

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

**DAMIAN ORLOWSKI, and** )  
**LYNN CECHIN,** )  
 )  
**Plaintiffs, on behalf of themselves** )  
**and all others similarly situated,** )

**Case No. \_\_\_\_\_**

**v.** )

**JURY DEMANDED**

**LARRY BATES, INDIVIDUALLY and** )  
**D/B/A FIRST AMERICAN MONETARY** )  
**CONSULTANTS, INC.; FIRST AMERICAN** )  
**MONETARY CONSULTANTS, INC.,** )  
**LARRY BATES, D/B/A INFORMATION** )  
**RADIO NETWORK, INC/IRN USA RADIO** )  
**NEWS; INFORMATION RADIO** )  
**NETWORK/IRN USA RADIO NEWS;** )  
**INFORMATION RADIO NETWORK, INC.;** )  
**BARRY DENISON; JOHN DOES A, B, & C;** )  
**and JANE DOES A, B, & C** )  
**Defendants.** )

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**COMPLAINT**

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COME NOW the Plaintiffs, Damian Orłowski and Lynn Cechin, on behalf of themselves, and all others similarly situated, by and through their attorneys, the Law Office of J. Houston Gordon and Mantense, Honigman Rossman and Williamson, P.C., and for this their Complaint against the Defendants, state as follows:

**I. PARTIES AND JURISDICTION**

1. Plaintiff Damian Orłowski (“Orłowski” or “Plaintiff”) is an individual who is a resident of Chicago, Illinois.
2. Plaintiff Lynn Cechin (“Cechin”) is an individual who is a resident of Lewisville, Texas.
3. Defendant Larry Bates, individually, d/b/a First American Monetary Consultants, Inc. (“FAMC”), d/b/a Information Radio Network, Inc. and d/b/a Information Radio Network/IRN USA Radio News is an individual residing in and doing business in Tennessee as CEO and Chief Economist for FAMC and/or FAMC Economic and Political Consulting Group, and serving as CEO and President of Information Radio Network/IRN USA Radio News.
4. First American Monetary Consultants, Inc. is a corporation registered for business in the state of Tennessee, incorporated in Colorado, with its principal place of business in Memphis, TN, and its principal address as Suite 101, 3740 Business Drive, Memphis, TN 38125. Its registered agent is Charles Larry Bates, 3740 Business Drive, Suite 101, Memphis, TN 38125.
5. Information Radio Network, Inc. and/or Information Radio Network/IRN USA Radio News is a corporation registered for business in the state of Tennessee, formed in Shelby County, Tennessee, with its advertised principal address being PO Box 383230, Germantown, TN 38183, its principal address being 3740 Business Drive, Memphis, TN 38125, and registered agent listed as Charles L. Bates, 3740 Business Drive, Memphis, TN 38125.

6. Barry Denison is an individual residing in Fort Collins, Colorado, serving as Senior Staff Economist for FAMC, during the relevant time period, who travels regularly, advertising for FAMC and speaking on the economy, the threat of Islam, and the question of Israel and the church.
7. John Does A, B, and C and Jane Does A, B, and C are real but, as yet, unidentified persons who have acted in concert with the named Defendants to carry out the wrongful conduct complained of herein.
8. All or part of the wrongful conduct and/or transactions described herein have impacted interstate commerce.
9. All or part of the wrongful conduct and/or transactions described herein originated in the State of Tennessee and, more specifically, in this District, where FAMC, FAMC Economic and Political Consulting Group, Information Radio Network, Inc. and Information Radio Network/IRN USA Radio News maintain their principal places of business, where these individuals and entities transact business with clients involving the sale and purchase of gold, silver and precious metals, where Bates resides and broadcasts his radio show, News and Views, via Information Radio Network/IRN USA Radio News. Defendant Bates advertises, uses the radio, television, and the Internet for FAMC to solicit sales of his books, A Nation in Crisis and The New Economic Disorder, to advertise for FAMC, to advertise for personal appearances and conferences where FAMC will handle the purchase of precious metals for consumers, to publish and edit the FAMC *Monetary and Economic Review*, a quarterly economic and financial publication that purportedly analyzes the economy and financial markets, to publish and edit the FAMC

publication *Unraveling The New World Order* (a monthly exposé of how government, financial and religious insiders are deciding our futures), to sell videos and DVDs of his seminars. Defendant Bates serves as Chief Economist for FAMC Economic and Political Consulting Group, and CEO of Information Radio Network IRN USA Radio News.

10. Jurisdiction is proper in this Court pursuant to 28 USC §§ 1331 and 1332(a), 28 USC §1332(d), 28 USC §1367 and 18 USC §1964(c). All parties are subject to the jurisdiction of this Court.
11. Since certain Defendants reside in this District and wrongful acts occurred in this District, venue is proper in this District under 28 U.S.C. § 1391 and 18 USC §1965(a).

## **II. FACTUAL ALLEGATIONS**

### **A. THE SCHEME AND RELATIONSHIP OF DEFENDANTS**

12. The allegations of Paragraphs 1-11 hereinabove are reiterated and incorporated as if fully set forth herein.
13. FAMC was formed/established in 1984 and founded by Larry Bates.
14. Bates holds himself out to serve as CEO of FAMC, Inc., Chief Economist of FAMC, Inc., Chief Economist of FAMC Economic and Political Consulting Group, CEO of the Information Radio Network/IRN USA Radio News, publisher and editor of *Monetary and Economic Review*, publisher and editor of *Unravelling the New World Order*, author of the book The New Economic Disorder, author of the book A Nation in Crisis, speaker at A Nation In Crisis conferences held across the country, and host of the radio show News and Views.

15. Denison holds himself out to be the Senior Staff Economist for FAMC, Inc. who works with clients to teach them how to utilize precious metals (gold and silver) as economic insurance to protect all their assets, including retirement accounts.
16. Denison represents that he and Bates help clients acquire specific types of gold and silver that are exempt from possible confiscation under current legislation.
17. Denison advertises that he works closely with Bates, as CEO, on strategic planning for FAMC, and speaks at FAMC/A Nation in Crisis conferences on the topics of the economy, the threat of Islam, and the question of Israel and the church.
18. Multiple methods of media, including, but not limited to, radio, television, books, newsletters, toll free numbers, email, direct mail, and personal solicitation at churches and conferences across the nation are used by Bates and Denison, and other agents of FAMC, Inc. to advertise for FAMC, Inc., to solicit money from unsuspecting individuals in order to purchase gold, silver and precious metals through Defendants from FAMC/Bates for the purpose of purchasing precious metals, specifically certain types of gold and silver.
19. These certain types of precious metals are advertised by Defendants as a “safe” investment during a period of world chaos and uncertainty, based on Christian beliefs and current political upheavals.
20. FAMC, its employees/agents, Bates, Denison and others claim to be in the business of consulting, business planning, and economic development for individuals during this time of world crisis.

21. FAMC's website represents that it "assists clients in raising their level of financial and economic understanding and in implementing strategies for asset allocation and debt elimination." (FAMC, <http://www.famcinc.com/aboutfamc> (last accessed June 17, 2011).
22. Bates, Denison, FAMC and others promote the idea of maintaining a significant portion of one's assets in certain types of precious metals, specifically certain types of gold and silver, with Christian financial advisors.
23. FAMC, through its employees/agents, economists, consultants, and Bates and Denison, sells such precious metals, including gold, silver, platinum, and rare coins.
24. FAMC specifically targets devout, Christian believers, elderly individuals, and widow/widowers with significant life savings, all who are seeking advice and help from a trusted Christian advisor and/or a Christian financial company.
25. Bates and Denison, as representatives of FAMC, using the multiple media outlets referenced above, have positioned themselves as trustworthy Christian financial advisors to thousands of Christians who subscribe to the newsletters, view the website, view the ads advertised on the website, watch Christian television where FAMC seminars are aired, read Bates' books, purchase Bates' DVDs, attend his "A Nation in Crisis" conferences, and listen to radio broadcasts of Bates/Denison on IRN/USA Radio Network.
26. Bates/Denison and other representatives of FAMC speak, travel, market, publish, and sell products through FAMC and its related entities, allegedly acting solely out of Christian concern for their fellow believers.

