

Alexander (Zander) Blewett, III
Anders Blewett
HOYT & BLEWETT PLLC
501 Second Avenue North
P.O. Box 2807
Great Falls, MT 59403-2807
Phone: (406) 761-1960
Fax: (406) 761-7186
E-mail: zblewett@hoytandblewett.com
ablewett@hoytandblewett.com

Larry D. Drury
LARRY D. DRURY, LTD.
100 N. LaSalle Street, Ste. 1010
Chicago, IL 60602
Phone: (312) 346-7950
Fax: (312) 346-5777
E-mail: ldrurylaw@aol.com

Robert A. Langendorf
ROBERT A. LANGENDORF, P.C.
134 N. LaSalle Street, Ste. 1515
Chicago, IL 60602
Phone: (312) 782-5933
Fax: (312) 371-1771
E-mail: rlangendorf@comcast.net

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

* * * * *

GEORGE AND SUSIE PFAU,
DAN DONOVAN, and
DEBORAH NETTER, individually
and on behalf of all others similarly,
situated,

Plaintiffs,

v.

GREG MORTENSON, DAVID
OLIVER RELIN, CENTRAL ASIA
INSTITUTE (CAI), a foreign
Corporation, PENGUIN GROUP
(USA), INC., a Delaware Corporation,
and MC CONSULTING, INC.,
a Montana Corporation,

Defendants.

Cause No. CV-11-72-SEH

Judge: Sam E. Haddon

**FOURTH AMENDED
COMPLAINT FOR
CLASS ACTION WITH
DEMAND FOR JURY TRIAL**

* * * * *

**CLAIM AGAINST MORTENSON, RELIN, PENGUIN, CAI AND
MC CONSULTING, INC., FOR RICO VIOLATIONS
PURSUANT TO 18 U.S.C. § 1962(c) & (d)**

For their claims against Defendants, Plaintiffs state and allege as follows:

1. Plaintiffs, George and Susie Pfau, are citizens of the State of California, residing in San Francisco, California. They both purchased *Three Cups of Tea* for approximately \$15 and *Stones Into Schools* for approximately \$15 because it had been represented to them that the stories were true.

2. Plaintiff, Dan Donovan, is a citizen of the State of Montana, residing in Great Falls, Cascade County, Montana. He purchased the book *Stones Into Schools* and paid approximately \$15 because it was represented to him that the book was true.

3. Plaintiff, Deborah Netter, is a citizen of the State of Illinois, residing in Lake County, Illinois. She purchased *Three Cups of Tea* for approximately \$15 because it had been represented to her that the story was true.

4. Defendant, Greg Mortenson (Mortenson), is an individual residing in Bozeman, Montana, and acted as the agent of Penguin Group (USA), Inc. (Penguin), Central Asia Institute (CAI), MC Consulting, Inc. (MC), and/or David Oliver Relin (Relin), in the writing, publishing and promoting of the book, *Three Cups of Tea* and *Stones Into Schools*.

5. Defendant Relin is an individual residing in Portland, Oregon, and acted as the agent of Penguin, CAI, Mortenson, and MC in the writing, publishing and promoting of *Three Cups of Tea*.

6. Defendant CAI is a foreign corporation with its principle place of business in Bozeman, Montana, that expended significant sums of money and other efforts to finance the writing, publishing and sales of Mortenson's, Relin's and Penguin's books.

7. Defendant Penguin is a foreign corporation that published the books, *Three Cups of Tea*, written by Mortenson and Relin, and *Stones Into Schools*, written by Mortenson, and played a significant role in writing, promoting and selling these books.

8. MC Consulting, Inc. (MC), is a Montana corporation, owned and controlled by Mortenson. On information and belief, Mortenson has transferred funds from his book sales to MC and otherwise involved MC in the marketing and sale of the books.

COUNT I: RICO - VIOLATION OF 18 U.S.C. §1962(c)

9. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-8 above.

10. Mortenson, Relin, Penguin, CAI and MC are two individuals and three corporations who are capable of holding a legal or beneficial interest in property and are, therefore, “persons” as defined in 18 U.S.C. § 1961(3).

11. These five “persons” operated collectively as a group and/or association and comprised an enterprise as defined in 18 U.S.C. § 1961(4). The common purpose of this enterprise was to form an informal group of “persons” with structure, relationships and longevity between the “persons”, to promote and sell books and to raise charitable contributions for CAI which would also benefit Mortenson and MC.

12. This enterprise entered into a massively widespread pattern of racketeering activity comprised of at least two acts of racketeering activity, but in actuality many, many more acts than two, all of which occurred between January 1, 2003, and November 1, 2011, which pattern of racketeering activities continues to this day. The enterprise, through the “persons” comprising the enterprise, was an ongoing organization with the framework for making and carrying out decisions regarding the writing, publishing and marketing of books as true works of nonfiction. The enterprise’s pattern of racketeering activity is comprised of an

ongoing scheme to defraud and actually defrauding purchasers of the books over at least an eight year period and continuing to this day, where they continued to misrepresent that the contents of *Three Cups of Tea* and *Stones Into Schools* were true, nonfiction accounts of what really happened, when, in fact, the contents were false and the accounts did not happen. The enterprise's fraudulent scheme was to make Mortenson into a false hero, to sell books representing to contain true events, when they were false, to defraud millions of unsuspecting purchasers out of the purchase price of the books, and to raise millions of dollars in charitable donations for CAI, a charity that was founded and run by Mortenson. The frauds perpetrated by this enterprise, contrived and carried out by Defendants through their racketeering activities, were not slight, factual inaccuracies based on time or location, but outright lies which were used as advertisements to raise millions of dollars in charitable contributions and earn themselves millions of dollars in profits for the five "persons" comprising the enterprise.

