IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00210-RBJ

LiST INTERACTIVE, LTD. D/B/A UKNIGHT INTERACTIVE,
LEONARD S. LABRIOLA,
Plaintiffs,

v.

KNIGHTS OF COLUMBUS,
Defendant.

KNIGHTS OF COLUMBUS,
Counterclaim Plaintiff

v.

LiST INTERACTIVE, LTD. D/B/A UKNIGHT INTERACTIVE,
LEONARD S. LABRIOLA, WEBSINC.COM, INC., STEPHEN S. MICHLIK, JONATHAN S. MICHLIK, AND TERRY A. CLARK,
Counterclaim Defendants.

DEFENDANT'S AMENDED RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND BRIEF REGARDING DISCOVERY OF MEMBERSHIP LIST

Defendant Knights of Columbus ("Order") opposes Plaintiffs' motion for temporary restraining order and discovery of its confidential membership list because: (1) Plaintiffs' theory of membership fraud has no basis; (2) Plaintiffs have engaged in improper efforts to acquire the Order's membership information, raising serious concerns about their seeking it in this case; and (3) the First Amendment rights of association and religion protect such information.

The Order's membership information is protected by the First Amendment. "Membership lists have a long and unique history in our constitutional jurisprudence." *Andersen v. United*

States, 298 F.3d 804, 810 (9th Cir. 2002). For secular associations, requiring their disclosure can only be justified upon a showing of "compelling need." *In re First Nat. Bank, Englewood, Colo.*, 701 F.2d 115, 119 (10th Cir. 1983), and for religious societies, not at all, *see infra*, Part III.B.

The Order respectfully urges the Court to reconsider its September 12 discovery order in the light of facts, argument, and law in this brief that were not available on September 12. Only if it is not persuaded by the arguments herein and without waiving any of them, the Court could consider ordering the less restrictive, more accurate alternative presented in Part IV, *infra*.

It is important to establish what the Order's "membership list" actually is. Plaintiffs have described the "membership list" as a simple "spreadsheet," but no simple spreadsheet of all Knights of Columbus members exists. Local councils have primary responsibility for keeping membership rosters. Many U.S. and Canadian councils keep this information in the Order's servers through software provided by the Order. Others maintain their rosters in paper files or on their Financial Secretaries' computers. Membership information on the Order's servers is maintained in complex databases and includes confidential and highly sensitive information ranging from members' names and addresses, to the parishes where they worship, to protected health information of insured members, to legally protected information on individual members' disability status. Members trust the Order and its financial secretaries to preserve the privacy of this information consistent both with the Order's policies and with state and federal law.

I. The Court should deny Plaintiffs' request for the Order's membership information. Plaintiffs have reams of discovery on why the Order did not do business with them, and none of it supports their "membership fraud" theory.

The Order has produced thousands of pages of documents related to the parties' failed business negotiations. Plaintiffs admit that not a single document supports their theory of

"membership fraud." (Mot. for Protective Order [ECF No. 77], Ex. B, at 8.)

- The Order's "UKnight Committee" evaluated Plaintiffs' systems to determine whether to partner with UKnight. One committee member, Kevin Brady, Manager of Membership Records, noted the need for data security because the Order did not want "a 3rd party selling our rosters for solicitation purposes." (Ex. A.)
- The Order sent a team to UKnight's offices in Dallas to learn more about UKnight's competencies. After the meeting, Ian Kinkade prepared a June 2015 "Investigation Report on UKnight," a draft of which was shared with Plaintiffs on June 4. The report identified significant limitations to Plaintiffs' system, criticized Plaintiffs for using old technology, and said "major changes in the site and database design" would be required. (Ex. B.) It also identified UKnight's poor data security as a "major failure." (*Id.* at 22.)
- In July 2015, the parties' ongoing negotiations were embodied in a 15-page discussion document emailed by Plaintiffs. (Ex. C.) The Order reiterated the requirement for updated technology to "address security and performance risks." (*Id.*, p.15).
- In September 2015, Plaintiffs sent the Order a letter proposing five alternative "plans" for the parties' relationship. These plans, however, were unworkable, expensive, and risky, particularly because Plaintiffs refused to rectify the problem of old technology. (Ex. D.)
- In November 2015, four departments within the Order advised against using UKnight until other vendors were evaluated. Their reports are attached as Exs. E, F, G, and H. Director of Insurance Marketing Matthew St. John summed up the criticisms in an internal memo to the Order's Deputy Supreme Knight on November 25: "[W]e believe that gaps in [UKnight's] management and technical ability would expose us to a level of

risk that would only be justifiable if there were no other feasible options." (Ex. I, p.2.)