27. Bates authors articles such as “Acquiring and Storing Precious Metals,” which encourage individuals to “contact an FAMC economist or consultant for specific recommendations...” on investing 30-55% of one’s total assets in precious metals, “since precious metals are the only monetary assets that’s not someone else’s liability and all paper currencies are depreciating and since we liken paper currencies to elevators going up and down on the Titanic...”.
28. Bates states that one should invest in gold because “we live in times of tumultuous change: borders shift, economies and businesses collapse, wars flare up. Amid all this global turmoil, gold stands firm.” Individuals are encouraged to “call one of our economists or consultants for procedures for swapping you (sic) bullion gold coins.”
29. Bates advertises that “[t]he precious metals we have recommended are extremely liquid and easily transportable. In fact, with FAMC’s extensive network of trading partners, we can move millions of dollars of the precious metals in a matter of minutes with settlement in 48 hours in the currency of your choice.” See Exhibit A attached hereto.
30. Bates states that one can “[s]imply call one of our offices listed below using the toll-free number and ask to speak to one of our staff economists or consultants and one will be assigned to you.”
31. Bates represents that “you can transfer or rollover the funds in a presents (sic) IRA plan to one with precious metals. Call an FAMC economist or consultant for details on how easily this transaction can be accomplished.”
32. Bates also represents that “As we discussed previously, action without information is fanaticism but information without action will only frustrate you and will not protect you

and your family. Call now and have one of our economists or consultants assist you in achieving your goals. Call Now 1-800-325-0919.”

33. Bates also specifically cites to the Christian Bible about Acquiring and Storing Precious Metals, including statements that there is a Biblical foundation for investing in precious metals (God put gold in the earth for a reason *Gen. 2:11-12*); that precious metals will survive the last days while Satan’s system falls (Merchants of the earth continue to trade precious metals until the time of the end *Rev. 18:11-12*); Precious metals are very valuable until the time God’s wrath is poured out (*Ex. 7:19*); End time transfer of wealth using precious metals (*Hag. 2:6-9*); and that “only a sluggard doesn’t physically prepare. (*Prov. 6:6-15*)”.
34. Bates states that: “FAMC’s mission is to raise the level of understanding about how our economy and monetary system works, expose how the economic elite of the world have devised a system we call Commercial Babylon, communicate how that system transfers wealth through the dishonest weights and measures in the monetary system, and communicate specific asset allocation recommendation for others to avoid being a victim of their schemes.”
35. Bates, using the language stated below, uses a “world’s end” “sky is falling” approach to encourage Christians to purchase precious metals from his companies:
  - a. “Life as we have known it in the United States is about to change and change drastically...”
  - b. “The two things that will determine whether you and your family are wiped out by the storm are knowledge and action...”

- c. “When the economic storm hits and you’ve acted to move part of your assets into the precious metals, you won’t be standing in line worrying...you’ll be the wise and faithful steward of the resources God has entrusted to you...”
  - d. “That’s why we’ve provided this information on how to storm-proof your assets by acquiring precious metals...”
  - e. “I trust the following information and recommendations will be helpful in the stewardship of storm-proofing your God-given financial assets.”
  - f. “The greatest shock of this decade is that more people are about to lose money than any time before in history, but the second greatest shock will be the incredible amount of money just a relatively few people will make at exactly the same time. The following information is designed to place you on the receiving end of the wealth transfer.”
36. The objectives of FAMC, as outlined in various publications, are:
- a. To educate people and raise their level of understanding as to how changes in the economic and political environment will affect their lives and how to protect their God-given assets;
  - b. To unravel and expose the plans of those who are directing and controlling the New World Order which we identify as Mystery Babylon (that demonic blend of the world’s system of economics politics and religion);
  - c. To protect Christians’ God-given assets through careful analysis of current economic and political conditions and monetary trends;
  - d. To provide economic and financial counseling from a Biblical perspective;

- e. To provide a highly-trained, professional staff of economists and consultants to assist clients in properly allocating their assets in accordance with current economic conditions including providing assistance in acquiring client-held precious metals (i.e., gold, silver, and platinum).
37. However, Bates, Denison, FAMC and other persons, entities/individuals have devised a scheme, and have an ongoing pattern and practice of knowingly and intentionally taking money from clients who have purchased assets based on the statements and principles outlined herein, and, carrying out that scheme by:
- a. delaying fulfillment of orders of specific precious metals for an unjustifiable amount of time (sometimes as long as nine to twelve months),
  - b. knowingly and intentionally filling only parts of precious metals orders, while keeping the money of clients without either a refund or distribution of the complete purchased precious metals;
  - c. knowingly and intentionally failing to fill orders in their entirety, and
  - d. knowingly and intentionally substituting inferior and less valuable products for those ordered by their clients.
38. This pattern and practice is illegal, ongoing, has existed since 1984, and now exists solely for the benefit of Defendants, who use the money retained by their actions to further their illegal activity, broaden the network of illicit activity, and continue the pattern of preying on unsuspecting individuals across the country by taking their life savings.
39. A large part of marketing done on behalf of FAMC is targeted at Christian believers.

40. A large percentage of the Defendants' victims are Christian believers who entered into a contract to do business with FAMC, Bates, Denison and/or the other Defendants based on their representations as being Christian businessmen leading a Christian company and looking out for the best interests of other believers.
41. Bates, Denison, FAMC, and others, by using Information Radio Network, Inc/IRN USA Radio News and/or Information Radio Network, Inc., further the illegal conspiracy by using these, and other, media outlets to reach unsuspecting consumers.
42. Bates advertises for FAMC using Information Radio Network, Inc/IRN USA Radio News and/or Information Radio Network, Inc., including links on its website to FAMC, Inc., by hosting a weekly radio show with his son, Chuck Bates, "News and Views," where he preaches the message of safe-guarding and storm proofing one's assets through the purchase of precious metals, by offering tickets for purchase to a nearby seminar/conference where he will speak on the dangers of current times and the need to invest in precious metals, sold by FAMC, and by advertising toll free numbers, email addresses, contact information, and other direct mail information such as newsletters and quarterly publications that consumers receive, all of which are advertising for FAMC.
43. Information Radio Network, Inc/IRN USA Radio News and/or Information Radio Network, Inc. is a separate entity used by Bates/FAMC/Denison and others to effectuate the activities of Bates/Denison and/or FAMC and others, at the direction of Bates to further the scheme to unlawfully obtain funds from targeted individuals.

44. Bates, when approached by clients whose orders are of the type as listed herein, states that his paying interest on the money of Plaintiffs, held by Defendants, is not a Christian thing to do.
45. FAMC Economic and Political Consulting Group, the joint enterprise directed by Bates, that is used to effectuate the Defendants' and others' unlawful activities and scheme, is a separate, legal association or entity through the identity of which Defendants carry out their unlawful scheme, used to obtain funds from individuals, to the detriment of their customers and to the benefit of Bates, Denison, FAMC and others.

**B. TRANSACTIONS OF PLAINTIFFS**

46. The allegations of Paragraphs 1-45 hereinabove are reiterated and incorporated as if fully set forth herein.
47. Plaintiffs, on behalf of themselves and others similarly situated, are customers, clients and victims of the fraudulent schemes carried out by Defendants, acting in concert.