13. The lies and the fraud perpetrated by this enterprise are contained, in part, in the books *Three Cups of Tea* and *Stones Into Schools*. The same fraud and lies were misrepresented to every purchaser of these books. In addition, this enterprise committed a vast number of other frauds. In order to comply with alleging this fraud with the required particularity, the enterprise set forth the following lies in the books and these additional lies after the publication of *Three Cups of Tea* and *Stones Into Schools*.

Fraud in the Books

(A) The enterprise stated Mortenson was a world-renowned, selfless humanitarian who went to Mother Teresa's place of rest after she died, knelt by her body, which was lying, in state, held her hand and mused about the

similarities between the two of them in September of 2000. Coupled with this story were scores of other lies. Mother Teresa had died three years earlier and all of the statements about Mortenson's contacts with Mother Teresa were false.

(B) The enterprise stated that Mortenson was a famous mountain climber who had successfully reached the summit of numerous peaks in the Himalayas and elsewhere to make him into a hero for the purpose of defrauding readers and raising charitable donations. Again, all of this was false.

(C) The enterprise stated that Mortenson got lost on a glacier and through his own strength of character, survived the night in sub-zero weather with no tent, sleeping bag or other protection, and that when he awoke in the morning, his nose and mouth were frozen over with ice. Again, these lies were created in order to make millions of dollars for Defendants. None of this was factual.

(D) The enterprise stated that Mortenson got lost again on an approximate six-mile hike over terrain traveled by thousands of people each year and that he ended up in Korphe and not Askole. This was impossible, as a raging river prevented any travel along the route the enterprise states Mortenson followed. In this regard, the enterprise repeatedly lied about many other facets of this theme.

(E) The enterprise stated that Mortenson built a school in Korphe because when he supposedly got lost he ended up in Korphe and the people in Korphe nursed him back to health after many days, and that after he set many villagers' bones and provided other medical care to them, he was so overwhelmed with gratitude that he promised Haji Ali that he would build the residents of Korphe a school. All of this was false. Mortenson never went to Korphe until more than a year later in October of 1994 under entirely different circumstances. The very premise of the book and Mortenson's promises to build the school in Korphe is false. In this regard, after Mortenson finished with his failed attempt to

climb K-2, he wrote an article for the *American Himalayan Foundation* and made no mention whatsoever of being lost, of ending up in Korphe, or any of the other facts the enterprise now contends are true, which are false. On the contrary, Mortenson stated he went to Khane and promised he would build a school in Khane, not Korphe; Khane is a town many hours by jeep from Korphe. Also, on March 19, 1995, Mortenson gave a written memo to Gene Hoerni, where he told Mr. Hoerni he was going to relocate the site of the proposed school from Khane to Korphe.

(F) The enterprise stated that Mortenson was captured by fierce AK-47 armed Taliban terrorists and held for eight days against his will in a prison-like structure, again, all for the purpose of making him a hero, selling millions of books, and earning millions of dollars, not only in book sales, but in charitable contributions to CAI, controlled by Mortenson. Such statements were false.

(G) The enterprise repeatedly lied about Mortenson and CAI's success in building schools and the number of schools that have been built. Again, these lies and frauds were carried out for the purpose of making Mortenson into a hero so that millions of books could be sold as true when they were false and, thereby, allowing Defendants to earn millions of dollars from book sales and to raise charitable contributions for CAI.

(H) The enterprise also created a patent falsehood by stating Mortenson was riding on an airplane in the autumn of 2003 with the King of Afghanistan and the King was so impressed with Mortenson that he had him sit with him during the flight and discussed the building of schools in Afghanistan. However, the facts are that the President had never flown on such a flight – again, a flagrant lie.

(I) The enterprise stated that Mortenson was invited to join the expedition to K-2 to serve as the team medic, when the expedition already had two

doctors and Mortenson's job was nothing greater than to act as support for the climbers who intended to summit K-2. In this regard, neither Mortenson nor any of the other expedition members ever contemplated Mortenson's climbing K-2 and the statement that he was going to place his little sister's, Christa, necklace on the top of K-2 is false. The enterprise falsely represented that Mortenson climbed "shatteringly close, within 600 meters of the summit" of K2, when in fact he did not. The enterprise also fabricated the role he played in the rescue of Etienne Fine.

(J) The enterprise permeated these books with falsehoods. The image of Mortenson which was created for public consumption by the enterprise and the enterprise's claims of all Mortenson's noble deeds, risks taken and people met are false. In the book *Three Cups of Tea*, the enterprise contends that Mortenson never made any promise to the Khane villagers to build a school and accused them of being greedy. The proof of this lie rests solidly in the article Mortenson wrote for the *American Himalayan Foundation*, where he specifically announced he had agreed to build a school in Khane.

(K) The enterprise stated in the book that because CAI's financial condition had deteriorated, Mortenson decided not to accept a raise from \$28,000 to \$35,000 a year. This, again, was false. Mortenson's CAI salary for 2002 was \$41,200, plus \$12,087 in employee benefits. In 2003, his salary increased to \$47,197, plus \$6,547 in benefits. He had also been receiving \$21,792 per year from the *American Himalaya Foundation*, Hoerni/Pakistan Fund. Where the enterprise claimed in the book that Mortenson was only receiving \$28,000 in salary, his annual compensation exceeded \$75,000.

(L) The enterprise stated in *Stones Into School*, again, that Mortenson had been captured and detained in Waziristan, again a blatant falsehood to enhance the promotion and sales of the book. The enterprise also

inserted fraudulent photographs in *Stones Into Schools*, again, lying about Mortenson's supposed capture by the Taliban.

(M) The enterprise also claimed in *Stones Into Schools* that the essence of the book was Mortenson's supposed promise to construct a school in Bozai Gumbaz in the rugged uplands in the high Pamir to educate the young children. It took almost a decade after the original promise by Mortenson to complete the construction of the school and by December 2009 it was a "ghost school" where no classes were ever held and no young children educated. Again, the enterprise created this fraud for the purpose of promoting and selling the book *Stones Into Schools*.