There is no basis to Plaintiffs' theory of "membership fraud" as motive. And it has no limiting principle. If Plaintiffs' logic prevails, a disappointed vendor could allege any nefarious motive by a defendant and thereby obtain wide-ranging discovery on collateral issues not genuinely at issue. *I'mnaedaft, Ltd. v. The Intelligent Office Sys.*, 2009 WL 1537975, at *6 (D. Colo. 2009) (denying franchisee's discovery to prove franchisor's improper motive, calling it an "'ammo recon' missio[n]"). Plaintiffs' allegations "present a scenario of a contractual relationship gone awry, rather than a Machiavellian effort by defendants to undermine plaintiffs' [business]." *Beylen Commc'ns, Inc. v. Tempest Assocs., Inc.*, 952 F. Supp. 49, 56 (D.P.R. 1996).

And there is not a hint of fraud here. Plaintiffs take the unremarkable fact that the Order, like any membership organization, has a portion of past-due members and tries to spin this into a fraud. How is it fraud? Nothing mandates that the Order kick members off its rolls at the first sign of delinquency. To the contrary, for practical and religious reasons (*see* Ex. J (Gary Nolan) ¶¶ 5-19), the Order works hard to retain members, especially those who may be wavering in faith or experiencing financial distress. There is nothing wrongful or fraudulent about this.[1]

II. Plaintiffs' have engaged in improper efforts to acquire the Order's membership information, raising serious concerns about their seeking it in this case.

Plaintiffs have sought the Order's membership information since at least December 2014,

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[1] *See Funk v. Stevens*, 169 N.W. 6, 6 (Neb. 1918) (power of benefit society "to enact by-laws [governing membership] is an inherent and continuous one" and courts will intervene only for "abuse of discretion"); *Krause v. Modern Woodmen of Am.*, 110 N.W. 452, 454 (Iowa 1907) (authority of benefit society "to waive its by-laws [regarding membership requirements] has been sustained too often to require citation"); Frederick H. Bacon, *Treatise on the Law of Benefit Societies* § 383, at 575 (1888) (subordinate lodges can retain nonpaying members unless "its laws forbid" and delinquent members retain their status as members).

well before they asserted any breach of contract claim. Their Mass Email on September 22, 2017, sought to accomplish this on a wider scale.

In an email to his business partners Steve Michlik and Terry Clark on December 3, 2014, Plaintiff Leonard Labriola told them he had surreptitiously acquired the private data of members of a council in San Antonio. He said it was "just [in] time for Christmas" and that "I could probably sell a list like this with all this info several times, and its ready to print!" (*See* Ex. K.) Until Plaintiffs produced this document, the Order was unaware this had occurred.

From: UKnight Help Desk <helpdesk@uknight.org>
Sent: Wed, 03 Dec 2014 15:13:35 -0700
To: steve.michlik@uknight.org, Terry.clark@uknight.org
Subject: With this kind of info...

Try to open the attached membership list.

Oh… password protected. Oh those councils have such tight security… but let's give it a try.

Let's see… Mmmmm - Council 7613. I wonder what that password could possibly be….

Council 7613? Oh, I don't know, let's try 7613…

42 pages, 10 names per page – 15 counting spouses – SPOUSES! - addresses, phone numbers, email addresses, degree dates - I could probably sell a list like this with all this info several times, and its ready to print!

Wow – just I time for Christmas! Sure glad they're not using UKnight!

Check it out – www.kofc7613.org

As a result of other documents produced by Plaintiffs in this litigation, the Order has become aware that in June 2015, Plaintiffs' contractor, Jerry Mishork, obtained membership records for a local council in Allen, Texas and passed them to Plaintiffs. (Ex. L.) The data was not remotely relevant to the parties' business discussions.

