] not require adjudication of the truth. A jury need only determine whether a reasonable person would want to know the information intentionally omitted.").

[129] *See Elder v. Clawson*, 384 P.2d 802, 804–05 (Utah 1963) (citations omitted).

listener would need to keep that statement from being misleading."[130]

Applying these principles here, the Church can be liable for fraud under an omission theory only if it has made a material statement that is misleading unless additional facts are supplied.[131] But the court can no better evaluate the allegedly misleading nature of a statement concerning religious belief or doctrine than it can a false statement. That is, the court cannot evaluate the misleading nature of the Church's statements without first ascertaining a certain truth about the matters at issue before then deciding whether the statement made could lead a listener to draw a conclusion at odds with that truth unless the Church made some additional statements. And even then, the court would have to decide what additional statements would be required to render the initial statement truthful and non-misleading. Here, Gaddy's allegations of material omissions concern the First Vision, translations of the Book of Mormon and Book of Abraham, locations of events described in the Book

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[130] *Blackmore/Cannon Dev. Co., LLC v. U.S. Bancorp d/b/a U.S. Bank*, Case No. 2:08-cv-370 CW, 2010 WL 1816275, at *8 (D. Utah May 3, 2010) (citing *First Sec. Bank of Utah, N.A. v. Banberry Dev. Corp.*, 786 P.2d 1326, 1330–31 (Utah 1990) (there is duty in fraud to reveal "matters known to [a party] that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading") (quoting Restatement (Second) of Torts § 551, at 119 (1977)).

[131] *See id.*

of Mormon, and the Church's history with polygamy.[132] These allegations directly implicate the truth of the Church's teachings concerning these matters. As the court has already articulated, the First Amendment bars this inquiry. Gaddy's remaining re-pled claims for fraudulent inducement, fraudulent concealment, intentional infliction of emotional distress, and two re-pled theories of liability under civil RICO fail to state a claim for which relief may be granted.[133]

II. New Claims

Gaddy also includes in her Amended Complaint a new cause of action for alleged violations of the Utah Charitable Solicitations Act, and an alternative theory of liability for her existing civil RICO claim. The court addresses each in turn.

A. Utah Charitable Solicitations Act

The Utah Charitable Solicitations Act (the Act) prohibits, "[i]n connection with any solicitation, . . . making any untrue statement of a material fact or failing to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading[.]"[134] Gaddy alleges the Church's "solicitation" of tithing

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[132] Dkt. 37 (Amended Complaint) ¶¶ 164, 177, 185, 196, 200(B), 219.

[133] *See Bryce*, 289 F.3d at 654.

[134] Utah Code Ann. § 13-22-13(3).

violates the Utah Charitable Solicitations Act because it has intentionally concealed or omitted material facts about the Church's history.[135]

The Church contends this new claim fails for two reasons. First, the Church argues the Act does not create a private cause of action.[136] Second, the Church maintains any claim under the Act in the context of this case necessarily requires an impermissible evaluation into the truth of the Church's statements based on religious teachings and beliefs.[137]

Assuming without deciding that the Act creates a private cause of action, the court concludes Gaddy's claim still fails because it impermissibly requires a determination of the truth of the Church's religious teachings. The allegedly untrue or misleading facts underlying Gaddy's claim are those relating to "Mormonism and the [] Church's key historical events, including but not limited to the first vision, character of Joseph Smith and the source of [the Church's] scripture[.]"[138] These facts directly implicate the truth of the Church's teachings. That is, the Church can only be liable under the Act for "making any untrue statement" or "failing to state a material fact necessary to make the statements made . . . not

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[135] Dkt. 47 (Opposition) at 30–31.

[136] Dkt. 38 (Motion) at 18 n.7.

[137] *Id.* at 18–19.

[138] Dkt. 37 (Amended Complaint) ¶ 196.

misleading[.]"[139] As the court has already determined, the First Amendment bars this inquiry when the statements at issue concern religious beliefs and doctrine.[140] For the same reasons the Church's First Amendment defense requires dismissal of Gaddy's claims based on fraudulent omissions, Gaddy's Utah Charitable Solicitations Act claim also fails to state a claim for which relief may be granted.[141]

2. Civil RICO (18 U.S.C. § 1962(c))

The court previously dismissed Gaddy's civil RICO claim. She reasserts the claim in her Amended Complaint, but includes in the amended claim a new alternative theory of liability.[142] Gaddy's new theory is based on statements by Church leaders related to the use of tithing funds, i.e., that the funds would not be used for commercial purposes.[143] Gaddy alleges these statements were false because tithing funds were in fact used for commercial purposes, including the

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[139] *See* Utah Code Ann. § 13-22-13(3) (prohibiting in connection with any solicitation "making any untrue statement of a material fact or failing to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading").

[140] *See* Dkt. 33 (MDO) at 10.

[141] *See Bryce*, 289 F.3d at 654.

[142] Dkt. 37 (Amended Complaint) ¶ 200(c).

[143] *Id.*; *see also id.* at ¶¶ 5, 6, 79.

development of the commercial City Creek Mall in Salt Lake City, Utah.[144]

"The elements of a civil RICO claim are: (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity."[145] Racketeering activity is defined as "any act which is indictable under federal law and specifically includes mail fraud, wire fraud and racketeering."[146] These underlying acts are commonly called "predicate acts."[147] The predicate acts forming the basis for Gaddy's RICO claim are mail and wire fraud.[148] In its Prior Order, the Court dismissed Gaddy's civil RICO claim because it rested on theories that depended on the truth or falsity of the Church's religious statements communicated through the mails and wires.[149]

Gaddy's new theory alleges the Church made misstatements of fact through the mail and wire communications about how the Church used or

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[144] *Id.*

[145] *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006) (citing 18 U.S.C. § 1962(a)–(c)).

[146] *Id.* (internal quotation marks and citation omitted).

[147] *Id.*

[148] Dkt. 37 (Amended Complaint) ¶ 202.

[149] Dkt. 33 (MDO) at 17.

planned to use tithing funds.[150] Gaddy alleges the Church used several billion dollars of principal tithing funds for profit-making business entity expenses, including the development of City Creek Mall.[151] She further alleges the Church simultaneously and falsely assured members that "tithing funds have not and will not be used to acquire [the mall]. Nor will they be used in developing it for commercial purposes."[152]

The Church contends the First Amendment's Religion Clauses bar Gaddy's new tithing theory for the same reason the court previously dismissed Gaddy's initial RICO theories.[153] The Church argues adjudicating the claim would require the court to determine whether the its actions were consistent with its scripture and official teachings.[154] The Church maintains because "[t]ithing is rooted in the Bible" and "commanded in a revelation recorded in another book of the Church's scripture, the Doctrine and Covenants," an examination of these teachings would entangle the court in an ecclesiastical dispute concerning the "proper use of the Lord's tithing

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[150] Dkt. 37 (Amended Complaint) ¶ 200(c).

[151] *Id.* ¶ 5.

[152] *Id.* ¶ 79.

[153] Dkt. 38 (Motion) at 16–17.