Lies After Books Were Written

(N) The enterprise, in order to keep the books, *Three Cups of Tea* and *Stones Into Schools*, on the non-fiction best seller list, used CAI funds to purchase many tens of thousands of copies of *Three Cups of Tea* and *Stones Into Schools*, a gross manipulation of CAI's funds, which were meant to be used for educating young girls in Pakistan and Afghanistan. A large number of these books were charged to CAI's *Pennies for Peace* program, again, a total misappropriation of these charitable funds for the purpose of enhancing the sales of these two books. Furthermore, the enterprise had CAI pay retail price from commercial outlets, such as Borders, Barnes and Noble and Amazon to buy these books so that some members of the enterprise, Penguin, Mortenson, Relin and/or MC, would receive vastly expanded royalties for each book when CAI then gave the books away to the public.

(O) The enterprise also used fraudulent speaking engagements, with Mortenson being the speaker, for the purpose of attempting to sell more non-fiction books to the unwary public. The enterprise allowed the charity, CAI, to pay all of Mortenson's travel costs, including charter jets and deluxe hotel suites,

along with expenses of family members and personal assistants while the charity, CAI, did not receive any of the substantial dollars earned from these speaking engagements. In addition, this enterprise allowed moneys from CAI to be used to promote the books in other ways, including paying for advertisements in the *New Yorker*, which expenses exceeded \$100,000, while at the same time reporting on its tax returns that these expenses were legitimate charitable expenses for the education of young girls in Afghanistan and Pakistan. This enterprise used CAI funds to pay for other extravagances, such as a four-day excursion by Mortenson to the Telluride Mountain Film Festival in May 2010, a Lear jet chartered to fly Mortenson and his family from Montana to Colorado and back, renting multiple residences in Telluride to house Mortenson's entourage, paying for lavish meals, and paying for the jet charter, which cost in excess of \$15,000. In the year 2009, this enterprise allowed CAI to spend more than \$1 million to promote the sales of these books and another \$1.4 million to fly Mortenson around in chartered jets, all for the purpose of enhancing the sales of these fraudulent books.

(P) The enterprise has also allowed CAI to fraudulently alter the contents of its accounting records to hide the amount CAI had spent on promoting the sale of the books, as compared to carrying out its charitable purposes. In 2009, the enterprise used CAI staffers to fabricate documentation which did not exist regarding the costs of schools built.

(Q) This enterprise continued to perpetuate frauds on the public, the book purchasers and employees of CAI who questioned CAI's expenses and accounting procedures and lost their jobs as a result.

(R) The enterprise also paid a \$700,000 advance to MC, the company Mortenson created in 1998 to shelter his personal wealth, so that Penguin could publish the book *Stones Into Schools*, again a supposedly non-fiction book which, like *Three Cups of Tea*, was false.

(S) The enterprise, from the year 2003 to date, has allowed CAI to avoid creating annual audits of its accounts by independent accountants for all but a few years. The purpose of this was to hide the conduct of the enterprise from the public and those who were being solicited to buy the books. In this regard, the enterprise falsified the annual CAI audit for the years 2009 and 2010, and posted the falsified audit on CAI's website, all controlled by the enterprise, which website deleted extremely important information concerning the audit. In the fiscal year 2009-2010, the enterprise arranged for CAI to pay \$75,276 to Greg Mortenson for his personal expenses for the book promotions and then labeled this transaction as a loan to cover-up the misappropriation when no loan existed. Finally, on August 11, 2011, the enterprise caused the Board of Directors of CAI to pass a resolution directing CAI to pay all of Greg Mortenson's personal legal expenses from the defense of this class action lawsuit, even though CAI was not a defendant in this class action lawsuit, again, misappropriating CAI funds which were meant to provide education for young girls in Afghanistan and Pakistan. All of this conduct by the enterprise constitutes a continued course of fraud against the purchasers of the books.

(T) In 2007, the enterprise launched a book tour consisting of numerous public appearances by Mortenson, where he repeated the lies for the purpose of selling more books for the enterprise. The lies he repeated were the lies set forth in the books. The perpetual book tour was ongoing through April 2011, with every indication it will continue as soon as Mortenson's health problems resolve.

(U) The enterprise, in order to enhance the book sales, asserted on April 16, 2011, in a press release, that Mortenson had donated hundreds of thousands of dollars to CAI and that Mortenson had worked for CAI without

compensation for a number of years. CAI's financial statements prove these assertions to be untrue.

(V) The enterprise, again for the purpose of promoting and selling the books, has forced CAI to pay virtually all of the expenses incurred by Mortenson and Relin and uncredited ghost writers while they were researching, writing and promoting the books. These expenses have included cameras, computers, writers' advances and travel. The enterprise allowed Mortenson, when he was traveling, to promote his books, and to fly on chartered jets paid for by CAI. In addition, CAI has paid vast sums of money to run numerous ads to promote the books in publications such as *The New Yorker*, *The Atlantic*, *Harpers* and *The New York Times*. Through this conduct, the enterprise has continued to perpetuate frauds on book purchases.

(W) The enterprise, to further its promotion and sale of these fraudulent books, has defrauded Plaintiffs and other putative class members by stating that CAI spends no more than 15% of donations on overhead and spends 85% on programs. However, the enterprise has hidden the fact that CAI reports the millions of dollars it spends on book advertisements and chartered jets for the sale of the books, which are not program expenses.

(X) The enterprise, also to sell more books, has defrauded Plaintiffs and other putative class members by claiming that the schools were built in areas of Pakistan and Afghanistan where the Taliban thrives and where extremist madrassas prevail and that, hence, the enterprise's activities are preventing kids from transforming into suicide bombers. Again, all of this is false and fraudulent.