Further, as described in the Order's Motion for Protective Order [ECF No. 77], before Plaintiffs' September 22, 2017 Mass Email, they had repeatedly and directly accessed the Order's information systems to obtain membership data. A September 20 email from Plaintiffs' counsel to the Order's counsel (Mot. for P.O., Ex. C) stated, "I've done some testing" in the Order's Member Database and attached a screenshot of it. This database is used to access data on the *Order's* servers, and at the local council level, access is restricted to the council's Grand Knight and Financial Secretary. Such access is possible only if a local council Grand Knight or Financial Secretary improperly shared username and password information with Plaintiffs.

The Mass Email made matters worse. First, it was misleading, and calculated to make local councils believe this Court had ordered them to turn over the Order's membership data. Plaintiffs' address was "mail@kofcknights.org" and their upload link was "courtdata." Second, it was an end-run around the discovery rules that govern this litigation. The Federal Rules of Civil Procedure have built-in safeguards – like the requirements in Rule 45 – precisely to prevent the chaos Plaintiffs unleashed with their Mass Email. Worse, Plaintiffs resorted to these tactics after they *specifically asked* this Court to order broad discovery of "membership information" and the Court *specifically denied* that request, requiring instead that the Order produce a membership list. (*Id.* at 10-11.) Finally, because many of the councils that received the Mass Email maintain membership data in the Order's centralized Member Database, the Mass Email induced those

councils to log into the Member Database – again, *the Order's* confidential database – to retrieve data and turn it over to Plaintiffs.

The Order has a legal right to protect the privacy of members' information. C.R.S. § 7-74-102(4) (trade secrets include "confidential business . . . listing of names, addresses, or telephone numbers"); Conn. Gen. Stat. § 35-51(d) (trade secrets include "compilation" and "customer list"); *Restatement (Third) of Unfair Competition* § 39 (1995) ("[F]raternal and religious organizations can also claim trade secret protection for economically valuable information such as lists of prospective members or donors."). Plaintiffs' attempts to access the Order's database are illegal. *See* 18 U.S.C. § 1030(a)(4) (Computer Fraud and Abuse Act); 18 U.S.C. § 2701(a) (Stored Communications Act); *Musacchio v. United States*, 136 S. Ct. 709 (2016) (upholding CFAA conviction for accessing former employer's computer system without authorization); *Cloudpath Networks, Inc. v. SecureW2 B.V.*, 157 F. Supp. 3d 961, 985 (D. Colo. 2016) (plaintiff stated CFAA claim against person who used contractor's login credentials to access plaintiff's "proprietary data" and against contractor "for conspiracy to enable . . . access").

Then and now, the Order does not know the full extent of Plaintiffs' unauthorized intrusions. The Order was fully within its rights, if not responsibility, to take reasonable steps to prevent unauthorized access of its database (1) by Plaintiffs directly or (2) by local councils acting at Plaintiffs' behest after being misled by the Mass Email. That is why the Order sent the email on September 22. The Order's September 22 email did not instruct witnesses not to speak with Plaintiffs or their counsel. Rather, it corrected the misrepresentations in the Mass Email and stopped local council officers from improperly extracting data from the Order's Member Database on Plaintiffs' behalf. Nothing about the Order's actions constitutes witness tampering.

III. Discovery of the Order's membership list violates the First Amendment rights of association and religion.

A. Compelled production of a membership list violates the Order's right of expressive association.

The First Amendment protects the "right to associate with others in pursuit of a wide variety of political, social, economics, educational, religious, and cultural ends." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647-48 (2000). Protecting the privacy of a group's members is often "indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). The Supreme Court barred disclosure of the NAACP's membership list, reasoning that "[i]nviolability of privacy in group association may . . . be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.* at 462. The Court subjects "compelled disclosure of affiliation with groups engaged in advocacy" to the "closest scrutiny." *Id*. at 461-62; *see Perry v. Schwarzenegger*, 591 F. 3d 1147, 1160, 1165 (9th Cir. 2010) (granting mandamus and protective order to prevent disclosure of membership list in light of chilling effect).