[154] *Id.*

funds."[155] The Church notes "[l]eaders of the Church have, for many years, taught the principle of tithing from the pulpit, including in the Church's semi-annual worldwide conferences."[156]

Following the framing in the court's Prior Order, the issue presented is whether the allegedly false statements circulated through the mails and wires concerning the Church's use of tithing implicate a purely secular dispute or an ecclesiastical dispute "about discipline, faith, internal organization, or ecclesiastical rule, custom or law[.]"[157] This distinction is required because the church autonomy doctrine only applies as a defense to alleged misconduct "rooted in religious belief."[158] The doctrine "does not apply to purely secular decisions, even when made by churches."[159] Indeed, the First Amendment "protects utterances which relate to religion but does not confer the same license for representations based on other sources of belief or verification."[160] The court must

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[155] *Id.* at 16.

[156] *Id.* at 17.

[157] Dkt. 33 (MDO) at 10 (citing *Bryce*, 289 F.3d at 657).

[158] *See Bryce*, 289 F.3d at 657 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)).

[159] *Id.*

[160] *Van Schaick v. Church of Scientology of California, Inc.*, 535 F. Supp. 1125, 1141 (D. Mass. 1982).

therefore determine whether the Church's "alleged statements were ecclesiastical statements protected by church autonomy or purely secular ones."[161]

As alleged in the Amended Complaint, the court concludes Gaddy's third alternative civil RICO theory is based on a secular dispute concerning statements by Church leadership about the specific ways tithing, once received, would in fact be spent. Justice Jackson provided a helpful example in his dissenting *Ballard* opinion in the context of criminal convictions based on misrepresentations of religious beliefs. There, he distinguished liability for fraud based on religious expressions with liability based on the misuse of donations, stating: "I do not doubt that religious leaders may be convicted of fraud for making false representations on matters *other* than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes."[162] This example highlights the distinction between the religious teachings behind the principle of tithing, and the Church's statements to its members about its use of tithing proceeds.

Here, Gaddy does not challenge the Church's tithing doctrine or teachings related to it. The court does not read her Amended Complaint to advance a

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[161] *Id.*

[162] *Ballard*, 322 U.S. at 95 (Jackson, J., dissenting) (emphasis added).

claim that the doctrine is false. Gaddy instead points to specific factual statements allegedly made by the Church through its representatives concerning the Church's use of tithing funds and alleges those statements are false.[163] The inquiry required to adjudicate this claim does not implicate religious principles of the Church or the truth of the Church's beliefs concerning the doctrine of tithing. This claim further does not require the court to determine whether the Church or its members were acting in accord with what they perceived to be the commandments of their faith.[164] Gaddy has instead challenged secular representations concerning the use of money received by the Church. While the statements were made by Church officials, the church autonomy doctrine does not apply as a defense.[165] The Church has not asserted any other challenge to Gaddy's RICO claim based on this alternative theory of liability. Accordingly, Gaddy's RICO claim based only on this alternative theory survives the Church's Motion to Dismiss.

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[163] *See* Dkt 37 (Amended Complaint) ¶ 79.

[164] *See Thomas v. Review Bd. of Ind., Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) ("Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.").

[165] *See In re The Bible Speaks*, 869 F.2d at 645 ("The [Free Exercise] clause does not allow purely secular statements of fact to be shielded from legal action merely because they are made by officials of a religious organization.").

CONCLUSION

For the reasons explained above, the Church's Motion to Dismiss is GRANTED in part, and DENIED in part.[166] The Motion is GRANTED as to Gaddy's claims for common law fraud, breach of the duty of full disclosure, fraud in the inducement to enter into an oral contract, fraudulent concealment, violations of the Utah Charitable Solicitations Act (UCA §§ 13-22-1, et seq.), her first and second alternative theories of civil RICO violations (18 U.S.C. § 1962(c)), and intentional (reckless) infliction of emotional distress. The Motion is DENIED as to Gaddy's third alternative civil RICO theory of liability relating to alleged misrepresentations concerning the Church's use of tithing.

After the court heard oral argument and took this matter under advisement, Gaddy filed a Motion for Leave to File her Second Amended Complaint.[167] That Motion is denied without prejudice as premature. However, now that the court has resolved the Church's Motion to Dismiss her Amended Complaint, Gaddy may file within thirty (30) days a motion for leave to amend her Amended Complaint.

SO ORDERED this 28th day of July 2021.

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[166] Dkt. 38 (Motion).

[167] Dkt. 85 (Motion for Leave to File Second Amended Complaint).

BY THE COURT:

/s/
ROBERT J. SHELBY
United States Chief District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LAURA A. GADDY,
Plaintiff,

v.

CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHIRST OF LATTER-DAY SAINTS,
Defendant.

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

2:19-cv-554-RJS-DBP

Chief District Judge Robert J. Shelby

Magistrate Judge Dustin B. Pead

Plaintiff Laura Gaddy was a member of The Church of Jesus Christ of Latter-day Saints most of her life. She recently left the Church after discovering new information about the Church's founding, history, and doctrine—information she alleges the Church hid from her and its general membership. In short, Gaddy contends the Church has intentionally misrepresented its foundational history to induce faith in the Church

and its teachings. Gaddy now asserts several claims against the Church, including fraud, Civil RICO, intentional infliction of emotional distress, and breach of fiduciary duty.

Defendant Corporation of the President of the Church of Jesus Christ of Latter-day Saints (the Church) argues the Free Exercise and Establishment Clauses of the First Amendment (the Religion Clauses) foreclose Gaddy's lawsuit because her claims implicate the Church's fundamental religious beliefs. Before the court is the Church's Motion to Dismiss, in which the Church asks the court to dismiss all claims.[1] For the reasons explained below, the Church's Motion is GRANTED.

BACKGROUND[2]

After providing a brief overview of some of the Church's foundational beliefs at the heart of the dispute, the court outlines the facts relevant to Gaddy.

I. Foundational Beliefs

Founded in 1830 by Joseph Smith, The Church of Jesus Christ of Latter-Day Saints has a worldwide

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[1] Dkt. 6.

[2] Because this case is before the court on a motion to dismiss, the court accepts as true all well-pleaded factual allegations contained in the Complaint. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

membership now exceeding sixteen million.[3] Gaddy alleges the Church has intentionally distorted the foundational facts upon which the Church's beliefs are built.[4] In particular, Gaddy contrasts the Church's "false official narrative" of several foundational events with what she alleges are the "historically accurate" accounts.[5] She focuses on the Church's teachings about a spiritual event when Joseph Smith saw God and Jesus Christ (known as the First Vision), the origins of one of the Church's foundational books of scripture, the Book of Mormon, and another canonical text known as the Book of Abraham.

A. The First Vision

1. *Official Church Narrative*

According to the Church, in 1820, Smith entered a grove of trees to pray and seek spiritual guidance.[6] In response to Smith's prayer, God and Jesus Christ appeared to Smith and told him not to join any of the existing churches.[7] This event marked the beginning of Smith's mission to restore what he later taught was

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[3] Dkt. 2 (Compl.) ¶¶ 12, 50.

[4] *Id.* ¶¶ 2–3.

[5] *See, e.g.*, *id.* ¶¶ 64–75.

[6] *See id.* ¶ 64. Smith was fourteen years old. *Id.*

[7] *Id.* ¶¶ 64, 183.

the true gospel of Jesus Christ.[8]

2. *Purported Historically Accurate Version*

Gaddy alleges the Church's official account of the First Vision is inconsistent with other accounts Smith gave over the years.[9] Several differing accounts of the First Vision were recorded, including in 1832, 1835, 1838, and 1842.[10] In those accounts, it is not clear that it was God or Jesus Christ that appeared to Smith.[11] The accounts depict various persons appearing to Smith, including the Lord, angels, an unidentified angel, two unidentified personages, and an angel named Moroni or Nephi.[12] The 1832 account, handwritten by Smith, describes only "the Lord" appearing, who forgave his sins.[13]

B. Translation of the Book of Mormon

1. *Official Church Narrative*

According to the Church, the Book of Mormon is

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[8] *Id.* ¶¶ 62, 64.