(Y) On April 15, 2010, the enterprise caused Mortenson to state on the website of George Lucas Education Foundation that the students in the CAI-built schools, by the 5th grade, learned five languages, including Arabic and

English. Again, these lies were told by the enterprise in order to promote and sell their books. Once again, these statements were blatantly false.

(Z) The enterprise, again to sell and promote its books, had Mortenson state on an Edutopia webinar in April 2010, that he goes to every school in Afghanistan and Pakistan every year. Again, this is a blatant falsehood.

14. There are scores of other lies contained in these books that were created, published and marketed by the enterprise and which were used as advertisements for charitable donations which were also absolutely false and were created out of “whole cloth” to raise monetary charitable donations to CAI and to fraudulently obtain the purchase prices from the sale of the books. Even after the enterprise’s lies were publically exposed, the enterprise continued to state publically that what had been said in the books was true, when it was absolutely false.

15. The enterprise carried out a pattern of racketeering activity, as defined in 18 U.S.C. § 1961, to wit: It devised and intended to devise a scheme or artifice to defraud and to obtain money by means of false and fraudulent pretenses and representations and for the purpose of executing such schemes or artifice, it used the United States Post Office, or other authorized depositories for mail matter to be delivered by the postal service. The enterprise used the U.S. Post Office and other private commercial shipping services extensively by mailing the books *Three Cups of Tea* and *Stones Into Schools* from the offices and warehouses of Defendant, Penguin, in New York, New York, Kirkland, New York, Pittston, Pennsylvania, or elsewhere, throughout the United States. In this regard, the enterprise’s pattern of racketeering activity has taken place in and directly affected interstate commerce. The mailing of these books occurred continuously from 2006 through the present time. The enterprise, through Defendants, used the mail

to send publications and brochures to individuals and potential donors throughout the United States on numerous occasions in which it promoted the truth of *Three Cups of Tea* and *Stones into Schools* from 2007 to 2010. The enterprise committed mail fraud, pursuant to 18 U.S.C. § 1341 (mail fraud), which affected interstate or foreign commerce, and, hence, violated 18 U.S.C. § 1962(c) in the conduct of the enterprise's affairs through a pattern of racketeering activity.

16. The enterprise also devised and carried out a scheme or artifice to defraud and for the purpose of obtaining money by means of false or fraudulent pretenses, representations or promises, and transmitted by means of wire, radio or television communication in interstate or foreign commerce, writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, all in violation of 18 U.S.C. § 1343 (wire fraud). The enterprise engaged in the above-mentioned activities which took place in and directly affected interstate and constituted a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). In this regard, the enterprise caused the books to be published and sold over the internet from Penguin's offices and warehouses in New York, New York, Kirkland, New York, Pittston, Pennsylvania, East Rutherford, New Jersey, or elsewhere, from 2006, to date, which books contained the lies and fraud. In addition, Penguin, Mortenson, and CAI, have repeatedly used the internet and email to market the books *Three Cups of Tea* and *Stones Into Schools* as true. From at least May 2008 to present, Penguin's website stated that *Three Cups of Tea* is a "true story." From 2006 to present, Penguin used its website to market *Three Cups of Tea* and/or *Stones Into School* as non-fiction to the public and book retailer sellers.

From December 14, 2009, to present, Penguin used the internet to post an advertisement on its website describing *Stones Into Schools* as nonfiction.

Furthermore, from 2007 to present, CAI and Mortenson have repeatedly and continuously used the websites they maintain and operate to state that the contents of Mortenson's books are true. Even after the lies contained in Mortenson's books were exposed in April 2011, CAI, Penguin and Mortenson, have continued, to date, to state on their websites that the contents of the books are true. On April 24, 2011, CAI used the internet and mail to distribute and publish a statement in which it described the contents of Greg Mortenson's books *Three Cups of Tea* and *Stones Into Schools* as "based on events that actually happened." Penguin employee, Carolyn Coleburn, used email, mail and/or wire to issue a false and misleading public statement on April 18, 2011, that Penguin planned to "carefully review" the veracity of Mortenson's books after media reports suggested they were falsified. Penguin already knew that the books were false and did not perform such review. Instead, it continued using its website to promote Mortenson's books as true. Finally, Mortenson has publically issued statements over email, the internet, including CAI's website, and in recorded interviews with the media that the contents of his book are true, commencing around April 2011, to present.

CAI and Penguin have used their websites to promote and market Mortenson's books from 2007 to present and to publicize the non-fiction book awards he has won. CAI used the internet to promote Mortenson's books and it obtained a portion of the proceeds from the sale of *Three Cups of Tea* and/or *Stones into Schools* from internet purchases made through Amazon.com, BooksAMillion.com, and/or Indiebound.com from 2006 to present.

CAI included advertisements for *Three Cups of Tea* and/or *Stones Into Schools* in its 2008, 2009 and 2010 publications entitled "Journey of Hope." These advertisements promoted Mortenson's books as true. In 2011 "Journey of

Hope,” which was published after media reports questioned the veracity of Mortenson's books, CAI specifically stated Mortenson's books were based on events that "actually happened." CAI used the postal service to mail copies of these publications to potential donors around the nation for the purposes of promoting the sale of the book and generating donations. It continues to advertise *Three Cups of Tea* and *Stones Into Schools* as true and nonfiction books by posting the above-mentioned publications on its website.

Some examples of this wire fraud are as follows:

http://us.penguin.com/static/rguides/us/three_cups_of_tea.html

&

<http://www.threecupsoftea.com/wp-includes/documents/3CTReadingGuide.pdf>

"*Three Cups of Tea* is the true story..."

<http://us.penguin.com/nf/Book/BookDisplay/0,,9780803730588,00.html>

"The villagers saved his life, and he vowed to return and build them a school."

