No. 25-_____

In the Supreme Court of the United States

FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL; THE UNIVERSAL PEACE FEDERATION; AND THE HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY (JAPAN),

Petitioners,

v.

HYUN JIN MOON; UNIFICATION CHURCH INTERNATIONAL; MICHAEL SOMMER; JINMAN KWAK; YOUNGJUN KIM; AND RICHARD J. PEREA

On Petition for a Writ of Certiorari to the Court of Appeals of the District of Columbia

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The trial court found that Petitioners, including the Unification Church, are the victims of a $3 billion embezzlement orchestrated by Respondents, a former church member and his allies, who fraudulently seized the Church's financial support organization and disbursed its assets. Leaving the Church remediless, the D.C. Court of Appeals reversed on First Amendment "entanglement" grounds, holding that neutral principles could not resolve the dispute and then refusing to decide who led the Church when the assets were stolen. The result is a rule effectively depriving churches of any remedy in property disputes if the usurper simply claims to be the church's leader.

That wrong conclusion conflicts with this Court's precedents, falls on the wrong side of a substantial state court split, and undermines church autonomy. This Court has long required courts to identify and defer to church authorities on issues of polity, including in property disputes. *Watson* v. *Jones*, 80 U.S. 679, 727 (1871). A sharply divided Court later authorized deciding disputes through "neutral principles of law" rather than deference. *Jones* v. *Wolf*, 443 U.S. 595, 602-603 (1979). Deference to church authorities, however, remained the rule if no neutral principles resolved the dispute. *Id.* at 604.

The question presented is:

Where necessary to resolve a church-property dispute, does the First Amendment prohibit courts from examining church-related facts to determine who leads the church?

PARTIES TO THE PROCEEDING AND RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioners are the Family Federation for World Peace and Unification International ("Family Federation," "Unification Church," or "Church"); The Universal Peace Federation; and The Holy Spirit Association for the Unification of World Christianity (Japan). No parent or publicly held companies owns ten percent or more of Petitioners.

Respondents are Unification Church International ("UCI"); Hyun Jin ("Preston") Moon; Michael Sommer; JinMan Kwak; Youngjun Kim; and Richard J. Perea.

RELATED PROCEEDINGS

This case is directly related to these proceedings in the District of Columbia Superior Court, the Court of Appeals for the District of Columbia, and this Court:

Family Fed'n for World Peace & Unification Int'l v. *Moon,* No. 25A329 (U.S. Sept. 22, 2025) (granting application for extension of time);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, Nos. 23-CV-0836, 23-CV-0837, 23-CV-0838, 338 A.3d 10 (D.C. July 3, 2025) (App. A) (opinion affirming final judgment to Respondents);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B (D.C. Super. Ct. Aug. 28, 2023) (App. B) (order granting post-remand motion to dismiss for lack of standing);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B, 2023 WL 5286266 (D.C. Super. Ct. Aug. 11, 2023) (order vacating preliminary injunction);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B, 2023 WL 5286264 (D.C. Super. Ct. July 6, 2023) (App. C) (order granting motion for judgment on the pleadings);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B, 2023 WL 5286266 (D.C. Super. Ct. June 15, 2023) (App. D) (order granting motion for summary judgment on Counts IV, V, and VI);

Moon v. *Family Fed'n for World Peace & Unification Int'l*, Nos. 20-CV-0714, 20-CV-0715, 281 A.3d 46 (D.C. Aug. 25, 2022) (App. E) (opinion reversing summary judgment and remedies order);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B, 2020 WL 13838677 (D.C. Super. Ct. Dec. 4, 2020) (App. F) (order partially granting Petitioners' remedies motion);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B (D.C. Super. Ct. Mar. 28, 2019) (App. G) (amended omnibus order granting Petitioners partial summary judgment);

Moon v. *Family Fed'n for World Peace & Unification Int'l*, Nos. 16-CV-881, 17-CV-23 (D.C. June 8, 2018) (memorandum opinion affirming preliminary injunction against Respondents);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B (D.C. Super. Ct. Dec. 23, 2016) (order denying motion for reconsideration and stay of injunction);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B (D.C. Super. Ct. Dec. 23, 2016) (second amended preliminary-injunction order);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B (D.C. Super. Ct. July 22, 2016) (memorandum opinion granting preliminary injunction);

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 14-CV-94, 129 A.3d 234 (D.C. Dec. 24, 2015) (opinion reversing order granting motion to dismiss); and

Family Fed'n for World Peace & Unification Int'l v. *Moon*, No. 2011 CA 003721 B, 2012 WL 3070965 (D.C. Super. Ct. June 19, 2012) (order granting motion to dismiss).

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INTRODUCTION

This case presents another example of lower courts' over-reading the First Amendment's Establishment Clause to undermine other rights protected by that same Amendment. *E.g., Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022) (collecting cases). It arises against the backdrop of over a decade of litigation involving billions of dollars and a lower court decision that exacerbates the challenges of church-property disputes by depriving churches of both a judicial forum and any remedy.

The case concerns the Unification Church's authority over an entity called Unification Church International ("UCI"), a D.C. financial support non-profit organization that the Church created to hold some of its most valuable assets, including assets donated by the Church's members. For the first 30 years of UCI's existence, there was no question that the Church had such authority. But in 2009, UCI's directors defied the Church's founder and leader, Reverend Sun Myung Moon, by secretly transferring all but a sliver of UCI's assets to a non-religious entity with no obligations to the Church. That entity then funneled most assets (worth ~$3 billion) to opaque, offshore jurisdictions known for money-laundering. To recover its stolen assets, the Church, under Reverend Moon's leadership, sued.

This Court has authorized two paths for resolving such disputes. Consistent with the Free Exercise Clause, courts can either defer to a church's governing religious body, *Watson* v. *Jones*, 80 U.S. 679, 733-734 (1871), or they can apply neutral principles of law,

Jones v. *Wolf*, 443 U.S. 595, 602-603 (1979). Since *Jones*, most states and the District of Columbia have adopted neutral principles as the preferred method. *Jones* clarified, though, that if a court cannot resolve such a dispute through neutral principles, "the court *must* defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.* at 604 (emphasis added and citation omitted).

However, while *Jones* promised to protect religious organizations both in states that defer first and in states that turn to deference only after trying to apply neutral principles, the D.C. Court of Appeals and, at a minimum, the New York Court of Appeals, ignore that promise. In this case, the Court of Appeals did so on the theory that the ecclesiastical-abstention doctrine, partially grounded in the Establishment Clause's prohibition of entanglement, *forbids* courts from undertaking the modest factual analysis necessary to identify the Church's leader. By contrast, at least six other state supreme courts *will* answer that question, correctly recognizing that a court cannot defer to an authority that it cannot identify.

If abstention forbids judicial inquiry into a religion's leadership, it will allow bad actors to harm religious groups with impunity—simply by claiming to contest the organization's leadership. That rule cannot be squared with the First Amendment. Its application here thwarted the Church's entitlement to judicial resolution of the harms it suffered—including by deference to Church leadership if neutral principles could not resolve the dispute. To prevent these harms and resolve the split, the Court should grant review.

OPINIONS BELOW

The Court of Appeals' opinion affirming final judgment is reported at 338 A.3d 10 and reproduced at Appendix A, App.1a-54a.

The superior court's order dismissing all remaining claims is not reported but is reproduced at Appendix B, App.55a-113a.

The superior court's order granting judgment on the pleadings to certain individual respondents is not reported but is available at 2023 WL 5286264 and reproduced at Appendix C, App.114a-149a.

The superior court's post-remand summary-judgment order is not reported but is available at 2023 WL 5286266 and reproduced at Appendix D, App.150a-178a.

The Court of Appeals' interlocutory opinion is reported at 281 A.3d 46 and reproduced at Appendix E, App.179a-227a.

The superior court's remedies order is not reported but is available at 2020 WL 13838677 and reproduced at Appendix F, App.228a-351a.

The superior court's summary-judgment opinion is not reported but is reproduced at Appendix G, App.352a-409a.

JURISDICTION

The Court of Appeals' opinion affirming final judgment as to all parties and all claims issued on July 3, 2025. The Chief Justice granted Petitioners' timely request for a 60-day extension to file this petition to

November 30, 2025. No. 25A329 (Sept. 22, 2025). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

In relevant part, the First Amendment provides that "Congress shall make no law respecting an establishment of religion[] or prohibiting the free exercise thereof[.]" U.S. Const. amend. I.

STATEMENT

A. Legal Background

For over 150 years, this Court cautioned courts not to second-guess the internal structures and decisions of religious organizations in a doctrine known as the ecclesiastical-abstention doctrine.

1. The Court first articulated the doctrine in *Watson*, 80 U.S. 679. *Watson* established a "rule of action" to "govern the civil courts": If "questions of *** ecclesiastical rule, custom, or law have been decided by the highest of *** church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them[.]" *Id.* at 727.

The Court expounded the doctrine further in *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952). That case involved a dispute about the "right to the use and occupancy of a church." *Id.* at 95. On one side was the head of the American churches. *Id.* at 95-96. On the other was the Russian Orthodox Church in Moscow. *Ibid.* To resolve the property dispute, the New York Court of Appeals "determined that the prelate

appointed by the Moscow ecclesiastical authorities was not entitled to the Cathedral and directed the entry of a judgment that [the American entities] be reinvested with the possession and administration" of the church. *Id.* at 97. This Court reversed because the First Amendment forbade the forced transfer of "control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church." *Id.* at 107.

Consistent with *Watson*, the Court explained that, under the Free Exercise Clause, religious organizations have "an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 116. Rather than abstain from deciding which ecclesiastical authority was entitled to deference, the Court engaged in a factual inquiry of the "record before [it]," including the history of the Russian Orthodox Church, to determine who led the church. *Id.* at 100-108, 120.

The Court reinforced this approach in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, a case involving "a church property dispute which arose when two local churches withdrew from a hierarchical general church organization." 393 U.S. 440, 441 (1969). The Court explained that "[c]ivil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property." *Id.* at 449. Rather, the Court upheld deference to the governing religious body while recognizing the possibility that "neutral principles of law, developed

for use in all property disputes" could play a role. *Id.* at 447-449.

The next case involving a church-property dispute, *Serbian Eastern Orthodox Diocese for the United States of America & Canada* v. *Milivojevich*, involved a dispute over who was a church's "true" bishop with control over local church assets. 426 U.S. 696, 698, 703, 707 (1976). The lower courts invalidated the Diocese's decision to defrock a bishop. *Id.* at 708. This Court reversed. It explained that, in violation of the Free Exercise Clause, the state court had fatally "reject[ed] *** the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitute[d] its own inquiry into church polity and resolutions based thereon of those disputes." *Ibid.*

This Court's last decision to address the standard for resolving disputes over control of church assets was *Jones*, 443 U.S. 595. *Jones* "involve[d] a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization." *Id.* at 597. For the first time, the Court authorized the "neutral principles of law" approach. *Id.* at 602. Under this alternative approach, the Court concluded, a court could "settl[e] a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." *Id.* at 603 (citation omitted).

Yet *Jones* did not abandon this Court's historical deference approach. Observing that "the application of the neutral-principles approach is [not] wholly free of difficulty," the Court retained deference as a constitutional imperative where attempting to apply neutral principles "would require the civil court to resolve a religious controversy." *Id.* at 604. In such cases, under the Free Exercise Clause, the "court *must* defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Ibid.* (emphasis added) (cleaned up).

Justice Powell, joined by Chief Justice Burger and Justices Stewart and White, dissented. Justice Powell predicted that this new standard would "make the decision of [church-property] cases by civil courts more difficult" than the Court's longstanding deference approach. *Id.* at 610 (Powell, J., dissenting). In the dissenters' view, "this new approach" not only "depart[ed] from long-established precedent," but "inevitably w[ould] increase the involvement of civil courts in church controversies." *Id.* at 611. To those four justices, the only inquiry open to courts is to "focus directly on ascertaining, and then following, the decision made within the structure of church governance." *Id.* at 618. That was consistent with those Justices' view that "the first question" that courts must resolve in a "dispute over church property" was *where* "within the religious association the rules of polity, accepted by its members before the schism, had placed ultimate authority over the use of the church property." *Id.* at 618-619. That inquiry was "both limited and clear: the civil court must determine whether the local church remains autonomous, so that

its members have unreviewable authority to withdraw it (and its property) from the general church, or whether the local church is inseparably integrated into and subordinate to the general church." *Id.* at 620.

All nine Justices in *Jones* thus agreed that deference remained constitutionally required in some church disputes. The underlying premise of that conclusion was that courts *could,* consistent with the First Amendment, determine the church authority entitled to deference.

2. Still, the confusion following *Jones*' adoption of a neutral-principles option in cases implicating a doctrinal dispute has led to what the Tennessee Supreme Court described as "massive inconsistency *** among states" adopting the neutral-principles approach resulting in "different results given the same facts, depending on how the court in question applies the standard." *Church of God in Christ, Inc.* v. *L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 168 (Tenn. 2017) (cleaned up). Even courts that apply neutral principles generally recognize that, if the court concludes that "no neutral principles of law exist to resolve plaintiffs' claims, the courts must defer to the church's internal governing body." *Harris* v. *Matthews*, 643 S.E.2d 566, 571 (N.C. 2007). Logically, before a court can defer to a church's authority, it must be allowed to identify that authority.

B. Factual Background

Here, that authority was the Reverend Sun Myung Moon, who founded The Holy Spirit Association for the Unification of World Christianity, later renamed Family Federation, and known as the Unification

Church. App.232a-233a.[1] Reverend Moon appointed his son Preston as vice president of Family Federation in 1998. App.237a. But Reverend Moon remained the Church's hierarchical leader until his passing in 2012. App.202a, 232a-233a, 367a, 371a-373a.

Reverend Moon directed UCI's formation as a nonprofit corporation to manage certain assets donated to support Church activities. App.253a. UCI's 1980 Articles of Incorporation identified the Unification Church or the Divine Principle—a text setting forth Reverend Moon's teachings—in its five listed purposes. App.186a-188a. In 2006, Reverend Moon directed the appointment of Preston as UCI's president and chairman. App.190a, 244a, 246a.

In a 2008 document called Report to Parents, Preston advocated a fundamental change in the structure and focus of the Church from a hierarchical denominational church to an interdenominational peace movement. App.190a-191a. In his report, Preston did not claim to be the Church's leader. MoonIV.JA.0842-0856. Instead, Preston's report criticized the church's traditional hierarchy and central theology.

For example, Preston charged his father with permitting the Church to "copy the failing methods and structures of the mainline Christian Churches" by allowing "church leaders" to push followers "to be

[1] Where possible, the factual background refers to the appendix filed with this petition. References to the Joint Appendices in the court below are styled as either MoonIII.JA.[page] or MoonIV.JA.[page]. *Moon III* refers to the summary-judgment appeal, and *Moon IV* refers to the appeal after final judgment.

members of their 'church congregations'" and then focusing not on serving the world but on "minist[ering] to [those] congregations." MoonIV.JA.0848-0849. This resulted, Preston wrote, in the world's seeing the Church as "a church," with the "Divine Principle [its] particular theology." MoonIV.JA.0848. Given these criticisms, Preston petitioned his father to elevate him to be the head of the Church, thereby seeking Reverend Moon's consent to seize absolute authority over the Family Federation, all related "providential organizations," and all for-profit businesses. MoonIV.JA.0850-0852, 2361-2362.

Yet Preston acknowledged that Reverend Moon led the Church, referencing in the 2008 report "the responsibilities Parents have entrusted to [him]," his efforts to "respond to Parents' Will for FFWPU," and his attempts to act "[a]s Father [Reverend Moon] directed." MoonIII.JA.3683-3685. In petitioning his father for changes, Preston necessarily recognized that Reverend Moon had sole authority to make the requested changes to the Church's polity, governance, and theology, MoonIV.JA.0843-0856; MoonIII.JA. 1335-1337, and that Reverend Moon was the "central person in God's providence" and the "true owner of God's dream." MoonIV.JA.0846.

Reverend Moon rejected both Preston's radical interpretation of what the Church should become and his desire to be elevated to the Church's head. App.246a, 250a-251a. He thus directed Preston "to step down from UCI," but Preston refused. App.246a. Later, Reverend Moon again directed Preston to resign his positions, but Preston again refused. App.250a-251a. This led one Church affiliate to vote to remove

Preston from its board for "disobey[ing] instructions from Reverend Moon and from the Church hierarchy." App.252a-253a.

Appalled at the prospect of losing the "power and money" that came with his position, App.313a, Preston departed the Unification Church and embarked on what he called, "asymmetrical warfare" like "the terrorists do." App.247a. After his departure, he created "his own rival organization" to the Church, later renamed the Family Peace Association ("FPA"). App.289a; MoonIV.JA.1220. He later claimed that, "now that [he'd] created FPA, there's no way in hell [he] will go back to UC." MoonIV.JA.0630. He claimed that FPA is what the "Family Federation for World Peace should have been," and said he would no longer have anything to do with that organization. App.289a-290a.

As part of his departure, Preston colluded with other disaffected allies in a "calculated effort to execute an insidious plan," App.330a, to divert the Church's assets for their own purposes. Preston replaced UCI's board—in violation of D.C. nonprofit rules and norms—with individuals who were "loyal to him rather than to the Unification Church leadership." App.244a-245a, 291a. The new board stopped sending money to Church-approved organizations and caused UCI to give its "most valuable assets" away to a Swiss entity, Kingdom Investments Foundation ("KIF"). App.250a, 313a.

Under Swiss law, KIF could not have religious affiliations. App.267a. So, for KIF to withstand Swiss scrutiny, Preston amended UCI's articles to eliminate

affiliation with any specific religious organization. App.255a-256a. In the process, Respondents deleted all references to the Unification Church or Churches, the Divine Principle, and even God. App.255a.

KIF's Deed of Foundation similarly excluded reference to the Unification Church, Unification theology, Reverend Moon, or even Respondent-controlled UCI. App.266a-267a. Instead, KIF's purposes were to further "interfaith understanding," promote "harmony among all," and teach "ethical principles." App.200a, 267a.[2]

UCI's board approved the KIF transfer without an appraisal, a market valuation of the assets or legal advice on whether the transfer violated fiduciary duties. App.274a, 295a, 319a. Under a donation agreement, UCI agreed to "irrevocably transfer" all but a sliver of UCI's assets, including the largest income-generating properties, known as Central City, and a billion-dollar-plus development known as Parc1. App.268a. KIF then diverted most of the assets to entities in opaque offshore jurisdictions: Labuan, the Caymans, and Anguilla. App.295a; MoonIV.JA.1300-1302, 1362-1364.

Two years after the KIF transfer, Central City was sold for nearly $1 billion. App.337a. Respondents claimed they had no idea what happened to the proceeds of this sale, took no action to find out, and eschewed all oversight of the assets. App.315a-318a, 324a. Respondents further testified they had no

[2] Invoking religious abstention, Respondents took a different position about KIF's and UCI's religious status in litigation. See, *e.g.*, App.46a; MoonIV.JA.0479.

visibility into KIF's operations and never even determined whether KIF complied with the one-year "donation" agreement. App.284a-285a, 294a. In his testimony, Preston denied controlling KIF "because of this litigation." MoonIV.JA.2250-2251, 2767-2768. He also denied speaking with any director or officer of KIF about KIF's work. MoonIV.JA.2768-2769. Worse still, the KIF deed created no fiduciary duty to UCI. App.284a.

The KIF transfer was unprecedented and highly unusual. UCI historically donated cash, not assets—and certainly not its *largest* assets. App.266a. Further, despite deviating from decades of tradition, Respondents concealed this material transfer from Reverend Moon and even UCI's own general counsel. See App.316a-317a. And Respondents offered only business (not religious) reasons for the KIF transfer. App.200a, 283a.

C. Procedural Background

At Reverend Moon's direction, Petitioners sued UCI and its rogue board to recover the Church's assets. Among other things, Petitioners claimed UCI's directors breached their fiduciary duty by amending UCI's articles and diverting UCI assets from their longstanding purpose of supporting the Unification Church.

1. Shortly after Reverend Moon's death, Respondents sought judgment on the pleadings, arguing that ecclesiastical abstention barred adjudication of Petitioners' claims. The trial court then dismissed the Complaint on religious-abstention grounds. App.202a. The Court of Appeals reversed and

remanded, holding the First Amendment did *not* bar adjudication of the claims as pleaded. App.202a. Thereafter, the trial court preliminarily enjoined Respondents from dissipating UCI's remaining assets. App.203a. The Court of Appeals affirmed, again rejecting Respondents' abstention argument because "there were no theological questions for the court to resolve." App.203a (cleaned up).

The trial court later granted Petitioners' motion for summary judgment in part, once again rejecting Respondents' argument that the First Amendment barred adjudication of Petitioners' claims. See App.366a-370a.

Then, following a month-long evidentiary hearing on remedies, the trial court (in its Remedies Order) ordered the individual Respondents removed from UCI's board and imposed on UCI's directors a surcharge of over $500 million. MoonIII.JA.0409. The trial court concluded that it *could* resolve the case on neutral principles without "ma[king] any church governance decisions" or "or interpret[ing] religious terminology." MoonIII.JA.0417.

The trial court also concluded that the Church was hierarchical and led by Reverend Moon at the time of the challenged actions, and that it could reach that conclusion without "wad[ing] into theological matters." See App.367a-368a; see also App.357a-358a, 383a-386a, 389a, 393a-394a. The trial court examined the issue of organizational structure and authority by considering, among other things, sixty years of custom and tradition, Preston's 2008 report, testimony from witnesses with knowledge of the Church's customs and

traditions, and other historical documents reflecting the Church's polity and Reverend Moon's leadership. See App.232a-233a, 237a-240a, 244a, 246a, 250a-253a, 262a-266a. In making that determination, the trial court did not address any issues of church doctrine or theology, nor did it need to.

In its Remedies Order, the trial court found Respondents' testimony during the remedies hearing regarding the Church's polity "not credible." See App.259a-264a. The trial court also repeatedly found Respondents' other remedies testimony "not credible." See App.257a-261a, 263a, 274a, 277a, 280a, 282a-285a, 293a, 317a-318a, 321a-322a. Respondents did not appeal these credibility determinations or any of the trial court's other factual findings as being clearly erroneous.

The trial court also found that Preston and the other directors: (1) displayed "lack of care, lack of due diligence, lack of loyalty and obedience, and disregard of their fiduciary position"; (2) intentionally inflicted harm on UCI; (3) engaged in a "gross abuse of their position"; (4) "caused UCI to lose about half of its assets" and showed no interest "in getting those assets back to UCI"; (5) "did not act in good faith when they approved donations" to KIF, which was not founded, supported, or approved by Reverend Moon; and (6) gave their allegiance to "Preston Moon's personal agenda, and not to the best interest of UCI." App.313a-314a, 319a, 323a-324a. The trial court again rejected Respondents' ecclesiastical-abstention arguments. App.370a.

2. Respondents appealed, and the Court of Appeals reversed and vacated on what it considered to be First Amendment grounds. App.225a-227a. It held that applying neutral principles would not resolve Petitioners' claims because of the existence (in its view) of underlying doctrinal disputes over the Church's structure and leadership. App.208a n.17, App.226a. That conclusion was grounded in Preston's new litigation position, asserted six years after the case was filed, that he was "fourth Adam" and thereby the Church's "true" leader. App.223a-226a.

Specifically, the Court of Appeals identified the following alleged disputes: (1) whether the Unification Church was a church or just a set of theological beliefs; (2) whether the church was a "denominational institution or an interfaith movement"; (3) whether its polity was "hierarchical" or decentralized; and (4) "the identity of [its] leader"—Reverend Moon or Preston. App.206a n.16, 208a n.17, 222a-225a. Resolving such questions, the Court continued, was "not permissible under the First Amendment." App.225a.

To find these disputes where the trial court did not, the Court of Appeals hyper-focused on Preston's assertion that Reverend Moon used the term "fourth Adam" when he was appointed as vice president of the Family Federation, App.189a, ignoring the Church's showing that "fourth Adam" is not a person, but a realm of existence to which all Church members must aspire, *e.g.*, App.237a, including Preston. At that point, according to the Court of Appeals, the First Amendment required abstention and reversal of the substantial judgment entered in the Church's favor. App.226a-227a. Thus, the Court of Appeals refused to

consider questions of the Church's structure, to identify its authoritative leader, or to defer to the Church's leader on matters of church polity or governance. App.215a n.23. Resolving such questions, it held, would "impermissibly entangle" the court in "ecclesiastical matters *** jeopardizing the values underlying the Religion Clauses." App.205a (citation omitted).

Still, the Court of Appeals declined to order dismissal of the case because the trial court had not yet addressed remaining self-dealing or "fraud and/or collusion" theories. App.227a.

3. On remand, the trial court dismissed all remaining claims. App.55a-178a. Respondents appealed, and the Court of Appeals affirmed on largely the same grounds as the trial court. App.14a-42a. In the process, the Court of Appeals reiterated its view that the First Amendment did not permit either it or the trial court to decide "that the Unification Church is a hierarchical organization" or that Preston Moon was not "the true leader of the religion" at the time he organized the transfers of the Church's assets from UCI. App.48a (citations omitted). And the Court of Appeals asserted that Reverend Moon in 1998 "*began* referring to Preston as 'the fourth Adam,'" App.5a (emphasis added)—even though that is not found anywhere in the record—once more ignoring the Church's authoritative explanation that the fourth Adam is not a person, but a realm. MoonIV.JA.2361, 1749. The Court of Appeals also again explained its belief that even attempting to identify the Church's leader would entangle the court in religious issues contrary to the "abstention doctrine's central

animating principles." App.47a-49a. Put simply, the Court of Appeals affirmed dismissal of all claims after concluding that resolving the remaining claims would "run into the same First Amendment problems" and "embroil [the] courts in the same religious questions" that it had identified in the prior appeal. App.36a, 39a. The Court of Appeals thus declined to follow *Jones*' requirement to defer to the Church's leader after concluding that neutral principles would not resolve the dispute. *Jones*, 443 U.S. at 604.

Thus, fourteen years after turning to the courts to recover its stolen assets, the Church's case was over. The Church had no forum and no remedy.

REASONS FOR GRANTING THE PETITION

In the decades since *Jones*, this Court has not addressed another church-property dispute. Although both the *Jones* majority and dissent emphasized that deference is required if applying neutral principles cannot resolve the dispute, at least two lower courts, including the D.C. Court of Appeals here, have failed to follow that instruction. Only this Court can resolve the resulting constitutional conflict—involving the highest courts of at least eight jurisdictions—over the proper standard to apply in the many church-property disputes that implicate First Amendment questions. The Court should resolve that conflict here to ensure that churches are not denied recourse when their property is fraudulently taken, and to ensure once again that overexpansive readings of the Establishment Clause do not lead to violations of other First Amendment rights.

I. The Lower Courts Are Sharply Divided On Whether The First Amendment Bars Them From Identifying A Church's Governing Authority When Necessary To Resolve A Property Dispute.

The Court of Appeals' conclusion that, because of "entanglement" concerns, it could not identify or defer to the Church's authoritative leader conflicts with several state supreme court decisions.

A. At least six state supreme courts are willing to identify a church's ecclesiastical authority.

On one side of the divide are courts like Indiana recognizing that, "[n]otwithstanding the limitations imposed on the civil courts[,]" such "courts can (and indeed *must* in some cases) look at ecclesiastical documents and related evidence concerning religious rites, doctrines, polity and practices for the limited purpose of determining the nature of the church organization." *Brazauskas* v. *Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 292 (Ind. 2003) (emphasis added) (quoting *Draskovich* v. *Pasalich*, 280 N.E.2d 69, 72 (Ind. Ct. App. 1972)).

Courts on this side of the split recognize that, at times, to protect churches' religious liberty, "the trial court must conduct an inquiry to determine whether the church is hierarchical or congregational (unless the parties agree as to the nature of the church structure)." *Early Church of God in Christ, Inc.* v. *Jackson*, 200 N.E.3d. 757, 763 (Ohio Ct. App. 2022). Courts that authorize that inquiry, even if the parties disagree, "consider[] the broad spectrum of facts and

circumstances in attempting to resolve" questions about a church's governing body. *State ex rel. Morrow* v. *Hill*, 364 N.E.2d 1156, 1158 (Ohio 1977).

In *Morrow*, for example, the Ohio Supreme Court upheld a lower court's "considering purely factual matters that related to the association of the local church with the national organization." *Id.* at 1160. That court also rejected arguments that the lower court erred in looking beyond "the legal documents of the local church." *Id.* at 1158. Unlike the Court of Appeals here, the Ohio court saw no other option: "The necessity of civil courts resolving this type of dispute is inherent in the nature of the dispute" because "[t]here is no church judicatory recognized by both parties to which to remand." *Id.* at 1160. On that basis, the court resolved the property dispute in favor of the hierarchical organization. *Id.* at 1157-1158 & n.2.

The Supreme Court of Pennsylvania reached the same conclusion in *St. John Chrysostom Greek Catholic Church of Pittsburgh* v. *Elko*, 259 A.2d 419 (Penn. 1969). It explained that, in disputes where "there is no established church judicatory to which to remand the decisive issue," it needed to determine which religious authority was entitled to deference. *Id.* at 425. In contrast to the Court of Appeals here, it concluded that "no right of a religion is violated" by "considering purely factual matters which relate to the kind of church St. John's is." *Ibid.* On that basis, the court resolved the property dispute in favor of the general church. *Id.* at 420.

The Supreme Court of South Carolina has likewise resolved questions, when they arise, about the identity of the church governing body. In *Protestant Episcopal Church in the Diocese of South Carolina* v. *Episcopal Church*, 806 S.E.2d 82 (S.C. 2017), for example, it concluded that the Episcopal Church was hierarchical. The lead opinion began with "a simplified history of [the Episcopal Church], and the church's history in South Carolina" before reversing a decision that the Episcopal Church "is a congregational rather than a hierarchical church." *Id.* at 84. On the same evidence, Justice Hearn agreed that "the National Church is hierarchical in nature" and that the court was "required *** to exercise restraint and defer" to it. *Id.* at 93-94 (Hearn, J., concurring). Thus, in stark contrast to the Court of Appeals here, the majority held that the national church controlled most of the property at issue. *Id.* at 125 n.72 (Toal, J., dissenting in part and concurring in the judgment in part).[3]

In dissent, Acting Justice Toal accused the majority of adopting a hierarchy analysis that was, in her view, "wholly inappropriate" for essentially the same reasons that the Court of Appeals provided here. *Id.* at 116 n.61. Justice Toal opined that, by "declaring the church hierarchical as an initial matter," despite the dispute about its hierarchical status, the "lead opinion and concurrence" had "imbue[d] this dispute

[3] Chief Justice Beatty similarly "agree[d] The Episcopal Church *** is hierarchical," but refused to defer after concluding that the dispute could be resolved by "applying neutral principles of law." *Protestant Episcopal Church in Diocese of S.C.* v. *Episcopal Church*, 806 S.E.2d 82, 102 (S.C. 2017) (Beatty, C.J., dissenting in part and concurring in part).

with ecclesiastical qualities" in violation of the Establishment Clause. *Id.* at 116. Like the Court of Appeals here, Justice Toal would have affirmed "the trial court's finding that the national church's leadership structure is ambiguous" such that the trial court should have only looked to "neutral principles of property law" in resolving the factual dispute. *Id.* at 116 n.61.

The Supreme Judicial Court of Massachusetts also follows the approach illustrated by the South Carolina Supreme Court majority. In a church-property dispute in *Parish of the Advent* v. *Protestant Episcopal Diocese of Massachusetts*, 688 N.E.2d 923 (Mass. 1997), the Massachusetts court "consider[ed], first, the issue of hierarchy." *Id.* at 931. In that case, the Parish of the Advent had argued that "the evidence clearly demonstrated that the Parish *** is congregational in its own governance."[4] The court squarely addressed and rejected that argument, concluding that "the Protestant Episcopal Church is hierarchical." *Ibid.*

In so holding, in contrast to the hands-off approach of the Court of Appeals here, the Massachusetts court considered both the "constitution and canons" of the general church and how they "detail the authority exercised by [the general church] through a diocese to each local parish." *Ibid.* The court also looked to the "constitution of the [relevant] Diocese" and saw that it "accedes to the doctrine, discipline and worship and to the Constitution and Canons" of the general church.

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[4] Pl.'s Br., *Parish of the Advent* v. *Protestant Episcopal Diocese of Mass.*, 688 N.E.2d 923 (Mass. 1997) (No. SJC-07199), 1996 WL 33686003, at *35.

Ibid. This evidence, the court concluded, showed that "the national canons supersede diocesan canons, which themselves supersede a parish constitution." *Ibid.* On that basis, the Massachusetts court held that the hierarchical body, by controlling the parish corporation, "has control over its assets." *Id.* at 933.

In another church-property dispute, the Supreme Court of Virginia considered "the nature of the relationship" between a local church and a hierarchical denomination. *Falls Church* v. *Protestant Episcopal Church in U.S.*, 740 S.E.2d 530, 540-541 (Va. 2013). Unlike the Court of Appeals here, the court was willing to consider both "the articles of religious governance of the hierarchical church as well as the course of dealing between the local congregation and the hierarchical church" in deciding the property's rightful owner. *Id.* at 540. Based on these church-related facts, the court found that the local church "affirmatively assented to the constitution and canons" of the general church and allowed the general church "to play an active role in its overall operations." *Id.* at 541. From there, the court concluded that, even without "an express denominational trust," it was clear that the local church had a "fiduciary relationship" over the property "for the benefit of" the general church. *Id.* at 541-542. Having so concluded, the court "required the conveyance of the property" from the local church to the hierarchical church. *Id.* at 545.

In these six states, unlike in the District of Columbia, the Church's entitlement to deference would have been adjudicated and the resulting answer would have been based on objective historical facts

about the customs and traditions of the Church and Reverend Moon's leadership. The situs of this dispute in the District of Columbia was, therefore, outcome-determinative.

B. Including the court below, the highest courts of at least two jurisdictions refuse to resolve disputed questions about the nature of a church's organization.

By contrast, other courts—including the Court of Appeals below—refuse to address questions about a church's polity or governance if doing so might involve doctrinal disputes. Relying on *Jones*' rejection of compulsory deference because, in *some* cases, "the locus of control would be ambiguous," those courts improperly forsake the inquiry altogether—ironically, under the banner of the First Amendment. 443 U.S. at 605.

1. The Court of Appeals has long abstained from resolving church-property disputes when that requires examining church polity or governance. For example, in *Samuel* v. *Lakew*, the Court of Appeals first concluded that the "asserted *** right to control of church property" was "based on arguments that could not be resolved without requiring the court to resolve theological issues that a secular court could not properly resolve," and therefore, neutral principles could not apply. 116 A.3d 1252, 1260 (D.C. 2015). Rather than defer to the church hierarchy, the Court of Appeals refused to address who controlled the church. *Id.* at 1259. It reasoned that "use of the *Watson* approach in this case would not be consonant with the prohibitions of the First Amendment"—specifically

the Establishment Clause. *Ibid.* (cleaned up). With both paths for resolving property disputes closed, the court affirmed the dismissal of the complaint. *Id.* at 1261.

As here, the Court of Appeals ignored *Jones'* "default rule" of deference to hierarchy when neutral principles fail to resolve the dispute. And it thus left the church without a forum in which to litigate its property dispute.

2. The New York Court of Appeals acted similarly in a dispute within a Jewish congregation where one party sought "an order declaring that the respondents' election is null and void and directing that Congregation property be transferred to" the other party. *Congregation Yetev Lev D'Satmar, Inc.* v. *Kahana*, 879 N.E.2d 1282, 1284 (N.Y. 2007). After concluding that no neutral principles of law could resolve the dispute without requiring the court to resolve questions of congregational membership, the court held that the case was over because it could not decide who constituted "the authorized governing body of the Congregation" with authority to decide the membership question. *Id.* at 1286. The court did so over a dissent accusing the majority of failing to "accept the decision of a religious tribunal as binding," instead "simply refus[ing] to decide the case at all." *Ibid.* (Smith, J., dissenting).[5] Like the decision below,

[5] Some lower state appellate courts have likewise refused to resolve questions about a church's hierarchical status. The Appellate Court of Illinois, for example, has explained that "a civil court may only determine a church's polity if that

the New York Court of Appeals' decision in *Congregation Yetev Lev* conflicts with the decisions, discussed above, of the highest courts of at least six other states.

* * *

In short, whether courts can decide disputes about who leads a church, consistent with the First Amendment's Establishment Clause, is an issue on which the highest courts of various states and the District of Columbia are split at least 6-2: New York and the District of Columbia refuse to resolve cases when they must decide questions of religious authority. This stands in contrast to the state supreme courts that *will* decide such questions by looking to neutral and historical facts to vindicate religious bodies' Free-Exercise rights. This Court's review is necessary to resolve that deep and wide split. In doing so, the Court should hold that, where necessary to resolve a church-property dispute (under either the neutral-principles or deference approach), the First Amendment permits courts to conduct a factual inquiry necessary to identify the church's governing authority. Otherwise, abstention becomes absolute immunity for those who would concoct a doctrinal dispute to bar courts from remedying the embezzlement of church assets.

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determination can be made easily, without intrusive scrutiny." *Werling* v. *Grace Evangelical Lutheran Church of River Forest*, 487 N.E.2d 990, 992 (Ill. App. Ct. 1985). With that understanding, the court found "conflicts within [a church's] bylaws, constitution and other evidence made it impossible to determine the [church's] polity without intrusive scrutiny" and therefore affirmed dismissal. *Id.* at 992-993.

II. The Decisions Below Were Wrong In Concluding That Courts Cannot Consider A Church's Structure Or Leadership To Resolve Church-Property Disputes.

In holding that civil courts are prohibited by the First Amendment from identifying a religious organization's leader when necessary to resolve a church-property dispute, the Court of Appeals denied Petitioners any judicial recourse to undo the amendments to UCI's articles and the fraudulent transfer of $3 billion in Church assets to KIF and other opaque entities around the world. That result contravenes this Court's precedents.