[9] *Id.* ¶ 68.

[10] *Id.* ¶ 67.

[11] *Id.*

[12] *Id.*

[13] *Id.* ¶ 69.

a translation of scripture originally inscribed on gold plates in reformed Egyptian.[14] The record was allegedly written by ancient prophets who lived in the Americas and was eventually buried in New York.[15] An angel directed Smith where to find the gold plates, which were also buried with spectacles called "interpreters."[16] While wearing the interpreters and looking at the gold plates, Smith translated into English the reformed Egyptian inscribed on the plates.[17]

2. *Purported Historically Accurate Version*

Gaddy alleges Smith dictated the Book of Mormon while looking at a "seer stone" that was placed in a hat.[18] Smith explained that he read the words he dictated as they appeared on the stone.[19] Under this theory, Smith created the Book of Mormon manuscript through divination, reading from a document buried inside the hat, dictation by inspiration, or some

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[14] *Id.* ¶¶ 76–77.

[15] *Id.*

[16] *Id.* ¶¶ 77, 79.

[17] *Id.* ¶ 79.

[18] *Id.* ¶ 84.

[19] *See id.* ¶ 85.

combination of those methods.[20] Thus, Gaddy alleges Smith did not directly use gold plates to create the Book of Mormon.[21]

C. Book of Abraham

1. *Official Church Narrative*

In 1835, the Church purchased Egyptian papyri containing writings in reformed Egyptian as well as three facsimiles (images).[22] Smith translated the papyri into the Book of Abraham—a short book of scripture, separate from the Book of Mormon, written by the Hebrew prophet, Abraham.[23] Smith also explained the facsimiles depicted scenes from Abraham's life.[24] Canonized in 1880, the Book of Abraham tells of Abraham's early life and contains other teachings about God's relationship with mankind and the creation of the Earth.[25]

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[20] *Id.* ¶ 84.

[21] *Id.* ¶ 85.

[22] *Id.* ¶ 92.

[23] *Id.* ¶¶ 92–93.

[24] *Id.* ¶¶ 93–94.

[25] *Id.* ¶ 94.

2. *Purported Historically Accurate Version*

Although the papyri from which the Book of Abraham was allegedly translated were believed to have been lost in a fire, they were rediscovered in 1966.[26] Egyptologists' subsequent translations of the papyri significantly differ from Smith's translation.[27] The facsimiles appear to depict ordinary Egyptian funerary rights and do not mention the prophet Abraham.[28] Gaddy alleges the Church eventually admitted the Book of Abraham was not written by the hand of Abraham and that the characters on the facsimiles do not represent what Smith originally described.[29]

II. Laura Gaddy

Gaddy was raised as a member of the Church most of her life.[30] This included attending church for three hours on Sundays, participating in other activities during the week, and paying tithing.[31] After graduating from college, Gaddy married her husband

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[26] *Id.* ¶ 97.

[27] *Id.*

[28] *Id.*

[29] *Id.* ¶ 101.

[30] *Id.* ¶ 141.

[31] *Id.* ¶¶ 142–43.

in 2015, and the couple remained active participants in the Church.[32]

While preparing to teach a lesson for church in 2018, Gaddy came across videos online about mind control and religious extremism as it related to the Church.[33] These videos discussed other controversies about the Church's history, which led Gaddy to conduct additional research on those topics.[34] Gaddy learned there were multiple accounts of Smith's First Vision as well as the role the seer stone played in the Book of Mormon's origin.[35] She also learned that Egyptologists contradicted Smith's translation of the papyri on which the Book of Abraham is based.[36] After unproductive conversations about her concerns with her husband, friends, and family members, Gaddy resigned from the Church.[37] Gaddy is now in counseling to help manage the emotional distress that has accompanied the loss of her faith in the Church.[38]

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[32] *Id.* ¶ 156.

[33] *Id.* ¶ 157.

[34] *Id.* ¶¶ 158–59.

[35] *Id.* ¶ 159.

[36] *Id.* ¶ 161.

[37] *Id.* ¶ 163.

[38] *Id.* ¶ 165.

LEGAL STANDARD

The Church seeks dismissal of Gaddy's Complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction or, in the alternative, under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.[39] Although some courts have held that claims implicating a church's religious beliefs may pose a jurisdictional bar to adjudication,[40] the Tenth Circuit has concluded these motions should be considered under Rule 12(b)(6).[41] This court will proceed under the Rule 12(b)(6) standard.

"To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[42] A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the

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[39] Dkt. 6 at 6.

[40] *See id.* n.2 (quoting *Westbrook v. Penley*, 231 S.W.3d 389, 398 (Tex. 2007)).

[41] *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 (10th Cir. 2002) ("Here, St. Aidan's Church raised the church autonomy defense on a motion to dismiss for lack of subject matter jurisdiction. The motion would more appropriately be considered as a challenge to the sufficiency of plaintiff's claims under Rule 12(b)(6).").

[42] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

defendant is liable for the misconduct alleged."[43] When determining whether a complaint meets these criteria, the court will "assume the truth of the plaintiff's well-pleaded factual allegations and view them in the light most favorable to the plaintiff."[44]

Here, the Church argues the First Amendment's Religion Clauses bar each of Gaddy's claims. The Tenth Circuit has analogized such an argument to a government official's defense of qualified immunity.[45] That is, if the First Amendment applies "to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted."[46]

ANALYSIS

Gaddy brings six causes of action against the

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[43] *Id.* (citing *Twombly*, 550 U.S. at 556).

[44] *Ridge at Red Hawk, LLC v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007).

[45] *See Bryce*, 289 F.3d at 654.

[46] *Id.* Additionally, a heightened pleading standard applies when fraud is alleged. Under this standard, "a party must state with particularity the circumstances constituting [the] fraud or mistake." Fed. R. Civ. P. 9(b). Thus, Rule 9(b) generally requires a plaintiff "to identify the time, place, and content of each allegedly fraudulent representation or omission, to identify the particular defendant responsible for it, and to identify the consequence thereof." *Hafen v. Strebeck*, 338 F. Supp. 2d 1257, 1263 (D. Utah 2004) (citation omitted).

Church: common law fraud, fraud in the inducement, breach of fiduciary duty, fraudulent concealment, Civil RICO (18 U.S.C. § 1962(c)), and intentional infliction of emotional distress. Before considering Gaddy's claims, the court begins with a brief overview of basic First Amendment principles applicable to the dispute, including the development of the church autonomy doctrine. After considering Gaddy's fraud based claims in the context of those principles, the court then turns to Gaddy's three remaining claims.

I. The First Amendment and the Church Autonomy Doctrine

A. The Religion Clauses of the First Amendment

The First Amendment provides in pertinent part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"[47] "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."[48] This right "unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions."[49]

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[47] U.S. Const. amend. I.

[48] *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990).

[49] *McDaniel v. Paty*, 435 U.S. 618, 626 (1978).