**(1) PLAINTIFF ORLOWSKI**

48. Plaintiff Orłowski was familiar with FAMC because he had watched the Christian television program, had seen FAMC advertisements, and had listened to several radio programs featuring Bates and son, Chuck Bates.
49. Plaintiff Orłowski originally contacted FAMC by telephone because of its strong affiliation with Christianity, its advertised propaganda, and its assurances of Christian trust.

50. In September 2008, Plaintiff Orlowski placed an order via telephone for gold valued at approximately \$100,000 and for 6,000 Silver Eagle coins, valued at approximately \$200,000, from FAMC.
51. Plaintiff Orlowski wired payment of approximately \$300,000 within twenty-four hours of placing his order to FAMC, on or about September 21, 2008.
52. Defendant Bates personally phoned Plaintiff Orlowski shortly after Plaintiff placed his order.
53. As he had transferred funds from his IRA, Plaintiff Orlowski faced penalties if the funds were not “rolled over” within a certain amount of time, and Bates was aware at the time of the wire transfer that these were IRA funds.
54. Bates informed Orlowski that Silver Eagles were in short supply, and represented to him that FAMC would be delivering 1000-ounce silver bars to fill Plaintiff’s order instead and would replace the bars with coins when the Silver Eagles became available.<sup>1</sup>
55. These bars are less valuable than Silver Eagle coins, and are not easily liquidated, weighing approximately eighty pounds in block form.
56. Bates actually publicly advises against the purchase of exact same silver bars he stated he was obtaining and selling to Plaintiff Orlowski.
57. Plaintiff Orlowski, relying on the misrepresentation by Bates, verbally agreed to have his order filled in silver bars, on the condition that the bars be replaced with Silver Eagles as soon as they became available.

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<sup>1</sup>Interestingly, Bates/FAMC recommend that silver holdings always be in silver coins rather than silver bullion bars, such as Silver Eagles and Maple Leaf coins.

58. His order for gold remained unchanged.
59. Three months later, when the order had not been filled, Plaintiff Orlowski contacted FAMC.
60. In December 2008, when Plaintiff Orlowski contacted FAMC to ask when his gold would be delivered, and when he could expect his silver bars to be replaced with the Silver Eagles as he was promised, an FAMC employee/representative informed Plaintiff Orlowski that the silver bars would not be substituted with Silver Eagles.
61. Contrary to the direct representation made by Bates, upon which Plaintiff Orlowski reasonably relied, Defendants have yet to replace Plaintiff Orlowski's silver bars with the Silver Eagles he ordered and paid for in full.
62. Due to the significant increase in value of Silver Eagles since the time Plaintiff Orlowski placed his order, Plaintiff Orlowski has suffered, to date, a loss of between \$4 and \$5 per ounce for each of the 6,059 ounces of silver that he purchased from FAMC, totaling between \$24,206 and \$30,295.
63. Additionally, although Plaintiff Orlowski purchased gold from Defendants in September, he did not receive the gold until December 8, 2008, nearly three months after placing his order and sending payment to FAMC, and only after FAMC was threatened with legal action.
64. Plaintiff Orlowski used his IRA savings to fund these purchases. Because of the delay in delivery of his gold, Plaintiff Orlowski was forced to delay the rollover of his IRA, incurring penalties for early withdrawal, resulting in the loss of approximately \$24,000.

**(2) PLAINTIFF CECHIN**

65. Plaintiff Cechin, a widow, became familiar with FAMC through direct mail flyers and through the FAMC website.
66. Plaintiff Cechin spoke with Defendant Bates on the telephone, and ultimately placed several orders with FAMC, including one transaction for gold totaling approximately \$75,000, on July 10, 2008.
67. Plaintiff Cechin mailed Defendant Bates a check on July 10, 2008 along with a letter with instructions of where to ship her gold.
68. Although Plaintiff Cechin contacted Bates and FAMC repeatedly, she did not receive her order for gold.
69. She was told that her gold would be hand delivered by Bates personally on September 27, 2008. It was not.
70. On October 10, 2008, Plaintiff Cechin telephoned Bates, who represented that he had not yet purchased the gold and did not know when it would be available.
71. After this conversation, via letter and fax, Plaintiff requested a refund from Bates/FAMC.
72. Via letter, she stated, in part:

I am extremely disappointed in the handling of this transaction. I believe your practice of taking people's money and holding without interest for months on end without action promised is nothing less than a scam and definitely a shame.

Not only am I disappointed in the handling of this transaction but also in the trust that I had in the Christian ethic I believed you had. My trust in you has been destroyed...
73. During a telephone call with FAMC, Plaintiff was informed that Bates would consider a refund after October 20, 2008.

74. Plaintiff Cechin filed a complaint with the Tennessee Division of Consumer Affairs on October 14, 2008. A letter to FAMC and Bates was sent by the Tennessee Division of Consumer Affairs on October 21, 2008.
75. On October 22, 2008, Bates wrote a letter to Plaintiff and enclosed a refund. The letter stated, in part:
- Lynn,
- Enclosed is the check for cancellation of your order dated July 10, 2008. I am also in receipt of your letter of October 10, 2008. Your problem is, you don't listen and you try and hear what you want to hear. Our communication to you has been clear and concise from myself and from Anne Trimble, as well as the written terms outlined on our Order Confirmation and Invoice as to estimated delivery times. Your claims to the contrary are pure nonsense....
76. On November 6, 2008, Bates faxed this letter to the Tennessee Division of Consumer Affairs with a handwritten note: "Joyce, The attached letter is self-explanatory. We have placed Ms. Cechin on our 'do not do business with' list. Sincerely, Larry Bates."
77. Due to the significant increase in value of gold during the time (three months) Plaintiff Cechin placed her order, Plaintiff Cechin has suffered, to date, a loss of interest on the money held by Bates, approximately \$7,500 - \$10,000 or more.
78. Additionally, Plaintiff Cechin suffered lost opportunities as a result of the loss of savings during the three month window, during which she could not use her assets to fund other opportunities.

**C. PATTERN OF ACTIVITY - OTHER INDIVIDUALS**

79. The allegations of Paragraphs 1-78 hereinabove are reiterated and incorporated as if fully set forth herein.

80. Numerous other FAMC clients have come forth with accounts of appalling business practices, including, inter alia:
- a. A woman who used the bulk of her life savings to purchase silver and gold from FAMC and had not yet received delivery of any precious metals six months after placing an order for gold and over a year after placing an order for silver;
  - b. A woman who placed and paid for an order for silver in October, 2009 and had not yet received delivery of her order as of March, 2011;
  - c. A woman who sent Bates a cashier's check in July 2007 for an order of gold, which was cashed, and had not yet received delivery of her order as of July, 2010;
  - d. A woman who placed and paid for an order for precious metals with FAMC in November 2008 and had not yet received delivery of her order as of July, 2010;
  - e. A gentleman who placed and paid for an order of Silver Eagles and European Franks in 2009 and had not yet received delivery of his order as of August 2011;
  - f. A gentleman who sent in 24 oz of gold coins to FAMC in order to exchange the coins for 1oz of American Eagle silver coins in May 2007, but did not receive his silver until December 2007, although his coins were sold;
  - g. A gentleman who purchased \$5,000 in gold francs via check on August 17, 2009, which check was cashed, but did not receive delivery of his order until January 2010;
  - h. A woman who purchased gold and silver coins from FAMC on June 19, 2008 via check, which check was cashed, but did not receive the coins, and ultimately was delayed in receiving a refund until May 2009, after repeatedly contacting the Defendants on December 2, 5, 12, 15, 16, 17, 18, 29, 31 2008; January 4, 9, 2009,

and March 13, 18, 2009. She received some coins on January 9, 2009, but not the full order. Ultimately, she was given a refund in March 2009,<sup>2</sup> but only after Bates stated that the silver was provided to her on a “no whine” basis and placing her on his “do not do business list.” See Exhibit B attached hereto;