1. In *Jones*, this Court held that there can be "little doubt about the general authority of civil courts to resolve" disputes like this. 443 U.S. at 602. It also recognized that "[t]he State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Ibid.* (citation omitted). Thus, "[c]ivil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property." *Presbyterian Church*, 393 U.S. at 449. A contrary conclusion leaves churches "at the mercy of anyone who appropriate[s]" their "property with an assertion of religious right to it." *Maktab Tarighe Oveyssi Shah Maghsoudi, Inc.* v. *Kianfar*, 179 F.3d 1244, 1248 (9th Cir. 1999).

Historically, resolving such disputes required courts to defer to the decisions of religious authorities on ecclesiastical as well as doctrinal matters. *Watson*,

80 U.S. at 724-725. Under that practice, decisions of the governing church body provided "the law *** applicable to the case," and "no civil court [can] reverse, modify, or impair" that law by refusing to give it effect. *Id.* at 732, 735. In sum, the longstanding rule when confronted with ecclesiastical issues was deference. *Id.* at 727. Only deference, the Court concluded, guarantees a "full, entire, and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles." *Id.* at 728.

Although *Jones* allowed courts to resolve disputes over church assets through neutral principles, if applicable, it did not abandon deference. 443 U.S. at 602-604. Even after *Jones*, the First Amendment still requires deference when a neutral-principles analysis fails to resolve the dispute. *Id.* at 604. That necessarily means the First Amendment does not preclude a court from conducting the factual analysis necessary to determine who leads the church.

2. Indeed, as Professor Douglas Laycock has explained, "[a] rule of deference to church authority requires courts to *identify* the authority to whom they will defer."[6] That is, a civil court is "authorized to determine who, under the rules of the church, is entitled to bind it."[7] This factual inquiry prevents "such claims" from being "resolved by brute force,"

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[6] Douglas Laycock, *Towards A General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1413 (1981) (emphasis added).

[7] *Ibid.*

Milivojevich, 426 U.S. at 726 (Rehnquist, J., dissenting), the consequence of a rule "denying all legal protection to churches."[8] That result is untenable under the Free Exercise Clause. As then-Justice Rehnquist recognized, "civil courts must *** make some factual inquiry" into the structure of a church where necessary to resolve the dispute. *Milivojevich*, 426 U.S. at 726 (Rehnquist, J., dissenting).

In short, if churches are to have *any* remedy in property disputes when no neutral principles apply, the conclusion that civil courts must "determine who, under the rules of the church, is entitled to bind it" is "unavoidabl[e]."[9]

3. Here, rather than engaging with that "unavoidable" factual inquiry, which is required to protect churches' Free Exercise rights, the Court of Appeals held that the inquiry into the Church's structure and leadership would "impermissibly entangle" the court in "ecclesiastical matters." App.205a (citation omitted), and thus violate the Establishment Clause. This holding means that, absent this Court's intervention, no court can decide Petitioners' legal claim to right the fraudulent transfer of the Church's assets to KIF.

In the process, the Court of Appeals tried to solve a perceived religious entanglement issue—traditionally an Establishment Clause concern, *Agostini* v. *Felton*, 521 U.S. 203, 232 (1997)—by effectively deferring, not to the *Church's* authority to

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[8] Laycock, *supra*, at 1413.

[9] Laycock, *supra*, at 1413.

decide matters of polity and governance, but to Respondents' dissenting views of these matters. That was the practical effect of the Court of Appeals' hands-off approach. And it violated the Church's rights under the First Amendment's Free Exercise Clause.

It also repeated an old error. As this Court explained in *Milivojevich*, the "fallacy fatal to" such analysis "rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute[.]" 426 U.S. at 708.

By contrast, the trial court's earlier decision avoided that fallacy: Examining sixty years of Unification Church custom and tradition, the trial court concluded that, even under the neutral-principles approach, examination of a limited set of facts *could* resolve any dispute about church leadership—and in Petitioners' favor. See App.366a-369a. Those objective facts showed that, for decades, Reverend Moon led a denominational religious institution and had final authority to approve (or disapprove) changes to the Church's polity. See App.232a, 244a, 371a-373a. Those facts also showed that Reverend Moon *alone* had authority to govern the Church and nonprofit corporations like UCI created at Reverend Moon's direction to carry out the Church's mission through the church-guided disposition of Church assets. See App.233a, 237a-240a, 383a. Objective, historical facts also conclusively established that, for 30 years after Reverend Moon incorporated UCI, it complied with the Church's chosen polity by seeking and respecting Reverend Moon's approval of amendments to UCI's articles, selection of directors,

and property distributions. See App.239a-241a, 244a, 253a. And the facts showed that, when Preston refused to yield to Reverend Moon's authoritative decisions and broke away to pursue his own agenda while orchestrating the diversion of $3 billion worth of Church assets, it was in defiance of the Church's leader. See App.244a-253a, 383a-394a.

Under the authorities cited above, the courts below were thus authorized—and, if neutral principles failed, required by the Free Exercise Clause—to examine these facts and decide whether Reverend Moon was the Church's authoritative decisionmaker entitled to deference. By deciding that question (or allowing the trial court to do so), the Court of Appeals would have avoided turning a blind eye when there are "religious rights to vindicate." *Cf. Southern Methodist Univ.* v. *South Cent. Jurisdictional Conf.*, 716 S.W.3d 475, 507 (Tex. 2025) (Young, J., concurring).

4. Having arrogated to itself the power to reject the Church's authoritative explanation of its polity and Reverend Moon's leadership, the Court of Appeals recast Petitioners' claims as arising out of a "schism" within the Church as a whole, beginning in the final years of Reverend Moon's life. App.2a, 45a-47a. But the objective facts show that Reverend Moon, not Preston, was always at the head of the Church. See App.232a, 244a, 371a-373a. Indeed, Preston himself explained that he wanted "nothing to do with" the Church after he concluded that, under Reverend Moon's leadership, the Church fell short of what Preston believed it "should have been." App.289a; MoonIV.JA.2398-2399. And he was clear that, after he created FPA to rival the Church, there was "no way in

hell" that he would go back to the Church. MoonIV.JA.0630. If a record based on those facts can preclude a court from even determining who leads a church, the practical result is absolute immunity for bad actors who steal church assets.

To avoid that result, this Court should grant the petition to reaffirm that the First Amendment allows (and sometimes even requires) courts to undertake the limited factual inquiry into the structure and leadership of a religious organization necessary to identify its governing authority.

III. The Enormous Stakes For Churches And Civil Courts Justify This Court's Plenary Review.

For churches, the stakes of a correct resolution of the issue presented are enormous. That is no doubt why two Justices of this Court recently acknowledged that "the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities" is a "question[] that may well merit [the Court's] review." *Roman Cath. Archdiocese of San Juan* v. *Acevedo Feliciano*, 589 U.S. 57, 67 (2020) (Alito, J., concurring, joined by Thomas, J.). Here, it does.

1. The Court has long recognized that governments have "an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones*, 443 U.S. at 602 (citation omitted). If *neither* neutral principles nor deference can resolve disputes brought

by churches, then that promise is a dead letter. Indeed, after being robbed, churches will face a second constitutional injury: a closed courthouse.

In refusing to resolve this dispute on the merits based on its misplaced concerns about First Amendment "entanglement," the Court of Appeals sanctioned fraud under the guise of abstention. If a party can immunize fraud by asserting a religious dispute after-the-fact about church structure or leadership, then myriad church-property disputes will go unresolved. That itself seriously undermines the autonomy to which this Court has held religious bodies are entitled under the First Amendment. See, *e.g., Our Lady of Guadalupe Sch.* v. *Morrissey-Berru,* 591 U.S. 732, 746-747 (2020).

Indeed, religious organizations will be severely harmed if their property is subject to a rule of possession or "might makes right." Such a rule—applicable *only* to religious bodies—is inconsistent with the First Amendment's guarantee that "our laws [are] applied in a manner that is neutral toward religion" and "bars even 'subtle departures from [religious] neutrality.'" *Masterpiece Cakeshop, Ltd.* v. *Colorado Civ. Rts. Comm'n*, 584 U.S. 617, 638, 640 (2018) (citation omitted). That Free Exercise principle is violated whenever governments, including courts, deny religious organizations access to "public benefits solely because of the[ir] religious character." *Carson* v. *Makin*, 596 U.S. 767, 779 (2022) (cleaned up). A judicial forum is just such a public benefit, and the Free Exercise clause thus forbids its being closed to churches.

2. The Court of Appeals' failure to engage with the objective factual record to answer questions about the Church's structure and the identity of its governing authority threatens to harm more than just newer religions like the Unification Church. It is equally problematic for more established religions.

Consider the Catholic entity at issue last term in *Catholic Charities Bureau, Inc.* v. *Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025). That entity, the Catholic Charities Bureau, "serves as the social ministry arm of the Roman Catholic Diocese of Superior." *Id.* at 243. The Diocese "exercises control over both the Bureau and its subentities." *Ibid.* The Bureau was thus controlled and operated much like UCI before Preston conspired to take control of its board.

If a usurper wrested control of the Catholic Charities Bureau from the Diocese, there would be evidence of the Diocese's historic control. But, under the Court of Appeals' approach here, that evidence would be of no moment. If the usurper disputed that control and implicated a doctrinal issue in the process, then the Diocese's claim would end. The usurper—having possession of the Bureau's assets when the case began—would win by default. This Court should not allow a rule that incentivizes a result so plainly contrary to churches' First Amendment rights. See *id.* at 255 (Thomas, J., concurring) ("The First Amendment's guarantee of church autonomy gives religious institutions the right to define their internal governance structures without state interference.").

3. The stakes for civil courts are nearly as high. The prospect of civil courts adjudicating church-property disputes may be daunting, but it is necessary. Under *Carson*, courts violate the Free Exercise Clause when they deny a church access to benefits like a judicial forum.

That violation is no less real when seeking to avoid religious issues. Recognizing that "[i]nteraction between church and state is inevitable," this Court has "always tolerated some level of involvement between the two." *Agostini*, 521 U.S. at 233. This reflects the necessary "play in the joints between what the Establishment Clause permits and the Free Exercise Clause compels." *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 458 (2017) (cleaned up). Properly understood, in property disputes, the Establishment Clause *permits* limited factual inquiries into a church's structure to avoid judicial violations of the church's Free Exercise rights.

Complete judicial abstention harms churches in other ways, too. If a church is, in fact, hierarchical, refusing to defer to its decisions would make civil courts complicit in "an impermissible rejection of the decisions of the highest ecclesiastical tribunals of [a] hierarchical church upon the issues in dispute." *Milivojevich*, 426 U.S. at 708. Such a result would also violate this Court's teaching that "a government entity's concerns about phantom constitutional violations"—like the Establishment Clause entanglement concerns of the court below—cannot justify "actual violations of *** First Amendment rights." *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). That promise means little in a regime that

reads the First Amendment to effectively forbid judicial review when churches "ask courts to assist them in resolving *** church property disputes." *McRaney* v. *North Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1071 (5th Cir. 2020) (Ho, J., dissenting from the denial of rehearing en banc).

In short, the question presented implicates not only the First Amendment free-exercise rights of churches, but also the proper, limited role of the courts in one the most common and contentious but constitutionally important types of property disputes. To ensure that churches, like other litigants, have effective access to the courts, the Court should grant review and reverse.

IV. This Case Is The Ideal Vehicle To Resolve This Important Question.

Granting the petition would also give this Court a clean vehicle to resolve whether courts, consistent with the First Amendment, may (or even sometimes must) engage in the limited factual inquiry necessary to answer predicate questions about a religious organization's structure and leadership. Here there is no question that the District of Columbia ordinarily resolves religious property disputes by looking to neutral principles of law. *Williams* v. *Board of Trs. of Mount Jezreel Baptist Church*, 589 A.2d 901, 908 (D.C. 1991). Nor is there any question that, although multiple trial judges below followed that ordinary rule and held that neutral principles of law *would* resolve Petitioners' claims, the Court of Appeals held that such principles could not do so. In the court's view, the

First Amendment's unyielding command to avoid any kind of "entanglement" forbade it from delving into Respondents' assertions of doctrinal disputes over the Church's structure and leadership. App.206a n.16. The Court of Appeals thus refused to conduct the analysis mandated by *Jones* when neutral principles could not resolve the dispute, i.e., simply determining through objective facts who or what was the highest church authority and then deferring to that authority on any doctrinal issues.

Resolving the question presented would thus not require the Court to reconsider *Jones'* neutral-principles approach. Nor would the Court need to reconsider the trial court's fact findings which, in any event, Respondents did not challenge as clearly erroneous. All the Court would need to do—assuming it agrees with Petitioners on the merits—is reverse the Court of Appeals' erroneous conclusion that the First Amendment prohibits it from even analyzing the Church's structure and leadership.

It is thus hard to imagine a cleaner vehicle. If, on review, this Court concludes that lower courts can, consistent with the First Amendment, engage in the objective factual inquiry necessary to determine who the Church's "authoritative ecclesiastical" decisionmaker is, that holding will allow the Church to show on remand, as it did in the trial court, that the Church was headed by Reverend Moon. Once that determination is made, the lower courts will be able to resolve Petitioners' claims—either under the neutral principles approach or the deference approach. No civil court will have to risk entangling itself in disputes over church doctrine.

CONCLUSION

This Court should grant the petition to clarify that the First Amendment permits (and even sometimes requires) a court to consider church-related facts about a religious organization's structure to identify its leader. Answering that question does not violate the ecclesiastical-abstention doctrine under a proper understanding of the First Amendment. To the contrary, that approach is necessary to protect the autonomy and equal rights guaranteed to religious bodies by that very Amendment.

Respectfully submitted,

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NOVEMBER 26, 2025

APPENDIX

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Appendix A

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 23-CV-0836, 23-CV-0837 & 23-CV-0838

FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*, APPELLANTS,

v.

HYUN JIN MOON, *et al.*, APPELLEES.

Appeals from the Superior Court
of the District of Columbia
(2011-CA-003721-B)

(Hon. Alfred S. Irving, Jr., Motions Judge)

(Argued February 11, 2025 Decided July 3, 2025)

Cathy A. Hinger, with whom *Victoria A. Bruno*, *Lela M. Ames*, and *Jasmine Chalashtori* were on the brief, for appellants.

Derek L. Shaffer, with whom *William A. Burck* and *Jan-Philip Kernisan* were on the brief, for appellee UCI.

Jacob M. Roth, with whom *William G. Laxton*, *David T. Raimer*, and *Henry W. Asbill* were on the brief, for appellee Hyun Jin Moon.

Michael Weitzner was on the brief for appellees Richard Perea, JinMan Kwak, and Youngjun Kim.

Christopher B. Mead was on the brief for appellee Michael Sommer.

Jodie E. Buchman, *Marci A. Hamilton*, *Jessica Schidlow*, *Carina Nixon*, *Jessica Downes*, and *Jennifer Wilczynski* filed a brief on behalf of CHILD USA, Survivors Network of those Abused by Priests, Zero Abuse Project, and Professor Leslie C. Griffin.

Before DEAHL, HOWARD, and SHANKER, *Associate Judges*.

DEAHL, *Associate Judge*: This case comes to this court for a fourth time since plaintiffs/appellants—the Family Federation for World Peace and Unification International, the Universal Peace Foundation, and the Holy Spirit Association for the Unification of World Christianity (Japan) (Family Federation, UPF, and UCJ, respectively)—filed their complaint in May 2011. Appellants' suit arose out of a schism and succession dispute within the Unification Church or Unification Movement. Defendants/appellees—Unification Church International (renamed UCI), UCI's president, Hyun Jin (Preston) Moon, and four of UCI's directors—are on a different side of the schism than appellants. In the most recent appeal, we held that several of appellants' most substantial claims were nonjusticiable under the First Amendment's religious abstention doctrine, since they could not be resolved without answering core questions about

religious beliefs and leadership. Post-remand, the trial court dismissed the remaining claims with prejudice across three different orders.

We affirm the trial court's orders, which were based on sound reasoning, and thereby bring this fourteen-year litigation to a close.

I. Factual Background[1]

The Reverend Sun Myung Moon founded the Holy Spirit Association for the Unification of World Christianity, a religious institution based in Seoul, South Korea, in 1954. This institution and the greater religion it espoused came to be known colloquially as the "Unification Church," which developed its own religious ceremonies, tithing practices, and holy texts such as its "Divine Principle." Satellite religious institutions outside of Korea were established as the religion grew, including UCJ, which is a "religious corporation" based in Tokyo, Japan. Rev. Moon was believed to be a "messianic" figure known as the "third Adam" within the Unification Church, serving not only as the religion's founder but also its "spiritual leader" for almost sixty years until the final years of his life. He and his now-widow, Hak Ja Han Moon, were known within the religion as the "True Parents of Humankind."

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[1] Although much of this background was recounted in *Moon v. Fam. Fed'n for World Peace & Unification Int'l* (*Moon III*), 281 A.3d 46 (D.C. 2022), we include it here along with other relevant details from the record for completeness purposes. These facts are undisputed unless otherwise indicated.

The network of organizations affiliated with the Unification Church and their relationships

Since its founding, the Unification Church grew substantially to encompass a variety of cultural and commercial enterprises. Rev. Moon and his supporters founded, for instance, *The Washington Times* newspaper, the Tongil Group business conglomerate, and the True World Group seafood distribution company. Rev. Moon and his supporters also started several nonprofits, including UPF and UCI, the latter of which was established as a nonprofit corporation in the District of Columbia in the 1970s. UCI's original corporate purposes were aimed at supporting the Unification Church and its principles, and UCI was a longtime funding source for projects that Rev. Moon supported. It regularly donated funds to UPF, the Universal Ballet, the University of Bridgeport, *The Washington Times*, a firearms manufacturer, a recording studio and performing arts center, a martial arts association, and True World Group.

For its part, UCI received funding from entities affiliated with the Unification Church such as UCJ, which donated around $100 million annually for many years. UCJ's donations were not made contingent on any specific written agreements or instruments. Rather, they were given with the general intention of supporting UCI's charitable corporate purposes—appellants alleged in their complaint, for example, that the purposes for which the funds were to be used were "reflected in the Articles of Incorporation of UCI" before their amendment in 2010, which included "assisting, advising, coordinating, and guiding the activities of Unification Churches." There was also

deposition testimony and other evidence that the funds were donated with the intention they be put towards "activities under the guidance of the True Parents and international headquarters," "missionary purposes," and UCI's "original purposes." Moreover, there is record evidence of UCI sending solicitation letters to UCJ, in which UCI would request funds and include general information about their upcoming annual budget. These letters, which scarcely changed year-to-year, mentioned UCI's "[b]usiness and other projects which, economically or otherwise, help advance the mission of UCI and the worldwide Unification Church movement."

Preston Moon's rise, fall, and the religious schism that followed

In the 1990s, Rev. Moon established the Family Federation, intending it to replace the Holy Spirit Association entity he founded in the 1950s. Part of Rev. Moon's stated rationale for founding the Family Federation was that "[t]he time is coming that we will not need a church" and a new focus on "the family level" was needed. Rev. Moon also announced around this time that his son, Preston, would become the vice president of the Family Federation, and began referring to Preston as "the fourth Adam." Preston testified that he understood this to mean he was recognized as a "messianic figure" and the spiritual heir to Rev. Moon. Preston soon assumed larger leadership roles in Church-related organizations, becoming president and chairman of UCI in 2006 with Rev. Moon's "wholehearted support." Under Preston's leadership, UCI engaged in a variety of commercial transactions with entities directly or indirectly owned

by Preston, including the purchase of a New Jersey building for $5.9 million, the receipt of several years of consulting services worth $120,000/month, and the issuance of a $2 million loan.

Soon after becoming UCI's president, Preston began to advance a particular view of what he believed to be the proper direction for the Unification Church. In a letter directed to Rev. Moon and Hak Ja Han, he wrote that the Unification Church should work towards becoming more of an "interfaith movement that could unite the body of faith through the world." Preston believed this approach was faithful to Rev. Moon's vision that was "rooted in the providential vision of one family under God," referring to Rev. Moon's earlier statements about there no longer being a need for a centralized denominational church. Soon after that letter was sent, Preston's younger brother, Hyung Jin or Sean Moon, was named the president of the Family Federation and was given a crown by Rev. Moon and Hak Ja Han at a "coronation" ceremony. Sean, notably, did not support Preston's interfaith views and wanted the Unification Church to remain "denominational."

Preston, as the president of UCI, then took steps to replace the directors on the UCI board with longtime Church members who shared his view of a decentralized and interfaith movement. Rev. Moon asked Preston to step aside from his UCI role, but Preston refused, wanting to ensure that his group of supporters retained power within the Church. Once his brother Sean replaced Preston as the head of UPF—an organization that UCI assisted financially in hosting "global peace festivals"—Preston founded the

Global Peace Foundation (GPF) to hold its own peace festivals. UCI then ceased making contributions to UPF and began funding GPF, which would go on to receive $34 million, the majority of its funding, from UCI.

Under Preston's leadership, UCI made two other substantial changes in the wake of the growing Church schism. First, UCI amended its Articles of Incorporation in order to, in its telling, better reflect Rev. Moon's prior declaration that a "church" was no longer needed and to accommodate "changes in the movement"—it eliminated references to the "Unification Church" and its Divine Principle, for example, and added references to the "Unification Movement" and a new emphasis on "promot[ing] interdenominational, interreligious, and international unification of world Christianity and all other religions." Second, UCI "irrevocably transfer[ed]" around $500 million[2] in assets to the Kingdom Investments Foundation (KIF), an entity established by UCI agents. The transfer—about which Rev. Moon, the Family Federation, and UCJ were not consulted—was made pursuant to a donation agreement with terms that mirrored UCI's newly amended articles of incorporation. These transferred assets included the "Parc1" and "Central City Limited" real estate developments in Seoul and a Korean ski resort.

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[2] Appellants posit that the current market value of these assets "is likely closer to $3 billion," citing to recent news articles about the sale of some of KIF's real estate holdings in Korea.

II. Procedural Background

Family Federation, UPF, and UCJ sued Preston Moon, UCI, and its directors in the Superior Court in 2011. The plaintiffs sued Preston and the directors under four distinct theories of breach of fiduciary duty and *ultra vires* acts (Count II),[3] alleging that they: (1) amended UCI's articles of incorporation contrary to UCI's central "mission and purpose"; (2) improperly removed some of UCI's directors "in defiance of [Rev. Moon's] directives"; (3) "engag[ed] in a scheme of self-dealing designed to divert corporate assets to the personal pursuits of Preston Moon"; and (4) "fail[ed] to use [UCI's] assets . . . to support the mission and activities of the Unification Church." Under the heading "Preston Moon Engages in Self-Dealing and Other Improper Transactions"—pertaining to the third theory—the complaint "[s]pecifically" lists the New Jersey property purchase for $5.9 million, the $120,000/month consulting agreement, and the $2 million loan. UCJ also sued UCI for breach of contract (Count IV), promissory estoppel (Count V), and unjust enrichment (Count VI), alleging under these counts that UCI improperly used UCJ's donations in ways that were contrary to the "mission," "purpose," and "activities" of the Unification Church.

In 2018, after two appeals[4] and discovery had wrapped up, all parties moved for summary judgment.

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[3] The trial court later determined Counts I and III of the complaint were abandoned, and appellants never appealed or otherwise contested this determination, so we do not describe these counts here.

[4] *See Fam. Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon* (*Moon I*), 129 A.3d 234 (D.C. 2015); *Unification Church Int'l*

As for Count II, while the trial court—Judge Laura Cordero, at this juncture—deemed the plaintiffs to have abandoned their theory about the improper removal of some UCI board members, the court granted summary judgment for the plaintiffs regarding their theories that Preston Moon and the director defendants improperly amended UCI's articles of incorporation and failed to support the Unification Church when they transferred assets to the newly created entities of KIF and GPF. In reaching this conclusion, the trial court found that the First Amendment's religious abstention doctrine did not bar resolution of these claims. As for the "three transactions" challenged "as self-dealing," the trial court granted summary judgment for the director defendants regarding all three transactions, and only the self-dealing claims against Preston Moon relating to the New Jersey property purchase and consulting agreement remained live. The trial court also found genuine issues of material fact remained regarding all of the contract claims (Counts IV-VI), specifically as to whether UCJ's donations to UCI were actually contingent upon UCI using those funds in accordance with its "original purposes" or the "activities" of the Unification Church. In a subsequent remedies order regarding the partial grant of summary judgment in the plaintiffs' favor on Count II, the trial court—Judge Jennifer Anderson at that point—ordered Preston and the director defendants to be removed from the UCI board and ordered that the original articles of incorporation be reinstated. The trial court also held

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v. Fam. Fed'n for World Peace & Unification Int'l (*Moon II*), Nos. 16-CV-0881, 17-CV-0023, Mem. Op. & J. (D.C. Jun. 8, 2018).

Preston and the director defendants jointly and severally liable for a "surcharge" of $530 million.

Preston Moon and the director defendants appealed the partial grant of summary judgment, and we reversed. In *Moon III*, we held that the trial court's resolution of plaintiffs' claims turned on deciding disputed questions of religious doctrine and purpose, rendering them nonjusticiable under the First Amendment's abstention doctrine. 281 A.3d at 61. Whether the changes to UCI's articles—for example, the move from "Unification Church" to "Unification Movement," and the excision of any reference to the Divine Principle—were an impermissible abandonment of UCI's central mission hinged on determining core religious questions: for instance, whether the "Unification Movement" could properly be considered part of the "Church," and inquiring into the doctrinal importance of the Divine Principle within the religion. *Id.* at 64-67. Accordingly, these claims involved disputed "theological question[s] that we h[ad] neither the expertise nor authority to answer." *Id.* at 64.

As for the transfers to KIF and GPF, whether those actions contradicted UCI's original purposes similarly depended on which side of the interfaith-vs.-denominational debate you stood on. Such a determination would require an analysis of what exactly promoting "the activities of Unification Churches" and "theology of the Unification Church" included and excluded, a determination that we could not permissibly make under the First Amendment. *See id.* at 57, 69-70. Moreover, we strongly disagreed with plaintiffs' attempt to differentiate the KIF and

GPF transfers from UCI's long history of donating to nonsectarian entities (e.g., *The Washington Times*, a firearms manufacturer, etc.) on the basis that Rev. Moon himself, as the "true leader" of the Church, approved those prior donations. *Id.* at 68-69. Any such distinction would require us to find both that the Unification Church was a hierarchical organization "in which the judgments of church leaders carry dispositive weight in church disputes," and also that Preston Moon was not Rev. Moon's rightful successor at the time he made the transfers—determinations that we could not make via any "neutral principles" of law. *Id.* at 69-70.

We did not address, however, the trial court's analysis as to the self-dealing theory of Count II, which we said "may yet have some legs." *Id.* at 70. Stating that there was a "potential exception" to the religious abstention doctrine in cases of "fraud or collusion" where religious figures "act in bad faith for secular purposes," we instructed that "the trial court may consider [the exception] on remand if appropriate." *Id.* at 70-71 (internal quotation marks omitted). We further noted that the contract claims, which were not on appeal in *Moon III*, "remain live in the trial court." *Id.* at 60 n.15.

On remand, the trial court—Judge Alfred S. Irving, Jr. now—dismissed the outstanding claims with prejudice across several orders. The trial court determined that in the wake of *Moon III*, (1) no claims remained against the director defendants; (2) appellants now lacked "special interest standing"—a requirement for some plaintiffs challenging the acts of charitable corporations like UCI—to pursue their

remaining self-dealing claims against Preston Moon after *Moon III* doomed the most substantial claims in the complaint; and (3) the potential fraud or collusion exception did not apply to the remaining contract-based claims against UCI, which it found were also barred by religious abstention. And in another order, the trial court (4) denied appellants' motion to reopen discovery—which included subsidiary requests to designate an expert and hold an evidentiary hearing—with respect to the fraud or collusion exception and recent statements made by Preston Moon after the discovery period had ended. This appeal followed.

III. Analysis

Appellants raise a litany of arguments on appeal identifying alleged errors in the trial court's analysis. We first address appellants' argument that their self-dealing claims that survived *Moon III* encompassed the KIF and GPF transfers, an issue we tackle first because it dovetails into other arguments raised in this appeal. We then address five other distinct arguments (and their various sub-arguments), with four pertaining to the orders listed above and a fifth relating to appellants' contention, raised for the first time in this appeal, that they have been denied access to the courts on account of their religion.

A. Neither the KIF nor GPF transfer were ever part of a self-dealing claim.

Post-remand, the director defendants and Preston Moon separately moved to dismiss the remaining claims against them under Super. Ct. Civ. R. 12(c) ("motion for judgment on the pleadings") and 12(b)(6) ("failure to state a claim upon which relief can be

granted"). In Judge Irving's orders granting the two motions, the trial court determined that appellants never alleged that the KIF or GPF transfers were instances of self-dealing under the theory of Count II that survived *Moon III*. Appellants contend this was error, arguing that (1) a prior trial court order decided that the KIF and GPF transfers were part of the self-dealing claim, which became the law of the case and binding on us because it was not challenged in previous appeals; and (2) in any event they adequately pled the KIF and GPF transfers as instances of self-dealing.

"We review de novo an order granting a Rule 12(b)(6) motion to dismiss for failure to state a claim and a Rule 12(c) motion for judgment on the pleadings." *Fourth Growth, LLC v. Wright*, 183 A.3d 1284, 1288 (D.C. 2018) (emphasis omitted). To survive either type of motion, a complaint must present "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* (quoting *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) and citing Super. Ct. Civ. R. 8(a)). "Pleadings that 'are no more than conclusions are not entitled to the assumption of truth,' and are insufficient to sustain a complaint." *Grimes v. Dist. of Columbia, Bus. Decisions Info. Inc.*, 89 A.3d 107, 112 (D.C. 2014) (quoting *Potomac Dev. Corp.*, 28 A.3d at 544). In analyzing a motion under Rule 12(c) or 12(b)(6), a trial court cannot "consider matters outside the pleadings" without converting it into a motion for summary judgment. *Id.* at 111.

Considering the relevant law and the language in appellants' complaint, we reject both of appellants'

arguments that the trial court should have found the KIF or GPF transfers to be instances of alleged self-dealing.

i. The law of the case doctrine does not apply.

Appellants' first argument invokes the law of the case doctrine, which generally "prevents relitigation of the same issue in the same case by courts of coordinate jurisdiction." *Sowell v. Walker*, 755 A.2d 438, 444 (D.C. 2000) (emphasis omitted) (quoting *Johnson v. Cap. City Mortg. Corp.*, 723 A.2d 852, 857 (D.C. 1999)). Appellants point to a 2016 preliminary injunction order issued by Judge John Mott, where he concluded in a footnote that "paragraph 117 of the Complaint"—which outlined appellants' four theories of breach of fiduciary duty in Count II—"arguably does encompass the KIF donation." Appellants contend that this order finally determined that the KIF transfer in particular was an example of self-dealing and accordingly must be considered law of the case, such that (1) it should have bound Judge Irving when ruling on the director defendants' and Preston Moon's motions, and (2) it now binds us because it was not challenged in either of the prior appeals post-dating that 2016 ruling. *See Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 250 (D.C. Cir. 1987) ("[A] legal decision made at one stage of litigation, unchallenged in a subsequent appeal when the opportunity to do so existed, becomes the law of the case for future stages of the same litigation.").

There are a host of flaws with this argument, foremost among them is that appellants fatally mischaracterize what Judge Mott said in his footnote.

The footnote says that the KIF transfer "arguably" falls under "paragraph 117," but only where that paragraph describes how the directors (1) permitted assets to be used in a way contrary to the "mission and purpose for which [UCI] was formed," and (2) failed to use assets "to support the mission and activities of the Unification Church." The "arguably" caveat alone precludes this ruling from having any preclusive force, *see Pannell v. District of Columbia*, 829 A.2d 474, 478 (D.C. 2003) (explaining that the law of the case doctrine applies only where "the first court's ruling is sufficiently final"), but even if you ignore that, Judge Mott was expressly referring to the distinct, non-self-dealing theories of Count II that we found nonjusticiable in *Moon III*. Judge Mott's order simply did not address the same question as Judge Irving—which was whether the KIF and GPF transfers were pled as acts of self-dealing—so that the law of the case doctrine has no application here. *Sowell*, 755 A.2d at 444 ("The doctrine has no application where the issue presented to a second judge is not identical to the question previously decided by the first judge.").

ii. Appellants never pled the KIF or GPF transfers as instances of self-dealing.

Appellants' second argument, persisting that its self-dealing claims encompassed the KIF and GPF transfers, fails on its merits. A claim of self-dealing alleges a breach of the duty of loyalty, which corporate officers and directors owe to the corporation they lead. *See* 11 William Meade Fletcher *et al.*, Fletcher Cyclopedia of the Law of Corporations § 837.60 (Sept. 2024 update) ("The duty of loyalty mandates that the best interest of the corporation and its shareholders

take precedence over any interest possessed by a director."); *see also Moon I*, 129 A.3d at 251 ("[D]irectors are subject to the fundamental fiduciary duties of loyalty and disinterestedness." (quoting *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171, 1174 (Del. 1988))). An impermissible self-dealing transaction is one in which there is a "conflict between duty and self-interest," Fletcher, *supra*, at § 837.60, which generally involves "appear[ing] on both sides of a [corporate] transaction," expecting to obtain "personal financial benefit" from a corporate transaction, or otherwise having a stake in the transaction that is at odds with the corporation's interests. *Behradrezaee v. Dashtara*, 910 A.2d 349, 363 (D.C. 2006) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)).

Here, appellants' complaint never described the KIF or GPF transfers as instances of self-dealing. To start, the section of the complaint on "Preston Moon['s] . . . Self-Dealing" only describes three transactions: the New Jersey property purchase, the consulting agreement, and the loan. The complaint then says that "*these* related party transactions constituted a breach of [Preston Moon's] duty of loyalty." Nowhere in the complaint are the KIF transfer, the GPF transfer, or some act that could be liberally construed as either transfer described as a transaction where Preston Moon or the director defendants were on "both sides" or "expect[ed] to derive any personal financial benefit." *Id.* (quoting *Aronson*, 473 A.2d. at 812). In fact, the complaint does not once mention the KIF transfer by name—the KIF transfer was revealed in discovery,

and appellants never amended their complaint to allege that it was an instance of self-dealing.

There is one small wrinkle with respect to the GPF transfer, where the complaint notes that Preston Moon originally created GPF "for his own purposes." But those four nonspecific words do not make out a legally sufficient complaint for a breach of fiduciary duty claim predicated on self-dealing. That phrase does not fairly describe, even implicitly, a "conflict between [Preston's] duty and self-interest," Fletcher, *supra*, at § 837.60, or meaningfully explain a "personal financial benefit" that Preston expected to obtain from the GPF donation, *Behradrezaee*, 910 A.2d at 363 (quoting *Aronson*, 473 A.2d. at 812). Preston would surely admit that the GPF and KIF transfers were "for his own purposes" in some sense; namely, in his telling his own purposes include advancing the interests of the Unification Church as he sees it, and redirecting the religion from where those on the other side of the schism would steer it. That of course would not amount to self-dealing, and appellants cannot retroactively smuggle a self-dealing claim into a single phrase in their complaint that is so vague and nondescript. Appellants simply did not—despite ample opportunity—plead the GPF transfer as an instance of self-dealing with at least some factual elucidation supporting that contention. *See Grimes*, 89 A.3d at 112 ("Pleadings that 'are no more than conclusions are not entitled to the assumption of truth' and are insufficient to sustain a complaint." (quoting *Potomac Dev. Corp.*, 28 A.3d at 544)).

Appellants' last gasp is that the trial court should have followed the "principle" that "pleadings are

deemed to conform to the evidence." We take this argument to mean that although the complaint never mentions KIF or the director defendants' roles in GPF, both things should have fallen under the self-dealing allegations in the complaint after the existence of KIF and these roles were uncovered in discovery. But the idea that pleadings automatically "conform to the evidence"—regardless of what those pleadings say—has no basis in law. Our rules establish a mechanism through which parties can request to amend their pleadings under certain circumstances, *see Williams v. Bd. of Trs. of Mount Jezreel Baptist Church*, 589 A.2d 901, 904 n.1 (D.C. 1991) (Super. Ct. Civ. R. 15 "permits amendment of pleadings to conform to the evidence."), and appellants did not successfully avail themselves here of that mechanism.

The trial court correctly concluded that the self-dealing claims that survived *Moon III* did not encompass the KIF and GPF transfers.[5]

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[5] Although we limit our review to the trial court's analysis of the pleadings themselves, the record supports appellees' contention that this move (calling the KIF and GPF donations acts of "self-dealing") was an about-face in appellants' theory of the case. The parties' conduct and court rulings throughout the litigation show that before the most recent remand, the KIF and GPF transfers were never considered to be part of appellants' self-dealing claims:

- Appellants referred in a filing to their "claims alleging breach of fiduciary duty arising from UCI's donations to KIF and GPF; UCI's amendment of its 1980 Articles of Incorporation; *and three self-dealing transactions*," in a clear reference to the purchase of the New Jersey property for $5.9 million, the $120,000/month consulting services agreement, and the $2

B. The dismissal of the complaint with respect to the director defendants was proper where no claims remained against them after Moon III.

Appellants next argue that the trial court erred in granting the director defendants' motion for judgment on the pleadings under Rule 12(c), in which the director defendants contended that "nothing remains" regarding the Count II breach of fiduciary duty claims against them, and accordingly there "is no valid basis in law" to keep them in the case. The trial court reasoned that the paragraphs of the complaint discussing the surviving self-dealing claims "only

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million loan. Another filing of theirs similarly described "three related-party transactions."

- Appellants on several occasions distinguished the three self-dealing transactions from the KIF and GPF transfers when describing their damages (after Judge Cordero granted them partial summary judgment). For example, appellants said in a filing that "[a] few Count II self-dealing claims against Preston Moon remain in the case" that involve "comparatively minor . . . amounts" of money relative to "the amounts at issue for the Count II claims as to which [Judge Cordero] entered summary judgment."

- Judge Cordero's summary judgment order mentioned how appellants "challenge three transactions . . . as self-dealing." The order then further describes how she granted summary judgment in favor of appellants on the KIF and GPF transfers, while at the same time she did not mention KIF or GPF when describing the self-dealing transactions that "remain[ed] pending."