To effectuate those rights under the First Amendment, courts have long held that the truth or falsity of religious beliefs are beyond the scope of judicial review.[50] In its seminal decision, *United States v. Ballard*, the Supreme Court observed,

> Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. . . . The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they

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[50] *See United States v. Ballard*, 322 U.S. 78, 86–87 (1944); *Van Schaick v. Church of Scientology of Cal., Inc.*, 535 F. Supp. 1125, 1142 (D. Mass. 1982).

enter a forbidden domain.[51]

In short, notwithstanding that many find various religious claims patently unbelievable, courts may not inject themselves into resolving ecclesiastically based disputes.

B. The Church Autonomy Doctrine

Over the years, courts—most notably, the Supreme Court—have expressed reluctance to involve themselves in religious disputes.[52] In what has become known as the church autonomy doctrine, courts have recognized "the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government *as well as those of faith and doctrine.*'"[53] The Supreme Court has therefore declined to intervene in property disputes between factions of a church that turned on questions of

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[51] 322 U.S. at 86–87.

[52] *See, e.g.*, *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871); *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1 (1929); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 446 (1969); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

[53] *Bryce*, 289 F.3d at 655 (quoting *Kedroff*, 344 U.S. at 116) (emphasis added).

religious doctrine and practice;[54] it refused to second-guess a church's determination concerning the qualifications of a chaplain (or whether a candidate possessed them);[55] it struck down a statute changing who in the church would control a cathedral;[56] and it declined to consider a church's defrocking of a bishop and reorganization.[57]

But while it is "wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions,"[58] the church autonomy doctrine "is not without limits."[59] Churches may not invoke the church autonomy defense to shield purely secular decisions.[60] And "[b]efore the church autonomy doctrine is implicated, a threshold inquiry is whether

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[54] *See Watson*, 80 U.S. (13 Wall.) at 727; *Presbyterian Church*, 393 U.S. at 449.

[55] *See Gonzalez,* 280 U.S. at 16.

[56] *See Kedroff*, 344 U.S. at 116.

[57] *See Milivojevich*, 426 U.S. at 710.

[58] *Presbyterian Church*, 393 U.S. at 445–46.

[59] *Bryce*, 289 F.3d at 657.

[60] *Id.*

the alleged misconduct is 'rooted in religious belief.'"[61] Put another way, the church autonomy doctrine does not place churches above the law or immunize them from tort liability where their alleged misconduct is unrelated to their religious beliefs.[62] Courts must therefore decide whether a dispute presented "is an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law, or whether it is a case in which we should hold religious organizations liable in civil courts for purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization."[63]

By way of example, in *Bryce*, the plaintiff brought a sexual harassment claim against the Episcopal Church after being fired from her position as a youth minister.[64] The plaintiff, who had recently had a civil commitment ceremony with her partner, was terminated for violating the Episcopal Church's doctrine on homosexuality.[65] Her claim was based on the content of letters one of the church's reverends

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[61] *Id.* (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)).

[62] *Id.*

[63] *Id.* (quoting *Bell v. Presbyterian Church*, 126 F.3d 328, 331 (4th Cir. 1997)).

[64] *Id.* at 652.

[65] *Id.* at 651–52.

sent to church authorities as well as statements church members made during a parish meeting.[66] Although the court acknowledged that some of the letters and statements may have been "offensive" or "incorrect," it determined they were not actionable because the statements fell "squarely within the areas of church governance and doctrine protected by the First Amendment."[67]

With these principles in mind, the court turns to Gaddy's six causes of action.

II. Gaddy's Fraud Based Claims

Three of Gaddy's causes of action relate to fraud: common law fraud, fraud in the inducement, and fraudulent concealment.[68] To state a claim for fraud, Gaddy must allege

(1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did

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[66] *Id.* at 652–53.

[67] *Id.* at 658.

[68] These are Gaddy's first, second, and fourth causes of action.

in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage.[69]

Gaddy's fraud claims relate principally to three of the Church's alleged misrepresentations of material fact:

- Joseph Smith saw God *and* Jesus Christ during the First Vision;[70]

- Joseph Smith translated the Book of Mormon from gold plates inscribed with reformed Egyptian characters using "interpreters" given to him from God;[71] and

- Joseph Smith accurately translated writings from Egyptian papyri about the Hebrew prophet Abraham into the Church's scripture known as the Book of Abraham.[72]

Each of these alleged misrepresentations directly implicates the Church's core beliefs. Because a statement's falsity is an essential element of fraud

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[69] *See Webster v. JP Morgan Chase Bank, NA*, 2012 UT App. 321, ¶ 16, 290 P.3d 930.

[70] Dkt. 2 ¶¶ 64, 183.

[71] *Id.* ¶¶ 79, 183.

[72] *Id.* ¶¶ 92–93, 183. Gaddy also cites a litany of other alleged misrepresentations as forming the basis for her fraud claims, *id.* ¶¶ 104–120, but these claims suffer from the same defects identified below.

claims, adjudicating these claims would require the court to do exactly what the Supreme Court has forbidden—evaluate the truth or falsity of the Church's religious beliefs.[73] This court can no more determine whether Joseph Smith saw God and Jesus Christ or translated with God's help gold plates or ancient Egyptian documents, than it can opine on whether Jesus Christ walked on water or Muhammed communed with the archangel Gabriel. The First Amendment prohibits these kinds of inquiries in courts of law.

Recognizing the court cannot adjudicate claims based on a Church's beliefs, Gaddy insists her Complaint does not challenge the truth or falsity of any of the Church's beliefs or doctrines.[74] Instead, Gaddy contends she is challenging only the underlying

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[73] *See Ballard*, 322 U.S. at 86–87. The elements for fraudulent concealment differ somewhat from the elements for fraud and fraudulent inducement. To prevail on a claim for fraudulent concealment, a plaintiff must prove "(1) that the nondisclosed information is material, (2) that the nondisclosed information is known to the party failing to disclose, and (3) that there is a legal duty to communicate." *Yazd v. Woodside Homes Corp.*, 2006 UT 47, ¶ 10, 143 P.3d 283. However, the Utah Supreme Court has clarified that the party's silence that renders it liable for fraudulent concealment "must amount to fraud[.]" *McDougal v. Weed*, 945 P.2d 175, 179 (Utah 1997). The court therefore considers the three fraud claims together. In any event, Gaddy's fraudulent concealment claim would also fail because the court concludes the Church did not owe Gaddy a legal duty. *See infra* Part V.

[74] Dkt. 23 (Opp'n) at 6–7.

facts upon which the beliefs are based, arguing "Facts are susceptible to proof. Beliefs are not; if proven, beliefs become facts."[75] In essence, Gaddy asserts the court can distinguish between the facts that support a church's beliefs from the beliefs themselves.[76] The Church argues Gaddy's reasoning would "spell the end of religious freedom" because many religious beliefs relate to historical facts.[77]

The court agrees with the Church. As an initial matter, Gaddy conceded at oral argument that no court has adopted the fact versus belief framework she advances. And for good reason: that framework is unworkable. Consider the statement "Jesus Christ was resurrected three days after he died." Is that a statement of fact or belief? The answer depends, of course, on who is answering the question. To most Christians, the statement is a fact—though not verifiable using defined scientific methods, believers accept the reality of Christ's resurrection much as they accept that there are 24 hours in a day and seven days in a week. On the other hand, those outside of Christianity may view the resurrection as abjectly false, an impossible event no more factual than the tales of the Brothers Grimm. A facts versus beliefs approach presents a false dichotomy that fails to

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[75] *Id.* at 9 ("Belief in Mormonism was and continues to be induced by [the Church's] misrepresentation of material facts upon which it was founded.").