To invoke this constitutional protection, an expressive association need only make a "prima facie showing of arguable first amendment infringement." *In re Motor Fuel*, 641 F.3d 470, 488 (10th Cir. 2011). This "burden is light." *N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1355 (2d Cir. 1989). An expressive association like the Order need only prove that disclosing membership information "*could* result in chilling constitutionally protected expression" by showing that disclosure would "make it less likely that association will occur in the future," or that exposure would "make it more difficult for members of an association to foster their beliefs." *In re Motor Fuel*, 641 F.3d at 488-89 (emphasis added).

This First Amendment doctrine protects "all legitimate" expressive groups, including corporations, unions, and associations. *Gibson v. Fla. Leg. Investig. Comm.*,372 U.S. 539, 556 (1963); *In re Glaxosmithkline PLC*., 732 N.W.2d 257, 268 (Minn. 2007) (collecting cases). Groups whose "cause is unpopular" receive "heightened protection." *Black Panther Party v. Smith,* 661 F.2d 1243, 1265 (D.C. Cir. 1981). Such groups have included the Black Panther Party, the NAACP, the Socialist Worker Party, and Prop 8 (traditional marriage) supporters.[2] In such circumstances, "the party seeking discovery must show that the information sought is highly relevant to the claims or defenses," which is "a more demanding standard of relevance than that under" Rule 26(b)(1). *Perry*, 591 F.3d at 1161.

The Order qualifies as an expressive association. *See, e.g.*, "Liberty Life Family: Public Policy," http://www.kofc.org/un/en/liberty-life-family/public-policy.html. In its early years, the Order's advocacy focused largely on defending Catholic immigrants against the Klan. *See* Thomas R. Pegram, ONE HUNDRED PERCENT AMERICAN: THE REBIRTH AND DECLINE OF THE KU KLUX KLAN IN THE 1920S 76-77 (2011). Today, the Order advocates for many vulnerable groups, including the unborn, religious and racial minorities, and immigrants.[3]

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[2] *Id*.; *NAACP*, 357 U.S. at 460; *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 99 (1982); *Perry*, 591 F. 3d at 1165. The ACLU successfully invoked this doctrine this week to stop the federal government from discovering the names of 6,000 protesters at President Trump's inauguration. Kate Conger, "Judge Orders Limitations on Sweeping DreamHost Warrant Seeking Info on Anti-Trump Site," *Gizmodo*, Oct. 10, 2017, https://gizmodo.com/judge-orders-limitations-on-sweeping-dreamhost-warrant-1819332117.

[3] "Liberty Life Family: Culture of Life," http://www.kofc.org/un/en/liberty-life-family/culture-of-life.html; "Life Liberty Family: Religious Liberty," http://www.kofc.org/un/en/liberty-life-family/religious-liberty.html; Kevin Jones, "Knights of Columbus celebrate history of breaking down racial barriers," *Cath. News Agency*, Feb. 8, 2013, https://www.catholicnewsagency.com/news/knights-of-columbus-celebrate-history-of-breaking-down-racial-barriers; "Resolution on U.S. Immigration Policy," Apr. 11, 2006, http://www.kofc.org/en/news/releases/59087.html;

As a faithful Catholic institution, attacks on the Catholic Church often become attacks on the Order. The Catholic Church is subject to regular attacks from both ends of the political spectrum. Last month alone, Steve Bannon excoriated Catholic bishops for their support of immigration reform,[4] and Democratic senators attacked Seventh Circuit nominee Amy Barrett because she is an "orthodox Catholic" who believes Catholic "dogma" too "loudly."[5] Protesters have associated Christopher Columbus – the Order's namesake – with white nationalism and racism, even though the Order has fought these from its inception. Columbus statues have recently been defaced or removed.[6]

In today's highly charged political environment, some members of the Order wish to keep their affiliation private, fearing reprisals or repercussions if their membership is disclosed. This is true of military and business leaders, professional athletes, and judges who are members of the Order. It is even more true of members who are undocumented immigrants. The Order, like the Church, strongly advocates for generous immigration laws and makes great effort to bring immigrant Catholics into the Order. (Ex. M (Martinez) ¶¶ 5-9; Ex. N (Cala) ¶¶ 3-6).) Albert Cala, Director of Membership Development and the Assistant to the Supreme Knight for

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Kevin Di Camillo, "Coming to America," *Nat'l Cath. Reg.*, Aug. 24, 2016 http://www.ncregister.com/blog/dicamillo/coming-to-america-thanks-to-the-knights-of-columbus.