<https://www.ikat.org/publications/2010JOH.pdf>

"NONFICTION PICTURE BOOK.... 'Listen to the Wind: The Story of Dr. Greg and *Three Cups of Tea*'"

<http://us.penguin.com/static/html/blogs/categories/penguin-group-usa-news?page=6>

"*Stones into Schools* debuts at #2 on the New York Times hardcover nonfiction list..."

http://us.penguin.com/static/pages/aboutus/pressrelease/penguinresult_s09.html

"III. Made Publishing History When Greg Mortenson Achieved Three Simultaneous #1 *New York Times* Bestsellers in One Week with Three Different Editions of *Three Cups of Tea*.

Three Cups of Tea was the longest running #1 *New York Times* nonfiction trade paperback and *Listen to the Wind* was the longest running #1 *New York Times* children's picture book of the year.

- *Three Cups of Tea* was successfully launched in hardcover by Viking and was a *New York*

Times hardcover nonfiction bestseller in 2006. The Penguin trade paperback edition, with more than 4.1 million copies in print since its initial publication in February 2007, has now been on The New York Times trade paperback bestseller list for over two years.

- *Three Cups of Tea: Young Readers Edition (Puffin) was a New York Times children's chapter book bestseller for eight months.*
- *Listen to the Wind (Dial) was a New York Times children's picture book bestseller for eight months.*”

<http://www.penniesforpeace.org/books/>

“*Three Cups of Tea* is at once an unforgettable adventure and the inspiring true story...”

<https://www.ikat.org/publications/2008JOH.pdf> (p. 36)

<https://www.ikat.org/publications/2009JOH.pdf> (p. 41)

<https://www.ikat.org/publications/2010JOH.pdf> (p. 41)

<http://us.penguingroup.com/nf/Book/BookDisplay/0,,9780143038252,00.html>

http://www.penguinspeakersbureau.com/speakers/page/greg_mortenson

<http://www.threecupsoftea.com/wp-includes/documents/3CTQA.pdf>

Promoting the non-fiction literary awards Mortenson's books have received.

<https://www.ikat.org/publications/2010JOH.pdf> (p. 41)

“This nonfiction book by Greg Mortenson...”

<https://www.ikat.org/publications/2011SpringJOH.pdf> (p. 11)

“*Three Cups of Tea* and *Stones Into Schools* are based on events that actually happened.”

<http://www.ikat.org/wp-includes/documents/gmresponse.pdf>

“Mortenson defends the truth of his books’ contents and CAI posts his statement on their website.”

<http://www.penguinbooks75.com/timeline/timeline.swf>

“**2007** – Published in Penguin on the same day in the U.S., Elizabeth Gilbert’s *Eat, Pray, Love* and Greg Mortenson’s *Three Cups of Tea*, these books go on to become two of the biggest non-fiction bestsellers in Penguin’s history.”

17. The Plaintiffs asserting this RICO claim, predicated on mail fraud and wire fraud, are not required to prove that every purchaser relied on the enterprise's alleged misrepresentations. There simply is no first-party reliance requirement under RICO. There is no question but that Plaintiffs did rely on such fraud and misrepresentations of the enterprise so as to show causation of their individual damages, but there is no requirement to show that every victim to the enterprise's mail fraud and wire fraud relied upon the fraud in order to recover. *Bridge v. Phoenix Bond and Indemnity Co.*, 553 U.S. 639, 128 S.Ct. 2131 (2008).

18. The enterprise's pattern of racketeering activity is comprised of an ongoing scheme to defraud and actually defrauding over a substantial period of time, exceeding eight years, and commencing in 2003, where the enterprise continued to represent that the contents of *Three Cups of Tea* and *Stones Into Schools* were true, nonfiction accounts of what really happened when, in fact, they were false.

19. Plaintiffs are persons injured in their business or property by reason of the enterprise's violations of 18 U.S.C. § 1962(c), as set forth above, and by the mail and wire fraud, which comprise the pattern of racketeering activity, and are entitled to recover the purchase prices paid for the books. In this regard, Plaintiffs have suffered concrete financial loss. This financial loss is the out-of-pocket loss, i.e., the purchase price, minus the value of the false and fraudulent "non-fiction" books, which is zero. The out-of-pocket measure of damages is the difference in the actual value between what the Plaintiffs paid and what they received and will restore the Plaintiffs to the financial position they enjoyed prior to the fraudulent transaction. Defendants are jointly and severally liable for payment to Plaintiffs of threefold the damages they sustained and the costs of suits, including a reasonable attorney's fee pursuant to 18 U.S.C. § 1964(c).

20. This Court has jurisdiction over this matter on the basis of “federal question” pursuant to 28 U.S.C. § 1331. Also, pursuant to 28 U.S.C. § 1332(d), jurisdiction in Federal District Court is appropriate because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, the class contains more than 100 members, greater than one-third of the class members are citizens of a state different from Defendants’, and the principle injuries resulting from Defendants’ unlawful conduct occurred outside Montana.

21. Venue was originally proper in Missoula County because the torts against Michelle Reinhart occurred there and because Michelle Reinhart, in her claim against Penguin, was a resident of Missoula County and the contract was to be performed in Missoula. Michelle Reinhart has been unable to continue as a Plaintiff in this case and, therefore, has been dropped as a Plaintiff. Therefore, venue is no longer proper in Missoula County or the Missoula Division of this Court, and the proper venue should be the Great Falls Division, where Dan Donovan is a resident and where the torts against him occurred in Cascade County and where the contracts were to be performed in Cascade County.

22. The enterprise violated 18 U.S.C. § 1962(c) and as a result, the Defendants are jointly and severally liable for the Plaintiffs’ damages consisting of three times the purchase price of the books, the costs of suits, including a reasonable attorney’s fee, pursuant to 18 U.S.C. § 1964(c).

COUNT II: RICO - VIOLATION OF 18 U.S.C. § 1962(d)

23. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-22 above.