- *Moon I* distinguished between (1) appellants' claim involving "the diversion of corporate expenditures" to GPF from (2) appellants' claim that "Preston Moon used his powers as President and Chairman of UCI to engage in self-dealing." 129 A.3d at 241-42.

identify Preston [Moon]," and appellants argue on appeal that this reasoning involved a misreading of their complaint.

Reviewing the dismissal de novo, we agree with the trial court that the plain language of the complaint shows that Preston Moon, *not* the director defendants, was the target of the self-dealing claim. To start, when describing the self-dealing theory of Count II, the complaint alleges that the "Individual Defendants . . . engag[ed] in a scheme of self-dealing designed to divert corporate assets to *the personal pursuits of Preston Moon*." (emphasis added). In other areas, too, the complaint describes the use of UCI funds for "Preston Moon's personal . . . projects," "[Preston Moon's] own personal activities," and "self-dealing transactions by Preston Moon." But the complaint never describes, directly or indirectly, diverting corporate assets to the "personal pursuits of the director defendants" or anything similar.

Moreover, the complaint contains its own separate section titled "*Preston Moon* Engages in Self-Dealing and Other Improper Transactions," which goes onto describe the New Jersey property purchase, the consulting agreement, and the loan in some detail, including a description of how Preston Moon—through entities that he "wholly owned"—was on both sides of those transactions. (emphasis added). In that section, Preston Moon's name is mentioned six times and none of the director defendants are named (or impliedly referenced) even once. So although the complaint contains one general reference to the "Individual Defendants" when discussing self-dealing, all in all it fails to provide any factual content about the director

defendants' potential roles or interests in the three enumerated self-dealing transactions. *See Behradrezaee*, 910 A.2d at 363; Fletcher, *supra*, at § 837.60.

Appellants latch onto one sentence in the complaint that says the "Individual Defendants" owed a "duty not to divert corporate assets . . . for personal gain." But still, we are left with no allegations that could support a self-dealing claim against any of the director defendants. This sentence merely describes a general legal principle and does not come close to making out a sufficient self-dealing claim.

In sum, because Preston Moon is the sole target of the self-dealing claim involving the three enumerated transactions—and because, as we found above, there was no outstanding KIF- or GPF-related self-dealing claim levied against the director defendants—the trial court properly determined that no claims remained against the director defendants after *Moon III* in its Rule 12(c) dismissal.[6]

C. The dismissal of the remaining claims against Preston Moon under Rule 12(b)(6) was proper where appellants lost special interest standing after Moon III.

Appellants also challenge Judge Irving's order granting Preston Moon's motion to dismiss for lack of special interest standing. Special interest standing is

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[6] Because we hold that judgment on the pleadings was proper in this regard, we do not reach appellees' alternative argument that the KIF and GPF transfers could not have been self-dealing as a matter of law on this record.

a prerequisite for certain private plaintiffs[7] who wish to challenge the actions of a "charitable trust" or "charitable corporation[]"—it requires, among other things, that the plaintiffs challenge an "extraordinary measure threatening the existence" of the charitable entity. *Hooker v. Edes Home*, 579 A.2d 608, 612-15 (D.C. 1990). Judge Irving's reasoning in granting Preston Moon's motion was that *Moon III* removed the KIF and GPF transfers from appellants' remaining claims against him, causing the "size and scale" of their claims to substantially diminish so that they no longer had special interest standing because they no longer challenged any extraordinary measure. Appellants' claims were dismissed with prejudice.

Appellants argue on appeal that (1) special interest standing was not lost, and contend in the alternative that (2) the law of the case precluded Judge Irving from issuing any ruling on special interest standing. They also contend that any dismissal for lack of special interest standing should have been (3) without prejudice; and (4) with leave to amend their complaint.

We address these arguments in turn, reviewing de novo the trial court's grant of a 12(b)(6) motion and resolution of the question of standing. *See Colbert v. District of Columbia*, 304 A.3d 199, 202 (D.C. 2023) (reviewing 12(b)(6) dismissal de novo); *District of*

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[7] Some private plaintiffs do not need to establish special interest standing where their standing is established by statute. *See* D.C. Code § 19-1304.05(c) ("The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust."); *Farina v. Janet Kennan Hous. Corp.*, Nos. 23-CV-0832 & 24-CV-0045, 2025 WL 1462269, at *8 (D.C. May 22, 2025). None of the parties argue that a statute provides a basis for standing here.

Columbia v. ExxonMobil Oil Corp., 172 A.3d 412, 418-19 (D.C. 2017) (reviewing de novo questions of both Article III and prudential standing). We accept the non-moving party's allegations in the complaint as true and draw all reasonable inferences in their favor. *Colbert*, 304 A.3d at 203.

i. After *Moon III*, appellants no longer challenged "extraordinary measures" as required to establish special interest standing.

Appellants' argument that special interest standing remained after *Moon III* rises and falls with their argument about whether the surviving self-dealing claims encompassed the KIF and GPF transfers. In their briefing, they do not focus their special interest standing analysis on the three enumerated self-dealing transactions, contending mainly that "[t]he *KIF transfer* was an extraordinary measure." For good reason—the surviving three transactions, which are all that remain given our conclusion above that the KIF and GPF transfers were not part of the self-dealing claims, fall well short of what our case law treats as extraordinary measures.

Generally, "only a public officer, usually the state Attorney General, has standing to bring an action to enforce the terms" of a "charitable corporation[]." *Moon I*, 129 A.3d at 244 (quoting *Hooker*, 579 A.2d at 612).[8] But an exception to this rule exists called special interest standing—private plaintiffs have such standing to sue when (1) they belong to a "particular class of potential beneficiaries" that "is sharply

[8] Special interest standing rules apply to both charitable trusts and charitable corporations. *See Moon I*, 129 A.3d at 244 n.15.

defined and its members are limited in number"; and (2) the plaintiffs challenge an "extraordinary measure" taken by the charitable corporation. *Hooker*, 579 A.2d at 614-15; *Farina*, 2025 WL 1462269, at *8. These requirements exist to protect charitable corporations from "vexatious litigation" brought by "any and all of a large number of individuals," which could unduly hinder their operations in the District. *Hooker*, 579 A.2d at 612.

An extraordinary measure—the second element of the analysis—is an action that "threaten[s] the existence" of the charitable corporation, as opposed to "an ordinary exercise of discretion on a matter expressly committed" to the corporation's leaders. *Id.* at 615. For example, we determined in *Hooker* that the sale of a home for "elderly, indigent widows" and "the planned transfer of its functions to another entity" was an extraordinary measure—the residents of the home stood "at a crossroads they are unlikely to face again," having been confronted with the threatened loss of both their residence and the entire organization that had provided them with support. *Id.* at 608, 616-17.

Here, the three allegedly self-dealing transactions—which, again, are the only actions of Preston Moon still of relevance—come nowhere close to being extraordinary measures. The purchase of the New Jersey property for $5.9 million, the $120,000/month consulting services agreement, and the $2 million loan, even when taken in combination are picayune in the scheme of assets that UCI controlled—totaling billions of dollars—and they in no way threatened UCI's existence. UCI received around $100 million per year from UCJ, and recently received

over $100 million from the sale of D.C. area buildings. UCI, to say the least, was not going to go bankrupt from these three transactions. Rather, these transactions were comparatively small and run-of-the-mill, qualifying as "ordinary" matters of discretion that Preston Moon and UCI's leadership were charged with handling as leaders of the corporation. *Id.* at 615. The facts here are a far cry from the existential threat that the charitable home in *Hooker* faced, and we thus conclude that the trial court properly dismissed the complaint as to Preston Moon for lack of special interest standing.[9]

ii. The law of the case doctrine did not bind Judge Irving to any prior rulings on special interest standing.

Appellants next argue that "[p]rior rulings" finding special interest standing "remain law of the case" and should have prevented Judge Irving from ruling otherwise. The prior rulings to which appellants cite are *Moon I*, Judge Cordero's order granting appellants' partial summary judgment, and Judge Anderson's subsequent remedies order.

But as we noted earlier, the law of the case doctrine "has no application where the issue presented to a second judge is not identical to the question previously decided by the first judge." *Sowell*, 755 A.2d at 444. Here, years after the rulings that appellants now rely upon, this court decided *Moon III* and drastically changed the special interest standing calculus. In

[9] Because appellants fail to meet the second element of the special interest standing analysis, we do not address the parties' arguments surrounding the first element.

Moon I, the extraordinary measures we identified were the steps Preston Moon and others allegedly took to "fundamentally chang[e] the purpose of UCI" and "divest itself from the Unification Church." 129 A.3d at 245 n.18. This plainly refers to the amendments to UCI's articles of incorporation and the KIF and GPF transfers, which fell from the case against Preston Moon after *Moon III*. The law of the case doctrine thus posed no bar to Judge Irving when he ruled that appellants lacked special interest standing post-remand.[10]

iii. The trial court properly dismissed the claims against Preston Moon with prejudice under Rule 12(b)(6).

In the event we determine they lack special interest standing, appellants claim the trial court improperly dismissed their claims against Preston Moon under Super. Ct. Civ. R. 12(b)(6) ("failure to state a claim upon which relief can be granted") rather

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[10] Appellants also argue that resolving the claims against Preston Moon on special interest standing grounds contradicts "the primary purpose of *Moon III*'s remand," which they say was to permit them to present evidence and arguments on the fraud or collusion exception to the religious abstention doctrine. Appellants also note that *Moon III* did not "question" their standing. But these contentions mischaracterize *Moon III*. We expressed no opinion as to the continued existence of special interest standing in *Moon III* because it was not raised on appeal, and our instructions to the trial court were to consider the fraud or collusion exception "if appropriate." 281 A.3d at 71. These instructions were followed—the trial court on remand discussed (albeit briefly) the fraud or collusion exception with respect to appellants' contract claims, and we address the trial court's resolution of that issue in section III.D., *infra*.

than 12(b)(1) ("lack of subject-matter jurisdiction"). Appellants make this argument because dismissals under 12(b)(1), as opposed to dismissals under 12(b)(6), "may only result in a dismissal without prejudice," potentially allowing them to file suit again. *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 48 (D.C. 2015). In particular, appellants take issue with the trial court's characterization of special interest standing as a question of "prudential standing," which they say wrongfully "allowed it to consider Preston Moon's motion as one brought under Rule 12(b)(6)."

Dismissals for lack of Article III standing fall under Rule 12(b)(1), while parties' lack of prudential or statutory standing should prompt a dismissal under Rule 12(b)(6). *ExxonMobil*, 172 A.3d at 418 n.8 (citing *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.2 (5th Cir. 2011)); *see also Potter v. Cozen & O'Connor*, 46 F.4th 148, 151 (3d Cir. 2022) (A challenge to "prudential" standing is "properly considered under Rule 12(b)(6), not Rule 12(b)(1)."). An attack on Article III standing is a challenge to the court's subject-matter jurisdiction. *UMC Dev.*, 120 A.3d at 42-43. An attack on prudential standing, by contrast, argues that the plaintiffs are not the proper parties to "invoke the courts' decisional and remedial powers" to adjudicate the underlying live dispute. *Consumer Fed'n of Am. v. Upjohn Co.*, 346 A.2d 725, 727 (D.C. 1975) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)); *see also ExxonMobil*, 172 A.3d at 419 & n.9.

The trial court was correct that appellants' lack of special interest standing is a prudential rather than a

jurisdictional defect. The *Hooker* special interest standing rules applicable to charitable corporations were judicially created and designed to avoid "vexatious litigation" resulting from "a large number of individuals who might benefit incidentally from the trust." 579 A.2d at 612. This is akin to prudential standing's "judicially self-imposed limits on the exercise . . . of jurisdiction," such as the rules prohibiting parties from litigating "generalized grievances," *ExxonMobil*, 172 A.3d at 419 (internal quotation marks omitted), or the rules preventing plaintiffs from suing under a law when they fall outside the "zone of interest" that the law seeks protect, *see Kalorama Citizens Ass'n v. SunTrust Bank Co.*, 286 A.3d 525, 533-35 (D.C. 2022) (applying prudential standing principles to the question of who can sue to enforce public easements). This demonstrates that special interest standing falls under the umbrella of prudential standing. It asks the question of which "class of persons" may sue to bring a claim as matter of "judicial self-governance," *Consumer Fed'n*, 346 A.2d at 727 (quoting *Warth*, 422 U.S. at 499), regardless of whether they check Article III's injury, causation, and redressability boxes.

This leads us to another reason why a lack of special interest standing is grounds for 12(b)(6), rather than 12(b)(1), dismissal. Special interest standing is not based on Article III's "case and controversy" requirement and does not relate to subject matter jurisdiction, rendering 12(b)(1) an inappropriate vehicle for dismissal. *See Hooker*, 579 A.2d at 611-15 (drawing special interest standing principles from the common law of trusts). Indeed, our precedents already

reflect that special interest standing motions are typically brought under Rule 12(b)(6) or 12(c). *See, e.g.*, *Moon I*, 129 A.3d at 244 (referring to "challenges based on lack of [special interest] standing and failure to state a cause of action pursuant to Super. Ct. Civ. R. 12(b)(6)"); *Bd. of Dirs., Washington City Orphan Asylum v. Bd. of Trs., Washington City Orphan Asylum*, 798 A.2d 1068, 1073 (D.C. 2002) (defendants' special interest standing argument raised in 12(c) motion for judgment on the pleadings); *see also He Depu v. Yahoo! Inc.*, 950 F.3d 897, 900 (D.C. Cir. 2020) (argument raised in 12(b)(6) motion).

The trial court thus properly dismissed the claims against Preston Moon with prejudice under Rule 12(b)(6). *Freyberg v. DCO 2400 14th St., LLC*, 304 A.3d 971, 981 (D.C. 2023) (dismissals under 12(b)(6) are "adjudication[s] on the merits" and are "assumed to be with prejudice").

iv. The trial court did not abuse its discretion by denying appellants leave to amend their complaint in order to plead the KIF and GPF transfers as self-dealing.

Appellants' final attempt to keep their litigation alive against Preston Moon (and they direct this argument at the director defendants as well) is their contention that the trial court should have dismissed their complaint with leave to amend, specifically so that they could plead the KIF and GPF transfers as examples of self-dealing. Appellants requested leave to amend, which the trial court denied, in their opposition to Preston Moon's 12(b)(6) motion to dismiss. Appellants argue on appeal that the trial

court, in denying their request, unduly focused on the "length of time [the] case has been pending."

"We review a trial court's decision to grant or deny leave to amend a pleading only for abuse of discretion." *U.S. Bank Tr., N.A. v. Omid Land Grp., LLC*, 279 A.3d 374, 381 (D.C. 2022). Leave to amend should generally be granted "freely . . . when justice so requires." Super. Ct. Civ. R. 15(a)(3). "Factors affecting the court's discretion include: '(1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party.'" *Pannell*, 829 A.2d at 477 (quoting *Crowley v. N. Am. Telecomm. Ass'n*, 691 A.2d 1169, 1174 (D.C. 1997)). Although we have held that denying leave to amend solely on the basis of delay "may be reversed," *Eagle Wine & Liquor Co. v. Silverberg Elec. Co.*, 402 A.2d 31, 35 (D.C. 1979), we have also said that "[t]he lateness of a motion for leave to amend . . . may justify its denial if the moving party fails to state satisfactory reasons for the tardy filing and if the granting of the motion would require new or additional discovery." *Pannell*, 829 A.2d at 477 (citing *Eagle Wine*, 402 A.2d at 35).

Judge Irving's conclusion that leave to amend was improper followed an analysis of all the appropriate factors and falls well within the range of permissible outcomes. Judge Irving noted that although this was appellants' first request to amend and that there was no clear evidence of bad faith, this request was made twelve years into the litigation—after multiple completed appeals to this court—and would have been

prejudicial to Preston Moon and the director defendants. The prejudice stemmed from the fact that appellants' theory of the case was changing last-minute (the KIF and GPF transfers were only now being alleged to be self-dealing) and their request for leave to amend was accompanied by new discovery demands. Judge Irving was also unmoved by appellants' justification for waiting so long to amend, which was that the KIF transfer was revealed only in discovery. In his words, "[appellants] discovered [the KIF and GPF] transactions . . . by 2013 at the earliest and 2017 at the latest," meaning appellants had all the information necessary to seek leave to amend six to ten years before they actually sought that leave.[11] Furthermore, Judge Irving found the fourth *Pannell* factor—regarding the merit of the proposed amendment—weighed against appellants because they had not even "proffered a proposed amended Complaint nor detailed what specific amendments they envision," having only suggested that they would amend to include the GPF and KIF transfers within "the scope of the self-dealing claim."

Appellants' invocation of *Miller-McGee v. Washington Hosp. Ctr.*, 920 A.2d 430 (D.C. 2007), does not help their case. In *Miller-McGee*, we held that the trial court abused its discretion by not sua sponte offering the plaintiff an opportunity to amend her

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[11] Appellants do not contest the issue of when they discovered the KIF transfer on appeal. But it is fair to say that appellants discovered the KIF transfer by July 2016 at the latest, given that it was substantively mentioned in Judge Mott's preliminary injunction order issued that month. At bottom, therefore, the delay in seeking leave to amend was no less than seven years.

complaint. 920 A.2d at 434-39. But as appellees note, we reached this conclusion because the case presented "exceptional circumstances"—the traditional leave to amend factors weighed overwhelmingly in the plaintiff's favor, and there was evidence that the plaintiff's failure to move for leave to amend was induced by the court. *Id.* at 437-39. There are no such exceptional circumstances here. Our case law, in fact, strongly supports Judge Irving's conclusion. *See, e.g.*, *Pannell*, 829 A.2d at 477 (lateness, prejudice to non-moving party, and lack of explanation for lateness justified denial of leave to amend); *see also Va. Acad. of Clinical Psychs. v. Grp. Hospitalization & Med. Servs., Inc.*, 878 A.2d 1226, 1239-41 (D.C. 2005) (affirming denial of leave to amend where amendment (1) was sought two years after complaint was filed and seven months after close of discovery; (2) would have required additional discovery; and (3) followed the completion of summary judgment briefing). In sum, the trial court did not abuse its discretion in denying appellants leave to amend.

D. Summary judgment for UCI was proper where religious abstention barred resolution of UCJ's contract claims as a matter of law.

We next consider the trial court's order dismissing UCJ's remaining contract claims against UCI on religious abstention grounds, where it found that resolution of the claims would require a "constitutionally impermissible inquiry into contested matters of Unification Church doctrine, polity, and practice." The court reached this conclusion after considering that the contract conditions at issue hinged upon the meaning of disputed phrases such as

"the activities of the Unification Church," much like the issues we held in *Moon III* could not be resolved without running afoul of the religious abstention doctrine. The trial court also declined to apply the potential fraud or collusion exception to its analysis, reasoning that it was "immaterial" to the contract claims and that appellants "made no showing" that it "should be applied."

We review a grant of summary judgment de novo. *Grant v. May Dep't Stores Co.*, 786 A.2d 580, 583 (D.C. 2001). "To prevail on a motion for summary judgment, a party must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Id.*; Super. Ct. Civ. R. 56(a). We view the evidence "in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor." *Radbod v. Moghim*, 269 A.3d 1035, 1041 (D.C. 2022); Super. Ct. Civ. R. 56(c).

As to Judge Irving's grant of summary judgment to UCI on the contract claims, appellants argue that the trial court erred by (1) finding that resolution of the contract claims required determining questions of disputed religious doctrine; and (2) after making that finding, failing to apply the fraud or collusion exception to nonetheless permit review of the contract claims. We start with some legal background on the religious abstention doctrine, and then address these arguments in turn.

"The First Amendment's Religion Clauses 'severely circumscribe the role that civil courts may play in the resolution of disputes involving religious

organizations.'" *Moon III*, 281 A.3d at 60 (quoting *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005)). Encapsulated in what has come to be known as the religious abstention doctrine, the Supreme Court has held that civil courts cannot decide claims that turn on "the interpretation of particular church doctrines" or "the importance of those doctrines to the religion." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969).

Neither can courts answer questions regarding contested matters of religious leadership or governance. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 186 (2012) (Religious organizations must have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952))).

But civil courts are of course not barred from "resolving any dispute with religious implications." *Moon III*, 281 A.3d at 61. We can resolve property or contract disputes between religious factions, for example, if we can do so through the application of "neutral principles of law" and "without deciding contested matters of church doctrine, polity, or practice." *Id.* (quoting *Moon I*, 129 A.3d at 250, 252); *Presbyterian Church*, 393 U.S. at 449. In determining whether a claim can be adjudicated via neutral principles of law, "we must look past 'the label placed on the action' and consider 'the actual issues the court has been asked to decide.'" *Moon III*, 281 A.3d at 62

(quoting *Moon I*, 129 A.3d at 249). This approach balances competing First Amendment interests by preserving access to the courts for religious claimants while also preventing inappropriate government entanglement in religion. *See Jones v. Wolf*, 443 U.S. 595, 606 (1979) (The "neutral-principles approach" does not impede the "free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods.").

The Supreme Court has also suggested that there is a "potential" "fraud or collusion" exception to the religious abstention doctrine. *Moon III*, 281 A.3d at 70 (citing *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976)). Under that exception, the Court reasoned it could be appropriate for courts to decide a facially ecclesiastical dispute when religious actors "act in bad faith for secular purposes." *Milivojevich*, 426 U.S. at 713. But it remains true that as of today, "no decision of [the Supreme Court] has given concrete content to or applied the 'exception,'" the origin of which was "dictum only" from the Supreme Court's prior decision in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). *Milivojevich*, 426 U.S. at 712; *Moon v. Moon*, 833 F. App'x 876, 880 (2d Cir. 2020) (referring to "purported" fraud or collusion exception).

i. The contract and quasi-contract claims are nonjusticiable under the religious abstention doctrine.

Appellants' contract-related claims—which for our purposes include the claims for breach of contract,

promissory estoppel, and unjust enrichment—are all based on the purported existence of conditions that UCJ had placed on its donations to UCI, and UCI's alleged breach of those conditions. This included the primary "restriction" that the donated funds "would be used in a manner consistent with the purposes for which [UCI] was established," as those purposes were described in UCI's articles of incorporation before their 2010 amendment. Those pre-2010 articles described UCI's purpose as "assisting, advising, coordinating, and guiding the activities of Unification Churches" across the globe, a purpose that "was also reflected in correspondence between" UCJ and UCI. UCJ claims that UCI breached those conditions it placed on its bequests when it made substantial donations to KIF and GPF.

The trial court was correct to hold that determining whether UCI breached these conditions would improperly embroil our courts in the same religious questions we found nonjusticiable in *Moon III*. To resolve whether UCI's donations to KIF and GPF were a breach of a potential contract with UCJ, the trial court would need to determine the meaning of "the activities of Unification Churches" with some degree of specificity. *See United House of Prayer for All People v. Therrien Waddell, Inc.*, 112 A.3d 330, 338 (D.C. 2015) (Contracts must be "sufficiently definite" and "provide[] a sufficient basis for determining whether a breach has occurred." (quoting *Rosenthal v. Nat'l Produce Co., Inc.*, 573 A.2d 365, 370 (D.C. 1990))); *Simard v. Resolution Tr. Corp.*, 639 A.2d 540, 552 (D.C. 1994) (promissory estoppel claims require "evidence of a promise"); Restatement (Third) of

Restitution and Unjust Enrichment §§ 1-2 (A.L.I. 2011) (unjust enrichment claims require "observable loss" and retention of a benefit "in a manner that the law regards as unjustified"). And here, UCJ and UCI strongly disagree as to what those religious Unification Church "activities" can be, and we cannot resolve that dispute by resorting to any neutral legal principles. We instead would need to opine on core religious questions, which is beyond our bailiwick.

Let's start with the KIF transfer, which involved UCI, under Preston Moon's leadership, moving Parc1 and other assets to KIF pursuant to an agreement that the assets be used in accordance with a more interfaith vision of the Unification Church. For that transfer to be deemed inconsistent with "the activities of the Unification Church" and thus constitute a breach of any conditions that UCJ put on its donations, it would require our courts to determine one of two things (maybe both): that (1) appellants' competing denominational vision for the Unification Church is the sole and true path forward for the religion; and/or (2) only donations approved by Rev. Moon or his valid religious successor—to the exclusion of Preston Moon—could be considered as supporting the Unification Church.[12] To reach either conclusion

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[12] Appellants at times suggest, harkening back to Rev. Moon himself, that there are roughly no bounds on how the true leader of the Unification Church directs UCI's assets. The leader charts the Unification Church's course, and can steer the ship wherever he likes, so that by virtue of advancing his own vision he has per se supported the Church. At other times, they suggest some limits on the true leader's power to steer the religion, so that even if Preston were the true successor to Rev. Moon, he may yet have diverted UCI's funds away from the Unification Church's

would be a "deeply religious judgment" that the trial court rightfully declined to make. *Moon III*, 281 A.3d at 64-65. In *Moon III*, we likewise declined to take sides between these two different "conception[s]" of the Church and refused to hold that anyone was or was not the Church's true leader, let alone hold that the Church had a hierarchical structure such that the leader's judgment would "carry dispositive weight in church disputes." *Id.* at 64, 69 (discussing Preston being named the "fourth Adam" by Rev. Moon and noting that "intrachurch succession disputes fall squarely within the nonjusticiable category" (quoting *Moon v. Moon*, 431 F. Supp. 3d 394, 406 (S.D.N.Y. 2019), *aff'd Moon*, 833 F. App'x 876)).

The GPF transfers, meanwhile, involved diverting donations that had historically gone to UPF (an organization led by Sean Moon) to GPF (an organization led by Preston Moon) for the purpose of holding "global peace festivals." For our courts to say that transfer did not support "the activities of the Unification Church," we again would need to conclude either or both (1) that Preston is not the true leader of the Unification Church and/or (2) that GPF's peace festivals somehow conflict with, or at least fail to advance, Unification Church practice or theology

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purposes. It is this unclarity in appellants' position that prompts us to equivocate on whether we would need to draw one or both of the conclusions above in order to find appellants have a viable claim, and ultimately it does not matter because we could not draw either one. At oral argument, appellants' counsel was twice asked pointedly whether they would have had a viable suit against Rev. Moon if he (rather than Preston) had directed UCI to make the KIF donation during his lifetime. Counsel did not provide a direct answer.

whereas UPF peace festivals advance the religion. Again, this would require our courts to embroil themselves in disputed theological questions of religious leadership and doctrine, which would be constitutionally improper.

Appellants suggest some ways out of this theological thicket, but none of them is navigable. For one, appellants argue that the trial court wrongfully found that UCI's articles of incorporation were "the only evidence of the potential contract terms," pointing to UCJ's "donative intent" and other correspondence like "solicitation letters and budgets" as containing "contract terms that would permit adjudication of a breach on neutral principles of law."

That misses the abstention problem entirely. Appellants' invocation of "donative intent" is of a piece with the aforementioned contractual "restrictions" on donations. There was deposition testimony and other evidence that UCJ's funds were donated so that UCI could put them towards "activities under the guidance of the True Parents and international headquarters," "missionary purposes," and UCI's "original purposes." These similarly broad and religion-focused conditions all run into the same First Amendment problems as before. "Original purposes" refers to the same exact articles of incorporation language, and whether the KIF and GPF transfers were made under the "the guidance of the True Parents" likewise gets into disputed questions of theology. "True Parents" refers to Rev. Moon and Hak Ja Han Moon, and Rev. Moon's vision or "guidance" for the Church is very much contested—Preston's interfaith perspective, in his words, was based upon Rev. Moon's own

pronouncements about the end of the Church and the beginning of a "family" approach. Neither can we answer what constitutes "international headquarters"—we held in *Moon III* that the question of whether any organization is "truly the authoritative religious entity directing the Unification Church" is a nonjusticiable religious question. 281 A.3d at 62 n.17. We are thus unable to wade into the waters of defining these terms with the kind of specificity necessary to resolve whether a breach of contract occurred. Whether they come packaged as contractual restrictions, donative intent, or Harry Houdini—these arguments still cannot wriggle out of their abstention doctrine shackles.

The correspondence appellants cite similarly harkens back to UCI's articles of incorporation and the disputed religious terms therein. The solicitation letters and budgets mentioned that UCJ's donated funds would go towards "[b]usiness and other projects which, economically or otherwise, help advance the mission of UCI and the worldwide Unification Church movement." "[A]dvanc[ing] the mission of UCI and the worldwide Unification Church movement" is essentially identical to the language in UCI's original articles, which describes "assisting, advising, coordinating, and guiding the activities of Unification Churches." Appellants offer no reasoning for why these two remarkably similar "conditions" should be treated any differently, so neither can this correspondence provide a religiously neutral path for analyzing appellants' claims.

In addition, appellants argue that because KIF was an entity that "could not have a religious purpose"

under Swiss law, the KIF transfer was a violation of the condition that donated assets be put towards religious purposes and remain "restricted to the Unification Church." Granting without delving into their understanding of Swiss law, this argument nevertheless runs into the problem that UCI has a long history of donating substantial sums to secular entities. As we stressed in *Moon III* and have emphasized again here, the First Amendment prohibits us from finding that those historical donations were somehow compliant with the Unification Church doctrine because Rev. Moon approved them, while this later one was not because Preston (rather than Sean or Hak Ja Han) did. *See Moon III*, 281 A.3d at 68-69.

Appellants' last contract-based argument is that "no matter what the donative restrictions were, UCI breached them by irrevocably transferring assets to KIF without knowing or having any mechanism to know or oversee whether KIF used the assets consistent with UCJ's donative intent." But this argument suffers from a fundamental defect: it is not based in any "obligation or duty arising out of [a] contract." *CorpCar Servs. Houston, Ltd. v. Carey Licensing, Inc.*, 325 A.3d 1235, 1244-45 (D.C. 2024). Appellants do not point to any contractual obligation requiring UCI to monitor third-party recipients of donated funds to ensure they use those funds as intended.

At bottom, appellants have yet to provide a clear, spelled-out answer as to how a court or jury might parse their contract and quasi-contract claims through neutral principles of law. Pointing us to any and all

potential contract conditions in the record does not cure the underlying problem we identified in *Moon III*—which was reiterated by the trial court on remand—that any path of decisionmaking analysis would require deciding actual, disputed questions of religious doctrine or leadership. This necessarily results from the combination of (1) the use of extraordinarily broad, religious language in the purported contract terms and (2) an intrachurch dispute about the meaning of that language. The contract-related claims therefore must fail under the baseline religious abstention doctrine.

ii. Any fraud or collusion exception would not save the contract-related claims.

In their final attempt to rescue the contract and quasi-contract claims,[13] appellants argue that the trial

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[13] We focus our fraud or collusion discussion on the contract-related claims because that is largely how the discussion was teed up before the trial court. UCJ's opposition to UCI's motion for summary judgment regarding the contract-related claims relied most heavily upon the fraud or collusion exception, and the trial court only analyzed the fraud or collusion exception with respect to those claims. To the extent that appellants argue on appeal that the trial court should have found the fraud or collusion exception also applicable to Count II's breach of fiduciary duty claim (which formally survived *Moon III* in that we did not direct summary judgment in favor of Preston Moon and the director defendants on Count II, but rather reversed the trial court's prior grant of summary judgment), our reasoning in this section applies with equal force. As we will explain, appellants cannot invoke the fraud or collusion exception because they have not made a showing—despite many years of discovery—that Preston Moon or the director defendants were bad faith actors with truly secular motives. That forecloses any argument that the religious abstention doctrine should not apply to the KIF and GPF transfers or the amendment of UCI's articles of incorporation,

court should have found that a fraud or collusion exception to the religious abstention doctrine actually exists, and then applied it so that their claims could continue to trial. The basis for finding that this case involved "tactical" or "contrived use of religion" amounting to fraud or collusion, appellants contend, is that when coordinating the KIF transfer, UCI acted "in secrecy," did not exercise "oversight" over the KIF transfer, did not follow "corporate norms," and converted "the Church's assets" "to their own use." Appellants also point to Preston Moon's efforts to replace UCI's board with people who believed in his vision and leadership within the Unification Church, which they decry as a "takeover."

We do not need to reach the question of whether there is in fact a fraud or collusion exception to the abstention doctrine, because assuming for the sake of argument that such an exception exists, appellants' claims would not fit within any viable version of it.[14]

To recap, the potential fraud or collusion exception—which the Supreme Court has explained would have to be quite "narrow" if it is recognized at all—allows for "marginal civil court review" when religious actors act "in bad faith for secular purposes." *Milivojevich*, 426 U.S. at 713; *see also Moon*, 833

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whether framed within appellants' theories of breach of contract or breach of fiduciary duty.

[14] For the same reason, we do not reach UCI's contentions that (1) the fraud or collusion exception cannot apply as a threshold matter to claims that do not sound in fraud (i.e., cannot apply to a breach of contract claim); and (2) appellants therefore needed to specifically plead a claim for fraud to avail themselves of the exception.

F. App'x at 880 (The exception "would apply where a religious entity engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen."). Notably, the fraud or collusion exception was once the "fraud, collusion, or arbitrariness exception"—in *Milivojevich*, the Court jettisoned "arbitrariness," reasoning that whether a religious figure acted arbitrarily would "inherently" involve an inquiry into religious rules or custom, which "is exactly the inquiry that the First Amendment prohibits." 426 U.S. at 712-13. The Court thus declined to recognize an exception that "would undermine the general rule." *Id.*; *see also Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983) (declining to apply exception even where complaint "arguably state[d] a claim for fraud or collusion" because priest's underlying claims "deal only with matters of religion" and not "secular aspects to employment"). This court has been asked once before to apply the fraud or collusion exception, and we declined to do so because it was "likely to be as impossible to apply as the 'arbitrariness' portion of the exception" and there were no "extraordinary circumstances" warranting its application. *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002) (involving a pastor's defamation suit against a former church employer). And even assuming the exception could apply, we noted that it would be unavailing because the plaintiff never pled that the statements he was challenging in his defamation suit had "secular purposes." *Id.* at 881-82 (quoting *Milivojevich*, 426 U.S. at 713).

Here, the "facts" that appellants cite in support of the fraud or collusion exception do not support a conclusion that the KIF or GPF transfers were secular acts performed under religious pretext such that the exception could apply. Appellants' point that the KIF transfer involved converting Church assets "to [UCI's] own use," which they apparently mean as "UCI's secular use," is unsupported and conclusory. And even if we assume that UCI acted secretively and contrary to corporate norms,[15] that is entirely unsurprising given the undisputed religious schism that had arisen within the Unification Church. It is no mystery why one faction of a religious schism would want to surreptitiously funnel money to its own religious causes rather than announcing those maneuvers to opposing factions—once the other side finds out, you are bound for protracted litigation (as ultimately occurred here). That secrecy is simply no evidence at all that Preston—who has at least a plausible claim to being Rev. Moon's rightful successor, and perhaps to messianic status, under any view of the evidence—or his followers knew that Preston was a fraud, as appellants would need to show to invoke any fraud or collusion exception. Appellants simply have no meaningful evidence on that point sufficient to gin up a genuine issue of material fact that would ward off summary judgment against them. The fraud and collusion that appellants would have our courts adjudicate via an exception to the religious abstention

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[15] UCI does not contest appellants' characterizations that (1) appellants were not made aware of the KIF transfer until discovery in this litigation; and (2) UCI did not conduct a review or appraisal of the assets before making the transfer.

doctrine depends entirely on our willingness to jump into the ecclesiastical deep end and resolve religious disputes, a step we have already explained we are precluded from taking. *Moon III*, 281 A.3d at 70.

The overwhelming weight of the evidence in this case indicates that the KIF and GPF transfers and the efforts to facilitate them were motivated by religious intentions, not "secular purposes." *Heard*, 810 A.2d at 882. Preston organized the KIF transfer pursuant to an agreement steeped in religious language—this agreement, which mirrored UCI's amended articles of incorporation, included purposes such as the promotion of "interdenominational, interreligious, and international unification of world Christianity and all other religions," and the advancement of "the understanding and teaching of the theology and principles of the Unification Movement." Plus, there was evidence that the Parc1 property was transferred to KIF so as to improve the development's economic prospects, which Preston Moon and one of the directors believed would help fulfill Rev. Moon's "lifelong dream" of developing the Parc1 property for the Church. And as for Preston Moon's efforts to replace UCI's board members, it is undisputed that Preston Moon did this to ensure that people who shared his view of the Unification Church as a decentralized and interfaith movement had a stronghold. There is no meaningful countervailing evidence aside from appellants' aspersions that Preston is an interloper, not the true leader, and to agree with them about that would require us to walk blindfolded back into the ecclesiastical fire.

Appellants' own statements and proffered evidence in this case further cut against finding that Preston's actions or the motives behind them were dishonest or a mere "smokescreen" for self-dealing. *Moon*, 833 F. App'x at 880. Appellants acknowledged in one of their proposed findings of fact that "as of 1998, Preston Moon believed he was leading the Unification Church movement," which was a belief shared by all of UCI's new directors, all of whom grew up in the Church and several of whom were born into families central to its founding. Furthermore, appellants' own expert testified in a deposition that the interfaith and denominational factions within the Church are "utterly convinced that their way forward is the path the Unification tradition should follow." This evidence further illustrates our inability to "disentangle" and isolate any secular fraud or collusion from UCI's actions, which were done under the auspices of Preston Moon's claim to "messianic status" and his leadership of the Church's interfaith faction. *Moon III*, 281 A.3d at 70; *see generally id.* at 50, 53-59 (describing an actual "religious schism" that began "[i]n the final years of Rev. Moon's life" before this litigation began). This situation cannot amount to "extraordinary circumstances" of bad-faith, secular activity that might warrant application of the fraud or collusion exception. *Heard*, 810 A.2d at 881. If it did, the exception would swallow the abstention doctrine whole.

Let us elaborate on why appellants' view of the fraud or collusion exception would obliterate the abstention doctrine, rendering their view as a non-viable candidate for any potentially "narrow"

exception that the Supreme Court has suggested may exist. Recall that appellants' claim that the KIF or GPF transfers were actually secular runs into UCI's long history of making Rev. Moon-approved donations to secular entities (e.g., a general-purpose newspaper, a ballet company, a university, a martial arts organization, and a firearms manufacturer). To determine that these prior donations were religious in nature but the KIF and GPF transfers were not is an exercise that we cannot do under the baseline religious abstention doctrine. As we noted in *Moon III*, this would require us to determine both "that the Unification Church is a hierarchical organization" and that Preston Moon was not "the true leader of the religion" at the time he organized the KIF and GPF transfers. *Id.* at 69.