- i. A gentleman who sent Bates/FAMC a cashier’s check for silver on September 26, 2008, after hearing Bates’ radio show about stewardship of storm-proofing his God-given financial assets, whose check was cashed, but who did not ever receive his silver, and was ultimately issued a refund of his principal amount only, in March 2009;
- j. A woman who placed and paid for an order on April 16, 2008 for gold and silver, but had not received the order as of February 2009;
- k. A gentleman who placed an order for silver, and sent a check to FAMC, on September 18, 2008, whose check was cashed, but did not receive the silver until May 2009, even though contact with FAMC was made on November 14 and 21, 2008, December 29, 2008, January 29, 2009, and who ultimately made a complaint with the BBB about FAMC/Bates;<sup>3</sup>

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<sup>2</sup>As can be seen from Exhibit C attached hereto, this individual pursued assistance from the Better Business Bureau. Defendant Bates advised the BBB on March 24, 2009 that “Mrs. \_\_\_\_ (name redacted for privacy) received the bulk of her order on January 12, 2009, which was her gold order. She was advised at the placing of her order that silver was “indefinite” and sold to her on a “no whine” basis due to the backlog of silver orders at mint and allocation from same.”

<sup>3</sup>This consumer also sought assistance from the Better Business Bureau, and once again, Defendants stated that the silver was sold to the consumer with NO WHINING about delivery. Likewise, Bates informed the consumer that paying interest to the consumer on the money he was holding was “not a Christian thing to do.” See Exhibit D (redacted for privacy reasons)

- l. A gentleman who placed an order for gold using a personal check to FAMC, after hearing Bates/FAMC on the radio, on November 18, 2005, whose check was cashed, but who did not receive his order until February 28, 2006;
- m. A gentleman who placed and paid for an order of \$50,000 worth of gold on June 22, 2011, after reading about Bates on the internet, and who had not received his order as of September 1, 2011;
- n. A gentleman who traded precious metals to FAMC on May 1, 2009, who received a portion of his order within eighteen months in the form of two shipments (approximately fifty-six percent (56%) complete), but did not receive his gold, valued at \$73,850.00, even though he had traded for it in May 2009, until February 15, 2011;
- o. A gentleman who sent in gold and silver coins for FAMC to purchase from him at an agreed-upon amount of approximately \$16,000 on March 4, 2011, after being solicited by FAMC to sell his coins, but had not received his money as of April 8, 2011, even though he contacted FAMC on February 28, 2011, March 3, 4, 11, 28, 2011, and April 5, 8, 2011;
- p. A gentleman who ordered and paid for approximately \$48,000.00 of gold and silver from FAMC between October - December 2010, but did not receive his order until May 2011;
- q. A woman who placed and paid for an order for gold on November 18, 2009, totaling approximately \$25,000, but had not received her order as of May, 2010;

- r. A woman, a widow, who placed and paid for an order for gold and silver coins from FAMC because of their label as a Christian company in approximately July-August 2010, totaling approximately \$80,000, ultimately received a refund of cash for the silver, and was shipped an order of gold that is valued approximately \$50 per coin less than the quality for which she paid and ordered;
- s. A couple that placed and paid for an order for coins from FAMC, Inc. in November 2009, paid for by money market check, which was cashed, but did not receive the order until March 2010;
- t. A gentleman who placed and paid for an order for Silver Eagle coins via telephone on October 9, 2009, who paid via money order, after reviewing a DVD, a FAMC brochure and seeing a program on television, but did not receive his coins until April 1, 2010 -- 116 business days later;
- u. A couple who placed and paid for an order for gold and silver in 2006, totaling approximately \$117,000, after receiving direct mail solicitations to Bates' seminars and as a result attending, during which time Bates relied upon Christian and biblical references to convince the couple he and FAMC were trustworthy, who sought to cash out their coins in 2008, and were informed that their gold and silver had been sold in previous years, but were never informed of this transaction and never given any of their money by Defendants;
- v. A gentleman who purchased over \$50,000 of gold coins and uncirculated silver Eagles after viewing Bates' program on Christian television, on March 19, 2008,

who received the gold coins but had not received the silver Eagles as of May 27, 2009;

- w. A woman who ordered and paid for gold coins in March 2009 from FAMC, but did not receive her order until November 2009;
  - x. A woman who placed and paid for an order for Silver Eagle coins on December 16, 2009 for approximately \$19,000, who did not receive her order and only received a refund of the principal amount on August 16, 2010;
  - y. A couple who placed and paid for an order for over \$10,000 in silver eagle coins on November 12, 2009, from FAMC after viewing ads for FAMC on Christian television, but did not receive the order until June 3, 2010;
  - z. A gentleman who purchased silver eagle coins from FAMC on January 11, 2008, after participating in a conference held by Bates, but did not receive the coins until March 10, 2009.
81. All of these clients and customers of Defendants, as well as numerous others similarly situated, have suffered damages as a result of Defendants' unreasonable delay in filling orders, complete failure to fill orders, or substitution of inferior products for the products ordered.
82. The Better Business Bureau gives FAMC a rating of "F" as a result of receiving at least fifty-three complaints regarding FAMC in the past three years. (Better Business Bureau, <http://www.bbb.org/northern-colorado/business-reviews/economic-analysts/first-american-monetary-consultants-in-fort-collins-co-1813> (last accessed June 23, 2011)).

83. The State of Tennessee has placed FAMC on its Buyer Beware list as of the date of the filing of this Complaint.

### **III - CLASS ACTION ALLEGATIONS**

84. The allegations of Paragraphs 1-83 hereinabove are reiterated and incorporated as if fully set forth herein.
85. Plaintiffs bring this action as a class action against Defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of a class, consisting of all persons similarly situated who have ordered precious metals from FAMC, sent payment for such precious metals to FAMC and/or its affiliates, and failed to receive all or part of their order, or failed to receive all or part of their order within a reasonable amount of time, or received inferior goods in place of those ordered.
86. The class period commences six years prior to the filing of this Complaint, through the date of the entry of a final judgment.
87. Plaintiffs are members of the class and will fairly and adequately assert and protect the interests of the class.
88. The interests of the Plaintiffs are consistent with, and not antagonistic to, those of the other members of the class.

89. Plaintiffs have retained attorneys who are experienced in fraud and class action litigation, and who will provide adequate representation.
90. Members of the class are so numerous that joinder of all members of the class is impracticable.
91. Upon information and belief, there are hundreds of members of the class whose identities can be ascertained from the records and files of Defendants and from other sources.
92. Common questions of law or fact as to Defendants' breaches of contract, fraud, conversion, misrepresentation, conspiracy, breach of fiduciary duty, racketeering and unjust enrichment that have caused and will continue to cause harm to the class predominate over any question affecting only individual members of the class.
93. The prosecution of separate actions by individual members of the class would create a risk of, among other things, the following:
  - a. Inconsistent or varying adjudications with respect to individual members of the class; and
  - b. Adjudication with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.
94. The claims of the lead Plaintiffs are typical of the claims of the class, and the class action method is appropriate for the fair and adequate prosecution of this case.
95. Individual litigation of claims which might be commenced by all class members would produce a multiplicity of cases such that the judicial system having jurisdiction of the claims would remain congested for years.