24. The enterprise violated 18 U.S.C. § 1962(d) by unlawfully conspiring to violate the provisions of 18 U.S.C. § 1962(c), and as a result, Defendants are jointly and severally liable for the Plaintiffs’ damages consisting of three times the

purchase price of the books, the costs of suits, including a reasonable attorney's fee, pursuant to 18 U.S.C. § 1964(c).

**CLAIM FOR CLASS ACTION AGAINST MORTENSON, RELIN,
PENGUIN, CAI AND MC FOR FRAUD, DECEIT, BREACH OF
CONTRACT, BREACH OF IMPLIED CONTRACT, UNJUST
ENRICHMENT, CONSTRUCTIVE TRUST ACCOUNTING
AND INJUNCTIVE RELIEF.**

25. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-24 above.

26. Pursuant to 28 U.S.C. § 1332(d), jurisdiction in Federal District Court is appropriate because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, the class contains more than 100 members, greater than one-third of the class members are citizens of a state different from Defendants', and the principle injuries resulting from Defendants' unlawful conduct occurred outside Montana.

27. Venue was originally proper in Missoula County because the torts against Michelle Reinhart occurred there and because Michelle Reinhart, in her claim against Penguin, was a resident of Missoula County and the contract was to be performed in Missoula. Michelle Reinhart has been unable to continue as a Plaintiff in this case and, therefore, has been dropped as a Plaintiff. Therefore, venue is no longer proper in Missoula County or the Missoula Division of this Court, and the proper venue should be the Great Falls Division, where Dan Donovan is a resident and where the torts against him occurred in Cascade County and where the contracts were to be performed in Cascade County.

28. In 1993, Mortenson went on a trip where he climbed in the mountains near K-2 in Pakistan. Sometime after he returned from that trip, he, Relin, Penguin, CAI, and MC hatched a scheme, whereby they thought they could make money for themselves by the sale of nonfiction books and raise money for a charity. This scheme involved an intricate plan to fabricate facts to make

Mortenson into a false hero and doing a vast number of courageous things to help unfortunate children in Pakistan and Afghanistan. As Mortenson and the other Defendants fabricated the facts, they systematically hid the truth of the matters from the public and from a number of directors of the Board of Directors of CAI and certain employees of CAI. In this regard, Mortenson was not truthful about his financial dealings with CAI and was not truthful about a number of matters, including, but not limited to, his financial dealings with CAI, the number of schools that Mortenson had built, the number of children he had helped, etc. All Defendants then proceeded to cover up a large number of these falsehoods over a period commencing in approximately 2003.

29. Mortenson, Relin, Penguin and/or CAI have repeatedly fabricated material details in the books *Three Cups of Tea* and *Stones into Schools*. The purpose of these fabrications was to induce unsuspecting individuals to purchase these books and feel good about Mortenson, as a humanitarian working for the sole benefit of children. These fabrications have generated significant sums of money for Mortenson, Relin, Penguin, CAI and MC in the form of book sales, personal fame for Mortenson, and other financial benefits to Mortenson and CAI regarding the charitable work.

30. Mortenson and Relin wrote the book *Three Cups of Tea* in 2006 and claim to have sold over 4 million copies, many of which were purchased by CAI, the charity controlled by Mortenson, to give extra royalties to Mortenson, Relin, Penguin and MC, and to keep the book on the bestseller list. Mortenson also wrote the book *Stones into Schools* in 2009 and sold a large number of copies.

31. CAI, Relin and Penguin knew that the two books contained falsehoods, or should have known. CAI, Penguin and Relin knew more books

would be sold if the stories were represented to be true. Penguin, CAI and Relin specifically profited from the misrepresentations that the books were true.

32. These books purport to be true accounts of how Mortenson transitioned from a mountain-climber to an astonishingly brave, selfless humanitarian building schools in Pakistan and Afghanistan for the purposes of educating girls. Many of the representations made in the books are false.

33. Plaintiffs, George and Susie Pfau, purchased *Three Cups of Tea* for approximately \$15 and *Stones Into Schools* for approximately \$15 because it had been represented to them that the stories were true. Deborah Netter purchased *Three Cups of Tea* for approximately \$15 because it had been represented to her that the story was true. Dan Donovan purchased the book *Stones Into Schools* and paid approximately \$15 because it was represented to him that the book was true.

COUNT III: BREACH OF CONTRACT

34. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-33 above.

35. Mortenson, Relin and Penguin offered *Three Cups of Tea* and *Stones Into Schools* to the Plaintiffs and the class as nonfiction and true stories of Mortenson's activities. The Plaintiffs and the class accepted the Defendants' offer and paid for, and received, the aforesaid books. However, many of Mortenson's, Relin's and Penguin's representations made in the books were false, misleading, deceptive, and contrary to the agreement as alleged herein.

36. As a result, Mortenson, Relin and Penguin are jointly and severally liable for breach of contract and should disgorge the purchase prices, with interest thereon to the Plaintiffs and the class.

COUNT IV: BREACH OF IMPLIED CONTRACT

37. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-36 above.

38. Count IV of this class action complaint is pled in the alternative to Count III.

39. By writing, publishing, advertising, marketing, and promoting *Three Cups of Tea* and *Stones Into Schools* as nonfiction and true stories, the characteristics of said books became an implied contractual condition of sale upon the purchase thereof by the Plaintiffs and the class.

40. Mortenson, Relin and Penguin breached their implied contracts with Plaintiffs and the class by selling Plaintiffs and the class books that were in fact not true, accurate, and genuine stories of Mortenson's life experiences following his failed attempt at climbing K-2, but in actuality were pure fiction.

41. As a direct and proximate result of Mortenson, Relin and Penguin's aforesaid breach and conduct, Plaintiffs and the class have been damaged and Mortenson, Relin and Penguin are jointly and severally liable for such damages.

COUNT V: FRAUD

42. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-41 above.

43. In an effort to entice people by Mortenson's self-proclaimed hero status and humanitarianism and to buy the two books, Mortenson, Relin, Penguin, CAI and MC have consistently maintained that the statements in the books are true. The books contain many fabrications which Mortenson, Penguin and CAI have repeated publically on several occasions.