[4] Michael J. O'Loughlin, "Steve Bannon says Catholics 'need illegal aliens to fill the churches,'" *America*, Sep. 8, 2017 at https://www.americamagazine.org/politics-society/2017/09/07/steve-bannon-says-catholics-need-illegal-aliens-fill-churches

[5] "JFK, Amy Coney Barrett and Anti-Catholicism," *Nat'l Catholic Register*, Sep. 22, 2017, http://www.ncregister.com/daily-news/jfk-amy-coney-barrett-and-anti-catholicism.

[6] Julia Manchester, "Christopher Columbus statue smashed in Baltimore," *The Hill*, Aug. 21, 2017, http://thehill.com/blogs/blog-briefing-room/news/347341-christopher-columbus-statue-in-baltimore-smashed; Edward Helmore, "New York mayor considers Christopher Columbus statue removal," *The Guardian*, Aug. 25, 2017, https://www.theguardian.com/us-news/2017/aug/25/new-york-christopher-columbus-statue-de-blasio.

Hispanic Development, notes, "Many immigrant members . . . are afraid that the information that they provide the Order, such as their full names and addresses, could be divulged to ICE or to other governmental entities who could track them down," and that "the Knights of Columbus would lose many Spanish-speaking members and it would be much harder to recruit new Spanish-speaking men to the Order if the Knights of Columbus is forced to turn over its membership lists." (Ex. N ¶¶ 8, 11-12; *see also* Ex. M.)

Under these facts, the Court must not grant Plaintiffs' request for the Order's membership data unless Plaintiffs prove that their request furthers a compelling interest that cannot be met through less restrictive means.

B. Discovery of the Order's membership list violates the First Amendment freedom of a religious society.

The Knights of Columbus began as the parish ministry of an assistant pastor, Father Michael McGiveny, in New Haven. Soon it was chartered as a fraternal benefit society, but it never ceased being a Catholic ministry. Today, it is one of the largest, most vital Catholic ministries in the world. The Order's members and leaders are practicing Catholics. Its Charter and its Supreme Chaplain ensure that its purposes are inspired and defined by Catholic belief; that it will form its members in faith, prayer, fraternity, and fidelity with the Holy See; that it will be charitable in service and treasure; and that it aid the Catholic Church in thousands of ways. (See attached affidavit of Brian Caulfield, Ex. O, for further detail.)

The First Amendment offers "special solicitude to the rights of religious organizations." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189, 190 (2012). Though often called the "church autonomy doctrine," this freedom applies to all religious

organizations, not just churches.[7] It protects a religious society's relationship both with its ministers, *see id.*; *accord Bryce v. Episcopal Church in Diocese of Colo.*, 289 F.3d 648 (10th Cir. 2002), and with its members. As the Supreme Court put it in *Watson v. Jones*, "[t]he right to organize voluntary religious associations" and to establish "the ecclesiastical government of all individual members, congregations, and officers is unquestioned." 80 U.S. 679, 728-29 (1871); *see Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (constitutionalizing *Watson*); *see also O'Connor v. Dioc. of Honolulu*, 885 P.2d 361 (Hawaii 1994) (First Amendment bars claims regarding church discipline and membership status); *Hadnot v. Shaw*, 826 P. 2d 978 (Okla. 1992) (same); *Davis v. Church of Jesus Christ of Latter-Day Saints*, 852 P.3d 640 (Mont. 1993) (same).

The First Amendment blocks all "civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity." *Bryce,* 289 F.3d at 655. Because "[i]t is no business of the State to decide what policies are entailed by or 'reflect' the institution's religious beliefs," this doctrine "protects religious institutions from governmental monitoring or second-guessing of their religious beliefs and practices." *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1264, 1261 (10th Cir. 2008). The doctrine prohibits not only the judicial resolution of religious questions but also "*the very process of inquiry* leading to findings and conclusions." *NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979) (emphasis added); *see also Grandbouche v. Clancy*, 825 F.2d 1463, 1466 (10th Cir. 1987) (court's "order compelling discovery . . . provide[s] the requisite governmental action that invokes First Amendment

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[7] *See, e.g.*, *EEOC v. Sw. Baptist Theological Seminary*, 651 F.2d 277, 283-85 (5th Cir. 1981) (seminary); *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 309-10 (4th Cir. 2004) (Jewish nursing home); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 833-34 (6th Cir. 2015) (non-denominational campus ministry).

scrutiny"); *Hadnot*, 826 P.2d at 989 ("Because religious judicature is immune from any civil court inquest, it is also protected from intrusion by discovery.").