96. Class treatment, by contrast, provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the conduct of Defendants.
97. The certification of a class would allow litigation of claims that, in view of the expense of litigation, may be insufficient in amount to support separate claims.
98. Accordingly, Plaintiffs bring this action on behalf of themselves and on behalf of all other members of the class defined as follows:
- All individuals who, on or after February 13, 1985, placed orders for precious metals (including silver, gold, platinum, and rare coins) from FAMC, sent payment for such orders to FAMC, and failed to receive all or part of their orders, failed to receive all or part of their orders in a timely fashion, or received a product that was different or of less value from the product ordered.
99. Excluded from the class is any judge who may preside over this case.

#### **IV - CAUSES OF ACTION**

##### **COUNT I - BREACH OF CONTRACT/UNJUST ENRICHMENT**

100. The allegations of Paragraphs 1-99 hereinabove are reiterated and incorporated as if fully set forth herein.
101. Plaintiffs and class members aver that the representations, assurances and offers made by the Defendants and the acceptance of such offers by Plaintiffs and class members and their submission of funds to Defendants, and (in some instances) the partial performance by Defendants constitute a contract and/or contracts which the Defendants have breached, entitled the Plaintiffs and class members to recover damages for breaches thereof in an amount to be determined by the jury of this cause.

102. Breaches include, but are not limited to, the following:
  - a. Failing to deliver all or part of the ordered and paid for precious metals;
  - b. Failing to deliver the ordered and paid for precious metals within a reasonable amount of time;
  - c. Failing to deliver the products ordered, and instead substituting inferior products;
  - d. Retaining payment for precious metals that Defendants did not deliver;
  - e. Retaining payment for precious metals that Defendants failed to deliver within a reasonable amount of time;
  - f. Retaining payment for orders which Defendants filled with inferior product instead of the product ordered.
103. The Plaintiffs and class members acted in good faith by placing an order with Defendants for the purchase of precious metals.
104. The Defendants failed to act in good faith and fair dealing, by intentionally inducing the Plaintiffs and class members to enter into the purchase of precious metals from the Defendants and their affiliated companies while knowing that the orders would not be filled as promised.
105. The Defendants' actions are breaches of contract and continuing breaches, entitling the Plaintiffs and class members to recover damages as may be determined by the jury.
106. As a result of the false and fraudulent misrepresentations and other wrongful actions of the Defendants, a benefit was conferred upon the Defendants by the Plaintiffs and class members, which benefit was accepted by the Defendants under such circumstances that it

is inequitable for the Defendants to retain the benefit without payment of the fair value thereof.

107. If the fact finder determines that there is no enforceable contract between the parties or that a contract has become unenforceable and invalid, Plaintiffs and class members aver that, in the alternative, Defendants, and each of them, were unjustly enriched and/or there exists a quasi-contract under which the Plaintiffs and class members may recover the value of the unjust enrichment received by the Defendants.

### **COUNT II - FRAUD/TORTIOUS MISREPRESENTATION**

108. The allegations of Paragraphs 1-107 hereinabove are reiterated and incorporated as if fully set forth herein.
109. The statements, representations, and activities of Defendants, and as carried out by the Defendants, individually, and acting in concert with and through each other and/or their agents and the companies listed as Defendants herein, were part of a scheme to defraud, intended to defraud and in fact, did defraud the Plaintiffs, class members, and identified persons herein, by causing the Plaintiffs and class members to rely upon the misrepresentations to their detriment.
110. At the time that the statements were made by Defendants promising to deliver the gold, silver and precious metals ordered and paid for by Plaintiffs and class members, the Defendants, and each of them, either directly or by imputation, knew that the representations, when made, were false, were being relied upon by Plaintiffs and the members of the class

to their detriment, and were intended to mislead and result in an unfair advantage to Defendants.

111. Specifically, the Defendants made those misrepresentations set forth in paragraphs 12 through 78, paragraph 80(a) - (z), paragraphs 81-83 hereinabove and the following misrepresentations, among others:

- a. That, by reassuring Plaintiffs via telephone and email, Plaintiffs and class members would receive the ordered and paid for precious metals in a timely manner upon payment by check or wire to the Defendants;
- b. That Defendants held genuine concern for class members and Plaintiffs based on common Christian beliefs;
- c. That the precious metals sold by FAMC were minted in the United States, hand inspected for quality by Larry Bates, and shipped timely, once payment was made by the client;
- d. That the precious metals would be hand-delivered to Plaintiffs and class members in a timely manner by Larry Bates;

112. In reliance upon false representations made, the Plaintiffs and class members relied on and were misled to their detriment:

- a. To wait for unreasonable periods of time without receiving either the precious metals or a refund of their money;
- b. To not require interest be paid by Defendants, who held Plaintiffs' and class members' funds interest free for months, even years;
- c. To accept substitute products of lesser quality after long waiting periods;

- d. To accept a refund of the principal balance originally used to purchase precious metals without interest after extended periods of time;
  - e. To have less valuable precious metals purchased for them;
  - f. To forfeit their money/precious metals not delivered by the Defendants.
113. Defendants knew, and intended that Plaintiffs and class members would rely on their false representations, and that Plaintiffs and class members would be induced to send payment for precious metals, which Defendants never intended to deliver as represented.
114. As a direct and proximate result of Defendants' intentional, malicious, wanton and reckless fraud committed by the Defendants, and each of them, acting in concert with each other and with others, as well as the corporations, Plaintiffs suffered financial and other damages for which Plaintiffs and class members are entitled to recover significant damages in an amount to be determined by the jury.
115. The actions of the Defendants, and each of them, jointly and severally, and acting in concert with each other, and with others not yet identified, i.e., John Does A, B, and C and Jane Does A, B, and C were intentional, malicious, and calculated to deceive and, as a result thereof, the Plaintiffs and class members are entitled to recover punitive damages in an amount to be set by the jury.

**COUNT III - WRONGFUL TROVER AND CONVERSION**

116. The allegations of Paragraphs 1-115 hereinabove are reiterated and incorporated as if fully set forth herein.

117. The actions of the Defendants and each of them, jointly and severally, and acting in concert with one another, amount to a wrongful conversion of the properties and assets of the Plaintiffs and class members, outright by use of fraud and deceit.
118. Defendants converted to their own use monies sent as payments for precious metals rightfully belonging to Plaintiff and class members, intentionally and deliberately withheld the paid-for precious metals rightfully belonging to Plaintiffs and class members, thus converting the money and/or metals to Defendants' own use.
119. Plaintiffs and class members retained equitable and/or legal title to all assets owned by Plaintiffs and class members as a result of the Defendants' misrepresentations and agreements.
120. As a direct and proximate cause of the Defendants' wrongful conversion of the Plaintiffs' and class members' properties and assets, individually and acting in concert with one another, the Plaintiffs and class members suffered damages, for which the Plaintiffs and class members are entitled to recover in an amount to be established by the jury.
121. The actions of the Defendants and each of them, jointly and severally, and acting in concert with each other, were intentional, malicious, and calculated to deceive and defraud, and as a result thereof, Plaintiffs and class members are entitled to recover punitive damages in an amount to be set by the jury.