[76] *See id.*

[77] Dkt. 26 (Reply) at 3–4.

recognize that, when it comes to faith, facts and belief often are inextricably intertwined.

The better distinction, and the distinction drawn by other courts faced with fraud claims involving churches, is between *religious* and *secular* facts.[78] While courts can resolve "purely secular disputes" where a church is a party, courts ordinarily may not get involved where the alleged misconduct is "rooted in religious belief."[79] Unlike secular facts, believers accept religious facts—like Christ's resurrection or Muhammed's ascension into heaven—in the absence of objective proof. That is, religious facts require faith. Courts therefore cannot adjudicate fraud claims implicating religious facts because "[m]en may believe what they cannot prove."[80]

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[78] *See In re The Bible Speaks*, 869 F.2d 628, 645 (1st Cir. 1989) ("The [Free Exercise] clause does not allow purely secular statements of fact to be shielded from legal action merely because they are made by officials of a religious organization."); *Molko v. Holy Spirit Assn.*, 762 P.2d 46, 58 (1988) ("Our initial inquiry, then, is whether plaintiffs' actions for fraud implicate religious belief or religiously motivated conduct. If the former, the actions are barred. If the latter, further constitutional analysis is necessary.") (citation omitted); *Van Schaick*, 535 F. Supp. at 1141 ("Statements citing science as their source may provide the basis for a fraud action *even though the same contention would not support such an action if it relied on religious belief for its authority*.") (emphasis added).

[79] *Bryce*, 289 F.3d at 657–58 (citations omitted).

[80] *Ballard*, 322 U.S. at 86.

Here, Gaddy's fraud claims plainly concern the basic religious facts upon which the Church was founded. The nature of the First Vision and the origin of some of the Church's scripture are simply not proper subjects for judicial scrutiny. Indeed, if all a plaintiff had to do to get around the First Amendment was to challenge the facts underlying a church's religious beliefs, the Religion Clauses would offer little protection against de facto referenda on churches' faith and doctrines.

Gaddy nevertheless contends several courts have held that churches are not immune from tort claims grounded in fraud. She is correct. If, for example, prior to selling its van, a church rolled back the odometer to make it appear the van had fewer miles than it actually had, the church would be liable for fraud, and the First Amendment would pose no bar to the unsuspecting buyer's suit. Indeed, in each of the cases Gaddy cites, the court stressed it could address the claims at issue only because the dispute turned on purely secular facts.[81] That is not the case, however, when the fraud claims implicate the veracity of religious facts.

Van Schaick v. Church of Scientology of California is on all fours with this case. There, the plaintiff brought several fraud claims against the

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[81] *See In re The Bible Speaks*, 869 F.2d at 645; *Molko*, 762 P.2d at 58; *Van Schaick*, 535 F. Supp. at 1141.

Church of Scientology.[82] The court concluded that not all of the plaintiff's claims were barred by the First Amendment. One of the counts "set[] forth purely secular representations . . . that defendant promised that [the plaintiff] would receive benefits, including training, room and board, and various work and research opportunities, after undergoing a period of auditing."[83] Adjudicating that claim would not force the court to consider the truth or falsity of religious doctrine.[84] But several other fraud claims depended on assertions the plaintiff was fraudulently induced to become a scientologist by false representations about the substance of Scientology doctrine.[85] Noting that fraud claims require a finding the defendant knowingly made a false statement, the court acknowledged that "[proving] those elements—that the statement was false and that defendant knew of its falsity—becomes problematic when the statement relates to religious belief or doctrine."[86] Accordingly, the court concluded that if the Scientology movement qualified as a religion for First Amendment purposes, *Ballard* would preclude the court from examining the

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[82] *Van Schaick*, 535 F. Supp. at 1142.

[83] *Id.* at 1140.

[84] *Id.*

[85] *Id.* at 1142.

[86] *Id.*

veracity of the plaintiff's allegations.[87]

The reasoning in *Van Schaick* applies with equal force here. Gaddy's fraud claims are not based on purely secular representations. Rather, the claims go to the heart of several of the Church's foundational beliefs. These are the types of claims *Ballard* forecloses.

Attempting to save her fraud claims, Gaddy advances two alternative arguments. First, Gaddy notes the truism that while the First Amendment protects belief absolutely, it does not prevent the government from regulating religious conduct.[88] Gaddy asserts the Church's proselytizing constitutes conduct that falls outside the First Amendment's protection. But the Supreme Court has repeatedly confirmed that the free exercise of religion encompasses not only the freedom to believe, but also the right to profess those beliefs through proselytizing.[89] Put another way, the

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[87] *Id.* The court determined it needed further briefing on whether the Scientology movement was sufficiently established to be entitled to the First Amendment protections reserved for religious institutions. *Id.* at 1144.

[88] *Reynolds v. United States*, 98 U.S. 145, 166 (1878) ("Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.").

[89] *See Smith*, 494 U.S. at 877 ("The free exercise of religion means, first and foremost, the right to believe *and profess* whatever religious doctrine one desires.") (emphasis added); *McDaniel*, 435 U.S. at 626 (noting that the free exercise clause

Church is no more liable for preaching and teaching its beliefs than it is for espousing them.

Second, Gaddy argues that even if the court may not inquire into the truth of the Church's beliefs, it can assess whether the Church's beliefs are sincerely held.[90] Regardless, the parties treated this argument only cursorily in the briefing, and Gaddy conceded at oral argument the Complaint nowhere alleges the Church's beliefs are not sincerely held. The court therefore declines to consider this issue.[91]

"unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions").

[90] Dkt. 23 at 16–17. Indeed, courts are sometimes forced to consider whether an individual's beliefs are sincerely held. This inquiry is required, for example, when an individual seeks an exemption from a statute or regulation under the Religious Freedom Restoration Act (RFRA). *See, e.g.*, *Kikumura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001) (reciting as an element of a RFRA challenge that the belief at issue be "sincerely held"). But courts have expressed doubts about evaluating the sincerity of an entire organization. *See Van Schaick*, 535 F. Supp. at 1144 (noting the U.S. Supreme Court's decision in *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707 (1981) "suggests the difficulty of challenging the good faith of an entire organization and states that courts may not ordinarily consider intrafaith differences among adherents in determining whether a religious belief is sincerely held.").

[91] Gaddy also argues the Free Speech provision of the First Amendment does not protect fraudulent speech. Dkt. 23 at 12–13. But the Church's Motion relies only on the Religion Clauses of the First Amendment. Even if Gaddy is correct, the Religion Clauses still mandate dismissal of Gaddy's fraud claims because the court may not inquire into the truth or falsity of the

In sum, none of Gaddy's arguments alters the court's conclusion that the First Amendment prohibits the inquiry her fraud claims would require. Where a defendant successfully asserts a First Amendment defense at the motion to dismiss stage, the plaintiff has no claim for which relief may be granted.[92] That is the case here. Even accepting as true Gaddy's well-pleaded factual allegations, the court may not assess the veracity of the Church's religious beliefs. Accordingly, Gaddy's fraud claims fail to state a claim for which relief may be granted.

III. Civil RICO

Gaddy alleges the Church's pattern of misrepresenting facts related to Joseph Smith's First Vision, the Book of Mormon, and the Book of Abraham constitutes a civil racketeering violation.[93] "The elements of a civil RICO claim are (1) investment in, control of, or conduct of (2) an enterprise (3) through a pattern (4) of racketeering activity."[94] Racketeering activity is defined as "any act which is indictable under

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Church's religious claims.