44. Defendants committed actual fraud against Plaintiffs by inducing them to accept Mortenson's self-proclaimed hero status and humanitarian qualities and to purchase the books that were represented to be true works, when, in fact, the books contained numerous fabrications, as set forth above. The elements of actual fraud have been satisfied because (1) Defendants represented to Plaintiffs that the books were true accounts based on events which actually took place; (2)

The representations were false in that many of the statements were falsified; (3) The representations were material because they pertain to integral aspects of the books' narrative, which led Plaintiffs to believe that they were purchasing books based on factual information from a hero and selfless humanitarian; (4) Defendants knew the representations were false because they described in the books events involving Mortenson that never occurred; (5) By representing that these books were based on fact, Defendants intended Plaintiffs and the class to rely upon these misrepresentations and to purchase the books with the mistaken belief that they were true; (6) Plaintiffs and the class were completely ignorant to the fact that Defendants included fabrications within the books; (7) Plaintiffs and the class relied upon the truth of the representations to their detriment by purchasing the books that they otherwise would not have purchased had they known of the falsified information; (8) It was reasonable for Plaintiffs and the class to rely upon Defendants' representations because Mortenson and Relin were world renowned authors, CAI, a renowned charity, and Penguin, a well-known publisher. When Defendants represented that the books were factual, Plaintiffs had every right to rely upon those representations; (9) Plaintiffs and the class were damaged by their reliance on Defendant's false representations in the amount of the purchase prices of the books, plus interest. Defendants are jointly and severally liable to Plaintiffs for all such damages.

COUNT VI: DECEIT

45. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-44 above.

46. Defendants are jointly and severally liable to Plaintiffs for the books' purchase prices for the tort of deceit because they willfully deceived Plaintiffs with the intent to induce Plaintiffs to accept Mortenson's hero status and humanitarianism and to purchase the books.

COUNT VII: UNJUST ENRICHMENT

47. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-46 above.

48. The conduct of Defendants has resulted in their receiving unjust enrichment to the detriment of Plaintiffs, and Defendants should be jointly and severally forced to disgorge the books' purchase prices, plus interest.

COUNT VIII: PENGUIN LIABLE AS PRINCIPAL

49. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-48 above.

50. Penguin is liable for all of the conduct of Mortenson, Relin, CAI and MC, as it was their principal and they were acting within the scope of their agency relationship at all pertinent times.

COUNT IX: PUNITIVE DAMAGES

51. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-50 above.

52. The conduct of Defendants constitutes malice and/or other egregious conduct for which a jury should award punitive damages in an amount it determines appropriate under the circumstances.

COUNT X: UNJUST ENRICHMENT BY MC

53. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-52 above.

54. MC has been unjustly enriched to the detriment of the Plaintiffs and the class by receiving any of these funds from Mortenson's book sales and should be forced to disgorge all such funds plus interest.

COUNT XI: ACCOUNTING AND INJUNCTIVE RELIEF

55. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-54 above.

56. Defendants should account for all money improperly collected from the wrongful sales of the books, should have a constructive trust imposed on said monies until further order of the Court, should disgorge all profits collected from

the sale of the books, plus interest, and should be enjoined from disbursing any of the monies received from said sales.

57. The true monetary amounts garnered from Defendants' wrongful conduct is only ascertainable from a detailed review of Defendants' accounting records and finances, and Plaintiffs and the class would otherwise be unable to determine the actual damages suffered and/or amounts unjustly retained by Defendants. Plaintiffs have been irreparably harmed thereby and Plaintiffs have no other adequate remedy at law.

58. Based upon the facts alleged herein, Plaintiffs have a likelihood of success on the merits and the hardships are balanced in their favor. Defendants should also be enjoined from continuing to market said books as pieces of nonfiction and/or as true stories, so as to prevent future losses by consumers. No remedy at law is otherwise available to remedy this pending harm to said consumers.

COUNT XII: CLASS ACTION ALLEGATIONS

59. Plaintiffs reallege each of the allegations set forth in ¶¶ 1-58 above.

60. Plaintiffs, George and Suzie Pfau and Deborah Netter, as purchasers of *Three Cups of Tea*, and Dan Donovan as a purchaser of *Stones Into Schools*, are representative parties for the class of other individuals who purchased either of Mortenson's books, and have standing to bring this class action.

61. Based on the RICO violations, breach of contract, breach of implied contract, fraud, and deceit, by Defendants in dealing with every book purchaser, Defendants have been unjustly enriched by the purchase prices paid. A constructive trust should be created into which all of the funds paid for the books should flow. If no constructive trust is established to receive these funds, and Defendants are permitted to retain the funds, they will be unjustly enriched. The

funds in the constructive trust should then be refunded to the Plaintiffs and the class and any unclaimed balance thereof transferred to an appropriate third-party institution to be selected by counsel for the Plaintiffs, with approval by the Court, for the humanitarian purposes originally stated by Defendants, or such other purposes as the Court deems appropriate.

62. This class is so numerous that joinder of all members is impractical and, in this regard, Plaintiffs have no way of determining or joining all members of this class unless this Court certifies this class. There are questions of law and questions of fact that are common to the class because Defendants' fabrications contained in the books have resulted in a vast number of people purchasing the books. The claims of Plaintiffs and the other class members, and the defenses of Defendants are typical, if not identical, in all such claims being asserted on behalf of the class. Finally, the Plaintiffs and their counsel can, and will, fairly and adequately protect the interests of the class.