Appellants' appeal to the fraud or collusion exception runs right into the exact same problem. Preston has only fraudulently donated UCI's assets if he is not the true leader of the Unification Church *and* he knows it. We cannot say the first thing without running afoul of the abstention doctrine, as we made clear in *Moon III*, and if bare allegations of fraud or collusion could get us around that, then the courts would be thrust right back into resolving core theological disputes about religious doctrine, hierarchy, and succession. "No thanks" to that—that runs afoul of the abstention doctrine's central animating principles. And it is well established that we cannot apply any fraud or collusion exception in a way that violates the existing Supreme Court precedent on religious abstention. *See Milivojevich*,

426 U.S. at 713; *Heard*, 810 A.2d at 881; *Kaufmann*, 707 F.2d at 358-59.

The trial court properly declined to apply the fraud or collusion exception to the religious abstention doctrine when it granted summary judgment to UCI on the contract claims.

E. Appellants have not been denied access to a legal forum based on their religion.

Appellants further posit for the first time on appeal that the "discriminatory" application of the religious abstention doctrine in this case has "set a dangerous precedent by closing the doors of the courts to religious organizations" and "violate[d]" their "religious freedom."[16] But appellants' only evidence of discrimination is the fact that the trial court applied the Supreme Court's religious abstention doctrine, which itself reflects and incorporates concerns about religious claimants' access to the courts. *See Jones*, 443 U.S. at 606 (The "neutral-principles approach" does not impede the "free exercise of religion, any more

[16] We take appellees' point that appellants appear to have forfeited this argument. Appellants did not raise an access-to-courts argument based on the Free Exercise Clause in either *Moon III* or post-remand when religious abstention was being litigated. *See Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 399 n.31 (D.C. 2023) (declining to address argument because it was "not raised in the trial court"); *see also G.W. v. United States*, 323 A.3d 425, 433 (D.C. 2024) (Appellant could not "relitigate in a second direct appeal issues this court addressed on the merits, or could have addressed on the merits had they not been forfeited, in a first direct appeal."). Regardless, appellants' argument that they have been denied access to the courts due to their religion is a specious one, so we tackle it, albeit briefly, on its own terms.

than do other neutral provisions of state law."). This argument also conflates appellants' *status* as religious claimants with appellants' claims, which involve religious *questions*—the religious abstention doctrine applies regardless of who the parties are, focusing on "the actual issues the court has been asked to decide." *Moon III*, 281 A.3d at 62 (quoting *Moon I*, 129 A.3d at 249). We must reject appellants' argument that the Free Exercise Clause required the availability of a trial and eventual remedy for their claims, which would be tantamount to creating a novel end-run around the well-established religious abstention doctrine.

F. The trial court did not abuse its discretion in denying appellants' efforts to reopen discovery.

We now turn to appellants' final argument on appeal. After *Moon III*, appellants asked the trial court to reopen discovery—complete with an evidentiary hearing and a chance to belatedly designate an expert—targeted at Preston Moon's relationship with KIF (specifically as to post-discovery comments Preston made about the Parc1 development) and the fraud or collusion exception generally. The proposed discovery would have involved several days' worth of depositions as well as multiple sets of interrogatories and document requests.

The trial court denied their motion after finding that appellants had not made the requisite showings of "good cause" or "excusable neglect." Super. Ct. Civ. R. 6(b)(1)(B), 16(b)(5)(E), 16(b)(7)(A). The trial court reasoned that the new discovery, involving significant "additional time and expense," would not provide

meaningfully new or relevant evidence for appellants' claims. The trial court also specifically rejected appellants' claim that more fact finding on the fraud or collusion exception issue was warranted—since the early stages of this litigation, appellants "were on ample notice that the First Amendment's religious abstention doctrine posed a significant challenge to prosecution of their case," precluding them from reopening discovery on those issues at this "belated" point in the case (five years after discovery's close). As for the belated expert designation, the trial court found the preliminary expert report unhelpful to appellants' cause, since it simply "reiterat[es] the extensive factual record" and "draw[s] generic inferences therefrom," which are tasks that the court or jury could "undertake on their own." The trial court also faulted appellants for not fully complying with Super. Ct. Civ. R. 16(b)(7)(A), which requires movants seeking to reopen discovery to provide the court with, among other things, "the date or dates within which all further discovery must be completed."

Appellants now argue on appeal that the trial court abused its discretion in declining to reopen discovery and rejecting its subsidiary requests for an evidentiary hearing and to belatedly designate a fraud or collusion expert. First, they argue—in just two sentences—that there was excusable neglect here because Preston's recent statements on Parc1 were made after the close of discovery and the fraud or collusion exception issue "only became ripe after *Moon III*." Second, they posit that the lack of new discovery and an evidentiary hearing was part of the trial court's "error" in "failing to decide whether the [fraud or collusion exception]

exists," which they argue violated our *Moon III* remand instructions.

Discovery rulings are generally reviewed for abuse of discretion. *Allen v. Yates*, 870 A.2d 39, 50 (D.C. 2005). "It is a rare circumstance where we find an abuse of discretion in the context of discovery disputes because we are appropriately reluctant to substitute our judgment for that of the trial court." *Featherson v. Educ. Diagnostic Inst., Inc.*, 933 A.2d 335, 338 (D.C. 2007). Where a party moves to reopen discovery after expiration of the deadlines set forth in a pretrial scheduling order, the party not only must make "the required showing of good cause for modification of the court's scheduling order," but also must "satisfy the trial court that [the party's] failure to act in timely fashion was due to excusable neglect." *Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d 904, 908 (D.C. 1998); *see also* Super. Ct. Civ. R. 6(b)(1)(B) (requiring party seeking extension of time to act after expiration thereof to show good cause and excusable neglect); Super. Ct. Civ. R. 16(b)(7)(A) ("The scheduling order may not be modified except by leave of court on a showing of good cause."); Super. Ct. Civ. R. 16(b)(5)(E) (After the close of discovery, "no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause."). "Excusable neglect" can be found upon considering factors like the length of delay, the reason for delay, whether the movant acted in good faith, and the danger of prejudice to the nonmoving party. *See In re Estate of Yates*, 988 A.2d 466, 468 (D.C. 2010) (interpreting "excusable neglect" within neighboring Rule 6(b)(2)). "Good cause" similarly involves a

multitude of factors, including "whether allowing the evidence would incurably surprise or prejudice the opposite party," "the impact of allowing the proposed testimony [or other discovery] on the orderliness and efficiency of the trial," and whether the new discovery would aid the "completeness of information before the court or jury." *Dada*, 715 A.2d at 909-10 & n.7.

As to their first argument, appellants do not meaningfully challenge the trial court's analysis under the above factors, which is fatal to their efforts. Appellants' opening brief does not at all explain how they met the requirements of good cause (which they had the burden of demonstrating) or Super. Ct. Civ. R. 16(b)(7)(A) (which required them to submit a sufficiently detailed discovery plan). And even if Preston Moon's late-breaking comments about Parc1 provided a good "reason" for part of appellants' delay in requesting to reopen discovery under the excusable neglect analysis, their argument does not address the trial court's core concerns with the cost of the proposed discovery, the likelihood that it would not yield any relevant evidence, the fact that there had already been years of discovery on religious abstention, and the length of time that had passed since the close of discovery. With most of the relevant factors weighing against appellants—and with appellants failing to contest that the trial court's balancing should have been any different—we conclude that this is not one of the "rare circumstance[s]" where the trial court abused its discretion. *Featherson*, 933 A.2d at 338.

As to their second argument that the trial court failed to follow our remand instructions and thus hampered appellants' ability to make a fraud or

collusion argument, appellants misread *Moon III*. In *Moon III*, we noted that the self-dealing theory "may yet have some legs, provided there is evidence to support it," the contract-related claims "remain live in the trial court," and "the trial court may consider [the fraud or collusion exception] on remand if appropriate." 281 A.3d at 60 n.15, 70-71. In no way did we direct the trial court to reopen discovery for further record development regarding the fraud or collusion exception. Appellants have in fact spent nearly a decade litigating the issue of religious abstention in this case, giving them ample opportunity to discover facts in support of their overarching argument that the disputes in this case are sufficiently secular to adjudicate. *See Moon I*, 129 A.3d at 249 (explaining that religious abstention issue required "further evidentiary presentation"). All things considered, appellants offer no basis to conclude that the trial court abused its discretion in denying its various requests to extend discovery. The trial court acted well within its discretion to put an end to this decade-old case rather than breathing new life into it on its deathbed years after appellants could have gone after the discovery they now belatedly seek.

IV. Conclusion

For the foregoing reasons, we affirm.

So ordered.

Appendix B

**IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*,	**2011 CA 003721 B**
Plaintiffs,	**Judge Alfred S. Irving, Jr.**
v.	
HYUN JIN MOON, *et al.*,	
Defendants.	

ORDER

Before the Court is *Defendant Hyun Jin Moon's Post-Remand Motion to Dismiss for Lack of Standing*, filed on January 25, 2023. Plaintiffs Family Federation for World Peace and Unification International ("Family Federation"), Family Federation for World Peace and Unification Japan ("UCJ," formerly known as the Holy Spirit Association for the Unification of World Christianity (Japan)), and Universal Peace Federation ("UPF") jointly filed an *Opposition* on February 24, 2023. Defendant Hyun Jin Moon ("Dr. Moon" or "Preston") filed a *Reply* on March 1, 2023. Dr. Moon seeks dismissal of Plaintiffs' remaining claims against him on the ground that

Plaintiffs no longer have standing to pursue their claims, since the August 25, 2022 decision of the District of Columbia Court of Appeals in the captioned case.

The Parties have comprehensively briefed the standing question, among other questions they have put before the Court since the August 25, 2022 decision of the Court of Appeals. The Court, therefore, finds oral arguments unnecessary. *See also* Super. Ct. Civ. R. 12-I(h). For the reasons set forth below, the Court will grant Dr. Moon's *Motion* and dismiss, with prejudice, Plaintiffs' remaining claims against Dr. Moon for lack of standing.

I. BACKGROUND

Herein, the Court recites the facts necessary to rule upon the instant *Motion*. *See also Moon v. Fam. Fed'n for World Peace & Unification Int'l* ("*Moon III*"), 281 A.3d 46, 51-60 (D.C. 2022); *Fam. Fed'n for World Peace & Unification Int'l v. Moon* ("*Moon I*"), 129 A.3d 234, 239-42 (D.C. 2015); *see also* June 15, 2023 Order, at 1-7 (summarizing background and procedural history). As the Court and other courts have noted previously, the controversy underlying this case results from a "religious schism" in the "religion known as the Unification Church." *Moon III*, 281 A.3d at 49-50. The schism apparently arose in prominence during the final years of the life of the Unification Church's founder, the late Reverend Sun Myung Moon ("Rev. Moon"). *Id.* The schism precipitated a "struggle for power and money" among Rev. Moon's two sons and widow, implicating Unification Church organizations and followers, assets, and billions of dollars across

three continents. *Id.* at 50. The struggle continues through years of litigation, including three appeals to the District of Columbia Court of Appeals. *Id.* at 53-55, 59-60.

The Parties' quarrel involves the control of UCI (formerly known as "Unification Church International"), *id.* at 52, and the conduct of Dr. Moon, Rev. Moon's eldest son, and four individuals, who joined Dr. Moon on UCI's board of directors by the end of 2009 (the "Director Defendants"). *Id.* at 54-55.

In May 2011, five Plaintiffs—the Family Federation, UPF, UCJ, and two former directors of UCI—on behalf of UCI, sued UCI as an actual and nominal Defendant and the five individuals comprising UCI's board of directors. *See generally* Compl. Of the six counts alleged in the forty-page *Complaint*, Plaintiffs leveled three against Dr. Moon and the Director Defendants, alleging misconduct arising from their actions in administering UCI:

- Count I, "Breach of Trust and Aiding and Abetting Same";
- Count II, "Breach of Fiduciary Duties, *Ultra Vires* Acts and Aiding and Abetting Same";

  and

- Count III, "Breach of Fiduciary Duty as Agent and Aiding and Abetting Same."

See Compl. ¶¶ 99-112, 113-23, 124-30.

The Hon. Laura A. Cordero addressed the Parties' arguments in her *Amended Omnibus Order on Motions for Summary Judgment* dated March 28, 2019

[hereinafter "Am. Omnibus Summ. J. Order"]. As to Plaintiffs' three counts against Dr. Moon and the Director Defendants, Judge Cordero dismissed Counts I and III in their entirety after Plaintiffs "elected not to pursue" them. Am. Omnibus Summ. J. Order, at 2, 19.

In Count II, Plaintiffs contend that Dr. Moon and the Director Defendants breached their fiduciary duties to UCI, "and aided and abetted their fellow Directors' breaches[,]" in the following four ways: (1) by amending UCI's articles of incorporation in 2010 to permit use of UCI's assets for "purposes other than the mission and purpose for which [UCI] was formed"; (2) by "manipulating the designation and removal" of UCI's directors "in defiance of [Rev. Moon's] explicit instructions" and "UCI's longstanding and uniform custom and practice of following [Rev. Moon's] directives" concerning the same; (3) by engaging in transactions that constituted a "scheme of self-dealing designed to divert corporate assets to the personal pursuits" of Dr. Moon; and (4) by "failing to use [UCI's] assets . . . to support the mission and activities of the Unification Church." Compl. ¶ 117.

Judge Cordero dismissed the aiding and abetting claims, as no such causes of action exist in the District of Columbia, and dismissed the claims arising from Plaintiffs' second theory—the removal and replacement of UCI's directors. Am. Omnibus Summ. J. Order, at 2-3 (noting Plaintiffs' withdrawal of their claim related to the removal and replacement of UCI's directors); *id.* at 42 (noting District of Columbia law does not recognize "independent tort for aiding and abetting" the breach of fiduciary duty); *see also*

Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP, 68 A.3d 697, 711 (D.C. 2013) (declining to recognize "separate tort of aiding-abetting").

Judge Cordero entered summary judgment in favor of Plaintiffs as to their first and fourth theories. Specifically, Judge Cordero found that Dr. Moon and the Director Defendants breached their fiduciary duties to UCI through their approval of the 2010 amendments to UCI's articles of incorporation that "substantially altered UCI's corporate purposes by eliminating any obligation to the Unification Church." Am. Omnibus Summ. J. Order, at 22-27 (citing *Moon I*, 129 A.3d at 252 (noting that "[i]t can be a breach of duty to 'change substantially the objects and purposes of the corporation'")). And, she found a similar breach resulted through the authorization of asset donations to the "Kingdom Investment Foundation" ("KIF") and the "Global Peace Foundation" ("GPF"). *Id.* at 27-34 (noting that evidence suggested that UCI made donations to KIF and GPF "specifically because KIF [and GPF were] completely unaffiliated with the Unification Church").

As to Plaintiffs' third theory, premised on alleged self-dealing, Judge Cordero observed that Plaintiffs' claims rested upon three transactions:

> First, in February 2008, a UCI subsidiary, True World Group, LLC ("True World"), purchased real property from UV Sales, Inc. ("UV Sales"), a corporation owned by Preston Moon. Second, in 2007, UCI loaned $1.5 million to United Vision Group, Inc. ("UVG"), a corporation wholly owned by Preston Moon. The pleadings

> state that the loan was for $2 million. This loan was paid in full around October 2009. Third, starting in 2006, another UCI subsidiary, One Up Enterprises, Inc. ("One Up"), retained UVG Strategic Consulting, LLC ("UVGSC"), a consulting firm wholly owned by UVG that was created in 2006.

Id. at 34 (internal citations omitted); *see also* Compl. ¶¶ 48-51. Judge Cordero declined to grant summary judgment in favor of Dr. Moon as to the first and third transactions[1] because she found that genuine issues of material fact existed: (1) the Parties proffered conflicting expert testimony as to the fair market value of the real property the subject of the February 2008 transaction, and (2) the Parties proffered conflicting expert reports as to the economic fairness of the 2006 consulting agreement and contested whether Dr. Moon disclosed any conflict of interest. Am. Omnibus Summ. J. Order, at 35-36. As to the second transaction, Judge Cordero granted summary judgment in favor of Dr. Moon and the Director Defendants because Plaintiffs "fail[ed] to offer any evidence in support of the proposition" that it "was economically unfair." *Id.* at 37.

Thereafter, the Hon. Jennifer M. Anderson held a four-week hearing in July, August, and October 2019 and, on December 4, 2020, she issued her *Order Granting, in Part, Plaintiffs' Motion for Remedies for*

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[1] Judge Cordero granted summary judgment in favor of the Director Defendants as to the first and third transactions because they "were undertaken" prior to their appointment as members of UCI's board of directors. Am. Omnibus Summ. J. Order, at 35-36.

the Individual Defendants' Breach of Fiduciary Duty [hereinafter "Remedies Order"]. Somewhat relevant to this Order, Judge Anderson ordered the rescission of the 2010 amendments to UCI's articles of incorporation; she ordered removal of Dr. Moon and three of the four Director Defendants as directors and officers of UCI; and she imposed two surcharges on Dr. Moon and three of the four Director Defendants amounting to $532,230,986.96—the value of UCI's donations to GPF and KIF during Dr. Moon's control of UCI's board—and pre- and post-judgment interest. Remedies Order, at 93-94.

By *Moon III*, the Court of Appeals reversed and vacated Judge Cordero's *Amended Omnibus Order* and Judge Anderson's subsequent *Remedies Order*. 281 A.3d at 51, 70. In doing so, the Court of Appeals expressly held that Judge Cordero's "ruling on [P]laintiff's fiduciary-duty claims"—specifically, the "two theories of fiduciary breach" upon which she entered summary judgment in favor of Plaintiffs—"violated the First Amendment" because "the grant of summary judgment on either ground would improperly intrude on religious questions." *Id.* at 62. The Court of Appeals went on to explain:

> [Defendants] ask us to not only reverse the entry of summary judgment against them, but to direct the trial court to dismiss the breach of fiduciary claim altogether. One wrinkle precludes us from doing that. While we agree that the two theories of fiduciary breach embraced by the trial court are non-justiciable, there remains a third theory advanced by [Plaintiffs] that the trial court did not address:

that the directors engaged in self-dealing . . . . That theory may yet have some legs, provided there is evidence to support it.

While religious abstention is a robust doctrine that provides substantial protections to religious organizations' autonomy within the religious sphere, the Supreme Court has strongly suggested that there is a "fraud or collusion" "exception to the general rule of non-interference," under which a civil court may decide a facially ecclesiastical dispute when religious figures "act in bad faith for secular purposes." Under that potential exception, a civil court may have the authority to exercise "marginal" review, even where a dispute implicates ecclesiastical matters. This "fraud or collusion" exception, "if [it] exists, . . . would apply where a religious entity" or figurehead "engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen." Although it would surely be difficult to disentangle a charge of self-dealing from religious questions when brought against somebody with a claim to messianic status, we need not confront that difficulty today.

The parties have not briefed the legal issue of whether there is a fraud or collusion exception to the religious abstention doctrine, nor have they explained what evidence (or lack thereof) underlies the self-dealing claim, nor have they even discussed whether that claim remains live at this stage of the proceedings in the trial

> court. Those are all matters we leave the trial court to address in the first instance on remand.

Id. at 70 (internal citations and footnote omitted).

Dr. Moon, in reliance upon *Moon III*, now seeks to dismiss Plaintiffs' claims on the ground that Plaintiffs lack standing to pursue them. *See generally* Def. Hyun Jin Moon's Post-Remand Mot. to Dismiss for Lack of Standing [hereinafter "Def.'s Mem."]; Def. Hyun Jin's [sic] Reply Mem. of Law in Supp. of his Mot. to Dismiss for Lack of Standing [hereinafter "Def.'s Reply"].

Plaintiffs oppose Dr. Moon's *Motion* for the following five reasons: (1) prior rulings "have already found that each Plaintiff has standing," a conclusion not disturbed by "*Moon III*'s limited non-justiciability holding"; (2) Plaintiffs have special interest standing under *Hooker v. Edes Home*, 579 A.2d 608 (D.C. 1990); (3) when faced with a standing challenge, the Court must assume that Plaintiffs' allegations are true and that Plaintiffs will prevail on the merits; (4) if the Court finds the "fraud or collusion exception" to the First Amendment's religious abstention doctrine applicable here, Dr. Moon's *Motion* will be moot; and (5) a grant of Dr. Moon's *Motion* will not end the case because the Court "cannot order a dismissal for lack of standing with prejudice" without granting Plaintiffs' leave to amend the *Complaint*, or Plaintiffs' request for "an evidentiary hearing, or both." *See* Pls.' Opp'n to Def. Hyun Jin Moon's Mot. to Dismiss for Lack of Standing 1-3 [hereinafter "Pls.' Opp'n].

II. LEGAL STANDARD

"It is an elementary matter of jurisprudence that an individual must have standing in order to maintain an action." *Burleson v. United Title & Escrow Co.*, 484 A.2d 535, 537 (D.C. 1983) (per curiam). "[T]he basic function of the standing inquiry is to serve as a threshold a plaintiff must surmount *before* a court will decide the merits question about the existence of a claimed legal right." *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011) (en banc) (emphasis in original). "When the plaintiff lacks standing, the court lacks jurisdiction." *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 191 (D.C. 2021); *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015) (finding "[a] 'defect of standing is [likewise] a defect in subject matter jurisdiction.'" (modifications in original)). "Without jurisdiction the court cannot proceed at all in any cause, and the only function remaining to the court is that of announcing the fact and dismissing the cause." *Hormel Foods Corp.*, 258 A.3d at 191 (internal quotation marks and citations omitted); *see also* Super. Ct. Civ. R. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Therefore, "[s]tanding is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Grayson*, 15 A.3d at 229 (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005)); *see Hormel Foods Corp.*, 258 A.3d at 191 (noting trial court should not have reached merits after finding plaintiff lacked standing).

"Although Congress established the courts of the District of Columbia under Article I of the Constitution," in contrast to the federal courts established under Article III, the Court of Appeals "nonetheless appl[ies] in every case 'the "constitutional" requirement of a "case or controversy" and the "prudential" prerequisites of standing.'" *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206 (D.C. 2002) (quoting *Speyer v. Barry*, 588 A.2d 1147, 1160 (D.C. 1991)). "Constitutional standing under Article III requires the plaintiff to 'allege personal injury fairly traceable to the defendant's unlawful conduct and likely to be redressed by the requested relief.'" *Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 731 (D.C. 2000) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)); *see also Grayson*, 15 A.3d at 234 n.36 (quoting three-element formulation of standing—injury in fact, causal connection to the defendant's conduct, and redressability—set forth in *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Prudential standing requirements, on the other hand, consist of "judicially self-imposed limits on the exercise of . . . jurisdiction," *Exec. Sandwich Shoppe*, 749 A.2d at 731, such as the "limitation on the 'class of persons who may invoke the courts' decisional and remedial powers.'" *Consumer Fed'n of Am. v. Upjohn Co.*, 346 A.2d 725, 727 (D.C. 1975) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)); *Exec. Sandwich Shoppe*, 749 A.2d at 731 (noting "general prohibition on a litigant's raising another person's legal rights" and the "requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked"). As prudential standing is not constitutionally required, a plaintiff

may have standing to advance their claim where they satisfy the requirements for constitutional standing and fall within an exception to the judicially created requirements for prudential standing. *See, e.g.*, *Kalorama Citizens Ass'n v. SunTrust Bank Co.*, 286 A.2d 525, 533-35 (D.C. 2022) (discussing requirements for "associational standing"); *Exec. Sandwich Shoppe*, 749 A.2d at 731 (noting courts cannot impose "prudential barriers to standing" where Congress "intends to extend standing to the full limit of Article III"); *Hooker v. Edes Home*, 579 A.2d 608, 611-15 (D.C. 1990) (discussing "special interest" exception to general rule limiting standing for actions seeking to enforce a trust to public officers).

"[A] challenge to a plaintiff's standing is properly raised as a challenge to the court's subject matter jurisdiction via motion to dismiss under Super. Ct. Civ. R. 12(b)(1) . . . . The plaintiff bears the burden to establish standing . . . ." *UMC Dev.*, 120 A.3d at 43 (footnote omitted). The Court of Appeals, looking to federal standing jurisprudence, has opined that there are the following two types of Rule 12(b)(1) motions:

> Courts have recognized that such a motion may either assert that a lack of jurisdiction is apparent on the face of the complaint (a "facial attack") or rely on matters outside of the complaint (a "factual attack"). When a party makes a facial attack under Rule 12(b)(1), the court treats the motion as one filed under Rule 12(b)(6) and must consider the allegations in the plaintiff's complaint as true. But when a movant attacks the factual basis upon which the opposing party alleges jurisdiction, . . . the

> court is free to weigh the evidence itself, and no presumption of truthfulness attaches to the complaint.

Matthews v. Automated Bus. Sys. & Servs., Inc., 558 A.2d 1175, 1179 n.7 (D.C. 1989) (citing *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981), and *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)); *accord Heard v. Johnson*, 810 A.2d 871, 877-78 (D.C. 2002) (noting Rule 12(b)(1) motion was a "factual" attack because it "challenge[d] the existence of subject matter jurisdiction irrespective of the pleadings, and matters outside the pleadings such as testimony and affidavits are considered" (quoting *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)); *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 429-30 (D.C. 1996) (holding complaint failed to survive "facial" attack challenging complaint's lack of heightened pleading to place negligence claim against church within justiciable matters under First Amendment abstention doctrine).

To be sure, a motion challenging a plaintiff's constitutional standing is decided under Rule 12(b)(1), while a motion attacking plaintiff's prudential standing is properly granted under Rule 12(b)(6). *See District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412, 418 (D.C. 2017) ("[W]e treat [the] ruling [below] that the District lacks concrete-injury-in fact standing as a ruling under Super. Ct. Civ. R. 12(b)(1) and [the] ruling [below] that only retailer dealers may sue to enforce [parts of a statute] as a ruling under Super. Ct. Civ. R. 12(b)(6)."); *id.* at 418 n.8 (citing *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795

n.24 (5th Cir. 2011)). In either case, however, the trial court "may review any evidence submitted by the parties, including affidavits, without converting the motion into a Rule 56 motion for summary judgment." *Beards*, 680 A.2d at 426 n.7. "If . . . the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." *Grayson*, 15 A.3d at 232 (quoting *Warth*, 422 U.S. at 501-02).

Dr. Moon's *Motion* challenges Plaintiffs' special interest or prudential standing to advance their claims. *See generally* Def.'s Mem. 5-7 (discussing special interest standing under *Hooker*, 579 A.2d at 611-17). Dr. Moon contends that Plaintiffs' lack of special interest standing is apparent on the face of the *Complaint* and in light of the substantive legal developments in *Moon III*, without reliance upon any factual matter beyond the *Complaint*—thus amounting to a "facial" attack on the Court's jurisdiction. *See generally id.* at 4, 10-12; Def.'s Reply 5-9 (contending *Complaint*'s self-dealing allegations did not encompass GPF and KIF donations); *see also* Pls.' Opp'n 8 ("And, even though [Dr. Moon] appears to be waging only a facial challenge to standing . . . ."); *Beards*, 680 A.2d at 429-30 (treating challenge to complaint based on First Amendment abstention doctrine as facial attack). Given Dr. Moon's standing arguments, the Court will treat Dr. Moon's *Motion* as one filed under Rule 12(b)(6). *Matthews*, 558 A.2d at 1179 n.7; *ExxonMobil Oil*, 172 A.2d at 418.

> To survive a Rule 12(b)(6) motion to dismiss,
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> a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Grimes v. District of Columbia*, 89 A.3d 107, 111-12 (D.C. 2014) (quoting *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (internal quotations omitted)). The facts pleaded must amount to more than simple legal conclusions, *id.* at 112, *i.e.*, "more than an unadorned, the-defendant-unlawfully-harmed-me accusation," *Potomac Dev. Corp., supra*, 28 A.3d at 544, and when well-pleaded, we "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Grimes, supra*, 89 A.3d at 112 (citation omitted).

Moon I, 129 A.3d at 245; *see also Matthews*, 558 A.2d at 1179 n.7 (providing that a court "must consider the allegations in the plaintiff's complaint as true," where Rule 12(b)(1) motion was considered a facial attack). In light of the lengthy procedural history and extensive uncontested factual record as set forth in *Moon III* and prior orders in this case, *see, e.g.*, *Moon III*, 281 A.3d at 51-60, the Court deems unnecessary further submissions by the Parties to supplement the evidentiary record as it currently stands. *See also UMC Dev.*, 120 A.3d at 43 ("We have never questioned . . . a trial court's consideration of facts outside the pleadings that are undisputed by the plaintiff.").

III. ANALYSIS

The Court first addresses whether prior court rulings concerning Plaintiffs' standing are binding, as the law of the case. *See infra* Part III-A. The Court then turns to Dr. Moon's challenge to Plaintiffs' special interest standing before addressing his challenge to Plaintiffs' standing on other grounds. *See infra* Parts III-B, III-C. In doing so, the Court also addresses the Parties' dispute over the scope of Plaintiffs' self-dealing claim, *see infra* Part III-B-2-a, and Plaintiffs' contentions regarding the appropriate disposition of the case. *See infra* Part III-D. As the Court does not need to reach the First Amendment issues to decide Dr. Moon's *Motion*—the existence of a purported "fraud or collusion exception" to the First Amendment's religious abstention doctrine is not relevant to the Court's determination of Plaintiffs' standing—the Court will decline to consider Plaintiffs' arguments regarding the "exception."[2]

A. Law of the Case as to Plaintiffs' Standing

"It is well established that, 'once the court has decided a point in a case, that point becomes and remains settled unless or until it is reversed or modified by a higher court.'" *In re Baby Boy C.*, 630

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[2] The Court further must reject Plaintiffs' characterization of the jurisprudence surrounding the "exception" for the same reasons as set forth in the Court's June 15, 2023 Order granting Defendant UCI's *Motion for Summary Judgment*. *See* June 15, 2023 Order, at 16-20 (rejecting "characterization that there exists 'robust recognition'" of the "exception" and distinguishing cited cases).

A.2d 670, 678 (D.C. 1993). The Court of Appeals has explained:

> The "law of the case" doctrine bars a trial court from reconsidering the same question of law that was presented to and decided by another court of coordinate jurisdiction when (1) the motion under consideration is substantially similar to the one already raised before, and considered by the first court; (2) the first court's ruling is sufficiently final; and (3) the prior ruling is not clearly erroneous in light of newly presented facts or a change in substantive law.

Kumar v. D.C. Water & Sewer Auth., 25 A.3d 9, 13 (D.C. 2011) (quoting *Tompkins v. Wash. Hosp. Ctr.*, 433 A.2d 1093, 1098 (D.C. 1981)). Where the question was previously "resolved by an earlier appeal in the same case[,] . . . [t]he general rule is that 'if the issues were decided, either expressly or by necessary implication, those determinations will be binding on remand and on a subsequent appeal.'"[3] *Lynn v. Lynn*, 617 A.2d 963, 969 (D.C. 1992) (citations omitted). "Application of this general rule is limited 'only where (1) the first ruling has little or no finality, or (2) the

[3] It is also axiomatic that "the trial court must follow the mandate that issues from [the Court of Appeals] on remand. 'The mandate of an appeals court precludes the [trial] court on remand from reconsidering matters which were either expressly or implicitly disposed of upon appeal.'" *Willis v. United States*, 692 A.2d 1380, 1382 (D.C. 1997) (quoting *United States v. Miller*, 822 F.2d 828, 832 (9th Cir. 1987)); *see also id.* at 1383 (noting decision and judgment on appeal "constituted the mandate or the 'law of the case' on remand," with the trial court obliged "to dispose of the matter in a manner consistent" with the appellate decision).

first ruling is clearly erroneous in light of newly presented facts or a change in substantive law." *In re Baby Boy C.*, 630 A.2d at 678 (quoting *Minick v. United States*, 506 A.2d 1115, 1117 (D.C. 1986), *cert. denied*, 479 U.S. 836 (1986)). "The doctrine serves the judicial system's need to dispose of cases efficiently by discouraging . . . multiple attempts to prevail on a single question." *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980) (per curiam); *see also P.P.P. Prods., Inc. v. W&L, Inc.*, 418 A.2d 151, 153 (D.C. 1980) ("Except in a truly unique situation, no benefit flows from having one trial judge entertain what is essentially a repetitious motion and take action which has as its purpose the overruling of prior action by another trial judge." (quoting *United States v. Davis*, 330 A.2d 751, 755 (D.C. 1975)).

Plaintiffs contend that "*Moon III*'s limited non-justiciability holdings concerning whether transactions violated the purposes of UCI's original articles [of incorporation] have nothing to do with the grounds upon which this Court found special interest standing, which remains as the law of the case." Pls.' Opp'n 11. Plaintiffs rely upon three previous rulings concerning their standing: (1) *Moon I*, in which the Court of Appeals concluded that "each of the plaintiffs has the requisite 'special interest' to provide it with standing to contest the complained-of actions by the defendants under both the trust and corporate wrong-doing theories," 129 A.3d at 244; (2) Judge Cordero's *Amended Omnibus Order*, in which she held that (a) Family Federation and UPF had special interest standing, (b) the two former UCI directors lacked standing after Plaintiffs abandoned their claim

challenging the former directors' removal, and (c) UCJ had standing because its contract-based claims remained live, Am. Omnibus Summ. J. Order, at 15-21; and (3) Judge Anderson's *Remedies Order*, in which she agreed with and adopted Judge Cordero's conclusions regarding standing and further held that Plaintiffs had standing to seek judicial removal of members of UCI's board of directors, Remedies Order, at 53-58, 58-62. *See* Pls.' Opp'n 8-11.

1. *Moon I* was not sufficiently final to establish the law of the case.

As to *Moon I*, the Court finds that it does not establish the law of the case as to Plaintiffs' standing at this juncture because *Moon I* "ha[d] little or no finality" on the issue of standing. *In re Baby Boy C.*, 630 A.2d at 678. The Court of Appeals decided *Moon I* on Plaintiffs' direct appeal of the Hon. Anita Josey-Herring's dismissal of the *Complaint* with prejudice on First Amendment grounds[4] and the Defendants' cross-appeal of the Hon. Natalia M. Combs Greene's earlier order[5] declining to dismiss the *Complaint* "on the

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[4] *See* Dec. 19, 2013 Order (Josey-Herring, J.) (order granting the defendants' motion for judgment on the pleadings, dismissing Plaintiffs' *Complaint* with prejudice, and staying dismissal pending completion of sanctions discovery); Mem. Op. on Defs.' Mot. for J. on the Pleadings (Dec. 19, 2013) (Josey-Herring, J.) (concluding that the defendants' motion was a successful factual challenge to the Court's subject matter jurisdiction and holding that the First Amendment abstention doctrine required dismissal of *Complaint* for want of subject matter jurisdiction).

[5] *See* June 19, 2012 Order (Combs Greene, J.) (order dismissing Plaintiffs' derivative claim on UCI's behalf under Count II of the *Complaint*, dismissing UCI as Plaintiff, but otherwise denying Defendants' joint motion to dismiss). Judge Combs Greene denied

asserted grounds of lack of personal jurisdiction, lack of standing, and failure to state a cause of action." *Moon I*, 129 A.3d at 239. The Court of Appeals examined each Plaintiff's standing within the context of all six counts of the *Complaint* and all of Plaintiffs' asserted theories of liability:

> Two of the plaintiffs are the ousted directors. They occupy a status both as the alleged successor trustees to the Moon trust and as directors of a charitable corporation akin to a charitable trust. Family Federation asserts an interest in several capacities: as successor in interest to Reverend Moon and his role as settlor of the trust, in nominations of directors, and as an overarching superior and benefiting entity in UCI's proper role to further the mission of Family Federation and the Unification Church. [UPF] was a major beneficiary from UCI for three decades, comfortably falling within the *Hooker* requirement that a beneficiary be in a class limited in number and that the nature of the challenge be to an extraordinary measure. Furthermore, in *Hooker*, the plaintiffs granted standing were not even current beneficiaries of the charitable corporation, only prospective ones, quite contrary to [UPF's] long-term status here. And the contributions by [UCJ] go far beyond the asserted rule that donors ordinarily

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Defendants' motion to certify her order for interlocutory appeal. *See* Sept. 11, 2012 Order (Combs Greene, J.) (order denying Defendants' joint motion to amend to certify the June 19, 2012 Order for interlocutory appeal).

> cannot sue charities unless they restrict their gifts . . . .

Id. at 244-45 (footnotes and citations omitted). The Court of Appeals concluded that dismissal on First Amendment grounds was premature "*at this point in the precise circumstances here*" because "the actual issues determinative of the outcome of this case *may well be* resolvable without infringement into areas precluded from court consideration by the First Amendment." *Id.* at 249-50 (emphasis added); *see also id.* at 253 ("[W]e agree with plaintiffs that *the record at this early stage of a difficult and complicated dispute with many ramifications* does not support a conclusion that the trial court must engage in inquiry banned by the First Amendment . . . ." (emphasis added)).