**COUNT IV - BREACH OF TRUST AND BREACH OF FIDUCIARY DUTY**

122. The allegations of Paragraphs 1-121 hereinabove are reiterated and incorporated as if fully set forth herein.

123. At all times pertinent herein, Defendants Bates, Denison, and agents/employees/consultants of FAMC and/or FAMC Economic and Political Consulting Group professed to be acting as the advisors, agents and representatives of Plaintiffs and members of the class in purchasing and delivering precious metals on behalf of Plaintiffs and class members.
124. Specifically, Defendants Bates and Denison openly professed at public seminars, television programs, radio shows and via other media outlets, as Christians, that they represented the Plaintiffs' and class members' interests in assisting Plaintiffs and class members to "storm proof" their assets in a time of spiritual and earthly war.
125. Specifically, Defendants Bates and Denison openly professed at public seminars, television programs, radio shows and via other media outlets to represent the best interests of other Christian believers, including Plaintiffs and class members, by assisting them in the purchase of precious metals through their affiliated companies/entities/enterprises.
126. Based on these representations, Bates, Denison and the other Defendants represented that, as Christians, the Defendants placed the interest of the Plaintiffs and class members ahead of their own, promising that, by taking the money for purchase of precious metals from Plaintiffs and class members, that the interests of Plaintiffs and class members would be placed ahead of the interests of Defendants.
127. In violation of these representations, creating a fiduciary duty, the fiduciary duty and trust created/established by Defendants through their representations as trusted Christian financial advisors, and in violation of the standard of care required of them as trusted Christian financial advisors assisting with the purchase of precious metals from their own companies,

Defendants took the properties of Plaintiffs and class members for the use and benefit of Defendants.

128. Defendants took the assets of Plaintiffs and class members, and intentionally and deliberately promised delivery of precious metals, while knowing that these promises would not be fulfilled.
129. As a direct and proximate result of the violation of the fiduciary duty and trust of Defendants, the Plaintiffs and class members were injured and suffered damages.
130. The actions of Defendants and each of them, jointly and severally, and acting in concert with each other, were intentional, malicious, and calculated to deceive and, as a result thereof, the Plaintiffs and class members are entitled to recover compensatory and punitive damages in an amount to be set by the jury.

#### **COUNT V - CIVIL RICO**

131. The allegations of paragraphs 1 through 130 hereinabove are reiterated and incorporated as if fully set forth herein. In addition, Plaintiffs and class members assert the following additional facts in support of alleged violations of 18 U.S.C. §1961 *et seq.*:

#### **A. PREDICATE FACTS AND OVERVIEW**

132. This action arises out of the scheme of mastermind Larry Bates to obtain money from unsuspecting Christian believers through an association/enterprise in and by itself lawful, but used to carry out an illegal scheme. Bates preyed upon the Christian communities in multiple states, and throughout the United States, by advertising himself as a Christian

advisor, and advertising FAMC and/or FAMC Political and Economic Consulting Group, IRN, and/or Information Radio Network, Inc./IRN USA Radio News, as honest and caring Christian companies, looking out for the best interests of other believers, and recruiting others to advertise on behalf of himself and his company, FAMC, to act on his fraudulent scheme.

133. Defendants took advantage of religious concepts in the Bible and principles of Christianity to gain the trust and acceptance of trusting but unknowing individuals seeking to protect their life savings by purchasing safe assets, such as precious metals.
134. Bates, as mastermind, posed as an altruistic, religious believer and enlisted trusted individuals in local communities to host his seminars at churches and local venues, to advertise for his seminars, to play his videos, sell his DVDs, sign up for newsletters, receive direct mailings from his companies, and otherwise encourage individuals that he could be trusted.
135. Bates, as mastermind, induced hundreds of individuals to purchase precious metals from FAMC, Inc., to receive advice by calling the toll free number from “consultants” and “economists” who were part of the advisory enterprise, FAMC Political and Economic Consulting Group and who would provide advice for the purchasing precious metals, but who exploited Christian principles and unsuspecting Christians to Defendants’ advantage in Bates’ scheme.
136. Defendants promised by telephone, at the time the order was placed and paid for by Plaintiffs and class members, that the precious metals would be shipped timely, in full, and in accordance with the quality and grade as ordered.

137. Defendants used the solicited funds from Plaintiffs and class members to enrich themselves, purchase other companies, to repay previous customers who were threatening legal action (without paying any interest), and to continue the illegal scheme.
138. Hundreds of people who entrusted money to Defendants for the purchase of precious metals have not been repaid, have yet to receive their orders, and/or received substandard quality precious metals that they did not agree to purchase.
139. Numerous class members, including Plaintiffs, have made efforts to contact Defendants and obtain repayment, shipment of the precious metals, or to obtain the correct quality and grade of the precious metals paid for by them. These efforts have been fruitless.

**B. THE CONDUCT OF THE SCHEME AND THE ENTERPRISE**

140. This case arises from an illegal scheme by Defendant Bates.
141. Defendant Bates began his illegal scheme as early as 1985, and continues his scheme to the present, as of the filing of this Complaint.
142. The Defendants in this action are various individuals and entities who have, together and in combination, conspired to and perpetuated multiple violations of RICO, and engaged in fraud, including, but not limited to, mail and wire fraud. Defendants also committed conversion, and aided and abetted the other Defendants' unlawful conduct.
143. Each of the various wrongful acts set forth hereinabove and hereinbelow, is a specific, predicate act by Defendants to carry out and accomplish their fraudulent scheme to obtain the properties of the Plaintiffs and class members for less than their true value, without paying full and fair compensation therefore. The Defendants, through the pattern of such

racketeering activities, knowingly participated in said wrongful acts, all in violation of 18 U.S.C. §1961, *et seq.*

144. Bates is the leader of this fraudulent enterprise and created the scheme. Defendant Bates, a Tennessee resident, is distinct from the RICO Enterprise and Defendants as defined herein, as he participates in the affairs of the RICO Enterprise defined herein. Defendant Bates is the president and CEO of FAMC, president and CEO of FAMC Political and Economic Consulting Group, Information Radio Network, Inc. and/or IRN/USA Radio News Network. These entities are the alter egos of Bates, and all of his frauds and wrongful acts are attributable to FAMC, FAMC Political and Economic Consulting Group, Information Radio Network, Inc. and/or IRN/USA Radio News Network.
145. Defendant Denison, a Colorado resident, is distinct from the RICO Enterprise defined herein, as he participates in the affairs of the RICO Enterprise defined herein. Defendant Denison is the Senior Staff Economist for FAMC. He is an agent of Defendants FAMC, FAMC Political and Economic Consulting Group, Information Radio Network, Inc. and/or IRN/USA Radio News Network and Bates and is the general manager of the scheme.
146. FAMC Economic and Political Consulting Group is the separate, legal entity not registered for business in any state, owned and dominated by Bates, through which Defendants carry out their scheme, and is defined as the RICO Enterprise for purposes of this Complaint.
147. Bates uses FAMC Economic and Political Consulting Group as the RICO Enterprise to carry out and further his illegal scheme and/or illegal enterprise. This group is a RICO enterprise as defined by law.

148. Defendants FAMC, Information Radio Network, Inc. and/or IRN/USA Radio News Network are companies owned and controlled by Bates used to promote the illegal scheme and/or illegal enterprise. Bates used his companies Information Radio Network, Inc. and/or IRN/USA Radio News to also carry out and further the illegal scheme. These companies participate in the affairs of the FAMC RICO Enterprise.
149. In the hierarchy of the RICO enterprise described herein, Defendant Bates ranks at the top, as he at all times has controlled, and now controls, the purposes and operations of the unlawful enterprise, as well as the receipt, flow, use and transfer of money from the Plaintiffs and class members through a pattern of criminally unlawful racketeering activity.
150. In the hierarchy of the RICO enterprise described herein, Defendant Denison ranks below Bates, as he at all times has acted to perform and carry out the purpose of the unlawful enterprise, the purposes and operations of the enterprise, as well as collect money from the Plaintiffs and class members, and pass this money along to Bates and/or other Defendants.
151. All Defendants, working in concert, are jointly and severally liable for all wrongful acts committed by their agents, employees, consultants and/or economists.
152. The representations made by Defendants, their agents/employees/consultants/economists, were false, and Defendants knowingly and intentionally used the Plaintiffs and class members' money to enrich themselves and to pay other individuals who had previously sent in money for precious metals orders. Defendants did not intend to purchase precious metals in accordance with the promises made to Plaintiffs and class members for their benefit.
153. Specifically, Defendants affirmatively represented to Plaintiffs and class members that they would receive the order as agreed upon by the parties, timely and in full.