[92] *See Bryce*, 289 F.3d at 654 ("If the church autonomy doctrine applies to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted.").

[93] *See* Dkt. 2 ¶¶ 236–38.

[94] *Tal v. Hogan*, 453 F.3d 1244, 1261 (10th Cir. 2006) (citing 18 U.S.C. § 1962(a), (b), & (c)).

federal law and specifically includes mail fraud, wire fraud and racketeering."[95] Courts often refer to these underlying acts as "predicate acts."[96]

Much of the parties' briefing is dedicated to whether the Church, its local leadership, and members qualify as an "enterprise" under RICO.[97] But the court need not reach that question. The predicate acts that form the basis for Gaddy's RICO claim are the Church's alleged mail and wire fraud by using the postal service and electronic communications to spread falsehoods about Joseph Smith, the Book of Mormon, and the Book of Abraham. These predicate acts directly implicate the veracity of the Church's teachings. That is, the Church can be liable for mail or wire fraud only if the messages it communicated were false. But the court has already determined the First Amendment bars inquiry into the Church's religious beliefs. Just as the Church's First Amendment defense required dismissal of Gaddy's fraud claims, the same is true here. Gaddy's RICO claim fails to state a claim for which relief may be granted.[98]

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[95] *Id.* (internal quotation marks and citation omitted).

[96] *Id.*

[97] *See* Dkt. 6 at 19–20; Dkt. 23 at 26–29.

[98] *See Bryce*, 289 F.3d at 654.

IV. Intentional Infliction of Emotional Distress

Gaddy's claim for intentional infliction of emotional distress fails for similar reasons: it too is dependent upon her fraud claims. To state a claim for intentional infliction of emotional distress, a plaintiff must allege the defendant (1) intentionally engaged in conduct toward the plaintiff with either (a) the purpose of inflicting emotional distress or (b) where any reasonable person would have known that such would result, and (2) the conduct is outrageous and intolerable.[99] Here, the conduct Gaddy alleges to be outrageous and intolerable is the Church's pattern of "knowingly and repeatedly misrepresenting the foundational facts of its organization."[100] Because the court concludes Gaddy's fraud claims must be dismissed—the conduct upon which her claim for intentional infliction of emotional distress is based—this claim fails as well.

V. Breach of Fiduciary Duty

Gaddy alleges a fiduciary relationship existed between Gaddy and the Church, and between Gaddy and the Church's local leaders.[101] This relationship

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[99] *See Jackson v. Brown*, 904 P.2d 685, 687–88 (Utah 1995).

[100] Dkt. 2 ¶ 242.

[101] *Id.* ¶ 206. It is unclear whether Gaddy withdrew this claim at oral argument. Because the parties briefed this issue and Gaddy did not formally withdraw her claim, the court briefly

arose, Gaddy argues, from the trust she placed in Church leaders for "all matters spiritual," and from the "extraordinary influence" the Church exercised over her.[102] Gaddy avers the Church breached its fiduciary duty by failing to "fully disclose the truth" of the Church's historical foundation.[103]

Under Utah law, breach of fiduciary duty claims require proof of four elements: "[1] the existence of a fiduciary relationship (such as attorney-client, physician-patient, or insurer-insured); [2] breach of the fiduciary duty; [3] causation, both actual and proximate; and [4] damages."[104] Gaddy cites to no authority—Utah or otherwise—establishing that a legally cognizable fiduciary duty arises from purely ecclesiastical relationships.[105] And, as Gaddy

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addresses this cause of action.

[102] *Id.* ¶¶ 208–10.

[103] *Id.* ¶¶ 118–19.

[104] *Gables at Sterling Village Homeowners Ass'n, Inc. v. Castlewood-Sterling Village I, LLC*, 2018 UT 04, ¶ 52, 417 P.3d 95.

[105] Gaddy asserts the Utah Supreme Court has held that "a developer-builder may owe his buyer a duty to disclose information known to him concerning real property 'when that information is material to the condition of the property purchased.'" Dkt. 23 at 23 (quoting *Yazd v. Woodside Homes Corp.*, 2006 UT 47, ¶ 16, 143 P.3d 283). But the *Yazd* decision arose in a commercial context and did not require the court to grapple with the difficult issues implicated by the First

acknowledged at oral argument, the Utah Supreme Court has explicitly declined to recognize such a duty.[106]

In *Franco v. The Church of Jesus Christ of Latter-day Saints*, the plaintiff, a seven-year-old girl, sought counseling from church leaders shortly after being sexually abused by a teenage boy who attended the same congregation.[107] After the leaders advised the plaintiff to "forgive and forget" and referred her to a non-licensed mental health counselor who gave the same recommendation, the plaintiff brought claims for negligence and breach of fiduciary duty against both the church and the leaders.[108] The Utah Supreme Court concluded the First Amendment barred the plaintiff's claims because establishing the appropriate

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Amendment protections afforded churches. The court therefore does not find *Yazd* instructive.

[106] *See Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 24, 21 P.3d 198 ("Accordingly, we conclude that the trial court correctly determined that Franco's claim[] against the LDS Church Defendants for . . . breach of fiduciary duty [is] barred by the First Amendment to the United States Constitution."). Gaddy argues *Franco* "was wrongly decided." Dkt. 23 at 22. But this court is bound by decisions of the Utah Supreme Court on matters of Utah law. *See, e.g.*, *Stickley v. State Farm Mut. Auto. Ins. Co.*, 505 F.3d 1070, 1077 (10th Cir. 2007) ("When the federal courts are called upon to interpret state law, the federal court must look to the rulings of the highest state court . . . .").

[107] *Franco*, 2001 UT 25, ¶ 3.

[108] *Id.* ¶¶ 3–4.

standard of care would improperly entangle the court with religion:

> Defining such a duty would necessarily require a court to express the standard of care to be followed by other reasonable clerics in the performance of their ecclesiastical counseling duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. This is as impossible as it is unconstitutional[.][109]

While *Franco* considered the breach of fiduciary duty in the context of clergy counseling, the court's reasoning similarly applies here. Gaddy asks the court to conclude that churches owe their members a fiduciary duty to disclose some category of facts. It is unclear from Gaddy's Complaint what exactly churches must disclose. But even if the court could define the scope of the duty, imposing such a duty would force the court to define a standard of care that could then be applied to "a diversity of religions professing widely varying beliefs."[110] This the court cannot do. Accordingly, Gaddy's claim for breach of fiduciary duty fails.

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[109] *Id.* ¶ 23.

[110] *Id.*

CONCLUSION

Churches can be liable for fraud claims like anyone else. But the First Amendment bars such claims when they would require a court to consider the truth or falsity of a church's religious doctrines. For the reasons explained above, the Church's Motion is GRANTED without prejudice to Gaddy to seek leave to amend her Complaint.[111]

After the court heard oral argument and took this matter under advisement, but just before issuing its decision, Gaddy filed a Motion to Amend her Complaint.[112] That Motion is denied without prejudice as premature. However, now that the court has resolved the Church's Motion to Dismiss, Gaddy may file within forty-five (45) days a motion for leave to amend her Complaint.[113]

SO ORDERED this 31st day of March 2020.