In sum, *Moon I* did not decide and settle the issue of Plaintiffs' standing throughout the entirety of "further proceedings consistent with [its] opinion." *Id.* at 253. Instead, the Court of Appeals expressly grounded its standing determination on the constellation of Plaintiffs' counts and theories *active in the case at time of their appeal*, with the expressed appreciation that subsequent developments on remand may alter the viability of Plaintiffs' counts and theories, *see id.* at 253 n.26 (noting summary judgment may be proper "going forward" where the trial court finds that the dispute "does in fact turn on matters of doctrinal interpretation or church governance")—and the corresponding implicit understanding that subsequent developments may also alter the bases for Plaintiffs' standing. *See Kamit Inst. for Magnificent Achievers v. D.C. Pub. Charter*

Sch. Bd., 81 A.3d 1282, 1287 (D.C. 2013) ("The requisites of standing must continue to be met as long as the appeals continue."); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980) ("The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).").[6]

Indeed, since *Moon I*, Plaintiffs have abandoned two of their three counts, and one of the four theories of the remaining count, against Dr. Moon. *See supra* Part I (noting abandonment of trust and agency counts and breach of fiduciary duty based on replacement and removal of directors). Judge Cordero held that the two

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[6] The Court of Appeals has cautioned, however, that "[t]he concepts of standing and mootness should not be confused." *Mallof v. D.C. Bd. of Elections & Ethics*, 1 A.3d 383, 395 (D.C. 2010). The Supreme Court has explained that "the description of mootness as 'standing set in a time frame' is not comprehensive[,]" specifically, in the context of exceptions to mootness doctrine—permitting certain moot cases to proceed—that do not exist under standing doctrine. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189-92 (2000) (discussing cases where defendant's voluntarily cessation of harmful conduct did not moot matter and the "capable of repetition, yet evading review" exception to mootness doctrine).

The distinction is not material here, however, because Dr. Moon's *Motion* contends that Plaintiffs "plainly lack[] a continuing interest" in their surviving claims after *Moon III*. *Id.* at 1921; *see also Speyer*, 588 A.2d at 1159 n.24 ("Lack of standing may be raised at any time."); *L.S. v. D.C. Dep't on Disability Servs.*, 285 A.3d 165, 172 n.10 (D.C. 2022) ("Mootness and standing are related concepts in that, generally speaking (putting aside the exceptions to the mootness doctrine), the requisite that 'must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'").

former directors lacked standing to pursue the remaining claims and dismissed them as plaintiffs.[7] Am. Omnibus Summ. J. Order, at 20-21. The Court of Appeals in *Moon III* expressly reversed grants of summary judgment in favor of the remaining Plaintiffs on two theories of the remaining count. 281 A.3d at 62-67 (finding grant of summary judgment on theory that 2010 amendments to UCI's articles of incorporation breached fiduciary duty was violative of First Amendment); *id.* at 67-70 (finding grant of summary judgment on theory that donations to GPF and KIF breached fiduciary duty was violative of First Amendment). As "standing is not dispensed in gross," *i.e.*, "a plaintiff must demonstrate standing *for each claim he seeks to press and for each form of relief that is sought*[,]" *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017) (emphasis added), "an unfavorable decision on the merits of one claim may well defeat standing on another claim if it defeats the plaintiff's ability to seek redress." *Get Outdoors II, LLC v. City of San Diego*, 506 U.S. 886, 893 (9th Cir. 2007). *Moon I* therefore does not establish the law of the case and, thus, does not bar this Court from re-evaluating Plaintiffs' standing. *See Sowell v. Walker*, 755 A.2d 438, 444 (D.C. 2000) (noting law of the case doctrine "has no application when the issue presented to a second judge is not identical to the question previously decided by the first judge"); *cf. Lynn*, 617 A.2d at 970 (reiterating that law of the case doctrine was inapplicable where, *inter alia*, "evidence in a

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[7] Plaintiffs do not challenge Judge Cordero's dismissal of the two former directors as plaintiffs for lack of standing to pursue the *Complaint*'s remaining counts.

subsequent trial was substantially different" or "controlling authority has since made a contrary decision of the law applicable to such issues").

2. Judge Cordero was not presented with a challenge to Plaintiffs' standing that is substantially similar to the instant *Motion*.

As to Judge Cordero's *Amended Omnibus Order*, Plaintiffs are correct that it "[was] certainly not preliminary" for the purposes of establishing the law of the case. Pl.'s Opp'n 10; *cf. Kritsidimas*, 411 A.2d at 373 (noting orders on pretrial motions that "demand detailed judicial consideration of specific facts" and "often require hearings and findings of fact" are sufficiently final because such "judicial exercises" are "exactly the kinds . . . the 'law of the case' doctrine is designed to prevent being repeated"). But, Dr. Moon's *Motion* instead challenges the surviving Plaintiffs' standing on grounds that were not "already raised before, and considered by," Judge Cordero in her *Amended Omnibus Order*. *Kumar*, 25 A.3d at 13. Dr. Moon specifically contests whether the three allegedly self-dealing transactions enumerated in the *Complaint* rise to the level of "extraordinary measure[s]" necessary to establish special interest standing under *Hooker*. *See* Def.'s Mem. 7-9 (characterizing the transactions as "routine," "relatively insignificant," and "everyday," in contrast to "the fundamental changes and existential reforms" in cases where plaintiffs were found to have had special interest standing). Judge Cordero neither considered nor premised her standing determinations as to any remaining Plaintiff on such an argument. *See*

Am. Omnibus Summ. J. Order, at 15-18 (rejecting contention that Family Federation was not legally cognizable entity); *id.* at 18-19 (finding Family Federation had special interest standing "on the basis of its special interest as a 'benefitting entity' from UCI's fidelity to its original purposes"); *id.* at 20-21 (holding former directors lacked standing to challenge corporate acts other than their removal); *id.* at 21 (finding UPF had special interest standing because it "was an actual beneficiary of UCI and received substantial funding as a result of this relationship"); *id.* at 21-22 (rejecting contention that UCJ lacked standing because of its donations being absolute gifts because genuine issue of material fact existed as to whether UCJ's donations were unconditional or restricted).

Therefore, Dr. Moon's *Motion* is not "substantially similar" to the prior motions that challenged Plaintiffs' standing. Thus, Judge Cordero's standing determinations cannot establish the law of the case.[8]

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[8] As the Court of Appeals clarified in *Moon* III, several factual findings underlying Judge Cordero's standing determination as to Family Federation represent impermissible forays into areas protected by the First Amendment's abstention doctrine. *Compare* Am. Omnibus Summ. J. Order, at 16 (concluding that Family Federation is "an authoritative religious entity at the head of the Unification Church religious denomination that directs other entities that are members of the denomination"), *and id.* at 18-19 (quoting Plaintiffs' exhibits, opining that "Family Federation is the Unification Church, this whole umbrella[,]" in concluding that Family Federation had a special interest as a "benefiting entity" from UCI's adherence to UCI's original purposes), *with Moon III*, 281 A.3d at 51 (finding "[i]t is not for the courts to pronounce, as the trial court did, that the Family Federation is the 'authoritative religious entity' that ordains

Kumar, 25 A.3d at 13; *compare Tompkins*, 433 A.2d at 1098 (holding two summary judgment motions were not "substantially similar" where the first asserted the non-movant was unable to establish the standard of care and the second asserted the non-movant could not establish proximate cause and "took advantage of a significant, intervening change in substantive law on an important preliminary issue"), *with Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1196-97 (D.C. 1984) (holding motion for summary judgment and prior motion to dismiss were substantially similar because, *inter alia*, the summary judgment motion "renewed" the movant's prior statute of limitations arguments and therefore "was essentially identical" to the motion to dismiss).

3. Judge Anderson's *Remedies Order* is clearly erroneous under *Moon III*.

Apart from reiterating the standing determinations set forth in *Moon I* and Judge Cordero's *Amended Omnibus Order*, *see* Remedies Order, at 55, 57, 62, Judge Anderson made two additional standing determinations relative to Plaintiffs' pursuit of relief. *Id.* at 53-58 (discussing Plaintiffs' standing to recover money damages); *id.* at 58-62 (discussing Plaintiffs' standing to request

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what does and does not benefit the Unification Church."); *id.* (explaining "it is not for us to pass judgment on whose vision of the Unification Church, or Unification Movement, is more faithful to the purposes UCI was established to advance."); *id.* at 69-70 (rejecting trial court's analysis of UCI's corporate purposes).

removal of Dr. Moon and the Director Defendants as directors of UCI).

As to Plaintiffs' standing to recover money damages, Judge Anderson found, *inter alia*, that (1) Family Federation is the authoritative head of the Unification Church; (2) the removal of "Unification Church" and "Family Federation" from UCI's articles of incorporation allowed diversion of UCI's assets to entities "unrelated" to the Unification Church; (3) notwithstanding the defendants' "professed motivation" that Family Federation "deviated from Rev. Moon's original path," the halting of funding to Family Federation was a concrete injury; (4) Family Federation was harmed "to the extent that its mission and purpose were undermined by that lack of funding"; and (5) UCI's donations to "other organizations" that were not previously selected by Rev. Moon injured the "Family Federation/Unification Church." *Id.* at 54-57. The Court of Appeals held that such determinations were beyond the scope of permissible inquiry and adjudication under the First Amendment. *See Moon III*, 281 A.3d at 64-66 (concluding that there were no neutral legal principles to apply to discern whether change from "Unification Church" to "Unification Movement" substantially altered UCI's purposes); *id.* at 66-67 (holding that First Amendment precluded determination whether amendment removing mention of "Divine Principle" in favor of "Theology and Principles of the Unification Movement," or amendment striking obligation to assist or guide "Unification Churches," fundamentally altered UCI's mission); *id.* at 67-69 (rejecting

differentiating propriety of donations by Rev. Moon's prior conduct).

Similarly, in determining that Plaintiffs had standing to seek removal of the defendants as UCI's directors, Judge Anderson relied upon the premise that the appropriateness of UCI's choice of donation recipient was dependent upon Rev. Moon's prior conduct, to the exclusion of any contrary preference of Dr. Moon after Rev. Moon had ostensibly elevated Dr. Moon's religious position within the Unification Church. *See* Remedies Order, at 61-62. Judge Anderson explicitly observed: "Until Preston Moon changed the composition of the board, Reverend Moon directed that funding, and money had never been given to an organization that was not founded or supported by Reverend Moon." *Id.* at 61. The Court of Appeals expressly rejected the premise on First Amendment grounds. *See Moon III*, 281 A.3d at 67-69.

As such, this Court can only conclude that Judge Anderson's *Remedies Order* is "clearly erroneous in light of . . . a change in substantive law." Her ruling, therefore, does not establish the law of the case as to Plaintiffs' standing. *Kumar*, 25 A.3d at 13. Furthermore, the standing determinations from *Moon I* and Judge Cordero's *Amended Omnibus Order* that the *Remedies Order* incorporates do not separately establish the law of the case for the reasons discussed *supra* concerning the two prior rulings. *See supra* Parts III-A-1, III-A-2.

The Court now turns to an evaluation of whether Plaintiffs have special interest standing.

B. Plaintiffs' Special Interest Standing

"[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Consumer Fed'n*, 346 A.2d at 727 (quoting *Warth*, 422 U.S. at 499). In the context of charitable corporations, with principles derived from those applicable to charitable trusts, *see Moon I*, 129 A.3d at 244 n.15 (noting recognition of "applicability of the rules relating to charitable trusts to [charitable] corporations" and citing *Owen v. Bd. of Dirs. of the Wash. City Orphan Asylum*, 888 A.2d 255, 260 (D.C. 2005)), although "specific individuals or members of a class of individuals may receive a benefit [from the trust] from time to time," the "traditional rule has been that only a public officer, usually the state Attorney General, has standing to bring an action to enforce the terms of the trust" because "the interest in ensuring that charitable trust property is put to proper purposes is properly that of the community at large[.]" *Hooker*, 579 A.2d at 611-12. This traditional rule, a prudential standing requirement, is premised on the "impossibility of establishing a distinct justiciable interest on the part of a member of a large and constantly shifting benefited class" and the recurring threat and burden of "vexatious litigation that would result from recognition of a cause of action by any and all of a large number of individuals who might benefit incidentally from the trust." *Moon I*, 129 A.3d at 244 (quoting *Hooker*, 579 A.2d at 612).

In an "important exception" to the traditional rule, a private individual may have standing "in situations where [the] individual seeking enforcement of the

trust has a 'special interest' in continued performance of the trust distinguishable from that of the public at large." *Id.* (quoting *Hooker*, 579 A.2d at 612). Although the Court of Appeals has declined to define with precision the term "special interest," *see Hooker*, 579 A.2d at 612 (defining "'special interest' [as] a term of uncertain scope . . . ."), the Court of Appeals has instructed that the "key consideration . . . is whether finding a justiciable interest in a given plaintiff would contravene the considerations underlying the traditional rule." *Moon I*, 129 A.3d at 244. Accordingly, for a plaintiff to have special interest standing, the plaintiff must satisfy two requirements: (1) the plaintiff must be part of a "particular class of potential beneficiaries" that "is sharply defined and its members are limited in number"; and (2) the act the plaintiff challenges must be "an extraordinary measure threatening the existence of the trust," as opposed to an act arising from the "ordinary exercise of discretion on a matter expressly committed to the trustees." *Hooker*, 579 A.2d at 615 (noting that "[a] suit by a representative of a class of potential beneficiaries should aim to vindicate the interests of the entire class and should be addressed to trustee action that impairs those interests . . . .").

1. Plaintiffs fall within a particular class of potential beneficiaries that is sharply defined and has a limited membership.

As to the first requirement for special interest standing, Dr. Moon contends that Plaintiffs do not fall within a "small class" of potential beneficiaries that is "sharply defined" and "limited in number," in view of

Moon III's clarification that determination of "UCI's class of potential beneficiaries" would "infring[e] on fundamental First Amendment principles." Def.'s Mem. 9-10 (citing *Moon III*, 291 A.3d at 68-70). Dr. Moon accordingly asserts that the Court "cannot hold that Plaintiffs are part of a defined and limited class of permissible beneficiaries" and consequently cannot "distinguish any putative plaintiff's interest from those of the general public," thus rendering UCI's class of potential beneficiaries to be "not judicially cognizable." *Id.* at 10.

In opposition, Plaintiffs contend that their interests in UCI differ from other past beneficiaries because of their establishment by Rev. Moon, their unique relationship with UCI and Dr. Moon, and their history of "receiv[ing] significant contributions from UCI for years." Pls.' Opp'n 17. Plaintiffs further contend that "[n]either this Court, nor the Court of Appeals in *Moon III*, defined criteria for a class of beneficiaries because the Courts understood it is undisputed that Plaintiffs have a special interest in UCI." *Id.*

In *Hooker*, the "leading District of Columbia case on 'special interest' standing," *He Depu v. Yahoo! Inc.*, 950 F.3d 897, 905 (D.C. Cir. 2020), the Court of Appeals concluded that a class of potential beneficiaries was "sufficiently narrow" to qualify for special interest standing to enforce a trust chartered for the purpose of maintaining a home for elderly and indigent widows residing in Georgetown. *Hooker*, 579 A.2d at 609, 615. There, the Court of Appeals looked to the will and charter establishing the trust, along with subsequently adopted trust bylaws, to identify a

limited class of beneficiaries consisting of individuals who are "(1) female, (2) indigent, (3) aged, and (4) widowed[,]" (5) in good health, and (6) residents of Georgetown for the five years immediately prior to their application to live in the home. *Id.* at 615. The Court of Appeals found instructive the decision in *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752 (N.Y. 1985) which found a more expansive class than that in *Hooker* possessed standing. The *Alco Gravure* court defined the pool of parties with standing to be "the employees of corporations in which [the settlor] was involved *and* the employees of successors of such corporations." *Hooker*, 579 A.2d at 615 (quoting *Alco Gravure*, 479 N.E.2d at 756). The Court of Appeals expressly noted that the "definite criteria [in *Hooker*] narrow the instant class and identify its present members with at least as much particularity as the limitation in *Alco Gravure*." *Id.*

Here, the Court finds that Plaintiffs satisfy the first requirement for special interest standing. Plaintiffs' proffered bases for a "special relationship with UCI" sufficiently identify a class of potential beneficiaries limited in membership and distinct in interest from the general public: the class consists of entities (1) established by Rev. Moon; (2) previously headed or directed by Dr. Moon through an executive or leadership role at the entity; (3) that have received significant contributions from UCI over an extended period of time. Pls.' Opp'n 17 (citing undisputed facts recited in *Moon III*, 281 A.3d at 53, 64); *see Moon III*, 281 A.3d at 51 (noting "Rev. Moon and his supporters established religious institutions around the globe, including [UCJ,]" and "founded a large number of

nonprofit organizations, such as [UPF]"); *id.* at 53 (noting "Rev. Moon established the Family Federation"); *id.* at 53-54 (recounting Dr. Moon's appointment to "high-ranking positions within multiple Church-related organizations," including Family Federation, UPF, and UCI, and subsequent departure from Family Federation and UPF following schism); *id.* at 52-53, 55-56 (noting UCI's prior funding of "Unification Church institutions," UCJ, and UPF). The criteria here "narrow the instant class and identify its present members with at least as much particularity" as in *Hooker* through definitions tied expressly to undisputed facts concerning the legal formation and historical legal leadership of Plaintiffs and UCI alongside the longstanding monetary relationship between Plaintiffs and UCI prior to the schism underlying the present litigation.[9] *See Hooker*, 579 A.2d at 615.

Dr. Moon is correct that *Moon III* rejected attempts to distinguish the propriety of UCI's donations based on the receiving entity's affiliation (or lack thereof) with the Unification Church, *see* Def.'s Mem. 9 (citing *Moon III*, 281 A.3d at 68-70 (noting UCI's history of donating to unaffiliated, nonsectarian entities and Plaintiffs' concession that such donations were

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[9] At least one of the three remaining Plaintiffs would fall within the class defined by Plaintiffs' identified criteria, thus permitting the other remaining Plaintiffs to remain in the case provided that they satisfy the second requirement for special interest standing. *See Horne v. Flores*, 557 U.S. 433, 446 (2009) ("Because the superintendent clearly has standing to challenge the lower courts' decisions, we need not consider whether the Legislators also have standing to do so." (citing *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 (1977))).

consistent with UCI's broad corporate purposes)). The standing inquiry, however, turns not on the nonjusticiable issues arising out of whether donations to nonaffiliated entities not approved by Rev. Moon were proper. *See Moon III*, 281 A.3d at 67-70. Rather, here, the standing question turns simply upon whether Plaintiffs share some criteria beyond being potential beneficiaries that set them apart, in number and interest, from the general public. *Hooker*, 579 A.3d at 614. The First Amendment does not preclude a determination of UCI's potential beneficiaries for purposes of the standing inquiry because none of the criteria Plaintiffs identify require the Court to "decree that the Unification Church is a hierarchical organization," or to "resolv[e] a dispute as to the identity" of the leader of the Unification Church (presuming the Unification Church is so organized), or to rely upon findings "as to which party had 'spiritual and charismatic authority' over the Church and its affiliates at the time the relevant [donations] were approved." *Moon III*, 281 A.3d at 69.

The Court now turns to the second requirement for special interest standing: whether Plaintiffs are challenging acts that are extraordinary in nature.

2. The acts Plaintiffs challenge are not extraordinary in nature.

Dr. Moon contends that Plaintiffs no longer have special interest standing because Plaintiffs' surviving self-dealing claim "only . . . relate[s] to two routine and relatively insignificant transactions undertaken by certain UCI subsidiaries." Def.'s Mem. 8. Dr. Moon cites the absence of any factual allegations in the

Complaint, along with the lack of any facts in the record, "that purport to substantiate how these two transactions could be 'extraordinary' within the meaning of *Hooker*." *Id.* at 9.

In opposition, Plaintiffs contend that Dr. Moon "mischaracterizes" the scope of the remaining claims by excluding transactions that fall within the *Complaint*'s allegation of "a scheme of self-dealing designed to divert corporate assets to [Dr. Moon's] personal pursuits." Pls.' Opp'n 5-6 (citing Compl. ¶¶ 4-5, 82, 115, 117). Plaintiffs specifically identify UCI's donations to KIF as "an extraordinary measure that fundamentally changed UCI," thereby giving rise to special interest standing under *Hooker*. *Id.* at 11-16 (contending KIF transaction was extraordinary because of (1) the scale of transaction, (2) the creation and use of entities that "intentionally deprived UCI of any oversight or control over" the transferred assets, (3) the corporate decision-making's inconsistency with "all corporate norms," (4) the concealment of transactions, (5) the pretextual reasons for transfer, and (6) Dr. Moon's new statements "taking credit for the post-transfer development" of real estate project).

In reply, Dr. Moon reiterates that the scope of Plaintiffs' self-dealing claim, as pleaded in the *Complaint*, identified at summary judgment, and treated in Plaintiffs' own prior papers, does not speak to or reference specifically the GPF or KIF transactions. Def.'s Reply 4-9. Dr. Moon further contends that Plaintiffs concede that, "if Dr. Moon is right about the remaining scope of the case—*i.e.*, there is no remaining challenge to KIF—Plaintiffs admit they lack standing." *Id.* at 4-5.

To ascertain whether Plaintiffs satisfy the second prong of *Hooker*'s formulation of special interest standing, the Court must first determine the scope of Plaintiffs' surviving claims before assessing whether the transactions within that scope amount to extraordinary measures.

a. Plaintiffs' remaining claims do not encompass UCI's donations to KIF.

Plaintiffs rely upon the expansive wording of paragraph 117 of the *Complaint* in asserting that their self-dealing claim extends to UCI's donations to KIF. Paragraph 117 provides in relevant part as follows: "The Individual Defendants breached their fiduciary duties . . . (3) by engaging *in a scheme of self-dealing* designed to divert corporate assets to the personal pursuits of Preston Moon . . . ." Compl. ¶ 117 (emphasis added). However, for largely the same reasons as set forth in the Court's July 6, 2023 Order, the Court finds that the scope of the *Complaint* simply does not extend to UCI's donations to KIF. *See generally* July 6, 2023 Order (granting Director Defendants' *Motion for Judgment on the Pleadings*).

First, the *Complaint* does not name KIF. *See* July 6, 2023 Order, at 12-14 (noting *Complaint* did not explicitly name KIF, in contrast to naming and describing of "other entities and assets involved in the 'alleged scheme of self-dealing'"). Nor does the *Complaint* adequately plead facts permitting the Court to draw the inference that Dr. Moon was on "both sides of the transaction[s]" between UCI and KIF or otherwise "expect[ed] to derive personal financial benefit" therefrom, necessary to plausibly

allege that the transactions were self-dealing. *See Behradrezaee v. Dashtara*, 910 A.2d 349, 363 (D.C. 2006) (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)); July 6, 2023 Order, at 14-16 (noting lack of factual matter demonstrating individual directors were on both sides of transactions between UCI and KIF or expected to derive personal financial benefit from transactions). Indeed, as the Court explained in its July 6, 2023 Order:

> Plaintiffs . . . fail to specify the particular transactions giving rise to the self-dealing claim. Instead, they opt for a boilerplate sentence reincorporating all allegations set forth in the *Complaint*. [Compl. ¶ 113.] Among the factual allegations preceding the *Complaint*'s statement of claims, Plaintiffs identify three transactions as "improper self-dealing designed to enrich [Dr. Moon]," *id.* at ¶ 48:
>
> > 49. Specifically, Preston Moon, using his powers as President and Chairman of UCI, caused True World Group, LLC ("TWG"), an indirect subsidiary of UCI, to purchase property located at 24 Link Drive, Rockleigh, New Jersey (hereinafter "the Rockleigh Building") from UV Sales, Inc. ("UV Sales"), an entity wholly owned by United Vision Group, Inc. ("UVG"), which in turn is wholly owned and controlled by Preston Moon himself. Under the terms of the sale, TWG agreed to pay $5.9 million to UV Sales for the Rockleigh Building. The

> fair market value of the Rockleigh Building at the time of the sale was less than the $5.9 million purchase price, and the sale served no legitimate business purpose for TWG or UCI.
>
> 50. Preston Moon, using his powers as President and Chairman of UCI, also caused UCI to lend two million dollars to UVG.
>
> 51. Preston Moon, using his powers as President and Chairman of UCI, also caused One Up Enterprises ("One Up"), a direct subsidiary of UCI, to enter into a consulting agreement with UVG Strategic Consulting LLC ("UVGSC"), an entity wholly owned by UVG. One Up agreed to pay $120,000 per month to UVGSC. One Up made these payments to UVGSC despite the fact that the consulting agreement served no legitimate business purpose for One Up or UCI.

July 6, 2023 Order, at 18-19 (quoting Compl. ¶¶ 49-51). And last, Plaintiffs' reliance upon the Hon. John M. Mott's reading of paragraph 117, as set forth in the July 22, 2016 *Memorandum Opinion* memorializing the issuance of a preliminary injunction, *see* Pls.' Opp'n 6 n.1, is misplaced. *See* July 6, 2023 Order, at 12-13 n.3 (rejecting Plaintiffs' reliance on footnote in the July 22, 2016 *Memorandum Opinion*, construing *Complaint* in setting forth preliminary injunction to extend self-dealing claim to include KIF transactions,

because (1) *Moon III* vitiated basis for factual inquiries underlying determination; (2) scope of injunction was not premised on self-dealing; (3) preliminary injunction was not law of the case; and (4) claim of breach of fiduciary duty premised on diversion of assets to impermissible purpose is "substantively different" from claim based on alleged self-interest in KIF or transactions with KIF).

In short, Plaintiffs' self-dealing claim extends only to the three transactions specifically pleaded in paragraphs 49 to 51 of the *Complaint*. If Plaintiffs intended the GPF and KIF transactions to fall within the category of self-dealing transactions, Plaintiffs certainly knew how to do so with the same specificity as the three detailed in paragraphs 49 to 51. Absent particularized pleading concerning other transactions, including the GPF and KIF donations, that satisfies the requirements of Rules 8 and 12 of the Superior Court Rules of Civil Procedure, the Court "must decline to construe the *Complaint* to extend beyond its plain text, factual content, and reasonable inferences drawn therefrom and must reject Plaintiffs' contention that the GPF and KIF transactions fall within Count II's self-dealing claim" against Dr. Moon. July 6, 2023 Order, at 16; *see also id.* at 12-13 n.3 (noting Plaintiffs "learned about the KIF transactions after filing their *Complaint* . . . and thereafter engaged in substantial discovery concerning KIF" but "never sought leave to amend the *Complaint* to include the KIF (or GPF) transactions among the alleged self-dealing transactions enumerated therein"); *cf. United States ex rel. Spay v. CVS Caremark Corp.*, Civil No. 09-4672, 2013 U.S. Dist. LEXIS 121554, at *17-23 (E.D. Pa.

Aug. 27, 2013) (restricting discovery, in False Claims Act suit alleging nationwide claims, to three of six practices where plaintiff expressly pleaded specific fraudulent practices occurred nationwide and rejecting nationwide discovery as to remaining three practices because plaintiff did not plead that latter practices were committed on a nationwide basis and such was consistent with understanding of defendants and court at earlier stages of litigation).

b. The transactions the *Complaint* specifically identifies as self-dealing are not extraordinary measures.

As quoted *supra*, the *Complaint* challenges three transactions as allegedly self-dealing on the part of Dr. Moon: (1) an indirect UCI subsidiary's purchase of the Rockleigh Building from a firm controlled by Dr. Moon; (2) a loan from UCI to another firm controlled by Dr. Moon; and (3) a direct UCI subsidiary's entry into a consulting agreement with, and related monthly payments to, a third firm controlled by Dr. Moon. Compl. ¶¶ 49-51. "[T]he three transactions allegedly occurred during the time starting from [Dr. Moon's] ascension as president and chairman of UCI—*i.e.*, 'Spring of 2006,' *see id.* at ¶¶ 46-47—up to August 2, 2009, the date of the UCI board meeting at which the last two directors who were not 'loyal' to Preston were removed." July 6, 2023 Order, at 19. All three, separately or collectively,[10] fall short of constituting

[10] The Court of Appeals previously observed that "[a]ll plaintiffs are challenging an extraordinary measure—fundamentally changing the purpose of UCI and taking steps to divest itself from the Unification Church." *Moon I*, 129 A.3d at 245 n.18. As explained *supra*, *Moon I* expressly relied on all of Plaintiffs'

"extraordinary measure[s] threatening the existence" of UCI as required for special interest standing. *Hooker*, 579 A.2d at 615.

In *Hooker*, the Court of Appeals distinguished "extraordinary measures" from acts arising from the "ordinary exercise of discretion on a matter expressly committed" to trustees of a charitable trust consistent with the rationale underlying the traditional rule: limiting recurring litigation to avoid "clog[ging] court dockets and dissipat[ing] trust assets with attacks on ordinary exercises of trustees' judgment." *Id.* In that case, where the trust at issue was chartered for operating a home for elderly indigent widows, the challenged acts consisted of a proposal to shutter and sell the home and transfer trust assets and operations to a nearby charitable residential care facility for purposes of consolidation. *Id.* at 610. The Court of Appeals held that the challenged acts were extraordinary and gave rise to special interest standing because the acts "represent[ed] a major change from the manner in which the trust has been administered in the past": (1) the trustees' intent to

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claims *active at the time of the appeal*—namely, all claims alleged in the *Complaint*, *see supra* Part III-A-1—and evaluated the nature of the alleged acts in their entirety. *See Moon I*, 129 A.3d at 244-45 (noting trust theory, Family Federation's role as "overarching superior and benefiting entity," UPF's long-term beneficiary status, and UCJ's trust and conditional donation theories). Subsequent developments pared down the number and scope of Plaintiffs' claims. *See supra* Part III-A-1; *cf.* Def.'s Mem. 8 ("After *Moon III*, all of those allegations are gone."). In any event, Plaintiffs' remaining claim is limited to the transactions they properly pleaded in the *Complaint*. *See supra* Part III-B-2-a.

sell the home and consolidate its operations with another entity "raise[d] substantial questions about the compatibility of [the acts] with the settlor's intent" and "portend[ed] the loss of [the trust's] independent identity, which may adversely affect the interests of all beneficiaries as a class"; (2) consolidation would divest the trustees of any discernable duties; and (3) merger of the home with a residential care facility would diverge from the trustees' longstanding practice. *Id.* at 616-17. The Court of Appeals further opined:

> It is not an exaggeration, in other words, to say that the Trustees, and all present and future residents of the [home], stand at a crossroads they are unlikely to face again. It may in fact be that the merger the Trustees propose is, as they contend, essential to preserving the trust in changed times—again, an issue not for us presently to decide. What is clear is that the outcome of this action will determine whether the institution undergoes the fundamental change the Trustees propose. When, as in *Kania* [*v. Chatham*, 254 S.E.2d 528 (N.C. 1979)], the injury flows from an ordinary exercise of discretion by the trustees in the course of administering the trust—such as the selection among eligible recipients of a benefit—the need to prevent costly and recurring judicial intervention in decisionmaking justifies denial of standing to individual potential beneficiaries. But when, as here, the Trustees decide upon a basic change affecting the interests of the entire class of intended beneficiaries—and one alleged

> to be inconsistent with the settlor's will—the value of denying representatives of the class access to judicial process to challenge that decision is greatly diminished.

Hooker, 579 A.2d at 617.

Here, none of the three[11] enumerated transactions rise to the level of an extraordinary measure threatening the existence of UCI. First, the size and scale of each transaction pales in comparison to UCI's revenue and the value of its then-extant portfolio of assets. *Compare* Compl. ¶¶ 49-51 (alleging two one-time self-dealing transactions valued at $5.9 million and $2 million and one transaction valued at $120,000 per month), *with Moon III*, 281 A.3d at 52-53 (noting "UCI donated funds to a sweeping array of recipients" and was subsidized by UCJ in the amount of "around $100 million annually . . . for many years"), *and id.* at 58-59 (noting assets donated to KIF had a "book value exceed[ing] $469 million, approximately half of UCI's total value"). Second, the transactions did not threaten or cause a change that would "affect[] the interests of the entire class of [UCI's] intended beneficiaries." *Hooker*, 579 A.2d at 617. UCI's mission and purpose were undisturbed by the transactions, as was its identity as an independent charitable nonprofit

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[11] Judge Cordero's grant of summary judgment in favor of Dr. Moon and the Director Defendants as to the $2 million loan, on the ground that Plaintiffs failed to identify any evidence showing that the loan was substantively unfair to UCI, was not disturbed by *Moon III* and, as the law of the case, would "be a separate and independent basis for concluding that [that] portion[] of Plaintiffs' self-dealing claim . . . is no longer live." *See* July 6, 2023 Order, at 23-25.

corporation; UCI's operations likewise continued in accordance with prior practice; and UCI's directors were not divested of their duties concerning management of UCI's charitable property as a consequence of the transactions. *See id.* at 616-17. Third, the transactions appear to be well within the "ordinary exercise of discretion by [UCI's directors] in the course of administering [UCI]," as exemplified by the transactions representing the "selection among eligible recipients of [the] benefit" of conducting business with, and receiving monetary disbursements from, UCI. *Id.* at 617.

Accordingly, *Hooker* precludes special interest standing for Plaintiffs because "the prospect of recurring vexatious litigation predicated on ordinary exercise of [UCI's directors'] judgment is . . . present here" and to hold otherwise would squarely contravene the considerations underlying the traditional rule limiting standing to enforce the terms of the charitable trusts. *Id.* at 615, 617. Plaintiffs therefore must identify some other basis for standing to survive dismissal.

C. Other Bases for Standing

Dr. Moon contends that each Plaintiff lacks any other basis for standing. *See* Def.'s Mem. 10-12. Plaintiffs do not directly address Dr. Moon's arguments on this issue. *See* Pls.' Opp'n 18-19 (contending proper standard requires presuming Plaintiffs prevail on the merits on all claims and theories, including Plaintiffs' invocation of the "fraud or collusion exception" to First Amendment's religious abstention doctrine); *id.* at 19-20 (contending Dr.

Moon's standing challenge fails if the "fraud or collusion exception" applies); *id.* at 20 (contending that, should Plaintiffs lack standing, dismissal without prejudice is proper disposition).

The Court observes that Plaintiffs' derivative claim on behalf of UCI was dismissed prior to *Moon I*. *See* June 19, 2012 Order, at 20-23, 45 (Combs Greene, J.) (finding Plaintiffs lacked standing to bring derivative claim, noting lack of recognition of "quasi-derivative claim" under District of Columbia law, and dismissing UCI as plaintiff). The Court also notes that Judge Cordero dismissed the two former UCI directors for want of standing after Plaintiffs abandoned their trust claim and theory of fiduciary breach premised on the allegedly wrongful ouster of the former directors. *See* Am. Omnibus Summ. J. Order, at 19-21. Accordingly, the remaining Plaintiffs are (1) Family Federation, (2) UCJ, and (3) UPF.

The remaining Plaintiffs do not have any other basis for standing. As to Family Federation, the Court previously identified another basis for Family Federation's standing premised on "its special interest as a 'benefiting entity' from UCI's fidelity to its original purposes," namely, "to further the mission of the Family Federation and the Unification Church." *See* Am. Omnibus Summ. J. Order, at 18-19 (citing *Moon I*, 129 A.3d at 245, and referencing exhibits providing that "Family Federation is Unification Church, this whole umbrella"). Dr. Moon is correct that *Moon III* plainly forecloses any pronouncement that Family Federation is the "authoritative religious entity" of the Unification Church, or that Family Federation and Unification Church are one and the

same. *See Moon III*, 281 A.3d at 51, 62 n.17, 65 n.23 (rejecting determination that Family Federation headed the Unification Church); *id.* at 64-66 (holding question of effect of amending UCI's articles to replace "Unification Church" with "Unification Movement" was nonjusticiable); *cf.* Def.'s Mem. 11. Family Federation's alleged role as a superior or benefiting entity of the Unification Church, or an all-encompassing entity coterminous with the "Unification Church," therefore cannot serve as a basis for standing. *See Moon III*, 281 A.3d at 61 ("[A] civil court may not ordain matters of 'church polity or administration,' by, for instance, 'determin[ing] the religious leader of a religious institution.'" (citations omitted)); *Askew v. Trs. of the Gen. Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 776 F. Supp. 2d 25, 30 (E.D. Pa. 2011) ("[A] dispute over membership in a church constitutes a core ecclesiastical matter."), *aff'd*, 684 F.3d 413 (3d Cir. 2012), *cert. denied*, 568 U.S. 1125 (2013); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."). Accordingly, Family Federation lacks standing to pursue its remaining self-dealing claim against Dr. Moon.

As to UCJ, the Court previously identified a basis for standing grounded in UCJ's contract and quasi-contract claims against UCI and the factual dispute concerning whether its gifts to UCI were conditional or absolute. *See* Am. Omnibus Summ. J. Order, at 21;

Moon I, 129 A.3d at 246-47. The Court observes that in *Moon I*, the Court of Appeals cited the RESTATEMENT (THIRD) OF TRUSTS for the principle that, where a donor makes a conditional gift to a charitable trust, the donor enjoys special interest standing "'to maintain a suit against the trustee-organization,' although 'only to enforce the restriction.'" *Moon I*, 129 A.3d at 247 n.20 (quoting RESTATEMENT (THIRD) OF TRUSTS § 94, cmt. g(3) (AM. L. INST. 2012)). Plaintiffs' self-dealing claim goes beyond "only . . . enforc[ing] the restriction[s]" UCJ allegedly placed on its contributions to UCI. *Moon I*, 129 A.3d at 247 n.20. UCJ's alternative basis for special interest standing does not remedy its lack of special interest standing, under *Hooker*, to challenge acts committed to the sound and sole discretion of UCI's board of directors. *See supra* Part III-B-2-b. Thus, Dr. Moon is correct that UCJ's alternative basis for special interest standing "goes only to [its] contract claims, Counts IV-VI; it cannot support standing to pursue 'self-dealing' claims against Dr. Moon." Def.'s Mem. 12.

As the Court has granted UCI's *Motion for Summary Judgment* as to UCJ's three contract and quasi-contract claims, *see generally* June 15, 2023 Order (granting summary judgment because First Amendment precluded UCJ from advancing viable legal theory as to any of the three claims), UCJ's standing premised on those claims no longer exists. UCJ therefore lacks standing to advance Plaintiffs' remaining self-dealing claim. *See Get Outdoors II*, 506 F.3d at 893 ("[A]n unfavorable decision on the merits

of one claim may well defeat standing on another claim if it defeats the plaintiff's ability to seek redress.").

As to UPF, the Court previously found that UPF had special interest standing to challenge "UCI's alleged diversion of funding from UPF to GPF after 2010," owing to its status as "an actual beneficiary of UCI" that "received substantial funding as a result of this relationship." Am. Omnibus Summ. J. Order, at 21 (noting UPF received $26.5 million from UCI over six years); *Moon I*, 129 A.3d at 245 (citing allegations that UPF "was a major beneficiary from UCI for three decades"). Dr. Moon correctly notes, however, that *Moon III* foreclosed Plaintiffs' claim for breach of fiduciary duty based on UCI's donations to GPF on First Amendment grounds. *Moon III*, 247 A.3d at 67-70; *cf.* Def.'s Mem. 11 ("In other words, the only claim UPF was afforded special-interest standing to pursue has been *dismissed*." (emphasis in original)). UPF has no other valid basis for standing to advance the self-dealing portion of Plaintiffs' claim of breach of fiduciary duty.