Plaintiffs' efforts to secure the Order's membership list place the religious autonomy doctrine squarely at issue. Plaintiffs say they need "membership numbers because its fundamental theory of this case is that Defendant has fraudulently inflated its membership." (TRO Mot. [ECF No. 76] at 2.) To prove this, Plaintiffs need this Court to hold that the *true* members of the Knights are Columbus are not those that *the Order has identified* as its members.

The prospect of a civil court ruling against a religious organization "about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *Colo. Christian Univ.*, 534 F.3d at 1262 (quotation omitted). Under the First Amendment, civil courts may not second-guess how a religious organization establishes and enforces membership requirements. This doctrine has stood since 1871, when the Supreme Court was asked to examine the "allegation that the plaintiffs are not lawful members of the Walnut Street Church." *Watson*, 80 U.S. at 714. The Court held that it was unable to "decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church." *Id*. at 730; *see also Dwenger v. Geary,* 14 N.E. 903, 908 (Ind. 1888) ("No power save that of the church can rightfully declare who is a Catholic."). The First Amendment just as clearly precludes courts from deciding that a religious organization's interpretation of its own rules constitutes fraud. *United States v. Ballard*, 322 U.S. 78, 79, 94 (1944).[8]

[8] Plaintiffs contend they simply want to enforce the Order's rule that a member that who "fail[s] to pay his dues" shall "*ipso facto* forfeit his membership." (*See* Reply in Supp. of Mot. to Amend

For these reasons, the First Amendment religious autonomy doctrine bars adjudication of who is or is not a member of the Order as well as discovery of facts regarding the same.

IV. There is a less restrictive alternative providing better membership information.

Only if the arguments above do not persuade and without waiving any of them, the Court could consider an alternative that is less restrictive of the Order's constitutional rights while providing more objective information than Mr. Labriola's personal polling of councils. Plaintiffs say they need data showing how many of members are past due to prove Defendant's motive for breaching its alleged contract. (Mot. for P.O., Ex. B at 11:4-14; 12:8-11.) Because councils are the exclusive source of such information and they often grant dues waivers for various fraternal and pastoral reasons, the Court could require the Order to engage a CPA to conduct a random sampling of thirty to fifty councils in various states who would contact the financial secretaries of those councils to determine the number of members on each council's roster that are past due after taking into consideration any waivers. Plaintiffs' counsel himself suggested that a sampling methodology would suffice. (*Id.*, Ex. C.) This methodology avoids disclosure of members' names and the risk of Plaintiffs sowing dissension between the Order and its councils.

[ECF No. 80] at 8.) But as a fraternal benefit society, it is the Order who must decide how such a rule is enforced. *See supra* note 1. And as a religious society, the Order's exercise of pastoral discretion is constitutionally protected, *Serbian E. Orthodox Dioc. v. Milivojevich*, 426 U.S. 696, 712-13 (1976) (rejecting "arbitrariness" exception to religious autonomy doctrine), as the Order makes faith-informed and pastoral judgments regarding individual members (Ex. J (Nolan) ¶¶ 5-19). *Compare* Canon Law Soc'y of Am., NEW COMMENTARY ON THE CODE OF CANON LAW 1558 (2000) (though canonical penalties follow "*ipso facto*" from a violation, instructing religious leaders to impose penalties "only as a last resort after all other pastoral measures have failed").

V. Conclusion

The Order respectfully requests that the Court deny Plaintiffs' TRO Motion; grant the Order's Motion for Protective Order; vacate the September 12 discovery order requiring the Order to produce its membership list; and order Plaintiffs to cease all attempts, whether direct or through others, to intrude into the Order's databases to access membership or other confidential information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 11, 2017, I filed this with the Clerk of the Court using the CM/ECF System. It will send notification to:

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