BY THE COURT:

/s/
ROBERT J. SHELBY
United States Chief District Judge

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[111] Dkt. 6.

[112] Dkt. 32.

[113] Gaddy may refile the same Motion to Amend (Dkt. 32) if she wishes, or may file a revised motion in view of this Order.

APPENDIX H

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

18 U.S.C. § 1961 — Relevant Definitions (Verbatim Excerpts)

18 U.S.C. § 1961(1)(B) "Racketeering activity — mail and wire fraud"

As used in this chapter—

(1) "racketeering activity" means …

> (B) any act which is indictable under any of the following provisions of title 18, United States Code: …
>
> > section 1341 (relating to mail fraud),
> > section 1343 (relating to wire fraud)…

18 U.S.C. § 1961(3) — "Person"

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property.

18 U.S.C. § 1961(4) — "Enterprise"

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

18 U.S.C. § 1961(5) — "Pattern of racketeering activity"

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

18 U.S.C. § 1962(c) — Prohibited Activities

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1964 — Civil Remedies (Verbatim)

a)

The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b)

The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may

rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d)

A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

Predicate Acts of Mail and Wire Fraud: 18 U.S.C. § 1341 and § 1342

18 U.S.C. § 1341 — Frauds and Swindles (Mail Fraud)

§ 1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose

of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. (Penalty for financial institution omitted.)

18 U.S.C. § 1343 — Fraud by Wire, Radio, or Television (Wire Fraud)

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. (Penalty for financial institution omitted.)

APPENDIX I

Official Visual Depictions

(Rule 14.1(i): "any other material essential to understanding the petition")

The following images are reproduced from official publications and public communications of the Church of Jesus Christ of Latter-day Saints and are included to provide visual context for the allegations described in the Second Amended Complaint. As alleged, for many years official artwork and instructional materials depicted Joseph Smith translating the Book of Mormon by reading directly from gold plates, without depicting the use of a seer stone placed in a hat.

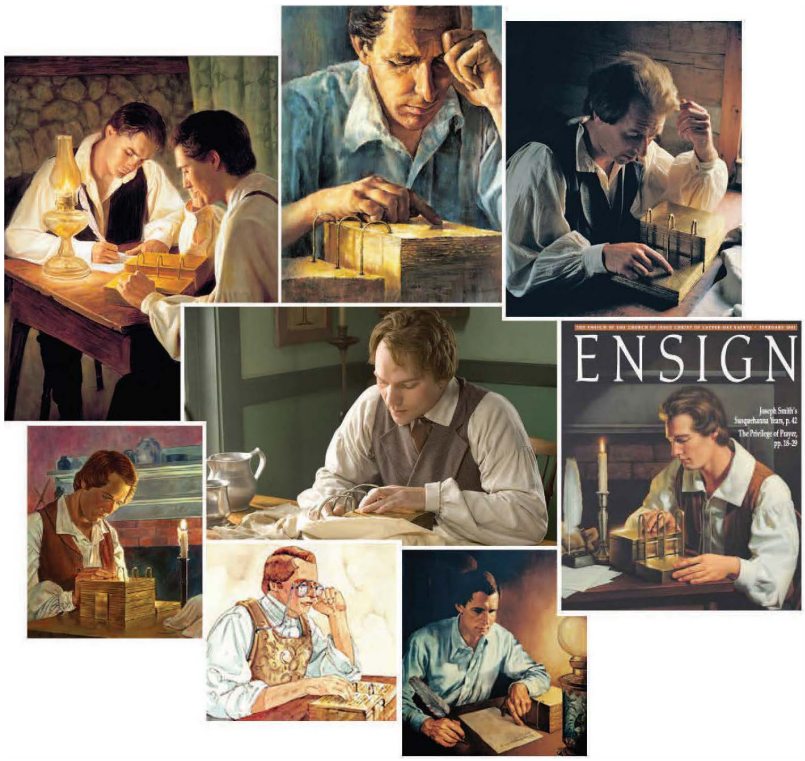
In October 2015, an article in a CES publication by a Brigham Young University professor discussed the influence of such artwork on member understanding and noted that official imagery from approximately 1971 to 2014 did not depict the seer-stone-in-a-hat method described in historical sources. In 2020, COP President Russell M. Nelson publicly demonstrated that method in a recorded reenactment while the gold plates were covered and placed nearby.

The images included here—consisting of historical artwork and stills from the 2020 reenactment—are provided solely as illustrative exemples referenced in the pleadings and are not offered for the purpose of resolving factual disputes.

Correlated Art Depicting Joseph Smith translating from Open Gold Plates, taken from Second Amended Complaint

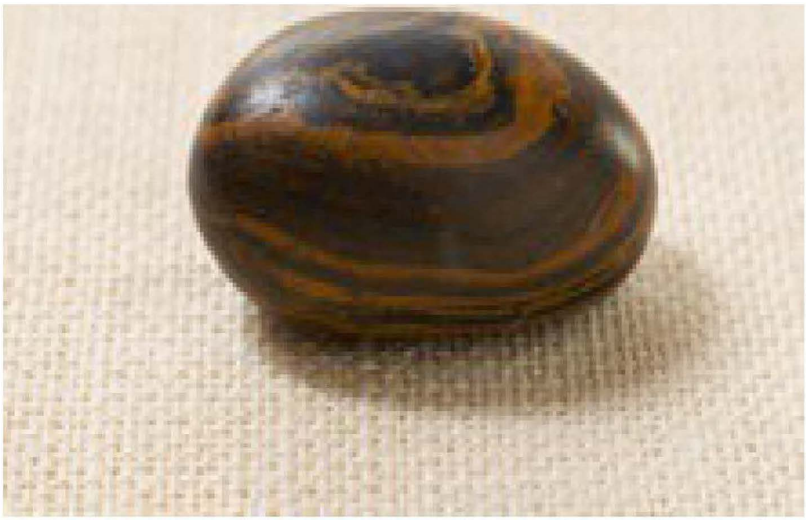
BYU Professor Anthony Sweat found that because official LDS artwork *from 1971–2014 never depicted Joseph Smith translating with a seer stone(s) in a hat*, Church members experienced cognitive dissonance when they later learned about the stone(s)-in-the hat with "plates concealed or not in the room," method described in multiple firsthand accounts." (AV3:116-118:¶261-263)

Gold Plate Montage **(**AV3:62:¶151)



The interpreters—spectacles attached to a breastplate (*a.k.a.* Urim & Thummim) shown above, were not used after the [initial dictation of the first] 116 pages were lost. Thus, all eyewitnesses write or say that the *Book of Mormon* manuscript that was eventually published was created by Smith dictating from a brown stone in a hat, gold [plates not in sight] (AV3:61¶150).

Photo of Joseph Smith's Brown Stone First Published August 4, 2015



"Never-before-seen photographs of a seer stone Joseph Smith likely used in the translation of the Book of Mormon," published August 4, 2015 on the Church's official website.

Excerpts from the Second Amended Complaint:
(AV3:63¶154 (photo))
(AV3:116¶261 (text))

LDS President Russel M. Nelson's video reenactment of the *Book of Mormon* taken from the Second Amended Complaint (AV3:66-69).

"…And Joseph used these, uh, the urim and thummim, seer stones in the, in the hat…"

"…it was easier for him to see the light…"

APPENDIX J

GLOSSARY OF TERMS

1826 Glass-Looking Proceeding: A judicial proceeding held in Bainbridge, New York, in which Joseph Smith was charged as a "disorderly person" under a statute addressing the use of a stone to divine buried treasure. Contemporary documentation includes Judge Albert Neely's bill of costs, rendering the proceeding empirically verified. (AV3:15¶31; AV4:72–77.)