Therefore, in addition to lack of special interest standing under *Hooker*, *see supra* Part III-B, all three remaining Plaintiffs lack alternative bases of standing to advance their remaining claim. The Court now turns to the Parties' dispute over the proper disposition of the case.

D. Appropriate Disposition

Plaintiffs contend that the Court cannot dismiss their claims with prejudice "solely for lack of standing." Pls.' Opp'n 20 (citing *UMC Dev.*, 120 A.3d at 48-49). Highlighting that "the 2011 Complaint has

not been amended," Plaintiffs further contend that the Court "should not grant [Dr. Moon's] Motion without first granting Plaintiffs leave to amend, holding an evidentiary hearing, or both." *Id.* Dr. Moon opposes any amendment considering the "over 12 years of litigation" and the futility of any amendment "in light of *Moon III*." Def.'s Reply 18.

1. As Dr. Moon's challenge to Plaintiffs' standing is a facial attack on Plaintiffs' prudential standing, Plaintiffs' lack of standing is properly understood as a failure to state a claim under Rule 12(b)(6) and thus does not preclude dismissal with prejudice.

Plaintiffs are correct that, ordinarily, the "appropriate remedy" for lack of standing is "dismissal without prejudice" because "a defect of standing is . . . a defect in subject matter jurisdiction." *UMC Dev.*, 120 A.3d at 43-44. Absent jurisdiction, a court cannot adjudicate the merits of the underlying matter. *See Hormel Foods Corp.*, 258 A.3d at 191. Because a dismissal with prejudice operates as "a determination of the merits of the underlying claim," a court generally cannot dismiss a matter with prejudice for want of standing. *See, e.g.*, *Jibril v. Mayorkas*, 20 F.4th 804, 813 (D.C. Cir. 2021) ("[D]ismissal of these claims should have been without prejudice, as dismissal of the claims for lack of standing is not an adjudication on the merits."); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1217 (10th Cir. 2006) (identifying "two important analytical reasons for requiring that a dismissal on jurisdictional grounds be without prejudice": (1) dismissal with prejudice "may

improperly prevent a litigant from refiling his complaint in another court that does have jurisdiction"; and (2) a court without jurisdiction over a claim "perforce lacks jurisdiction to make any determination of the merits of the underlying claim"). Plaintiffs' reliance on this general rule governing dismissals for lack of standing, however, ignores the specific procedural posture of, and related nuances in standing jurisprudence implicated by, Dr. Moon's instant *Motion*.

As discussed *supra*, Dr. Moon mounts a *facial* attack upon Plaintiffs' *prudential* standing. *See supra* Part II. "When a party makes a facial attack under Rule 12(b)(1), *the court treats the motion as one filed under Rule 12(b)(6)* . . . ." *Matthews*, 558 A.2d at 1179 n.7 (emphasis added). Similarly, and most significant here, a challenge to a party's prudential standing is properly decided under Rule 12(b)(6), as opposed to a challenge to a party's constitutional standing, which is decided under Rule 12(b)(1). *See ExxonMobil Oil*, 172 A.3d at 418. The difference in the applicable rule arises from the difference in origin of each type of standing, as highlighted by Dr. Moon's standing challenge. Dr. Moon does not contend that Plaintiffs have failed to allege an injury-in-fact fairly traceable to Defendants' conduct that is likely to be redressed by Plaintiffs' requested relief—*i.e.*, a live "case or controversy" as required for constitutional standing. *Exec. Sandwich Shoppe*, 749 A.2d at 731; *Grayson*, 15 A.3d at 234 n.36 (quoting *Lujan*, 504 U.S. at 560-61). Rather, Dr. Moon contends that Plaintiffs have not articulated a basis to overcome the "judicially self-imposed limits on the exercise of . . . jurisdiction."

Exec. Sandwich Shoppe, 749 A.2d at 731. In other words, *given that the dispute lies within the Court's subject matter jurisdiction*, Plaintiffs have not demonstrated that they are the proper parties to "invoke the [Court's] decisional and remedial power" to adjudicate the underlying live dispute. *Consumer Fed'n*, 346 A.2d at 727 (quoting *Warth*, 422 U.S. at 499); *see Hooker*, 579 A.2d at 614-15 (citing "policy reasons for limiting standing" as rationale for limiting special interest standing exception to small, sharply defined class of potential beneficiaries challenging extraordinary acts of trust administration). Accordingly, "the problem is one of prudential rather than constitutional standing, so it [does] not actually affect subject matter jurisdiction." *Doermer v. Callen*, 847 F.3d 522, 526 n.1 (7th Cir. 2017); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014) ("[T]he absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional *power* to adjudicate the case."); *cf. Wilderness Soc'y v. Kane Cnty.*, 632 F.3d 1162, 1168 n.1 (10th Cir. 2011) ("[P]rudential standing is not a jurisdictional limitation and may be waived . . . ."). The language of *UMC Development*, requiring dismissal without prejudice where a plaintiff lacks standing, *see UMC Dev.*, 120 A.3d at 39, 48-50, is not applicable here. In *UMC Development*, the Court of Appeals addressed a successful challenge to *constitutional* standing and held that the trial court lacked subject matter jurisdiction over the claims at issue—and, thus, the power to dismiss with prejudice. *See id.* at 45-46 (finding plaintiffs failed to "satisfy the traceability

element of standing"); *id.* at 46-47 (finding plaintiffs failed to substantiate actual injury).

Therefore, the Court's conclusion that Plaintiffs lack any basis for special interest standing is properly framed as a determination that Plaintiffs have failed to "state a claim upon which relief can be granted" pursuant to Rule 12(b)(6): Plaintiffs have not alleged a plausible basis for special interest standing to challenge Defendants' allegedly wrongful acts in administering UCI's assets. Dismissal under Rule 12(b)(6) "operates as an adjudication on the merits" unless "the dismissal order states otherwise." Super. Ct. Civ. R. 41(b)(1)(B); *see Colvin v. Howard Univ.*, 257 A.3d 474, 485 (D.C. 2021) ("'[A]n adjudication on the merits' is synonymous with a dismissal with prejudice[.]")

The Court finally turns to whether Plaintiff's requests to hold an evidentiary hearing and for leave to amend the *Complaint* are meritorious and warrant dismissal of the case without prejudice.

2. Plaintiffs' requests are without merit.

As to Plaintiffs' request for an evidentiary hearing, the Court must deny the request for the reasons set forth in the Court's August 11, 2023 *Omnibus Order* denying Plaintiffs' motion for the same. *See* Aug. 11, 2023 Omnibus Order, at 44 (finding evidentiary hearing to be "wasteful of resources," given Plaintiffs' arguments set forth in their pleadings rest upon an "extraordinarily" extensive evidentiary record).

As to Plaintiffs' request for leave to amend the *Complaint*,[12] "it is the duty of the Court to decide whether the ends of justice require that leave be granted to amend at this time." *Glesenkamp v. Nationwide Mut. Ins. Co.*, 71 F.R.D. 1, 4 (N.D. Cal. 1974); Super. Ct. Civ. R. 15(a)(3) ("The court should freely give leave when justice so requires."). The Court of Appeals has identified the applicable considerations in determining whether to grant such a request:

> Leave to amend a complaint after the filing of responsive pleadings (as in this case) is a matter within the discretion of the trial court. *See Crowley v. North American Telecommunications Ass'n*, 691 A.2d 1169. 1174 (D.C. 1997); *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A.2d 495, 501 (D.C. 1994); Super. Ct. Civil Rule 15(a). However, the policy that favors resolution of disputes on the merits creates a "virtual presumption" that leave to amend should be granted unless there are sound reasons for denying it. *See Johnson*, 641 A.2d at 501. Factors affecting the court's discretion include: "(1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party." *Crowley*, 691 A.2d at 1174. The lateness of a motion for leave to amend,

[12] Unlike their requests to reopen discovery and hold an evidentiary hearing, Plaintiffs never filed a formal motion for leave to amend the *Complaint*.

> however, may justify its denial if the moving party fails to state satisfactory reasons for the tardy filing and if the granting of the motion would require new or additional discovery. *Eagle Wine & Liquor Co. v. Silverberg Electric Co.*, 402 A.2d 31, 35 (D.C. 1979).

Pannell v. District of Columbia, 829 A.2d 474, 477 (D.C. 2003); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (articulating "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment," as non-exclusive grounds for denying leave to amend).

Of the five factors identified in *Pannell*, only the first factor weighs in favor of Plaintiffs' request: Plaintiffs are correct that the *Complaint* has never been amended throughout this case's lengthy and complex proceedings. The second, fourth, and fifth factors, however, weigh heavily against granting leave to amend: this case has been pending for twelve years and counting; Plaintiffs have not proffered a proposed amended *Complaint* nor detailed what specific amendments they envision[13]; and permitting

[13] Plaintiffs suggest that, at the very least, they would amend the *Complaint* to include UCI's donations to GPF and KIF alongside "additional self-dealing" transactions. *See* Pls.' Opp'n 5-7. Notwithstanding the expansion of the scope of the self-dealing claim such an amendment would effect, Plaintiffs' contention that they "could not have alleged the secretive KIF transactions in their Complaint because Plaintiffs only learned of these transactions in the context of sanctions discovery," *id.* at 6 n.1, does not justify granting leave to amend. Plaintiffs discovered

amendment at this juncture would significantly prejudice Defendants. *See* Aug. 11, 2023 Omnibus Order, at 30-37 (finding Plaintiffs' did not demonstrate excusable neglect in making belated discovery requests because (1) granting requests would plainly prejudice Defendants; (2) delay was significant and granting request would almost certainly extend delay; (3) Plaintiffs' premise for delay was unsatisfactory and legally unsound; and (4) Plaintiffs' request came after

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transactions beyond the three specifically identified in the *Complaint* by 2013 at the earliest and 2017 at the latest—well in advance of the close of discovery and the deadline for filing dispositive motions. *See, e.g.*, *id.* (citing Plaintiffs' own discovery filings); *see also* July 6, 2023 Order, at 12-13 n.3 ("[T]he Court finds it curious that Plaintiffs never sought leave to amend the *Complaint* to include the KIF (or GPF) transactions among the alleged self-dealing transactions enumerated therein."). As one federal district court explained:

> "Even when an amendment is sought because of new information obtained during discovery," no good cause exists where "the moving party unduly delays pursuit of the amended pleading." In other words, a party can obtain new information in discover and still wait too long to seek an amendment. What matters is *when* the party obtained the information in discovery, not *that* it did so. That is particularly true here where the discovery period has been lengthy, and absent something unusual, [the movant] could not have been diligent unless it obtained information at the *end* of discovery.

Hix v. Acrisure Holdings, Inc., No. 1:21-cv-4541-MLB, 2022 U.S. Dist. LEXIS 221082, at *8 (N.D. Ga. Dec. 8, 2022) (citations omitted, emphasis in original) (denying leave to amend where motion was made seven months after expiration of scheduling order's deadline for amendments). Here, Plaintiffs offer no explanation for their delay in seeking amendment nor identify anything "unusual" that would excuse their failure to seek amendment timely. This failure, alone, warrants denial of the request to amend.

this Court's oral reminder that discovery was closed); *id.* at 37-43 (concluding Plaintiffs did not demonstrate good cause for similar reasons and failure to comply with procedural requirement to proffer proposal with timetable and specifics); *see, e.g.*, *Parish v. Frazier*, 195 F.3d 761, 763-64 (5th Cir. 1999) (affirming denial of leave to amend where motion was made seven months after filing of complaint, delay "could have been avoided by due diligence," and proposed amendment would increase delay and expand "the allegations beyond the scope of the initial complaint"). As to the third factor, "the record does not clearly indicate that Plaintiffs acted in bad faith in making their request." Aug. 11, 2023 Omnibus Order, at 36; *see also* June 15, 2023 Order, at 21 n.9 (declining to sanction Plaintiffs over "bad faith in continuing to pursue doomed claims against" Defendants); *but see, e.g.*, *United States ex rel. Nicholson v. Medcom Carolinas, Inc.*, 42 F.4th 185, 197 (4th Cir. 2022) ("Delay . . . is often evidence that goes to prove bad faith and prejudice."); *Williams v. Savage*, 569 F. Supp. 2d 99, 107-08 (D.D.C. 2008) (noting dilatory motive "exists where a party has ample time to amend a pleading before a court takes dispositive action and fails to do so").

Accordingly, in addition to Plaintiffs' amendments likely "requir[ing] new or additional discovery," *Pannell*, 829 A.2d at 477; *see* Aug. 11, 2023 Omnibus Order, at 39-41 (discussing Plaintiffs' fatally vague and procedurally noncompliant proposal for reopening discovery), "sound reasons" exist to deny Plaintiffs' request. *See, e.g.*, *Edwards v. Safeway, Inc.*, 216 A.3d 17, 19-20 (D.C. 2019) (affirming denial of leave to amend complaint where case had been pending for

eighteen months, delay was not explained, and additional discovery would be required on proposed amendments); *Va. Acad. of Clinical Psychs. v. Grp. Hospitalization & Med. Servs., Inc.*, 878 A.2d 1226, 1239-41 (D.C. 2005) (affirming denial of leave to amend complaint to add new legal theory where motion to amend was made seven months after close of discovery, more than two years after filing of initial complaint, and after conclusion of summary judgment briefing and movant did not offer satisfactory explanation for delay); *Hoffman v. United States*, 266 F. Supp. 2d 27, 32-35 (D.D.C. 2003) (denying leave to amend because of (1) undue delay stemming from litigation "for nearly twenty years" across "two different district courts, three appellate proceedings, two appellate rehearings, two unsuccessful certiorari petitions," and latest remand; (2) undue prejudice to defendants through expansion of issues on remand; and (3) likely bad faith inferred from lack of any explanation for delay and limited scope of permissible arguments as ordered on remand), *aff'd*, 96 F. App'x 717 (Fed. Cir. 2004), *cert. denied*, 543 U.S. 1002 (2004); *Doe v. McMillan*, 566 F.2d 713, 720 (D.C. Cir. 1977) (affirming denial of leave to amend where "appellants' complaint had been before the district court, [the federal court of appeals], and the Supreme Court for over thirty-eight months before appellants filed the first of their motions for leave to file an amended complaint" and "no sound reason" existed for "failure to seek amendment earlier").

Therefore, in view of the extensive and protracted proceedings in this case, Plaintiffs' lack of prudential standing to advance their remaining claims on

remand, and the lack of merit in Plaintiffs' requests, the Court will dismiss the *Complaint* with prejudice under Rule 12(b)(6) of the Superior Court Rules of Civil Procedure and order the case closed.

ACCORDINGLY, it is by the Court this 28th day of August 2023, hereby

ORDERED that *Defendant Hyun Jin Moon's Post-Remand Motion to Dismiss for Lack of Standing*, filed on January 20, 2023, is **GRANTED**; and it is further

ORDERED that the *Complaint* in the above-captioned matter, filed on May 11, 2011, is

DISMISSED WITH PREJUDICE; and it is further

ORDERED that the above-captioned matter is **CLOSED**.

/s/ Alfred S. Irving, Jr.
Judge Alfred S. Irving, Jr.

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Appendix C

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*,	**2011 CA 003721 B**
Plaintiffs,	**Judge Alfred S. Irving, Jr.**
v.	
HYUN JIN MOON, *et al.*,	
Defendants.	

ORDER

Before the Court is a *Motion for Judgment on the Pleadings* that Defendants Michael Sommer, Richard Perea, JinMan Kwak, and Youngjun Kim (collectively the "Director Defendants") filed on January 25, 2023. Plaintiffs Family Federation for World Peace and Unification International ("Family Federation"), Family Federation for World Peace and Unification Japan ("UCJ," formerly known as the Holy Spirit Association for the Unification of World Christianity (Japan)), and Universal Peace Federation ("UPF") filed their joint *Opposition* on February 24, 2023. The Director Defendants filed a *Reply* on March 3, 2023. The Director Defendants seek judgment on the

pleadings as to the remaining count against them and their dismissal from the case in view of the August 25, 2022 decision of the District of Columbia Court of Appeals and the portions of the Hon. Laura A. Cordero's March 28, 2019 *Amended Omnibus Order on Motions for Summary Judgment* that ostensibly survived review.

The questions before the Court are fully briefed and, thus, the Court requires no oral argument to rule. *See also* Super. Ct. Civ. R. 12-I(h). For the reasons set forth below, the Court will grant the Director Defendants' *Motion* and dismiss the claims against them.

I. BACKGROUND

The Court will forgo reciting, in their entirety, the allegations giving rise to this continuing lawsuit, and will decline to revisit in this order the lengthy and complex procedural history relating to the three D.C. Court of Appeals' decisions issued over the course of the last twelve years. *See Moon v. Fam. Fed'n for World Peace & Unification Int'l* ("*Moon III*"), 281 A.3d 46, 51-60 (D.C. 2022); *Fam. Fed'n for World Peace & Unification Int'l v. Moon* ("*Moon I*"), 129 A.3d 234, 239-42 (D.C. 2015); *see also* June 15, 2023 Order, at 1-7 (summarizing pertinent background and procedural history). In brief, the controversy underlying this case is a "religious schism" in the "religion known as the Unification Church." The schism arose in the final years of the life of the Unification Church's founder, the late Reverend Sun Myung Moon ("Rev. Moon"). *Moon III*, 281 A.3d at 49-50. The schism precipitated a "struggle for power and money" among Rev. Moon's

two sons and widow, implicating Unification Church organizations and followers, assets, and billions of dollars across three continents, which struggle continues to the present day. *Moon III*, 281 A.3d at 49-50, 53-55, 59-60. At issue are (1) a dispute over control of UCI (formerly known as "Unification Church International"), a District of Columbia corporation formed in the 1970s, at the direction of Rev. Moon, to serve "as a 'funding source' for organizations and projects Rev. Moon founded or supported[,]" *id.* at 52, and (2) the conduct of Rev. Moon's eldest son, Dr. Hyun Jin Moon ("Preston"), and the Director Defendants. *Id.* at 54-55. The Director Defendants are individuals "who shared [Preston's] view of the Unification Church" and joined UCI's board of directors by the end of 2009, directing UCI's activities amid the ongoing "religious schism." *Id.*

Relevant to the instant *Motion*, in May 2011, five Plaintiffs—the Family Federation, UPF, UCJ, and two former directors of UCI—on behalf of UCI, sued UCI as an actual and nominal Defendant and the five individuals comprising UCI's board of directors: Preston and the Director Defendants. *See generally* Compl. Of the six counts alleged in the forty-page *Complaint*, Plaintiffs leveled three against the Director Defendants, alleging misconduct arising from the Director Defendants' actions in administering UCI:

- Count I, "Breach of Trust and Aiding and Abetting Same";
- Count II, "Breach of Fiduciary Duties, *Ultra Vires* Acts and Aiding and Abetting Same";

and

- Count III, "Breach of Fiduciary Duty as Agent and Aiding and Abetting Same."

See Compl. ¶¶ 99-112, 113-23, 124-30.

Judge Cordero addressed the Parties' summary judgment arguments in her March 28, 2019 *Amended Omnibus Order on Motions for Summary Judgment* [hereinafter "Am. Omnibus Summ. J. Order"]. As to Plaintiffs' three counts against the Director Defendants, Judge Cordero dismissed Counts I and III in their entirety after Plaintiffs "elected not to pursue" them. Am. Omnibus Summ. J. Order, at 2, 19.

As to Count II, Plaintiffs alleged the Director Defendants breached their fiduciary duties to UCI, "and aided and abetted their fellow Directors' breaches" by: (1) amending UCI's articles of incorporation in 2010 to permit use of UCI's assets for "purposes other than the mission and purpose for which [UCI] was formed"; (2) "manipulating the designation and removal" of UCI's directors "in defiance of [Rev. Moon's] explicit instructions" and "UCI's longstanding and uniform custom and practice of following [Rev. Moon's] directives" concerning the same; (3) engaging in transactions that constituted a "scheme of self-dealing designed to divert corporate assets to the personal pursuits" of Preston; and (4) "failing to use [UCI's] assets . . . to support the mission and activities of the Unification Church." Compl. ¶ 117.

Judge Cordero dismissed the aiding and abetting claims, as well as the claims arising from Plaintiffs' second theory—the removal and replacement of UCI's

directors. Am. Omnibus Summ. J. Order, at 2-3 (acknowledging Plaintiffs' withdrawal of claim based on removal and replacement of UCI's directors); *id.* at 42 (observing that District of Columbia law does not recognize an "independent tort for aiding and abetting" the breach of fiduciary duty); *see also Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 711 (D.C. 2013) (declining to recognize "separate tort of aiding-abetting"). Judge Cordero entered summary judgment in favor of Plaintiffs as to their first and fourth theories. She found that the Director Defendants breached their fiduciary duties to UCI in the following two ways: (1) the Director Defendants' approval of the 2010 amendments to UCI's articles of incorporation that "substantially altered UCI's corporate purposes by eliminating any obligation to the Unification Church," Am. Omnibus Summ. J. Order, at 22-27 (citing *Moon I*, 129 A.3d at 252 ("It can be a breach of duty to 'change substantially the objects and purposes of the corporation.'")); and (2) the Director Defendants' authorization of asset donations to the "Kingdom Investment Foundation" ("KIF") and the "Global Peace Foundation" ("GPF"), *id.* at 27-34 (noting that evidence suggested that UCI made donations to KIF and GPF "specifically because KIF [and GPF were] completely unaffiliated with the Unification Church").

As to Plaintiffs' third theory, premised on alleged self-dealing, Judge Cordero observed, as follows, that Plaintiffs' claims rested on three transactions:

> First, in February 2008, a UCI subsidiary, True World Group, LLC ("True World"), purchased real property from UV Sales, Inc. ("UV Sales"),

> a corporation owned by Preston Moon. Second, in 2007, UCI loaned $1.5 million to United Vision Group, Inc. ("UVG"), a corporation wholly owned by Preston Moon. The pleadings state that the loan was for $2 million. This loan was paid in full around October 2009. Third, starting in 2006, another UCI subsidiary, One Up Enterprises, Inc. ("One Up"), retained UVG Strategic Consulting, LLC ("UVGSC"), a consulting firm wholly owned by UVG that was created in 2006.

Id. at 34 (internal citations omitted); *see also* Compl. ¶¶ 48-51. Judge Cordero granted summary judgment in favor of the Director Defendants on the grounds that the first two transactions occurred prior to their appointments to UCI's board of directors, Am. Omnibus Summ. J. Order, at 35-36 (February 2008 purchase of real property); *id.* at 36 (2006 retention of consulting services),[1] and Plaintiffs "fail[ed] to offer any evidence in support of the proposition" that the third transaction "was economically unfair." *Id.* at 37 (2007 loan).

In *Moon III*, the Court of Appeals reversed and vacated Judge Cordero's *Amended Omnibus Order*. 281 A.3d at 51, 70. In doing so, the Court of Appeals expressly found that Judge Cordero's "ruling on [P]laintiff's fiduciary-duty claims"—specifically, the "two theories of fiduciary breach" upon which she

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[1] As to all other Defendants, Judge Cordero found the existence of genuine issues of material fact as to the substantive fairness of the 2008 property purchase and 2006 retention of consulting services precluded summary judgment. *Id.* at 35-36.

entered summary judgment in favor of Plaintiffs—"violated the First Amendment" because "the grant of summary judgment on either ground would improperly intrude on religious questions." *Id.* at 62. The Court of Appeals went on to explain:

> [Defendants] ask us to not only reverse the entry of summary judgment against them, but to direct the trial court to dismiss the breach of fiduciary claim altogether. One wrinkle precludes us from doing that. While we agree that the two theories of fiduciary breach embraced by the trial court are non-justiciable, there remains a third theory advanced by [Plaintiffs] that the trial court did not address: that the directors engaged in self-dealing . . . . That theory may yet have some legs, provided there is evidence to support it.
>
> While religious abstention is a robust doctrine that provides substantial protections to religious organizations' autonomy within the religious sphere, the Supreme Court has strongly suggested that there is a "fraud or collusion" "exception to the general rule of non-interference," under which a civil court may decide a facially ecclesiastical dispute when religious figures "act in bad faith for secular purposes." Under that potential exception, a civil court may have the authority to exercise "marginal" review, even where a dispute implicates ecclesiastical matters. This "fraud or collusion" exception, "if [it] exists, . . . would apply where a religious entity" or figurehead "engaged in a bad faith attempt to conceal a

> secular act behind a religious smokescreen." Although it would surely be difficult to disentangle a charge of self-dealing from religious questions when brought against somebody with a claim to messianic status, we need not confront that difficulty today.
>
> The parties have not briefed the legal issue of whether there is a fraud or collusion exception to the religious abstention doctrine, nor have they explained what evidence (or lack thereof) underlies the self-dealing claim, nor have they even discussed whether that claim remains live at this stage of the proceedings in the trial court. Those are all matters we leave the trial court to address in the first instance on remand.

Id. at 70 (internal citations and footnote omitted). The Director Defendants, relying upon the decision in *Moon III*, seek judgment on the pleadings and dismissal from the case on the ground that no claims against them remain. *See generally* Defs. Michael Sommer, Richard Perea, JinMan Kwak, & Youngjun Kim's Mot. for J. on Pleadings [hereinafter "Defs.' Mem."]; Reply in Supp. of Defs. Michael Sommer, Richard Perea, JinMan Kwak, & Youngjun Kim's Mot. for J. on Pleadings [hereinafter "Defs.' Reply"]. Plaintiffs oppose the Director Defendants' *Motion* on the following grounds: (1) Plaintiffs' self-dealing claim encompasses UCI's donations to KIF and GPF; (2) the Director Defendants have failed to meet their burden to obtain judgment on the pleadings in their favor; and (3) *Moon III* does not preclude further inquiry into Plaintiffs' self-dealing claim, as "self-dealing is 'an entirely different category' and falls outside religious

abstention." *See* Pls.' Opp'n to Defs. Michael Sommer, Richard Perea, JinMan Kwak, & Youngjun Kim's Mot. for J. on Pleadings 7-15 [hereinafter "Pls.' Opp'n"]. Plaintiffs further urge the Court not to decide the Director Defendants' instant *Motion* prior to determining whether the "fraud or collusion exception" to the First Amendment's religious abstention doctrine applies. *Id.* at 15-20.

II. LEGAL STANDARD

Rule 12(c) of the Superior Court Rules of Civil Procedure provides that, "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Super. Ct. Civ. R. 12(c). "Rule 12(c)'s condition that the pleadings be closed requires that an answer have been filed . . . ." *Iannucci v. Pearlstein*, 629 A.2d 555, 558 (D.C. 1993). "To survive a Rule 12(b)(6) or 12(c) motion, 'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Grimes v. District of Columbia*, 89 A.3d 107, 112 (D.C. 2014) (quoting *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011)); *Silberberg v. Becker*, 191 A.3d 324, 331 (D.C. 2018) (noting adoption of plausibility pleading standard, as set forth by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 440 U.S. 554 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)); *see also Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1128-29 (D.C. 2015) (noting a court need not accept as true "legal conclusions," "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," or "unadorned, the-defendant-unlawfully-harmed-me accusation[s]"). A

court construes the "facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Bennings Assocs. v. Joseph M. Zamoiski Co.*, 379 A.2d 1171, 1173 (D.C. 1977). "As is true with respect to motions for summary judgment, a motion for judgment on the pleadings should not be granted where there is a genuine issue of material fact." *Amberger & Wohlfarth, Inc. v. District of Columbia*, 300 A.2d 460, 464 n.5 (D.C. 1973). Furthermore, "[j]udgment on the pleadings may be granted only if, on the facts so admitted, the moving party is clearly entitled to judgment." *Bennings Assocs.*, 379 A.2d at 1173.

In deciding a Rule 12(c) motion for judgment on the pleadings, as when deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim, where a court "consider[s]" and "relies at all" on "matters outside the pleadings in making its ruling," the motion is "normally convert[ed] . . . into one for summary judgment." *Bd. of Dirs. of Wash. City Orphan Asylum v. Bd. of Trs. of Wash. City Orphan Asylum*, 798 A.2d 1068, 1078 (D.C. 2002); *see* Super. Ct. Civ. R. 12(d) ("If . . . matters outside of the pleadings are presented to and not excluded by the court, the motion *must* be treated as one for summary judgment under Rule 56." (emphasis added)); *Foretich v. CBS, Inc.*, 619 A.2d 48, 55 (D.C. 1993) (noting "[t]he language of Rule 12 is mandatory[,]" and holding that trial judge erred in not converting Rule 12(c) motion into Rule 56 motion where the trial judge considered and relied upon transcripts, presented by the movant, that were "not the specific material relied upon" in the nonmovant's complaint).

III. ANALYSIS

The Court first addresses Plaintiffs' arguments concerning the scope of their self-dealing claim, namely, whether their claim, as pleaded in the *Complaint*, encompasses the transactions diverting assets to GPF and KIF. *See* Pls.' Opp'n 7-12; Defs.' Reply 2-5. The Court then addresses whether any live claims remain against the Director Defendants, *see* Defs.' Mem. 2-3, including Plaintiffs' contention that the Director Defendants' instant *Motion* must be denied in light of their purported reliance on materials outside of the pleadings.[2] *See* Pls.' Opp'n 2, 6-7,10, 12-14; Defs.' Reply 2.

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[2] As to Plaintiffs' contention regarding the "fraud or collusion exception" to the First Amendments' religious abstention doctrine, the Court must reject Plaintiffs' contention because the existence of the purported "exception" is immaterial to the status of the outstanding self-dealing claims against the Director Defendants—namely, that the Court need not reach the First Amendment issues because the *Complaint* fails to state a plausible claim of self-dealing on the part of the Director Defendants. *See infra* Parts III-A, III-B.

The Court must, as well, reject Plaintiffs' characterization of the jurisprudence surrounding the purported "exception" for the same reasons as set forth in the Court's June 15, 2023 Order granting Defendant UCI's *Motion for Summary Judgment*. *See* June 15, 2023 Order, at 16-20 (rejecting "characterization that there exists 'robust recognition'" of the "exception" and discussing cited cases); *cf.* Defs.' Reply 7 (noting "fraud or collusion exception" section of Plaintiffs' *Opposition* is "essentially cop[ied] and paste[d]" from other briefs responding to motions currently pending before the Court).

A. Scope of Plaintiffs' Self-Dealing Claim as to GPF and KIF Transactions

Plaintiffs assert that the Director Defendants' previous summary judgment motion as to the self-dealing claim "was limited only to three other transactions involving self-dealing by [Preston] before Director Defendants joined UCI's Board," and consequently, Judge Cordero's grant of summary judgment in the Director Defendants' favor was "only partial summary judgment[.]" *Id.* at 8. Plaintiffs then contend that the Director Defendants' *Motion* should be denied because Plaintiffs' self-dealing claim includes their allegations that the Director Defendants "diverted assets to GPF and KIF as part of the scheme to fund [Preston's] personal pursuits, and so doing, breached their own duties for personal gain." Pl.'s Opp'n 7-8. In support, Plaintiffs cite the *Complaint*'s averments of "the steps [Preston] undertook to gain control of UCI's Board of Directors so that he could further divert assets of UCI to his personal activities," "how Director Defendants benefitted personally for their part in the scheme[,]" and the Director Defendants' failure to "fulfill their duty to disclose their self-interest in the diversion of assets" to GPF and KIF. *Id.* at 9-10 (citing Compl. ¶¶ 54-74, 81-89).

In reply, the Director Defendants contend that Plaintiffs "lack any good-faith basis" to argue "that UCI's donations are, or have ever been, part of Plaintiffs' alleged 'self-dealing' claims." Defs.' Reply 2. The Director Defendants point to the *Complaint*'s express separation of the GPF and KIF transactions from the three transactions listed under the

Complaint's "standalone section" alleging self-dealing, Plaintiffs' distinct treatment of the GPF and KIF transactions in their previous summary judgment papers, and Judge Cordero's similar treatment of the transactions in her *Amended Omnibus Order*. *Id.* at 3-4. The Director Defendants further challenge the sufficiency of the *Complaint*'s allegations of self-dealing on the grounds that (1) Plaintiffs failed to aver that the Director Defendants, themselves, "'received a personal financial benefit' from the KIF or GPF donations, or 'owed a competing duty of loyalty' to either organization"; and (2) *Moon III* renders nonjusticiable the issue of whether the KIF and GPF transactions were unfair to UCI, "another necessary element of a self-dealing claim[.]" *Id.* at 4-5.

To be sure, Plaintiffs' self-dealing claim is set forth within Count II of the *Complaint*. Count II alleges that the Director Defendants committed the tort of breach of fiduciary duty. *See* Compl. ¶ 115 ("The Individual Defendants also owe fiduciary duties of loyalty and care, including the duty not to divert corporate assets, opportunities, or information for personal gain . . . ."); *id.* at ¶ 117 ("The Individual Defendants breached their fiduciary duties . . . (3) by engaging in a scheme of self-dealing designed to divert corporate assets to the personal pursuit of Preston Moon . . . ."). "A plaintiff alleging a breach of fiduciary duty must show: (1) the existence of a fiduciary relationship with the defendant; (2) breach of a duty imposed by that fiduciary relationship; and (3) an injury caused by such breach." *Caesar v. Westchester Corp.*, 280 A.3d 176, 187 (D.C. 2022) (citing RESTATEMENT (SECOND) OF TORTS § 874 (AM. L. INST. 1979)). Among the fiduciary

duties directors of a corporation owe to the corporation include the duty of loyalty to the corporation and its members, *Willens v. 2720 Wis. Ave. Coop. Ass'n*, 844 A.2d 1126, 1136 (D.C. 2004), *i.e.*, "an undivided and unselfish loyalty to the corporation [that] demands that there shall be no conflict between duty and self-interest." *Weinberger v. Uop*, 457 A.2d 701, 712 (Del. 1983) (quoting "the classic language" of *Guth v. Loft, Inc.*, 5 A.2d 503, 512 (Del. 1939)). Accordingly, "[f]rom the standpoint of interest, this means that directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing, as opposed to a benefit which devolves upon the corporation or all stockholders generally." *Behradrezaee v. Dashtara*, 910 A.2d 349, 363 (D.C. 2006) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)).

The mere existence, however, of a conflict between a corporation's interests and a director's self-interest relating to a transaction is insufficient to establish the director's liability. The allegedly self-dealing transaction must also be substantively unfair to the corporation after considering the "entire fairness" of the transaction. *Willens*, 844 A.2d at 1136 n.13 (D.C. 2004); *Mayflower Hotel S'holders Protective Comm. v. Mayflower Hotel Corp.*, 173 F.2d 416, 418-23 (D.C. Cir. 1949) (collecting cases); *Weinberger*, 457 A.2d at 711 ("[T]he test for fairness is not a bifurcated one as between fair dealing and price. All aspects of the issue must be examined as a whole since the question is one of entire fairness."); *cf. Silberberg*, 191 A.3d at 339 ("Ordinarily, if a transaction 'was fair, just[,] and beneficial to the corporation' and there was full

disclosure regarding the action to be ratified, it 'may be ratified by a majority of the stockholders in the company.'"); D.C. Code § 29-406.70(a)(3) (providing that transactions between a nonprofit corporation and, *inter alia*, its directors or "other entity in which one or more of its directors . . . hold a similar position, or have a financial interest, shall not be void or voidable solely for that reason" if the transaction "is fair as to the corporation as of the time it is authorized, approved, or ratified by the board . . . .").

Therefore, for Plaintiffs' self-dealing claim to encompass UCI's transactions with GPF and KIF, Plaintiffs must allege factual material sufficient for the Court to draw the reasonable inference that the Director Defendants "appear[ed] on both sides of [the] transaction[s]" or "expect[ed] to derive any personal financial benefit" from the transactions that did not "devolve[] upon [UCI] . . . generally." *Behradrezaee*, 910 A.2d at 363; *Silberberg*, 191 A.3d at 331; *Grimes*, 89 A.3d at 112.

The Court finds that the *Complaint* fails to "contain sufficient factual matter, accepted as true, to state a claim" that the Director Defendants engaged in self-dealing through the transfer of UCI's assets to GPF and KIF. *Grimes*, 89 A.3d at 112. First, the *Complaint* does not explicitly name KIF, in contrast to the express naming of GPF as a recipient of UCI's assets and the descriptions of other entities and assets involved in the "alleged scheme of self-dealing."[3] *See*

[3] Although Plaintiffs are correct that the Hon. John M. Mott, in his July 22, 2016 *Memorandum Opinion* memorializing his granting injunctive relief against further "donations to third parties unaffiliated with the Unification Church," construed

paragraph 117 of the *Complaint* more expansively to encompass UCI's donation to KIF, Plaintiffs ignore the substance of Judge Mott's footnote, set forth below in its entirety, conditioning his interpretation of the *Complaint*:

> Defendants claim that paragraph 117 of the Complaint does not encompass the claim that defendants breached their duty of obedience through the KIF donation. The court finds that paragraph 117 arguably does encompass the KIF donation, as this paragraph provides that the individual defendants breached their fiduciary duties "by permitting the Corporation's assets to be used for purposes other than the mission and purpose for which the Corporation was formed," and "by failing to use all the assets of the Corporation to support the mission and activities of the Unification Church . . . ." While the Complaint does not explicitly mention KIF, the court notes that the issue of the KIF donations is far from a surprise to defendants, as it has become one of the central issues of this case. Plaintiffs first raised the KIF donations in October 2012, and since that time, the parties have engaged in significant discovery (the so-called "sanctions discovery") concerning these donations, which remains ongoing as of the date of this Order.

July 22, 2016 Mem. Op., at 8-9 n.3 (Mott, J.).