154. Plaintiffs and class members adopt the previously stated facts as to the identities of the individual Defendants, and would state that the individuals are RICO "persons" as defined by 18 USC §1961(3).
155. Defendants have combined through an association in fact and formed a RICO enterprise, as defined by 18 USC §1961(4), involving the named individuals and companies, and use FAMC Economic and Political Consulting Group as the herein identified FAMC RICO Enterprise.
156. The goals and purposes of the FAMC RICO enterprise are to obtain and solicit money from individuals for the use and benefit of Bates and Defendants.
157. The enterprise exists separate and apart from the pattern of racketeering activity in which its participants have engaged, as a separate and legal entity known as FAMC Economic and Political Consulting Group.
158. Plaintiffs and class members herein allege a separate and distinct "enterprise" within the meaning of 18 U.S.C. §§1961(4) and 1962(b), (c), and (d), constituting an "enterprise," an "association in fact," or a "de facto association" within the meaning of 18 U.S.C. §1961(4).
159. The named Defendants in this cause of action are and/or were principals, were employed by, or are otherwise associated with the enterprise.
160. The FAMC RICO enterprise exists independently of the above named "persons" named as Defendants herein.
161. The FAMC RICO enterprise exists independently of the pattern of unlawful racketeering activity described herein.
162. The FAMC RICO enterprise engages in activities that affect interstate or foreign commerce.

163. The FAMC RICO enterprise operates by soliciting funds from unsuspecting Christian believers, elderly individuals, widow/widowers, and other vulnerable and unsuspecting individuals in order for First American Monetary Consultants, Inc. to purchase precious metals ostensibly on behalf of Plaintiffs and other class members, with promises that the precious metals would be shipped to them timely, in full, and in accordance with the type and quality of metals ordered.
164. It was represented by Defendants that Plaintiffs and the class members could speak with economists and/or consultants to advise them on what type of precious metals to order, and such services were offered through First American Monetary Consultants, Inc. via Internet, toll free number, or in person at a seminar conducted by Bates.
165. Defendant Bates operates his illegal scheme under the name of his company, First American Monetary Consultants, Inc., and uses FAMC Political and Economic Consulting Group as the enterprise through which the scheme is carried out.
166. Bates uses his companies Information Radio Network, Inc. and/or IRN/USA Radio News, his newsletters, Christian televisions, DVDs made by him that are available for purchase, his radio show News and Views, and in person seminars conducted by him, where Plaintiffs and class members were charged \$20 per ticket to attend, to further the illegal scheme.
167. At Bates' direction, the funds from the various affiliated companies are commingled in furtherance of the illegal scheme.
168. Using these various forms of media, Bates preaches that the Bible instructs Christians to purchase precious metals as a way to safeguard their assets in the "world's end". He also

preaches that his company, First American Monetary Consultants, Inc., will provide these precious metals and advice for obtaining the best precious metals.

169. Bates also relies upon “consultants,” “economists,” and employees of the enterprise to run the illegal scheme, including Senior Staff Economist, Barry Denison.
170. Bates recruited “consultants” and “economists” to solicit money for precious metals purchases, while exploiting FAMC’s Christian principles, the Christian beliefs of these “consultants” and “economists” and the faith of the targeted Plaintiffs and class members.
171. Every Plaintiff and class member who purchased precious metals was promised that the precious metals would be shipped timely, in full and in accordance with the quality and type ordered.
172. Plaintiffs and class members sent the money via US Mail by check, money order, cashier’s checks, and/or wire transfers to Defendants at the direction of consultants and/or economists and/or employees and/or agents and/or representatives and in furtherance of the FAMC RICO Enterprise.
173. Plaintiffs and class members were told to make the checks payable to FAMC and/or Information Radio Network.
174. Despite the promises as listed herein, Defendants had no intention of fulfilling the orders for precious metals and/or refunding the payment sent by Plaintiffs and class members.
175. Through the repetition of this fraud, the FAMC RICO scheme and pattern of illegal activities has taken in hundreds of thousands of dollars, if not more, from those who were duped by the appeal to what Bates promulgates as Christianity.

**PREDICATE FACTS**

**C. MAIL AND WIRE FRAUD**

176. In furtherance of their fraudulent scheme, the Defendants, through the FAMC RICO enterprise, engaged in a pattern of racketeering activity as defined in 18 USC §1961(1), through the perpetration of hundreds of instances of mail fraud and wire fraud within the last ten years, in violation of 18 USC §§1341 and 1343.
177. As described above, Defendants directly and indirectly conducted and participated in the conduct of the enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(b), (c), and (d).
178. Defendants' hundreds, if not thousands, of instances of racketeering activity have continued for a number of years and will continue, if not abated.
179. During the course of the racketeering activity, Defendants employed a scheme to extract funds from the Plaintiffs and class members, as well as hundreds, potentially thousands of individuals. This racketeering activity involved defrauding the Plaintiffs and class members into participating in what Defendants knew to be illegal and fraudulent schemes.
180. Pursuant to and in furtherance of each instance in which the fraudulent scheme was carried out, Defendants intentionally and/or with actual knowledge, committed related predicate acts, as defined by 18 U.S.C. § 1961(1)(8) and (5), including the facts stated hereinabove, incorporated herein again by reference.
181. Specifically, Defendants caused to be transmitted, through the United States mails and/or United States wires, hundreds of separate documents and communications containing false and/or misleading information relating to the solicitation of funds. These specific instances are set forth herein in paragraphs 10-82, with other known solicitations occurring.

182. Among other things, these documents contained false and misleading information as to the sale and purchase of precious metals, misrepresented the relationship of Defendants to Plaintiffs and class members, failed to disclose that the Plaintiffs' and class members' money would not be used as represented to purchase precious metals on their behalf and/or that the funds would be held by Defendants, and misrepresented Defendants' ability to obtain the precious metals as promised, as well as the Defendants ability and intention to either deliver the purchases or refund the Plaintiffs' and class members' money.
183. Such false information was also communicated by Defendants over the telephone and through the Internet.
184. The transmission of these documents and the making of these communications through the United States mails and interstate wires was for the purpose of, among other things, inducing Plaintiffs and the class members to entrust their money to the Defendants and/or to assuage the fears of the Plaintiffs and class members, thereby securing their continued cooperation and participation. Thus, the communications were made in connection with and for the purpose of executing a scheme to defraud Plaintiffs and the class members and to conceal from Plaintiffs and the class members the truth regarding the Defendants' activities and the subject transactions.
185. The fraudulent documents and communications misrepresented and omitted material information, and were calculated to deceive persons of ordinary prudence and comprehension.

186. As described above, the Defendants, through their enterprise, knowingly, willfully, and intentionally communicated through methods of wire and mails, false and misleading information to Plaintiffs and the class members.
187. Defendants benefitted directly from their racketeering activity, because they enriched themselves through the operation of the enterprise.
188. The allegations set forth herein sufficiently apprise the Defendants of the Plaintiffs' and class members' claims. Further, because the fraudulent scheme carried out by Defendants occurred on a continuous basis over an extended period of time, the Plaintiffs need not allege in detail the facts of each fraudulent statement or omission, or of each transaction of the fraudulent scheme.