Anti-Mormon: Term used by Church leaders and members to describe non-correlated information, especially facts that contradicted Respondent's correlated narrative of LDS history. (AV3:11¶14, AV3:142¶316, and AV3:148¶338 .)

AV1, AV2, AV3 and AV4: are abbreviations for each of four volumes of appendices filed in the Tenth Circuit Court of Appeal. For example, AV3:28¶52 references paragraph 52 at page 28 of the Second Amended Complaint—the operative complaint in this case. AV2:70:12-14 references the hearing transcript on the Motion to Dismiss the Original Complaint, page 70, lines 12-14.

***Book of Abraham*:** A work included in the Latter-day Saint volume *Pearl of Great Price* and presented in correlated materials as a translation by Joseph Smith Jr. from ancient Egyptian papyri acquired in 1835. The title page attributes the text to the Hebrew prophet

Abraham, whom Smith stated was depicted in accompanying facsimiles included in the Book.

Modern Egyptological scholarship concludes that the surviving papyri fragments correspond to common Egyptian funerary texts, such as the *Book of Breathings*, rather than to the narrative contained in the *Book of Abraham*.

***Book of Mormon*:** The Book of Mormon is believed by the LDS Church to be the translated record of Hebrews who migrated to America in 600 B.C. and recorded their history and teachings on gold plates. The Book is considered the cornerstone of Mormonism and is the LDS Church's primary scripture.

Brethren: An institutional term commonly used to refer collectively to the senior leadership of the Church of Jesus Christ of Latter-day Saints, specifically the members of the First Presidency and the Quorum of the Twelve Apostles. The term is used within the Church to denote authoritative leadership and institutional responsibility for approving correlated instructional, member-facing, and public-facing materials, such as those used by missionaries.

CES Letter: A publicly circulated document, not authored by Petitioners, published after the *LDS Personal Faith Crisis Report* (defined infra.), that summarizes issues discussed in public discourse concerning historical materials and Church representations. The term is included solely as a descriptive reference and in connection with the reasons stated by Leanne Harris for her resignation

from the Church.

CES (Church Educational System): The educational division of the Church responsible for producing seminary, institute, and youth curriculum, subject to review through the Church's correlation process prior to publication.

Church Correlation / Correlated Materials: The Church's centralized administrative system, implemented beginning in approximately 1961 under the direction of the First Presidency, through which curriculum, historical narratives, missionary materials, artwork, and other instructional and public-facing materials are standardized and approved prior to dissemination.

COJCOLDS: Acronym for [the] Church of Jesus Christ of Latter-day Saints.

***Ensign* Magazine:** An official monthly magazine of the COJCOLDS (AV3:109¶248) published from 1971 until 2020 and widely distributed to adult members. (AV3:89¶213) The *Ensign* contained institutional teachings, historical narratives, instructional articles, and official statements approved through the Church's correlation process, and functioned as a primary vehicle for communicating Church positions and interpretations to members. (In 2021, the *Ensign* was discontinued and its functions were consolidated into the *Liahona* magazine.)

Ensign Peak Advisers ("EPA" or "EP")**:** An asset and investment management firm created in 1997 that has

accumulated profits from investing tithing, including tithing principal, to over $128 billion as of December 2019.(AV3:55¶139.)

First Presidency: The highest governing council of the Church, consisting of the President of the Church and two counselors. The First Presidency oversees the Church's correlation process and approves curriculum, historical narratives, and other instructional and public-facing materials.

Gospel Topics Essays: A series of official essays published by the Church beginning in late November of 2013 and made available on its website, addressing selected historical and doctrinal topics. The essays were reviewed and approved through the Church's correlation process and discuss matters including Joseph Smith's *Book of Mormon* translation methods, Smith practice of plural marriage, and the Egyptian papyri associated with the *Book of Abraham*.

Joseph Smith (Jr.): Early 19th Century founder of Mormonism, a religion based on the record of ancient Hebrews who migrated to America about 600 B.C. Over the years, the migrants devolved into two main warring factions, the lighter skinned Nephites, and the dark-skinned Lamanites. The Nephite prophets kept a record of their history and teachings of their leaders for the latter-days which was inscribed in "reformed Egyptian" on gold plates and then buried in a hill near Smith's upstate New York home. The *Book of Mormon* is taught as the translated record from those plates and is considered to be the scriptural cornerstone of LDS doctrine, and other Mormon sects.

***Joseph Smith Papers* (*JSP*):** A multi-volume documentary editing project that publishes Joseph Smith's writings, documents, journals, correspondence, and contemporaneous records, produced by the Joseph Smith Papers Project and affiliated historians. The project is sponsored, and administered by Respondent through its history department.

The *JSP* presents original source materials—often in facsimile and transcription form—with scholarly annotations, and is widely regarded as the authoritative compilation of primary historical records concerning Joseph Smith and the early history of the Church. Many documents published in the JSP were not included in prior correlated instructional materials and bear directly on historical events, translation methods, and institutional knowledge.

LDS acronym for Latter-day Saint or Saints. Shorthand for COJCOLDS.

LDS Archives / Church History Library: (colloquially referred to as the "Vault") — The Church's centralized repository for Church-owned historical documents and artifacts, including journals, manuscripts, and other primary historical records.

LDS Institute Program ("Institute"): A program within the Church Educational System (CES) that provides religious education for young adults, generally ages 18–30. Classes are commonly offered near college campuses or in local meetinghouses and include instruction on the Book of Mormon and Church history.

***LDS Personal Faith Crisis Report ("LDSPFCR")*:** A privately produced report published in 2013 summarizing survey responses from more than 3,000 former or disaffected LDS members concerning factors they identified as contributing to their disengagement. It was authored by LDS-affiliated scholars and was not commissioned by the Church. (AV3:11¶17; AV4:1–77.)

Missionary Discussions: Standardized instructional lessons used by missionaries of the Church worldwide, often including scripted dialogue. The materials are produced through the Church's correlation process and are used in presenting the Church's teachings and historical narratives to prospective converts. (AV3:93¶221.)

Plural Marriage / Polygamy (including Polyandry): A historical marital practice, involving contemporaneous marriages to more than one spouse. In official Church instructional materials prior to 2014, plural marriage was generally associated with later Church leaders, most prominently Brigham Young. In October 2014, COP, through its Church History Department, published the "Gospel Topics Essay" titled *Plural Marriage in Kirtland and Nauvoo*, which acknowledged that Joseph Smith also entered into plural marriages during his lifetime. The essay describes marriages to multiple women, including some who were young and some who were already married to other men. Historical sources characterize these relationships as marital in nature. The 2014 essay is widely regarded, including by the Church, as the first clear institutional acknowledgment of Joseph Smith's plural marriages.

Seer Stone: A physical stone historically associated with Joseph Smith and referenced in eyewitness accounts of the production of the *Book of Mormon*, including use during dictation. COP had possession of two such stones, the brown opaque stone depicted in the 2AC and a white stone. (AV3:63¶153 fn 35.) Both stones were apparently used by Smith for treasure hunting.

Ward / Stake: Local congregational and regional administrative units of the Church of Jesus Christ of Latter-day Saints, typically administered and staffed by lay members rather than paid clergy.