On the first condition, namely, that paragraph 117 included the KIF donation because the KIF donation deviated from UCI's "mission and purpose" to "support the mission and activities of the Unification Church," Defendants are correct that the First Amendment precludes any inquiry into the substance of such an allegation and, consequently, Plaintiffs would not have a viable claim for relief in light of *Moon III*. *See* Defs.' Reply 3; *see also* June 15, 2023 Order, at 8-16 (granting summary judgment in favor of UCI on Counts IV, V, and VI of the *Complaint* because the First Amendment precludes the Court from determining whether UCI's use of funds was "contrary to the 'mission and purpose' of 'assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world'").

As to the second condition, specifically, the lack of surprise to all Defendants given the then-ongoing extensive discovery proceedings concerning KIF, the Court observes that Judge Mott, in explaining the scope of the injunction, enumerated only two out of the five theories of breach of fiduciary duty Plaintiffs allege in paragraph 117. In other words, Judge Mott appears not to have relied upon Plaintiffs' theory of self-dealing as another basis for the injunction.

In any event, Judge Mott's reading of paragraph 117 is not binding on the Court because it is not subject to the law of the case doctrine: (1) the circumstances of Judge Mott's ruling are not "substantially similar" to the Director Defendants' instant *Motion*, especially given the different procedural posture; (2) Judge Mott's preliminary injunction ruling is not "sufficiently final"; and (3) reliance on Plaintiffs' theories of breach of fiduciary duty premised on UCI's donations being violative of its "mission and purpose" is clearly erroneous in light of a change in substantive law, namely, *Moon III*. *See Kumar v. D.C. Water & Sewer Auth.*, 25 A.3d 9, 13 (D.C. 2011) (quoting *Tompkins v. Wash. Hosp. Ctr.*, 433 A.2d 1093, 1098 (D.C. 1981), in articulating three requirements for applying law of the case doctrine: (1) "the motion under consideration is substantially similar" to the previous motion; (2) the previous ruling is "sufficiently final"; and (3) the prior ruling "is not clearly erroneously in light of newly presented facts or a change in substantive law"); *Bernal v. United States*, 162 A.3d 128, 133 n.10 (D.C. 2017) (reiterating that law of the case doctrine is not applicable to "interlocutory rulings that 'do not settle the law of a case and are not conclusive or binding on the trial judge, who has the ultimate responsibility of deciding the case on the merits'").

Furthermore, the face of the *Complaint* must provide adequate factual material to raise a plausible claim for relief and fairly put the Director Defendants on notice of the nature of the claim against them. *See* Super. Ct. Civ. R. 8(a); *Silberberg*, 191 A.3d at 331. Putting the Director Defendants on notice of a claim for breach of fiduciary duty *premised on diversion of assets to an impermissible purpose*, as noted by Judge Mott, is substantively different from putting them on notice of a claim of self-dealing *based on their alleged interest in KIF or the transactions with KIF*. As Plaintiffs learned about the KIF transactions after filing their

Compl. ¶ 82 (naming "an entity known as the Global Peace Festival Foundation," noting its lack of "any formal or legal association" with Plaintiffs or the Unification Church, and alleging "Preston Moon has used, and continues to use, UCI assets to fund" activities of the "Global Peace Festival Foundation"); *id.* at ¶¶ 49-52 (detailing transactions between UCI and entities Preston owned and controlled); *id.* at ¶¶ 92-94 (alleging Preston and the Director Defendants caused UCI to encumber or sell assets of UCI subsidiaries, which they owned and controlled).[4]

Complaint, *see* Pls.' Opp'n 3 n.1, and thereafter engaged in substantial discovery concerning KIF, the Court finds it curious that Plaintiffs never sought leave to amend the *Complaint* to include the KIF (or GPF) transactions among the alleged self-dealing transactions enumerated therein. *See* Super. Ct. Civ. R. 15(a). At this juncture, amendment would be untimely. *See, e.g.*, *Edwards v. Safeway, Inc.*, 216 A.3d 17, 19-20 (D.C. 2019).

[4] The Court observes that the *Complaint* also alleges that UCI engaged in two other property sale transactions, occurring in December 2010 and March 2011 (*i.e.*, after the Director Defendants became the sole members of UCI's board of directors alongside Preston), "to heavily leverage and encumber assets in South Korea owed by [UCI's subsidiaries] in order to support his personal projects and businesses." *See* Compl. ¶¶ 92-94.

Such transactions do not give rise to a plausible claim of self-dealing, however, because the *Complaint* does not allege that the Director Defendants were "on both sides" of the property sales or had a personal interest in the sales—for example, that the Director Defendants owned the purchasing entities or received some property or financial interest conveyed in the sale. *Behradrezaee*, 910 A.2d at 363. Instead, the *Complaint* merely alleges that the Director Defendants controlled both UCI and the respective UCI subsidiary that owned the property put up for sale.

Second, the *Complaint* lacks any factual matter demonstrating that *the Director Defendants* were "on both sides of [the] transaction[s]" between UCI and GPF or UCI and KIF. *Behradrezaee*, 910 A.2d at 363; *compare* Compl. ¶¶ 93-94 (alleging "Preston Moon and the other Individual Defendants orchestrated the sale" of property to UCI subsidiaries "*controlled by Preston Moon and the other Individual Defendants*" (emphasis added)), *with id.* at ¶ 82 (alleging GPF was created by Preston "for his own purposes" and received UCI's assets). Nor does the *Complaint* contain factual material plausibly alleging that the Director Defendants "expect[ed] to derive any personal financial benefit" from the transactions. *Behradrezaee*, 910 A.2d at 363. Plaintiffs are correct that the *Complaint* details the series of events culminating in the seating of the Director Defendants as members of UCI's board of directors, including factual allegations concerning the ouster of directors who attempted to investigate Preston's pre-2009 alleged self-dealing transactions. *See* Compl. ¶¶ 56-76; *cf.* Pls.' Opp'n 9. But, the *Complaint* does not provide any factual basis for the Court to conclude that the Director Defendants, *in approving the GPF or KIF transactions*, would (or did) receive any specific personal benefits *from the transactions* that were not already due them solely in their roles as directors of UCI. *See* Pls.' Opp'n 9 (noting "many financial and other personal benefits *attendant to those positions*" on UCI's board of directors (emphasis added)); *Silberberg*, 191 A.3d at 337-40 (reversing dismissal of complaint where complaint alleged that directors elected by majority shareholders of closely held corporation did not act in best interest of corporation where they authorized, *inter alia*, sales

of property contrary to preexisting agreement with minority shareholders, dividends to majority shareholders and themselves, and additional compensation for service as directors and officers); *cf. Behradrezaee*, 910 A.2d at 352, 361-64 (reversing dismissal of complaint in shareholder derivative action where complaint pleaded that corporation directors lacked independence and were highly interested in challenged transactions and factual allegations therein were "sufficient to create a reasonable doubt" that the directors "acted independently" and therefore preclude application of business judgment rule to transactions); *Aronson*, 473 A.2d at 816 ("[I]t is not enough to charge that a director was nominated by or elected at the behest of those controlling the outcome of a corporate election. That is the usual way a person becomes a corporate director.").

As to Plaintiffs' attenuated theory, asserted in their opposition to the instant *Motion*, that the Director Defendants "acted in their own self-interest to preserve their positions on UCI's Board" because they "accepted their positions knowing that entailed participating in [Preston's] self-dealing scheme," *see* Pls.' Opp'n 9-10, the *Complaint*'s factual matter again comes up short: there are no particularized or specific facts sufficient for the Court to draw the inference that the Director Defendants were so "'beholden' to [Preston] or so under [his] influence that their discretion would be sterilized." *Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993) (quoting *Aronson*, 473 A.2d at 815 ("There must be coupled with the allegation of control such facts as would demonstrate that through

personal or other relationships the directors are beholden to the controlling person.")).

Generalized allegations of cooperation with Preston in ratifying an indeterminate number of UCI's transactions with GPF and KIF, without more—*e.g.*, specific factual links to particular transactions, cognizable facts showing the Director Defendants' interests thereof, and factual bases suggesting Preston's means of control over the Director Defendants—are insufficient to sustain Plaintiffs' claim of self-dealing on the part of the Director Defendants as to the GPF and KIF transactions. *Sundberg*, 109 A.3d at 1129; *Potomac Dev. Corp.*, 28 A.3d at 544 ("The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully . . . ." (quoting *Ashcroft*, 556 U.S. at 678)). The *Complaint*'s failure, on its face, to articulate even the basic factual contours that could plausibly classify the GPF and KIF transactions as self-dealing transactions on the part of the Director Defendants plainly indicates that such transactions are beyond the scope of the *Complaint*'s self-dealing claim against the Director Defendants. The Court therefore must decline to construe the *Complaint* to extend beyond its plain text, factual content, and reasonable inferences drawn therefrom and must reject Plaintiffs' contention that the GPF and KIF transactions fall within Count II's self-dealing claim against the Director Defendants.

B. Remaining Claims Against the Director Defendants

The Director Defendants contend that no live claims remain against them because (1) Plaintiffs specifically abandoned Counts I and III of the *Complaint* and one of Count II's four theories of breach of fiduciary duty; (2) the Court of Appeals reversed Judge Cordero's grant of summary judgment as to two of Count II's four theories; and (3) Judge Cordero granted summary judgment in favor of the Director Defendants as to Count II's final theory of breach of fiduciary duty. Defs.' Mem. 1-2.

In opposition, Plaintiffs contend that (1) the Court of Appeals, in *Moon I* and *Moon III*, "has ***twice*** concluded that the Complaint adequately states a claim—capable of surviving the pleading stage—that [the Director Defendants] engaged in a self-dealing scheme to divert UCI's assets," Pls.' Opp'n 7 (emphasis in original); and (2) further inquiry into Plaintiffs' self-dealing claim, including assessment of "what evidence underlies" their claim and the Director Defendants' arguments invoking the religious abstention doctrine, necessarily depends on "facts outside the pleadings" and therefore warrants denial of the instant *Motion*. *Id.* at 12-15. Plaintiffs accordingly urge the Court to be guided by the determination in *Tapp v. Wash. Metro. Area Transit Auth.*, 306 F. Supp. 3d 383 (D.D.C. 2016), that is:

> deny the [Rule 12(c)] Motion, grant Plaintiffs' motion for a limited reopening of discovery and for leave to designate experts on the ["fraud or collusion exception"], and then conduct an

> evidentiary hearing on the ["exception"]. At that point, if Director Defendants believe they are entitled to judgment as a matter of law (which Plaintiffs dispute), they can file a motion for summary judgment with a statement of undisputed facts that Plaintiff will have the opportunity to oppose.

Pls.' Opp'n 14-15; *see Tapp*, 306 F. Supp. 3d at 399 (denying Rule 12(c) motion as to Title VII employment discrimination claim "because the Court cannot conclude that [the complainant] failed to exhaust his administrative remedies based solely on" the complaint and permitting "a period of limited discovery solely with respect to the issue" of administrative exhaustion).

In reaction, the Director Defendants assert that Plaintiffs "misapprehend[] the relevant standard under Rule 12(c)[,]" specifically the "established universe of materials *outside* the pleadings this Court may consider." Defs.' Reply 2 (emphasis in original). The Director Defendants cite several federal cases for the proposition that the Court's prior orders and *Moon III* are "matters subject to proper judicial notice" in considering a Rule 12(c) motion before asserting that "[j]udgment on the pleadings is therefore appropriate where, as here, the face of the Complaint and matters subject to judicial notice make clear that Plaintiffs' claims are barred as a matter of law." *Id.* (citing *Kane v. Bank of Am., N.A.*, 338 F. Supp. 3d 866, 869 (N.D. Ill. 2018); *Greenman v. Jessen*, 787 F.3d 882, 887 (8th Cir. 2015); *Compunnel Software Grp., Inc. v. Gupta*, No. 14 Civ. 4790 (SAS), 2015 U.S. Dist. LEXIS 33061, at *8 (S.D.N.Y. Mar. 17, 2015); *Phillips v. Prudential*

Ins. Co. of Am., 714 F.3d 1017, 1020 (7th Cir. 2013); and *Taylor v. Javitch, Block & Rathbone, LLC*, No. 1:12CV708, 2012 U.S. Dist. LEXIS 86727, at *7 n.2 (N.D. Ohio June 22, 2012)).

1. Plaintiffs' self-dealing claim alleges three pre-August 2009 transactions were improper.

In Count II, Plaintiffs allege that the Director Defendants "breached their fiduciary duties . . . (3) by engaging in a scheme of self-dealing designed to divert corporate assets to the personal pursuits of Preston Moon." Compl. ¶ 117. Plaintiffs, however, fail to specify the particular transactions giving rise to the self-dealing claim. Instead, they opt for a boilerplate sentence reincorporating all allegations set forth in the *Complaint*. *Id.* at ¶ 113. Among the factual allegations preceding the *Complaint*'s statement of claims, Plaintiffs identify three transactions as "improper self-dealing designed to enrich [Preston]," *id.* at ¶ 48:

> 49. Specifically, Preston Moon, using his powers as President and Chairman of UCI, caused True World Group, LLC ("TWG"), an indirect subsidiary of UCI, to purchase property located at 24 Link Drive, Rockleigh, New Jersey (hereinafter "the Rockleigh Building") from UV Sales, Inc. ("UV Sales"), an entity wholly owned by United Vision Group, Inc. ("UVG"), which in turn is wholly owned and controlled by Preston Moon himself. Under the terms of the sale, TWG agreed to pay $5.9 million to UV Sales for the Rockleigh Building. The fair market value

> of the Rockleigh Building at the time of the sale was less than the $5.9 million purchase price, and the sale served no legitimate business purpose for TWG or UCI.
>
> 50. Preston Moon, using his powers as President and Chairman of UCI, also caused UCI to lend two million dollars to UVG.
>
> 51. Preston Moon, using his powers as President and Chairman of UCI, also caused One Up Enterprises ("One Up"), a direct subsidiary of UCI, to enter into a consulting agreement with UVG Strategic Consulting LLC ("UVGSC"), an entity wholly owned by UVG. One Up agreed to pay $120,000 per month to UVGSC. One Up made these payments to UVGSC despite the fact that the consulting agreement served no legitimate business purpose for One Up or UCI.

Id. at ¶¶ 49-51. While the *Complaint* does not specifically provide dates for each of the three alleged self-dealing transactions, the *Complaint* does allege that two of UCI's former directors "first learned of these improper actions just prior to their removal from the UCI Board in August 2009," *id.* at ¶ 53, thus confirming that the three transactions allegedly occurred during the time starting from Preston's accession as president and chairman of UCI—*i.e.*, "Spring of 2006," *see id.* at ¶¶ 46-47—up to August 2, 2009, the date of the UCI board meeting at which the last two directors who were not "loyal" to Preston were removed. *See also id.* at ¶¶ 65-67 (alleging one director learned about the transactions as early as June 2009,

mentioned them to Preston but was rebuffed, and re-raised them at the board meeting before being voted off the board).

2. The *Complaint* fails to allege that the Director Defendants plausibly engaged in self-dealing through any of the three transactions because there are no facts suggesting the reasonable inference that the Director Defendants were on both sides of, or expected to derive a personal financial interest from, the transactions.

The Court finds that the *Complaint* does not allege a plausible claim for self-dealing on the part of the Director Defendants as to any of the three identified transactions. As discussed *supra*, Plaintiffs must allege factual material sufficient for the Court to draw the reasonable inference that the Director Defendants "appear[ed] on both sides of [the] transaction[s]" or "expect[ed] to derive any personal financial benefit" from the transactions that did not "devolve[] upon [UCI] . . . generally." *Behradrezaee*, 910 A.2d at 363; *see supra* Part III-A. The plain text of the *Complaint*'s three paragraphs identifying the transactions does not provide any factual content suggesting that the Director Defendants were on both sides of any transaction, or that they stood to receive a personal financial benefit therefrom that UCI, as a whole, would not. To the contrary, the three paragraphs only identify Preston, Preston's use of his powers as UCI's president and chairman to effect the transactions, and transaction partners consisting of entities that are ultimately "wholly owned and controlled by Preston Moon himself." *See* Compl. ¶ 49 (alleging purchase of

property from UV Sales, which is "wholly owned" by UVG, "which in turn is wholly owned and controlled" by Preston); *id.* at ¶ 50 (alleging loan to UVG, which Preston wholly owned and controlled); *id.* at ¶ 51 (alleging consulting agreement with UVGSC, which is "wholly owned" by UVG, which Preston wholly owned and controlled).

Even where the Court construes the *Complaint*'s reference to Preston's use of his "powers as President and Chairman of UCI" to suggest that UCI's board of directors needed to approve or ratify his acts, *cf.* D.C. Code § 29-406.01(b) (providing that "all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation"), and in light of the *Complaint*'s allegations that Preston established control over a majority of UCI's board before July 2009, thus potentially permitting some of the Director Defendants to participate in approving or ratifying Preston's acts, *see* Compl. ¶¶ 57-61, 63,[5] the *Complaint*'s failure to provide any factual content about the Director Defendants' roles or relationships with the entities Preston wholly owned, or any particularized allegations about the Director Defendants' interests in the transactions, vitiates any

[5] Prior to the January 2009 meeting of UCI's board, there were five members: Preston, and four other directors. Compl. ¶ 57. At the January 2009 board meeting, Preston moved for the election of Mr. Sommer and Mr. Perea, to which the board duly agreed, thus expanding the board to seven. *Id.* at ¶ 58. Thereafter, but prior to summer 2009, Preston demanded and received the resignations of two of the pre-January 2009 directors, thus shrinking the board back to five members, with Preston, Mr. Sommer, and Mr. Perea outnumbering the remaining two directors. *Id.* at ¶¶ 60-61.

plausible basis, as pleaded in the *Complaint*, for concluding that the Director Defendants engaged in self-dealing as to the challenged transactions. *Sundberg*, 109 A.3d at 1129; *Potomac Dev. Corp.*, 28 A.3d at 544; *cf.* Defs.' Reply 4 ("[T]he defining element of any 'self-dealing' claim—namely, *self-dealing*—is conspicuously absent." (emphasis in original)). Therefore, the Court must dismiss the self-dealing claim against the Director Defendants.

3. Denial or conversion of the instant *Motion* is unnecessary because the Court need not consider facts outside of the pleadings to decide it.

The Court observes that the Director Defendants' *Motion* expressly relies on three documents: the *Complaint*, *i.e.*, a "pleading," *see* Super. Ct. Civ. R. 7(a)(1); and two documents "outside of the pleadings," Super. Ct. Civ. R. 12(d), namely, Judge Cordero's *Amended Omnibus Order* and the Court of Appeals' decision in *Moon III*. *See* Defs.' Mem. 1-2. The Court also notes that, contrary to Plaintiffs' contention about the necessity of examining "facts outside the pleadings," *see* Pls.' Opp'n 2, 10, 13, the Director Defendants' arguments turn on whether the Court, in construing the *Complaint*, may rely upon Judge Cordero's ruling as to Plaintiffs' four theories of fiduciary breach as to Count II of the *Complaint*—along with her conclusions on the three alleged self-dealing transactions—in light of *Moon III*.[6] *See* Defs.' Mem. 2.

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[6] While the Court of Appeals noted in *Moon III* that "the trial court did not address" Plaintiffs' theory "that the directors

The Court must reject Plaintiffs' assertion that the Court must rely upon facts outside of the pleadings to decide the Director Defendants' instant *Motion*. As set forth *supra*, a plain reading of Plaintiffs' *Complaint*, and straightforward application of the standard attendant in deciding a Rule 12(c) motion without reliance on extra-pleading factual materials, *see supra* Part II (setting forth standard), yield the conclusion that the *Complaint* fails to state a plausible claim of self-dealing on the part of the Director Defendants as to any of the identified transactions therein—and the GPF and KIF transactions upon which Plaintiffs now attempt to base their self-dealing claim. *See supra* Part III-A (finding scope of self-dealing claim does plausibly extend to GPF and KIF transactions); Parts III-B-1, III-B-2 (finding allegations did not set forth plausible self-dealing claim as to the three identified transactions). Therefore, denial or conversion of the Director Defendants' instant *Motion* is not required. *See* Super. Ct. Civ. R. 12(d); *United States ex rel. Shea v. Cellco P'ship*, 863 F.3d 923, 936 (D.C. Cir. 2017) ("[Rule 12(d)[7]] forbids considering *facts* beyond the

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engaged in self-dealing," thus precluding the Court of Appeals from "direct[ing] the trial court to dismiss the breach of fiduciary duty claim altogether," 281 A.3d at 70, that observation appears to be mistaken in light of Judge Cordero's explicit conclusions that the Director Defendants were entitled to summary judgment because (1) they were not on UCI's board of directors at the time of two of the transactions and (2) Plaintiffs failed to present any evidence that the third transaction was substantively unfair. *See* Am. Omnibus Summ. J. Order, at 35-37.

[7] "Because Super. Ct. Civ. R. 12 is identical to its federal counterpart, Fed. R. Civ. P. 12, we may look to court decisions interpreting the federal rule as 'persuasive authority in interpreting [the local rule].'" *Bible Way Church of Our Lord*

complaint in connection with a motion to dismiss the complaint . . . ." (emphasis added)); *cf. Bd. of Dirs.*, 798 A.2d at 1078 (observing that conversion of a Rule 12(c) motion is not necessary where a court considers "appropriate materials" to construe a statute because "the court is in the process of arriving at a ruling on a question of law").

The Court further notes that the grounds for it ruling as to Plaintiffs' self-dealing claim *supra* are distinct and independent from the grounds set forth in Judge Cordero's *Amended Omnibus Order*. In the portion of her *Amended Omnibus Order* addressing Plaintiffs' self-dealing claim, which was left undisturbed by the Court of Appeals in *Moon III*, Judge Cordero concluded that summary judgment was proper as to the entirety of Plaintiffs' self-dealing claim because (1) two of the three transactions—the Rockleigh Building purchase and the consulting agreement—occurred before any of the Director Defendants became members of UCI's board and (2) Plaintiffs failed to identify any evidence showing that the third transaction—UCI's loan to UVG—was substantively unfair to UCI. Am. Omnibus Summ. J. Order, at 36-37. As discussed *supra*, the Court's conclusions here rest solely on its reading of the *Complaint*. *See supra* Parts III-A, III-B-1, III-B-2. In any event, the Director Defendants' reliance on the undisturbed portions of Judge Cordero's *Amended Omnibus Order* to dismiss Plaintiffs' self-dealing

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Jesus Christ of the Apostolic Faith v. Beards, 680 A.2d 419, 427 n.5 (D.C. 1996).

claim wholesale is legally dubious. For her decision[8] to be binding here, the law of the case doctrine must be applicable to her conclusions. The Court of Appeals has defined the law of the case doctrine as follows:

> The "law of the case" doctrine bars a trial court from reconsidering the same question of law that was presented to and decided by another court of coordinate jurisdiction when (1) the motion under consideration is substantially similar to the one already raised before, and considered by the first court; (2) the first court's ruling is sufficiently final; and (3) the prior ruling is not clearly erroneous in light of newly presented facts or a change in substantive law.

Kumar v. D.C. Water & Sewer Auth., 25 A.3d 9, 13 (D.C. 2011) (quoting *Tompkins v. Wash. Hosp. Ctr.*, 433 A.2d 1093, 1098 (D.C. 1981)). "It is well established that 'once the court has decided a point in a case, that point becomes and remains settled unless or until it is reversed or modified by a higher court.'" *In re Baby Boy C.*, 630 A.2d 670, 678 (D.C. 1993). "The doctrine serves the judicial system's need to dispose of cases efficiently by discouraging . . . multiple attempts to prevail on a single question." *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980) (per curiam);

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[8] *Moon III* is binding law. "[T]he trial court must follow the mandate that issues from [the Court of Appeals] on remand. 'The mandate of an appeals court precludes the [trial] court on remand from reconsidering matters which were either expressly or implicitly disposed of upon appeal.'" *Willis v. United States*, 692 A.2d 1380, 1382 (D.C. 1997). Accordingly, this Court examines only whether Judge Cordero's *Amended Omnibus Order* is the law of the case.

see also P.P.P. Prods., Inc. v. W&L, Inc., 418 A.2d 151, 153 (D.C. 1980) ("Except in a truly unique situation, no benefit flows from having one trial judge entertain what is essentially a repetitious motion and take action which has as its purpose the overruling of prior action by another trial judge." (quoting *United States v. Davis*, 330 A.2d 751, 755 (D.C. 1975)).

Here, only Judge Cordero's conclusion as to UCI's loan to UVG would establish the law of the case. As to Judge Cordero's conclusion that the Director Defendants were entitled to judgment as to the Rockleigh Building purchase and consulting agreement because the two transactions predated the Director Defendants' membership on UCI's board, the Court notes that such an argument was not advanced by any defendant in their motions for summary judgment on Count II. *See* Defs.' Am. Mot. for Summ. J. No. 1: All Counts on First Amendment Grounds (July 20, 2018) (raising First Amendment grounds); Defs.' Am. Mot. for Summ. J. No. 3: Count II, at 10, 30-33 (July 20, 2018) (contending that Preston and the Director Defendants did not breach duty of loyalty because there was no factual basis for finding any of the three transactions were substantively unfair to UCI; and Plaintiffs lacked standing to challenge the transactions). Therefore, the "motion under consideration" is not "substantially similar to the one *already raised before*, and considered by, the first court[.]" *Kumar*, 25 A.3d at 13 (emphasis added)[9]; *see*

[9] The substance of the arguments raised across two motions, and not the precise label of the motions or related standard of review, determines whether the two motions are "substantially similar." *See, e.g.*, *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1196-

also Tompkins, 433 A.2d at 1098 (holding two summary judgment motions were not "substantially similar" where the first asserted the non-movant was unable to establish the standard of care and the second asserted the non-movant could not establish proximate cause and "took advantage of a significant, intervening change in substantive law on an important preliminary issue").

In contrast, as to Judge Cordero's conclusion that UCI's loan to UVG was not substantively unfair, her ruling satisfies the three elements for applying the law of the case doctrine: (1) the Director Defendants previously raised the lack of any evidence of substantive unfairness, which Judge Cordero considered, *see* Defs.' Am. Mot. for Summ. J. No. 3: Count II, at 10, 30-33; Am. Omnibus Summ. J. Order, at 35-37; (2) Judge Cordero's grant of summary judgment rendered her conclusion "sufficiently final," *see Kritsidimas*, 411 A.2d at 372-73 (discussing "finality"); and (3) Judge Cordero's conclusion is not "clearly erroneous in light of newly presented facts or a change in substantive law." *Kumar*, 25 A.3d at 13. Therefore, Judge Cordero's ruling as to UCI's loan to UVG would be a separate and independent basis for concluding that those portions of Plaintiffs' self-

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97 (D.C. 1984) (holding a motion for summary judgment and prior motion to dismiss were substantially similar because, *inter alia*, the summary judgment motion "renewed" the movant's prior statute of limitations arguments and therefore "was essentially identical" to the motion to dismiss).

dealing claim against the Director Defendants is no longer live.[10]

4. None of Plaintiffs' claims against the Director Defendants remain live.

With the Court's conclusions *supra* that Plaintiffs' self-dealing claim against the Director Defendants must be dismissed, *see supra* Parts III-A, III-B-1, III-B-2, Plaintiffs no longer have any live claims against the Director Defendants. Plaintiffs previously abandoned the entirety of Counts I and III of the *Complaint* and the portion of Count II premised on the removal and replacement of UCI's directors, *see supra* Part I (noting Plaintiffs' relinquishing of claims, as recognized in Judge Cordero's *Amended Omnibus Order*), and do not seek their reinstatement. *See* Pls.' Opp'n 7 ("The record in this case does not support Director Defendants' contention that the Court should dismiss them because no claims remain against them. The Court of Appeals has ***twice*** concluded that the Complaint adequately states *a claim . . . that they engaged in a self-dealing scheme to divert UCI's assets*." (first emphasis in original; second emphasis added)). The Court of Appeals expressly reversed Judge Cordero's grant of summary judgment as to the

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[10] Whether a Rule 12(c) motion must be converted into a summary judgment motion or denied because a prior ruling, appearing to be the law of the case, relies on matters outside of the pleadings in reaching a relevant decision on the merits is a question that need not be resolved here given the Court's separate grounds for granting the instant *Motion*. *See supra* Parts III-A, III-B-1, III-B-2; *see also United States v. U.S. Smelting Refining & Mining Co.*, 339 U.S. 186, 199 (1950) ("[T]he 'law of the case' is only a discretionary rule of practice.").

portions of Count II premised on the change in UCI's purpose through the 2010 amendments to its articles of incorporation and the impermissibility of donating to GPF and KIF arising from the entities' lack of affiliation with the Unification Church. *Moon III*, 281 A.3d at 62-70. The *Complaint* does not set forth any other counts against the Director Defendants. *See* Compl. ¶¶ 131-154 (setting forth Counts IV, V, and VI against only UCI). Therefore, the Court will grant the Director Defendants' *Motion for Judgment on the Pleadings*, dismiss Counts I, II, and III as set forth in the *Complaint* against the Director Defendants, and dismiss the Director Defendants as parties in this matter.

ACCORDINGLY, it is by the Court this 6th day of July, 2023, hereby

ORDERED that the *Motion for Judgment on the Pleadings*, filed jointly by Defendants Michael Sommer, Richard Perea, JinMan Kwak, and Youngjun Kim on January 25, 2023, is **GRANTED**; and it is further

ORDERED that Counts I ("Breach of Trust and Aiding and Abetting Same"), II ("Breach of Fiduciary Duties, *Ultra Vires* Acts and Aiding and Abetting Same"), and III ("Breach of Fiduciary Duty as Agent and Aiding and Abetting Same") of the *Complaint* are

DISMISSED as to Defendants Michael Sommer, Richard Perea, JinMan Kwak, and Youngjun Kim; and it is further

ORDERED that Defendants Michael Sommer, Richard Perea, JinMan Kwak, and Youngjun Kim are **DISMISSED** as defendants in this matter.

/s/ Alfred S. Irving, Jr.
Judge Alfred S. Irving, Jr.

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Appendix D

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*,	**2011 CA 003721 B**
Plaintiffs,	**Judge Alfred S. Irving, Jr.**
v.	
HYUN JIN MOON, *et al.*,	
Defendants.	

ORDER

Before the Court is Defendant Unification Church International's *Motion for Summary Judgment on Counts IV, V, and VI*, filed on January 20, 2023. Plaintiff Family Federation for World Peace and Unification Japan ("UCJ"), formerly known as the Holy Spirit Association for the Unification of World Christianity (Japan), filed its *Opposition* on February 17, 2023. Defendant Unification Church International ("UCI") filed its *Reply* on February 24, 2023. UCI seeks summary judgment as to the three outstanding counts against it, particularly in view of the August 25, 2022 Court of Appeals' decision in this case.

The questions before the Court are fully briefed and, thus, the Court requires no oral argument to rule. *See also* Super. Ct. Civ. R. 12-I(h). For the reasons set forth below, the Court will grant UCI's *Motion for Summary Judgment* and enter judgment on all three counts.

I. BACKGROUND

The Court will forego reciting, in their entirety, the allegations giving rise to this continuing lawsuit, and will decline to revisit in this order the lengthy and complex procedural history relating to the three D.C. Court of Appeals' decisions over the course of twelve years. *See Moon v. Fam. Fed'n for World Peace & Unification Int'l* ("*Moon III*"), 281 A.3d 46, 51-60 (D.C. 2022); *Fam. Fed'n for World Peace & Unification Int'l v. Moon* ("*Moon I*"), 129 A.3d 234, 239-42 (D.C. 2015). In brief, at the heart of the controversy underlying this case is a "religious schism" in the "religion known as the Unification Church," which schism arose in the final years of the life of the Unification Church's founder, the late Reverend Sun Myung Moon ("Rev. Moon"), which precipitated a "struggle for power and money" among Rev. Moon's two sons and widow implicating Unification Church organizations and followers, assets and billions of dollars across three continents, which struggle continues to the present. *Moon III*, 281 A.3d at 49-50, 53-55, 59-60.

Relevant to the instant *Motion*, Rev. Moon founded a religious institution called the "Holy Spirit Association for the Unification of World Christianity" ("HSA") in 1954, with "[b]oth HSA and the religion it espoused [becoming] known colloquially as the

'Unification Church,' though there is no legal entity by that name." *Id.* at 51. As the Unification Church "grew into a global movement encompassing religious, cultural, educational, media, and commercial enterprises," Rev. Moon and his followers established "religious institutions," including Plaintiff UCJ, and "a large number of nonprofit organizations," including Plaintiff Universal Peace Federation (hereinafter "UPF") and Defendant UCI, and several for-profit corporations. *Id.* at 51-52. UCI, a District of Columbia corporation, was formed in the 1970s at the direction of Rev. Moon to serve "as a 'funding source for organizations and projects Rev. Moon founded or supported." *Id.* at 52. As the Court of Appeals summarized:

> Over the decades, UCI donated funds to a sweeping array of recipients, such as UPF, the Universal Ballet, the University of Bridgeport, *The Washington Times*, a firearms manufacturer, a recording studio and performing arts center, a martial arts association, and [the seafood distribution company True World Group]. UCI also transferred limited funds to Unification Church institutions like HSA, but far more money flowed in the opposite direction, with the churches subsidizing UCI, rather than UCI subsidizing them. [UCJ] in particular transferred around $100 million annually to UCI for many years.

Id. at 52-53. While Rev. Moon lacked formal legal authority over the constellation of Unification Church religious institutions and related nonprofit

organizations, "he held 'moral authority' over those organizations" by virtue of his "spiritual and charismatic authority" over the Unification Church religion. *Id.* at 52. That authority included control over the leadership of the various organizations, including UCI and UPF, with individuals Rev. Moon selected as having been duly elected or appointed as directors, chairpersons, or other high-ranking officers. *Id.* at 53; Mar. 28, 2019 Am. Omnibus Order on Mots. for Summ. J., at 3-6 (Cordero, J.). Most relevant here, Defendant Dr. Hyun Jin Moon ("Preston"), Rev. Moon's eldest living son, was elected by UCI's board of directors to serve as UCI's president and chairman in 2006, after Rev. Moon appeared to name Preston as Rev. Moon's spiritual heir in 1998, expanded Preston's leadership role within the Unification Church, and endorsed Preston's organization of "global peace festivals"[1] through initiatives at UPF, the governing board of which Preston co-chaired. *Moon III*, 281 A.3d at 53.

In 2008, however, Plaintiff Family Federation for World Peace and Unification International ("Family Federation"), an unincorporated organization established by Rev. Moon in the mid-1990s as the intended successor to the HSA, announced that Preston's younger brother, Hyung Jin Moon ("Sean"), had been named its new president.[2] *Id.* at 54. Sean

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[1] The Court of Appeals described the "global peace festivals" as "multi-day events designed to promote world peace, involving speakers, entertainment, and service projects." *Moon III*, 281 A.3d at 53.

[2] Sean was later stripped of his leadership roles after Rev. Moon died in September 2012 and the Reverend's widow (and Sean's mother), Hak Ja Han, "laid claim to her husband's role as spiritual leader of the Unification Church[.]" *Moon III*, 281 A.3d

replaced Preston as chair of UPF in 2009. *Id.* Preston remained chairman of UCI's five-member board of directors and refused several requests by Rev. Moon "to resign from all his positions with Unification Church affiliates[,]" including UCI. *Id.* at 55. Instead, Preston took steps to replace the other four directors at UCI "with associates who shared his view of the Unification Church as a decentralized and interfaith movement[,]" ultimately seating Defendants Michael Sommer, Richard J. Perea, JinMan Kwak, and Youngjun Kim as UCI's directors by the end of 2009. *Id.* at 54-55. Thereafter, Preston registered the "Global Peace Foundation" ("GPF") to continue organizing global peace festivals, in line with Rev. Moon's vision—according to Preston—of "a God-centered world in which people of every race, religion, nationality[,] and culture live in harmony as members of one family under God." *Id.* at 55.

UCI, under Preston's control, accordingly "ceased making contributions to UPF and began funding peace festivals through GPF[,]" donating more than $34 million to GPF until 2016, when the Hon. John M. Mott issued an injunction prohibiting the disbursement of additional funds. *Id.*; *see* July 22, 2016 Order (Mott, J.) (enjoining Defendants "from

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at 59. Sean's suit against his mother in federal court, seeking a declaration that he was the "worldwide Leader of the Unification Church and Family Federation," was dismissed on First Amendment grounds. *See Moon v. Moon*, 431 F. Supp. 3d 394 (S.D.N.Y. 2019), *aff'd*, 833 F. App'x 876 (2d Cir. 2020), *cert. denied*, 141 S. Ct. 2757 (2021). "To this day, Sean maintains that he is Rev. Moon's rightful successor, and he has created the 'Sanctuary Church' to carry out that role." *Moon III*, 281 A.3d at 59.

making donations to third parties unaffiliated with the Unification Church using UCI's assets"). UCI's board also amended its articles of incorporation in April 2010—the validity and effect of which remain disputed—before authorizing the transfer of UCI's interests and assets to the "Kingdom Investments Foundation" ("KIF"), a Swiss foundation created by "UCI's agents . . . for the purpose of receiving certain UCI assets." *Moon III*, 281 A.3d at 58-59. The transfer was made pursuant to a donation agreement between UCI and KIF that enumerated purposes "mirror[ing] the purposes set forth in UCI's amended articles" and set forth that UCI agreed to "'irrevocably transfer' . . . approximately half of UCI's total value" in assets to KIF. *Id.* "[T]hese assets' book value exceeded $469 million[.]" *Id.* at 58.

In May 2011, five Plaintiffs—the Family Federation, UPF, UCJ, and two former directors of UCI—on behalf of UCI, sued UCI as an actual and nominal Defendant and the five individuals comprising UCI's board of directors: Preston, Michael Sommer, Richard J. Perea, JinMan Kwak, and Youngjun Kim. *See generally* Compl. Of the six counts alleged in the forty-page *Complaint*, UCJ leveled the following three against UCI, arising from UCJ's monetary contributions to UCI, alleged conditions on their use, and UCI's breach thereof:

- Count IV, "Breach of Contract,"
- Count V, "Promissory Estoppel," and
- Count VI, "Unjust Enrichment."

See Compl. 33-34, 34-35, 35-36.