#### **D. INJURIES AND DAMAGES**

189. Plaintiffs and the class members are "persons" capable of holding a legal or beneficial interest in property, within the meaning of 18 U.S.C. §§1961(3) and 1964(c).
190. Defendants' wrongful racketeering activities directly and proximately caused significant financial and economic damages to the Plaintiffs' and the class members' property, including among other things, loss of money, loss of profits, loss of value, and other compensatory and financial damage, as well as pain and suffering and emotional distress. Said violations were the direct and proximate cause of injury to the Plaintiffs and class members.
191. Accordingly, Plaintiffs and the class members are entitled to an award of actual damages, in addition to treble damages and attorney fees under 18 U.S.C. 1964( c).

192. Plaintiffs and the class members are entitled to a tolling of the RICO claim, because Defendants, through their conduct and the conduct of their agents, have affirmatively misrepresented to and/or concealed from the Plaintiffs material facts concerning the transactions, as described above.

**COUNT VI - TORTIOUS CONSPIRACY**

193. The allegations of paragraphs 1-192 hereinabove are reiterated and incorporated as if fully set forth herein.

194. All of the acts and activities of the Defendants and each of them as set forth hereinabove were either lawful acts taken for an unlawful purpose and/or unlawful acts taken in concert as a part of a wrongful and unlawful scheme to wrongfully defraud, convert, and obtain Plaintiffs' and class members' monies and assets by fraudulent and unlawful means for the said Defendants, and as a result thereof, the Defendants have committed the tort of unlawful conspiracy.

195. At all material times, Defendants acted in concert with one another and/or others in furtherance of a deliberate and intentional scheme to unlawfully defraud Plaintiffs and the class members and to commit other tortious acts against Plaintiffs and the class members.

196. As a direct and proximate result of the concerted actions and Defendants' wrongful and tortious acts and omissions in furtherance of the conspiracy, Plaintiffs and the class members have suffered damages, including actual, consequential and exemplary damages, in an amount to be set by the jury.

197. The actions of the Defendants and each of them, jointly and severally, and acting in concert with each other, were intentional, malicious and calculated to deceive and, as a result

thereof, the Plaintiffs and class members are entitled to recover punitive damages in an amount to be set by the jury.

**COUNT VII - CONSTRUCTIVE TRUST**

198. The allegations of paragraphs 1-197 hereinabove are reiterated and incorporated as if fully set forth herein.
199. Defendants obtained money from Plaintiffs and the class members through a scheme of fraud, concealment, misrepresentation and unfair dealing.
200. Plaintiffs and the class members entrusted the money to Defendants because of the deliberate and intentional scheme of Defendants to unlawfully deceive Plaintiffs and the class members and defraud them of their money.
201. It would be unfair, inequitable and unconscionable for Defendants to retain and enjoy the benefits of the monies Defendants obtained from Plaintiffs and the class members.
202. The imposition of a constructive trust is necessary and proper to preserve the status quo and will ensure that Defendants do not otherwise acquire, transfer, encumber, squander, secrete, or dispose of Plaintiffs' and the class members' money, or any interests or profits derived from Plaintiffs' and the class members' money without the prior approval of Plaintiffs and the class members and this Court.
203. A constructive trust should be imposed over all money Defendants obtained from Plaintiffs and the class members, as well as over all interest or profits Defendants have obtained from those monies.
204. The imposition of a constructive trust is necessary and proper and in the interest of justice to do equity and to prevent unjust enrichment.

**COUNT VIII - ACCOUNTING**

205. The allegations of paragraphs 1-204 hereinabove are reiterated and incorporated as if fully set forth herein.
206. Based on the actions and inactions of Defendants including, without limitations, the actions identified in this Complaint, the monies entrusted by Plaintiffs and the class members to Defendants were not used for the purposes for which they were entrusted and have been diverted, misused and squandered by Defendants.
207. Plaintiffs and class members, therefore, seek and are entitled to a full and complete accounting from Defendants of all the monies that were entrusted by Plaintiffs and the class members to Defendants and all other assets that were and/or are in the possession, custody and/or control of Defendants.
208. Plaintiffs and class members reserve the right to amend this complaint and *ad damnums* contained herein and additional facts become known.

**PRAYER FOR RELIEF**

Premises considered, the Plaintiffs and members of the class pray:

- A. That the Defendants be required to answer the Complaint filed herein, upon their oath;
- B. The court set a hearing for the declaration of a resulting trust and/or constructive trust as listed in Count VII in this cause and enjoin the Defendants from further disposing of and/or liquidating any properties owned by Plaintiffs and/or class members. THIS IS THE FIRST REQUEST FOR INJUNCTIVE RELIEF;
- C. That the Court order that the Defendants, and each of them, as listed in Count VIII, provide a full accounting of all properties, assets, monies, accounts, and activities of the ongoing

businesses and of all funds obtained or taken by them as a result of their actions against the Plaintiffs and members of the class, and;

- D. That, pursuant to Count I of the Complaint, Breach of Contract/Unjust Enrichment, that the Plaintiffs and class members recover damages to be determined by the jury in an amount not to exceed Ten Million Dollars (\$10,000,000), or in the alternative, the value of the true unjust enrichment;
- E. That, pursuant to Count II of the Complaint, Fraud/Tortious Misrepresentation, that the Plaintiffs and class members recover damages to be determined by the jury in an amount not to exceed Ten Million Dollars (\$10,000,000), along with punitive damages in an amount not to exceed Ten Million Dollars (\$10,000,000).
- F. That, pursuant to Count III of the Complaint, Wrongful Trover/Conversion, the Court

declare that the Defendants hold the assets of the Plaintiffs and class members obtained by them as a result of the fraudulent schemes, that the fraudulent schemes depicted herein were not a just and proper usage of the monies obtained from Plaintiffs and class members, and, as a result, such indebtedness owed by the Defendants to the Plaintiffs and class members be transferred to the Plaintiffs;

- G. In the alternative, that the Court declare a trust on all other monies paid to Defendants by Plaintiffs and class members and converted by Defendants, the same to be held in trust for the benefit of the Plaintiffs and class members and that the Defendants be required to account for all such monies, assets, said properties and their management of them, and that the Plaintiffs and class members recover all damages suffered by them as a result of the

misuse, waste, conversion and/or destruction of the present monies in an amount not to exceed Ten Million Dollars (\$10,000,000);

H. That, pursuant to Count IV of the Complaint, Breach of Trust/Breach of Fiduciary Duty, the Plaintiffs and class members recover damages to be determined by the jury in an amount not to exceed Ten Million Dollars (\$10,000,000), along with punitive damages in an amount not to exceed Ten Million Dollars (\$10,000,000);

I. That, pursuant to Count V of the Complaint, Civil RICO, the Plaintiffs and class members recover damages to be determined by the jury, the same to be trebled, along with the expenses and costs of this cause and reasonable attorney fees and expenses;

J. That, pursuant to Count VI of the Complaint, Tortious Conspiracy, the Plaintiffs and class members recover actual, consequential, and exemplary damages to be determined by the jury in an amount not to exceed Ten Million Dollars (\$10,000,000) along with punitive damages in an amount not to exceed Ten Million Dollars (\$10,000,000).

K. Plaintiffs and class members demand a jury to try the issues when joined.

L. Plaintiffs and class members reserve the right to amend this complaint and the facts contained herein as more information becomes available.

WHEREFORE, Plaintiffs and the class request judgment in their favor against Defendants in an amount to be determined, plus costs, interest, and attorneys fees, exemplary damages, punitive damages, declaratory and injunctive relief, and any other relief to which Plaintiffs and the class is entitled.

**THIS IS THE FIRST APPLICATION FOR INJUNCTIVE RELIEF.**

RESPECTFULLY SUBMITTED this 28th day of December, 2011.

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