63. This proposed class-action should be certified because the questions of law and/or of fact common to class members predominate over any questions affecting only individual members and there are almost no questions of law or fact that only affect individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. As a practical matter, there is no other available method. In this regard, the Plaintiffs, bringing this class action advise the Court:

(A) Plaintiffs are in a position to have this issue resolved for all class members who either purchased the books and for all class members who have been damaged by Defendants' RICO violations, breach of contract, breach of implied contract, fraud, deceit, and unjust enrichment. These other class members

do not have the knowledge, resources, legal expertise, or time to bring these claims individually in separate actions.

(B) When the complaint was originally filed, and at the present time, to the knowledge of Plaintiffs, there were no other cases and are no other cases pending against Defendants concerning the controversy which has already been begun by Plaintiffs individually and on behalf of the class members in this proposed class action.

(C) The desirability of concentrating the litigation of all of these claims in this particular forum before this particular Court under these circumstances, where the entire case turns on the common scheme of RICO violations, breach of contract, breach of implied contract, fraud, deceit, and unjust enrichment, employed by Defendants is undeniable.

(D) Although all class actions have certain difficulties, representative Plaintiffs and their counsel feel these difficulties will be much more easily managed through a class action proceeding than through the nearly impossible procedure of individual prosecutions.

64. Pursuant to Rule 23(b)(3), Fed.R.Civ.P., Plaintiffs bring this class action on behalf of themselves and all members of the following class: All consumers throughout the United States who purchased and paid for *Three Cups of Tea* or *Stones Into Schools* in any form or media (e.g., hardcover, paperback, audio book, audio download, e-book download) from January 1, 2006, to the date of judgment. Excluded from the class are the Defendants, the Defendants' agents, subsidiaries, parents, successors, predecessors and any entity in which the Defendants or their parents have a controlling interest and their current and former employees, officers and directors, the judge or magistrate judge to whom this case is assigned and the judge or magistrate judge's immediate family, the persons who

execute and file a timely request for exclusion and the legal representatives' successors or assigns of any such excluded person.

65. On information and belief, millions of individuals have been adversely affected by the Defendants' fabrications.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court, as early as practicable, enter an order as follows:

- A. Certifying this matter as a class action for the disgorgement and payment of both book purchases, interest, trebled under the RICO Counts I and II, and Plaintiffs' reasonable attorneys' fees under Counts I and II.
- B. Certifying this matter as a class action for the disgorgement and payment of both book purchases and interest, pursuant to Counts III through XI.
- C. Order that the Defendants place all proceeds from the sale and/or marketing of *Three Cups of Tea* and *Stones Into Schools* into a constructive trust for the benefit of Plaintiffs and the class;
- D. Order that Defendants be enjoined to stop all advertising, marketing, promoting, and/or sales of *Three Cups of Tea* and *Stones Into Schools* that refers to the books as being nonfiction and/or true stories;
- E. Place any funds received by MC from book purchases into a constructive trust, with the funds to be used as set forth above, pursuant to Rule 23(b)(3), F.R.C.P.;
- F. Order that Defendants complete an accounting of all wrongfully retained proceeds;

- G. Award reasonable attorneys' fees and costs, as a part of the class action, as compared to the statutory attorney fees allowed under RICO;
- H. Appoint a trustee for the constructive trust, and a claims administrator as the Court deems appropriate;
- I. Direct such notice to the class, pursuant to F.R.Civ.P. 23 (c)(2)(B), Fed.R.Civ.P. as the Court deems appropriate.
- J. Award punitive damages;
- K. Appoint the named Plaintiffs herein as class representatives;
- L. Appoint Plaintiffs' counsel, Alexander (Zander) Blewett, III, and Larry D. Drury, as co-lead class counsel, and Anders Blewett and Robert A. Langendorf, as class counsel; and
- M. Award such other damages and equitable relief to Plaintiffs and the class as the Court deems appropriate.

Plaintiffs demand trial by jury on the class action claim for all issues which are triable by jury.

DATED this 12th day of January, 2012.

HOYT & BLEWETT PLLC

/s/ Alexander Blewett, III
Alexander (Zander) Blewett, III
Anders Blewett
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand that all issues be tried before a jury.

DATED this 12th day of January, 2012.

HOYT & BLEWETT PLLC

/s/ Alexander Blewett, III
Alexander (Zander) Blewett, III
Anders Blewett
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of January, 2012, a copy of the foregoing document was served on the following persons by the following means:

| | |
|----------------------|----------------------------|
| <u>1,2,3,4,5,6,7</u> | CM/ECF |
| _____ | Hand Delivery |
| _____ | Mail |
| _____ | Overnight Delivery Service |
| _____ | Fax |
| _____ | E-Mail |

- | | |
|---|--|
| <p>1. Clerk, U.S. District Court</p> <p>2. John M. Kauffman Kasting, Kauffman & Mersen, P.C. 716 S. 20th Avenue, Suite 1010 Bozeman, MT 59718 Attorneys for Def. Mortenson</p> <p>3. Kevin C. Maclay Todd E. Phillips Caplin & Drysdale, Chartered One Thomas Circle, NW, Ste. 1100 Washington, D.C. 20005 Co-Counsel for Def. Mortenson</p> <p>4. Jonathan M. Herman Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019-6119 Attorneys for Def. Penguin</p> | <p>5. F. Matthew Ralph Dorsey & Whitney LLP Suite 1500, 50 S. Sixth Street Minneapolis, MN 55402-1498 Attorneys for Def. Penguin</p> <p>6. Charles E. Hansberry Elena J. Zlatnik Garlington, Lohn & Robinson, PLLP P.O. Box 7909 Missoula, MT 59807-7909 Attorneys for Def. David Oliver Relin</p> <p>7. Sonia A. Montalbano Elliott, Ostrander & Preston, P.C. Union Bank of California Tower 707 SW Washington St., Ste. 1500 Portland, OR 97205 Attorneys for Def. David Oliver Relin</p> |
|---|--|

HOYT & BLEWETT PLLC

/s/ Alexander Blewett, III
Alexander (Zander) Blewett, III
Anders Blewett
Attorneys for Plaintiffs