The Hon. Laura A. Cordero previously addressed the Parties' summary judgment arguments in her March 28, 2019 *Amended Omnibus Order on Motions for Summary Judgment* [hereinafter "Am. Omnibus Summ. J. Order"]. As to UCJ's three counts, Judge Cordero concluded that summary judgment was improper on all counts because genuine issues of material fact remained "as to [1] whether conditions were placed on [UCJ's] donations and [2] whether they were enforceable." Am. Omnibus Summ. J. Order, at 41-42. In doing so, Judge Cordero found: (1) "[t]here is no evidence that [UCJ] donated funds to UCI pursuant to a written agreement or written instrument," *id.* at 39; (2) the record "suggested that [UCJ] understood that UCI was to use donated funds to further UCI's charitable corporate purposes," including "support[ing] activities under the guidance of [Rev. Moon and his wife] and [the Unification Church's] international headquarters" and "support[ing] world mission activities," *id.*; (3) UCJ's "regular donation of funds to UCI was not contingent upon a written promise or repeated assurances about the use of funds," as evidenced by UCJ's donations to UCI "even in years [when] UCI made no funding requests or representations" as to their intended use, *id.*; (4) UCI's solicitation letters to UCJ from 1977 to 2005 enumerated "budgetary purposes" for funds that "were intentionally written with broad scope, . . . again suggesting a measure of discretion on UCI's behalf, albeit consistent with the Unification Church," *id.* at 40-41; and (5) UCJ "expected" UCI to use donated funds "in furtherance of [UCI's] 'original purposes,'" although UCJ lacked knowledge as to UCI's "business activities," *id.* at 41.

Although the Court of Appeals reversed and vacated Judge Cordero's *Amended Omnibus Order* on appeal in *Moon III*, UCJ's claims against UCI were "not the subject of [the] appeal," and, thus, "remain live" before this Court. *Moon III*, 281 A.3d at 60 n.15. UCI, citing *Moon III*, now seeks summary judgment as to all of UCJ's counts against it on the ground that the religious abstention doctrine of the First Amendment to the U.S. Constitution precludes this Court (or any United States civil court) from determining whether UCI's use of funds violated any alleged commitment to use its funds "solely to support UCI's religious mission as conceived of by UCJ." *See generally* Def. UCI's Mot. for Summ. J. on Counts IV, V, & VI [hereinafter "Def.'s Mem.]; Reply in Supp. of Def. UCI's Mot. for Summ. J. on Counts IV, V, & VI [hereinafter "Def.'s Reply"]. UCJ opposes UCI's *Motion* on the grounds that (1) *Moon III* did not disturb Judge Cordero's findings of disputed material facts; (2) the Court can determine whether UCI's use of funds violated any promise or condition using neutral principles of law; and (3) UCI's conduct falls within the "fraud or collusion exception to the religious abstention doctrine," as suggested in *Moon III*. *See generally* Pl. UCJ's Opp'n to Def. UCI's Mot. for Summ. J. on Counts IV, V, & VI [hereinafter "Pl.'s Opp'n"]; *see also Moon III*, 281 A.3d at 70-71 (observing "the Supreme Court has strongly suggested that there is a 'fraud or collusion' 'exception to the general rule of non-interference'").

II. SUMMARY JUDGMENT STANDARD

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is

sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Super. Ct. Civ. R. 56(a)(1). "A fact is 'material' if a dispute over it might affect the outcome of a suit under governing law. An issue is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Baker v. Chrissy Condo. Ass'n*, 251 A.3d 301, 305 (D.C. 2021) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A court views the evidentiary materials in the record "in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor." *Radbod v. Moghim*, 269 A.3d 1035, 1041 (D.C. 2022); *see also* Super. Ct. Civ. R. 56(c).

"A motion for summary judgment brings into question the legal sufficiency of a claim . . . ." *Lee v. Jones*, 632 A.2d 113, 114 (D.C. 1993). "The showing of a 'genuine issue for trial' is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts, and which would entitle the party opposing the motion (assuming his version to be true) to a judgment as a matter of law." *Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979) (quoting *McGuire v. Columbia Broad. Sys., Inc.*, 399 F.2d 902, 905 (9th Cir. 1968)). Summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Night & Day Mgmt., LLC v. Butler*, 101 A.3d 1033, 1037 (D.C. 2014) (quoting *Celotex Corp. v. Catrett*, 477 U.S.

317, 322 (1986)); *see also Nader*, 408 A.2d at 49 ("Such party in essence must produce enough evidence to make out a prima facie case in support of his claim.").

III. ANALYSIS

The Court first addresses UCI's contention that *Moon III* "squarely forecloses UCJ's donative-intent-based claims" because UCJ "cannot establish any *breach* without resorting to inquiries into religious doctrine and practices that are flatly forbidden by *Moon III* together with the First Amendment." Def.'s Mem. 6-8 (emphasis in original); Def.'s Reply 2-6. The Court then addresses UCJ's arguments regarding the "fraud or collusion exception" to the religious abstention doctrine under the First Amendment. Pl.'s Opp'n 10-18; Def.'s Reply 6-8.

A. UCI's Alleged Wrongful or Unjust Use of UCJ's Contributions

1. All three of UCJ's counts require UCJ to show that UCI's use of funds was wrongful or unjust through breach of the alleged condition on UCJ's contributions.

As a starting matter, UCI is correct that UCJ's three counts, premised on UCJ's monetary contributions to UCI and alleged conditions attached to UCI's use of UCJ's contributions, require UCJ to show that UCI's use of funds was wrongful or unjust. *Cf.* Def.'s Mem. 6.

To prevail on Count IV, a claim for breach of contract, UCJ "must establish (1) a valid contract between [UCJ and UCI]; (2) an obligation or duty arising out of the contract; *(3) a breach of that duty*;

and (4) damages caused by breach." *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009) (emphasis added). As to Count V, premised on promissory estoppel, UCJ must show "[1] evidence of a promise, [2] the promise must reasonably induce reliance upon it, and [3] the promise must be relied upon to the detriment of the promisee," *Simard v. Resol. Trust Corp.*, 639 A.2d 540, 552 (D.C. 1994), with UCI liable only where "[4] *injustice* [*is*] *otherwise not . . . avoidable*." *N. Litterio & Co. v. Glassman Constr. Co.*, 319 F.2d 736, 739 (D.C. Cir. 1963) (emphasis added) (citing RESTATEMENT (FIRST) OF CONTRACTS § 90 (AM. L. INST. 1932)); *Bender v. Design Store Corp.*, 404 A.2d 194, 196 (D.C. 1979). Similarly, as to Count VI, unjust enrichment, UCJ must show that "(1) [UCJ] conferred a benefit on [UCI]; (2) [UCI] retains the benefit; and (3) *under the circumstances,* [*UCI's*] *retention of the benefit is unjust*." *Pearline Peart v. D.C. Hous. Auth.*, 972 A.2d 810, 813 (D.C. 2009) (emphasis added).

Here, UCJ pleads that "UCI breached the contract with [UCJ] when it used [UCJ's] contributions for purposes for which they were not intended," with the "purposes" allegedly understood by both Parties to be the "mission and purpose . . . reflected in the Articles of Incorporation of UCI prior to their unauthorized amendment in April 2010," namely, "[t]o serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." Compl. ¶¶ 133, 134. Similarly, as to its quasi-contractual claims, UCJ pleads that UCI promised to use UCJ's funds in accordance with the same "mission

and purpose" quoted above, with UCI's alleged failure to abide by the terms of the promise giving rise to UCI's liability for restitution and other damages. *Id.* at ¶¶ 140-146; *see also Moon I*, 129 A.3d at 247 n.20 (indicating that a "nonprofit organization 'may not . . . receive a gift made for one purpose and use it for another . . . .'").

Therefore, notwithstanding the Parties' dispute over whether such a contractual condition or promise existed, *see, e.g.*, Am. Omnibus Summ. J. Order, at 38-41, and presuming that UCJ's claimed condition on use of its contributions is otherwise enforceable, *but see Moon III*, 281 A.3d at 67 n.26, the issue before the Court is whether UCI used UCJ's contributions in a manner contrary to the "mission and purpose" of "assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world."

2. The Court is precluded from determining whether UCI's use of funds was wrongful or unjust because such a determination requires a constitutionally impermissible inquiry into contested matters of Unification Church doctrine, polity, and practice.

UCJ, as Plaintiff, must proffer evidence showing that UCI used UCJ's contributions for purposes other than "assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." UCJ identifies, *inter alia*, UCI's donations to GPF and KIF as falling outside of UCI's "mission and purpose." *See* Pl.'s Opp'n

1-2, 6-10; Compl. ¶ 82; Def.'s Mem. 5. The Court must therefore be able to identify "the activities of Unification Churches" as a precondition for ascertaining whether UCI's donations to GPF and KIF (or any other use of UCJ's contributions) were in line with furthering said "activities." *Cf. Rosenthal v. Nat'l Produce Co.*, 573 A.2d 365, 369-70 (D.C. 1990) ("[A] court cannot enforce a contract unless it can determine what it is . . . . [T]he contract [must] provide[] a sufficient basis for determining whether a breach has occurred . . . ."); *In re U.S. Office Prods. Co. Sec. Litig.*, 251 F. Supp. 2d 77, 97 (D.D.C. 2003) ("[T]hough a promise need not be as specific and definite as a contract, it must still be a promise with definite terms on which the promisor would expect the promisee to rely." (citing *Bender*, 404 A.2d at 196)).

The Parties advance differing explanations of what such "activities" are,[3] with the differences largely predicated on the identity of the rightful successor to Rev. Moon—including (1) the person(s) serving as Rev. Moon's "spiritual successor" and, (2) if the faith is so organized, (3) the entity serving as the "institutional embodiment" of the Unification Church—and the doctrinal variances that accordingly follow. *See Moon III*, 281 A.3d at 50, 53-54 (noting Preston advanced an "interfaith" vision of the Unification Church, in

[3] The phrase at issue is plainly ambiguous, as "activities of Unification Churches" (not to mention the scope of the series of verbs preceding "activities") is "susceptible of more than one meaning" and requires "a choice of reasonable inferences" from evidence extrinsic to any purported agreement between UCI and UCJ and UCI's 1980 Articles of Incorporation, the textual source of the written condition. *Aziken v. District of Columbia*, 70 A.3d 213, 219 (D.C. 2013).

contrast to Sean and Hak Ja Han's "denominational" vision, both of which ostensibly derive from Rev. Moon's pronouncements, acts, and apparent endorsements at differing times prior to his death). The First Amendment, however, precludes the Court from inquiring further into the definition and scope of "activities of Unification Churches"—and, consequently, whether UCI's use of UCJ's contributions were wrongful or unjust. As the Court of Appeals explained:

> The First Amendment's Religion Clauses "severely circumscribe the role that civil courts may play in the resolution of disputes involving religious organizations." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005) (citing *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, [393 U.S. 440, 449 (1969)]). Courts "must be careful" to avoid adjudicating "church fights that require extensive inquiry into matters of ecclesiastical cognizance." *Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 427 (D.C. 1996) (internal quotation omitted).
>
> For example, civil courts are barred from deciding disputes that turn on "the interpretation of particular church doctrines" or "the importance of those doctrines to the religion." *Presbyterian Church*, 393 U.S. at 450. Likewise, a civil court may not ordain matters of "church polity or administration," *Meshel*, 869 A.2d at 353, by, for instance, "determin[ing]

the religious leader of a religious institution." *Samuel v. Lakew*, 116 A.2d 1252, 1261 (D.C. 2015); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, [565 U.S. 171, 186 (2012)] (religious bodies must have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine") (citation omitted). Court involvement in such disputes would "impermissibly entangle the judiciary in ecclesiastical matters," *Meshel*, 869 A.2d at 353, jeopardizing the values underlying the Religion Clauses and "inhibiting the free development of religious doctrine." *Presbyterian Church*, 393 U.S. at 449.

That is not to say that the First Amendment precludes civil courts from resolving any dispute with religious implications. *See Bible Way Church*, 680 A.2d at 427; *United Methodist Church v. White*, 571 A.2d 790, 795 (D.C. 1990) ("[T]he church is not above the law."). A civil court may, for instance, resolve a property dispute between factions of a church, so long as it can do so through "neutral principles of law" without deciding contested matters of church doctrine, polity, or practice. *Moon I*, 129 A.3d at 250, 252. Similarly, a court may enforce a contract—even when one or more of the parties to it is a religious organization—when the terms of the contract require no incursion into the ecclesiastical domain. *See, e.g.*, *Meshel*, 869 A.2d at 346 (invoking "neutral principles of contract law" to enforce an arbitration clause,

> even though the underlying dispute involved a religious controversy); *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 817-18 (D.C. 2012) (holding that a civil court can resolve a dispute over an employment contract between a church and a pastor when the breached provision did not "require the court to entangle itself in church doctrine," and the pastor was not seeking reinstatement). In determining whether a controversy is justiciable, we must look past "the label placed on the action" and consider "the actual issues the court has been asked to decide." *Moon I*, 129 A.3d at 249 (quoting *Samuel*, 116 A.3d at 1259). *Compare Meshel*, 869 A.2d at 358 (suit to compel arbitration appears religious on its face, but sounds in "well-established, neutral principles of contract law"), *with Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) (defamation claim appears secular, but implicates religious practice).

Moon III, 281 A.3d at 60-62 (footnote omitted).

In *Moon III*, the Court of Appeals held that the First Amendment precluded this Court from deciding whether UCI's directors "breached their fiduciary duties to UCI" when they (1) "substantially alter[ed] UCI's articles of incorporation" in 2010, *id.* at 62, and (2) "voted to transfer around half of UCI's assets to KIF and GPF," two entities "not affiliated with the Unification Church," *id.* at 67. As to the 2010 amendments to UCI's 1980 articles of incorporation, the Court of Appeals observed that no "neutral

principles of law" existed for any civil court to ascertain whether substitution of the term "Unification Movement" for "Unification Church," or striking of "assisting, advising, coordinating, and guiding the activities of Unification Churches . . . throughout the world" from UCI's enumerated purposes, changed the "essential character of UCI's purposes without a deep dive into religious questions." *Id.* at 64-66, 67.[4] Similarly, as to UCI's transfer of assets to KIF and GPF, the Court of Appeals rejected the premise that "donations approved by Rev. Moon comport with UCI's mission, whereas those approved by Preston (and his co-directors) do not," *id.* at 68-69:

> We cannot adopt that reasoning. For one thing, it would require us to decree that the Unification Church is a hierarchical organization, in which the judgments of church leaders carry dispositive weight in church disputes. That is a contested issue of church polity. Moreover, even if we assume that the Unification Church is a charismatic religious movement that places a single individual atop its hierarchy, the First Amendment bars us from resolving a dispute as to the identity of that leader. Here, the directors have offered testimony that Rev. Moon's health was fading

[4] The Court of Appeals also held that "the directors' excision of the term 'the Divine Principle' from [UCI's] amended articles" was not justiciable because "[i]t is not for a civil court to determine whether a religion is built around a single canonical text. And it is not for us to determine the religious significance of Rev. Moon's [post-1980] works expounding upon the Divine Principle." *Moon III*, 281 A.3d at 66.

> and that—at the time of key events in this case—he was being manipulated by others, contrary to his vision for the religion's future. Preston, on the other hand, had been dubbed the "fourth Adam" by his father. He was elected president and chairman of UCI's board of directors. Several of his co-directors testified that, in their view, Preston was the true leader of the religion—even before Rev. Moon's death. We can discern no neutral principle to resolve a dispute as to which party had "spiritual and charismatic authority" over the Church and its affiliates at the time the relevant transfers were approved.

Id. at 69 (internal citations omitted). The Court of Appeals further explained:

> UCI's stated purposes are plainly broader than merely supporting institutions that are formally affiliated with the Church. And the directors contend that the transfers to GPF were consistent with UCI's purposes because GPF's "peace-building work fulfilled Rev. Moon's providential vision" for the movement, and that the transfer to KIF was consistent with UCI's purposes because it was essential to secure project financing for the Parc1 real estate development, which was necessary to achieve Rev. Moon's "lifelong dream" of developing that plot . . . .
>
> The [trial] court did not consider the directors' argument that the articles should be interpreted to embody a more "providential

> vision" of the Church. Nor could it have rejected that argument based on neutral legal principles. To determine which party was correct about the meaning of the 1980 articles—which are steeped in overtly religious language—the [trial] court would have needed to adjudicate longstanding debates over the direction of the Church, including whether it is best understood as a denominational institution or an interfaith movement. Such determinations are not permissible under the First Amendment. In short, the trial court erred in finding that UCI's donations to KIF and GPF ran afoul of UCI's corporate purposes.

Id. at 69-70.

Moon III's reasoning is applicable here to UCJ's three counts against UCI because the propriety of UCI's donations necessarily turns on resolving disputes attaching to almost every single word of the phrase at issue: "activities of Unification Churches." The Court is barred from determining whether the "global peace festivals" and specific land development projects, funded through UCI's donations to GPF and KIF (*i.e.*, "assisting . . . activities"), fall within the scope of "activities" of the "Unification Church[]" because such a determination requires the Court to decide, *inter alia*, the nature of "Rev. Moon's providential vision" and "lifelong dream" for the Unification Church, the identity of Rev. Moon's successor and the meaning and effect of their interpretations of Rev. Moon's teachings, and the organization of the Unification Church's polity. *Id.*; *see also id.* at 62 n.17 (listing non-exhaustive "host of

material factual disputes inhibiting [the Court of Appeals'] ability to resolve this case on neutral principles of law"). To the extent that UCJ asserts that the contractual nature of its three counts against UCI reveals neutral principles of law that render its claims justiciable, *see* Pl.'s Opp'n 6-8 (asserting that UCI's directors' lack of knowledge about whether KIF's use of UCI's donations was consistent with UCI's purposes permits argument that UCI breached UCJ's claimed restrictions "no matter what the donative restrictions were and regardless of whether they were entangled with religious doctrine or not"), the Court must reject such assertions because UCJ's challenge goes to whether UCI's directors breached their fiduciary duty through donating UCI's assets to KIF, which *Moon III* plainly forecloses. *See Moon III*, 281 A.3d at 69-70. In any event, the Court would still have to examine whether KIF's use of funds exceeded the scope of the donation agreement between UCI and KIF to ascertain whether UCI breached UCJ's claimed condition and any resulting damages or injustice. *See Tsintolas Realty Co.*, 948 A.2d at 187; *Bender*, 404 A.2d at 196; *Pearline Peart*, 972 A.2d at 813. The First Amendment bars such an examination and determination.[5] *Moon III*, 281 A.3d at 69-70.

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[5] UCJ also contends that "the Court should consider that neither the donor UCI, nor the done KIF, are religious organizations, and under Swiss law, KIF could not have a religious purpose or be dedicated to supporting any particular religious group" because "if the jury were to find that [UCJ's] donative restrictions were tied to the Unification Church . . . , giving funds restricted for Church purposes to an entity that cannot exist for religious purposes could be found a breach under neutral principles of law." Pl.'s Opp'n 9-10.

Therefore, the Court cannot determine whether UCI's use of funds was wrongful or unjust because such a determination requires assessing UCI's compliance with the "mission and purpose" UCJ invokes—an assessment that necessarily requires an inquiry into contested matters of Unification Church doctrine, polity, and practice forbidden by the First Amendment.

The Court must reject UCJ's contention. First, the Court observes that, as UCJ quotes, KIF's purposes included "furthering world peace, harmony of all humankind, [and] interfaith understanding among all races, colors and creeds throughout the world," mirroring UCI's amended articles of incorporation. Pl.'s Opp'n 10; *see Moon III*, 281 A.3d at 57. Whether such an ostensibly nonsectarian, nonreligious purpose is beyond the scope of "activities of Unification Churches," especially in light of the dispute over the denominational-versus-interfaith nature of the Unification Church, is a question that the First Amendment bars the Court from resolving. In addition, UCJ's categorical preclusion of non-religious entities receiving donations "restricted for Church purposes" ignores "the substance of those purposes." *Moon III*, 281 A.3d at 69.

Second, the Court of Appeals discussed and rejected attempts to distinguish "the transfers to KIF and GFP from UCI's historical donations to other unaffiliated organizations." *Id.* at 68. "Indeed, UCI's history appears to refute the notion that the articles ever prohibited donations to entities unaffiliated with the Unification Church." *Id.* (listing the Universal Ballet, University of Bridgeport, *The Washington Times*, a New York private school, a martial arts organization, a firearms manufacturer, and "several anti-communist organizations" as nonsectarian, secular recipients of UCI's donations).

3. Summary judgment is therefore proper because UCJ has no viable legal theory that would entitle it to judgment as a matter of law.

UCJ therefore cannot establish a prima facie case for any of its three claims against UCI because the First Amendment precludes the Court from ascertaining whether UCI's use of funds constituted breach or injustice. There is no "genuine issue for trial" on UCJ's counts because UCJ fails to present "a legal theory which remains viable under [UCJ's] asserted version of the facts . . . which would entitle [UCJ] (assuming [its] version to be true) to a judgment as a matter of law." *Nader*, 408 A.2d at 48. Summary judgment is accordingly appropriate in favor of UCI and against UCJ on all three of UCJ's counts because UCJ has "fail[ed] to make a showing sufficient to establish the existence of an element essential to [UCJ's] case, and on which [UCJ] will bear the burden of proof at trial." *Butler*, 101 A.3d at 1037.

B. "Fraud or Collusion" Exception

UCJ contends that the Court should not decide the instant *Motion* prior to determining whether the "fraud or collusion exception" to the religious abstention doctrine applies to the facts of this case.[6]Pl.'s Opp'n 10-11. In support of its contention, UCJ asserts the following: (1) "there has already been robust recognition of [the fraud or collusion exception]

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[6] As briefly explained *infra*, and as the Court of Appeals noted in the final footnote of *Moon III*, "[t]he Supreme Court has never definitively endorsed the exception. Nor, for that matter, have we." *Moon III*, 281 A.3d at 70 n.29 (internal citations omitted).

in the law," *id.* at 10-12; (2) "the religious abstention doctrine is limited by self-dealing, . . . as well as the [fraud or collusion exception]," especially in cases where there is "alleged self-dealing, bad faith, and fraudulent or collusive misconduct by non-ministerial directors of a charitable corporation that is not itself a church," *id.* at 11-12; and (3) UCI "makes no attempt whatsoever to show that there are no material issues of fact in dispute concerning" the fraud or collusion exception, thus failing to meet its burden as the party moving for summary judgment, *id.* at 13-14.

In opposition, UCI notes the following: (1) "no court has ever actually applied" the fraud or collusion exception, Def.'s Reply 1, 8; (2) UCJ's invocation of the fraud or collusion exception ignores the contractual nature of its claims against UCI, *id.* at 6-7; and (3) UCJ is "continuing to claim, if anything, that the donations (as long known to it) inherently betrayed UCI's corporate and religious mission—which is precisely the sort of complaint that [*Moon III*] foreclosed." *Id.* at 8.

The Court must quarrel with UCJ's characterization that there has been "robust recognition" of the fraud and collusion exception to the First Amendment's religious abstention doctrine, suggesting that many trial courts have applied the exception. Not so. Most courts have approached the subject with much circumspection and caution, and rightfully so. Important here is that the Court of Appeals noted that the exception *may* exist, but significantly noted it has never applied the exception, and that "[t]he Supreme Court has never endorsed the exception." *Moon III,* 281 A.3d at 70 n.29. Indeed, as

to the possible existence of the exception, this Court is impressed by the Court of Appeals' more guarded phraseology—such as a "potential exception" and "strongly suggested" *but "never definitively endorsed"*—when referring to its position and that of the Supreme Court. *Moon III*, 281 A.3d at 70; *id.* at 70 n.29 (emphasis added) (citing *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986) (discussing suggestion of fraud or collusion exception in *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712-13 (1976), before declining to intervene in the religious dispute and emphasizing that "we do not hold that such great fraud would be a basis for court interference"), *cert. denied*, 479 U.S. 885 (1986); *Moon v. Moon*, 833 F. App'x 876, 880 (2d Cir. 2020) (observing "purported exception to the ecclesiastical abstention doctrine" and declining to apply the fraud and collusion exception, "if the exception exists"), *cert. denied*, 141 S. Ct. 2757 (2021); and *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002) (noting the Supreme Court "later characterized the entire phrase" "fraud, collusion, or arbitrariness" as "dictum only" and declining to apply any purported exception)). The federal appellate cases UCJ cites, *see* Pl.'s Opp'n 12, similarly do not apply the fraud or collusion exception, at best merely noting that whether a fraud or collusion exception exists is an open question requiring further clarification from the Supreme Court. *See Askew v. Trs. of the Gen. Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 684 F.3d 413, 418-21 (3d Cir. 2012) (holding First Amendment barred inquiry into whether appellant was a member of church in light of appellant's allegations of the church's failure to follow church bylaws in

excommunicating member); *Young v. N. Ill. Conference of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994) (noting *Milivojevich* "'left open the issue' of whether a church decision may be reviewed in the case of 'fraud or collusion'" but noting the "unlikely significance" of the "'open issue' . . . in some hypothetical case"); *Jeong v. Cal. Pac. Annual Conf.*, No. 92-55370, 1992 U.S. App. LEXIS 30366,[7] at *5-8 (9th Cir. Nov. 12, 1992) (affirming dismissal of complaint that failed to state a claim for fraud or intentional infliction of emotional distress); *Crowder v. S. Baptist Convention*, 828 F.2d 718, 726-27 (11th Cir. 1987) (affirming dismissal of complaint "one step removed from a major doctrinal conflict between two factions" in church after considering balance of interests, including a grievant's "strong interest in obtaining a civil forum where the religious tribunal's decision is tainted by fraud or collusion"); *Hutchison*, 789 F.2d at 395 ("We merely state that possibility has been left open by the Supreme Court . . . ."); *Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983) (noting "*Milivojevich* did not foreclose 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes" but declining to apply exception).

As to UCJ's reliance on *Ambellu v. Re'Ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71 (D.D.C. 2019), the Court observes that, there, the court was deciding a motion to dismiss a complaint alleging, *inter alia*, that a faction of a church had

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[7] The Ninth Circuit's written opinion in *Jeong* was not published; instead, only the single-word disposition ("AFFIRMED") was reported at 979 F.2d 855.

"illegally t[aken] control of the [c]hurch and its assets" through "false or fraudulent pretenses" and sought money damages under the Racketeer Influenced and Corrupt Organizations Act, as codified at 18 U.S.C. §§ 1961 *et seq*. 387 F. Supp. 3d at 76, 79. The plaintiff asserted that the faction had "falsely 'promis[ed] that a vote to dismiss the [church's board of trustees] would be held' . . . [but n]o vote occurred, and the [faction] instead dismissed the [b]oard through 'unilateral action.'" *Id.* at 79. The court noted that determining whether such a promise was fraudulent "d[id] not 'turn on the resolution by civil courts of controversies over religious doctrine and practice[,]'" instead permitting "marginal civil court review[.]" *Id.* Accordingly, the court held that, "[*a*]*t this stage of the litigation*, proceeding to the merits of these claims would not improperly entangle the Court in an essentially religious controversy." *Id.* (emphasis added) (observing "[t]hese claims could, in theory, be resolved through application of neutral principles of corporate law").[8]

UCJ's reliance upon *Ambellu* is misplaced, however. UCJ's claims against UCI plainly rest upon the "resolution [by this Court] of controversies over religious doctrine and practice" of the Unification Church. *Id.*; *see supra* Part III-A. Therefore, "[e]ven if [the Court were] inclined to rush in where the Supreme Court has refused to tread, [UCJ] has made

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[8] The district court nonetheless dismissed the complaint for failure to satisfy the pleading standards set forth in Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and declined to exercise supplemental jurisdiction over the state law claims. *Ambellu*, 387 F. Supp. 3d at 85-87.

no showing that the [fraud or collusion exception] should be applied here." *Heard*, 810 A.3d at 881.

The Court further observes that UCJ's invocation of the fraud or collusion exception as to its claims against UCI appears, as UCI noted, to conflate the contractual nature of its three counts with the *Complaint*'s other counts, alleging breaches of fiduciary duty and self-dealing, that are immaterial to deciding the instant *Motion*. While the Court need not accept UCI's suggestion that UCJ must plead a plausible fraud claim to invoke any purported fraud or collusion exception, *see* Def.'s Reply 6-7, the Court reiterates that the First Amendment precludes adjudication of UCJ's three counts because they are expressly premised on a determination of whether UCI's acts were in accord with a religious mission or purpose—a determination requiring a constitutionally impermissible extensive inquiry into "matters of ecclesiastical cognizance," including "contested matters of church doctrine, polity, or practice." *Moon III*, 281 A.3d at 61; *see supra* Part III-A-2. Again, UCJ's focus on the presence or absence of self-dealing among UCI's directors misses the decisive basis precluding its claims: the Court cannot ascertain if UCI's donations are within the scope of "assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." *See supra* Part III-A-1, III-A-2.

Therefore, as the First Amendment precludes UCJ from advancing a valid legal theory in support of its claims against UCI, the Court will grant UCI's *Motion for Summary Judgment* and enter summary judgment

in favor of UCI as to Counts IV, V, and VI of the *Complaint*.[9]

ACCORDINGLY, it is by the Court this 15th day of June 2023, hereby

ORDERED that *Defendant UCI's Motion for Summary Judgment on Counts IV, V, and VI*, filed on January 20, 2023, is **GRANTED**; and it is further

ORDERED that summary judgment is **GRANTED** in favor of Defendant Unification Church International as to Counts VI ("Breach of Contract"), V ("Promissory Estoppel"), and VI ("Unjust Enrichment") of the *Complaint*.

/s/ Alfred S. Irving, Jr.
Judge Alfred S. Irving, Jr.

[9] The Court does not address the Parties' arguments about whether UCJ is judicially estopped from litigating the applicability of the fraud or collusion exception. *See* Pl.'s Opp'n 16-18; Def.'s Reply 9. UCI's suggestion—that "the Court consider sanctioning UCJ, pursuant to the Court's inherent authority, for UCJ's bad faith in continuing to pursue doomed claims against UCI"—is well taken. *See* Def.'s Mem. 9; Def.'s Reply 9-10. The Court, however, declines to issue sanctions because UCJ's assessment of the jurisprudence that (1) application of the fraud and collusion exception remains (at best) an open legal question and (2) *Moon III* did not definitively foreclose its arguments here, is accurate, even though to this Court its effort is futile. *See* Pl.'s Opp'n 19-20.

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Appendix E

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DISTRICT OF COLUMBIA
COURT OF APPEALS

Nos. 20-CV-0714 & 20-CV-0715

HYUN JIN MOON, *et al.*, APPELLANTS,

v.

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(CAB-3721-11)

(Hon. Laura A. Cordero & Hon. Jennifer M. Anderson, Trial Judges)

(Argued June 17, 2021 Decided August 25, 2022)

Michael A. Carvin, with whom *Jacob M. Roth*, *William G. Laxton, Jr.*, *David T. Raimer*, *Henry W. Asbill*, and *Veena Viswanatha* were on the briefs, for appellant Hyun Jin Moon.

Derek L. Shaffer, with whom *William A. Burck*, *John F. Bash*, and *JP Kernisan* were on the briefs, for appellant UCI.

Francis D. Carter was on the briefs for appellants JinMan Kwak and Youngjun Kim.

Christopher B. Mead was on the briefs for appellant Michael Sommer.

Laura G. Ferguson, with whom *James A. Bensfield*, *Alan I. Horowitz*, *Brian A. Hill*, *Michael J. Satin*, and *Dawn E. Murphy-Johnson* were on the brief, for appellees The Family Federation for World Peace and Unification International, Universal Peace Federation, and The Holy Spirit Association for the Unification of World Christianity (Japan).

G. Edward Powell III, *Steffen N. Johnson*, and *Paul N. Harold* filed an *amicus curiae* brief for Professors Elizabeth A. Clarke, Robert F. Cochran, Jr., Teresa Collett, Carl H. Esbeck, Richard W. Garnett, John D. Inazu, Douglas Laycock, Michael P. Moreland, Robert J. Pushaw, and David A. Skeel in support of appellants.

Eric C. Rassbach and *William J. Haun* filed an *amicus curiae* brief for The Jewish Coalition for Religious Liberty and The Becket Fund for Religious Liberty in support of appellants.

Before GLICKMAN and DEAHL, *Associate Judges* and BECKER,* *Associate Judge, Superior Court of the District of Columbia.*

* Sitting by designation pursuant to D.C. Code § 11-707(a).

DEAHL, *Associate Judge*: The Reverend Sun Myung Moon founded a religion known as the Unification Church in 1954. He was the religion's spiritual leader for nearly sixty years. In the final years of Rev. Moon's life, and through the present day, a religious schism has fractured the Church and its adherents. On one side of the rift is Rev. Moon's eldest living son, Dr. Hyun Jin (or Preston) Moon, whom Rev. Moon had once declared his spiritual successor and the "fourth Adam," following the Biblical Adam, Jesus Christ, and Rev. Moon himself. Preston views the Church as an interfaith movement and wants it to grow as a non-denominational and decentralized religion, a course Rev. Moon had once charted for it as well. Preston is also Chairman of the board of directors of a non-profit corporation known as Unification Church International ("UCI"), which holds considerable assets—once in the ballpark of $1 billion or more—earmarked for advancing the Unification Church and its principles. On the other side of the divide is Rev. Moon's widow, Hak Ja Han Moon, and his younger son, Hyung Jin (or Sean) Moon. Both of them have claimed to be Rev. Moon's successor as spiritual leader of the Church and, at different times, each has led the Family Federation for World Peace and Unification International. They believe the Family Federation is the institutional embodiment of the Unification Church, effectively synonymous with it, and that UCI is bound to support it.

The Family Federation, among others, sued Preston and the rest of UCI's board of directors, claiming that UCI's directors breached their fiduciary duty of loyalty to the Unification Church in two

distinct ways. First, UCI's directors caused about half of UCI's assets to be donated against the wishes of, and to entities unaffiliated with, the Family Federation, which claims to be the "authoritative religious entity that directs Unification Churches worldwide." Second, to facilitate those donations, the directors amended UCI's articles of incorporation. They removed purposes such as "assisting, coordinating, and guiding the activities of Unification Churches," and "further[ing] the theology of the Unification *Church*," and left in their place commitments like "support[ing] the understanding and teaching of the theology and principles of the Unification *Movement*" (emphases added).

The central issue in this appeal is whether this dispute is one for civil courts to resolve. The First Amendment generally precludes civil courts from resolving religious conflicts, in what is sometimes called the religious abstention doctrine. Whether that doctrine bars the District's courts from resolving the present dispute, or whether it instead can be resolved through the application of neutral principles of law without wading into religious questions, has proven a vexing question. The Superior Court initially dismissed the underlying suit on religious abstention grounds, concluding that it could not be resolved without "venturing into religious questions forbidden by the First Amendment." *Family Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon (Moon I)*, 129 A.3d 234, 239 (D.C. 2015). We reversed, reasoning that dismissal was "premature" at the motion-to-dismiss stage because it was possible that evidence might be adduced that would permit the dispute to be

resolved through neutral principles of law. *Id.* at 248-52. On remand, and after extensive discovery, a newly assigned judge concluded that the conflict could indeed be resolved by applying neutral legal principles. In the orders now on appeal, the court granted summary judgment in the Family Federation's favor and directed that the UCI directors be removed from their posts and held personally liable to UCI for more than half-a-billion dollars. In doing so, the court described this case as less a quarrel over church doctrine and more "a struggle for power and money."

It is certainly that, but this struggle for power and money cannot be resolved without answering core questions about religious doctrine. And we are precluded from providing those answers. It is not for the courts to pronounce, as the trial court did, that the Family Federation is the "authoritative religious entity" that ordains what does and does not benefit the Unification Church. Nor can we say that UCI's directors fundamentally altered its articles of incorporation without first addressing religious questions that we cannot entertain. UCI's articles could have vested final decision-making authority in a particular institutional actor like the Family Federation, but they have never done that. *See Jones v. Wolf*, 443 U.S. 595, 603 (1979) ("[R]eligious societies can specify . . . what religious body will determine the ownership in the event of a schism or doctrinal controversy."). Absent that, it is not for us to pass judgment on whose vision of the Unification Church, or Unification Movement, is more faithful to the purposes UCI was established to advance. That religious question is outside of this court's purview.

We therefore reverse and vacate the trial court's grant of summary judgment and its subsequent remedies order.

I.

The following facts are taken from the summary judgment record. Except where otherwise noted, they are not disputed.

The Beginnings of the Unification Church and UCI

The Reverend Sun Myung Moon founded the Holy Spirit Association for the Unification of World Christianity ("HSA"), a religious institution based in Seoul, South Korea, in 1954. HSA organized congregations, developed religious doctrines and rituals, published texts, accepted members, and collected tithes and offerings. Both HSA and the religion it espoused came to be known colloquially as the "Unification Church," though there is no legal entity by that name. Adherents of the religion regard Rev. Moon as a non-divine "messianic" figure. They sometimes refer to Rev. Moon as the "third Adam," following the Biblical Adam and Jesus Christ. Rev. Moon served as the Unification Church's "spiritual leader" for nearly sixty years—from its founding until the final years of his life. He and his now-widow, Hak Ja Han Moon, are sometimes referred to by their followers as the "True Parents of Humankind."

The Unification Church grew into a global movement encompassing religious, cultural, educational, media, and commercial enterprises. In addition to HSA, Rev. Moon and his supporters established religious institutions around the globe, including appellee Holy Spirit Association for the

Unification of World Christianity (Japan) ("HSA Japan").[1] They also founded a large number of nonprofit organizations, such as appellee Universal Peace Federation ("UPF"),[2] and for-profit corporations such as *The Washington Times* newspaper, the Tongil Group business conglomerate, and the seafood distribution company True World Group. Because Rev. Moon maintained "spiritual and charismatic authority" over the religion, he held "moral authority" over those organizations. Yet, he did not have *legal* authority over them.

In the 1970s, Rev. Moon directed a close associate to establish a nonprofit corporation called Unification Church International, or UCI, in the District of Columbia. UCI is not itself a church. But its articles of incorporation, as they appeared in 1980 until Preston and the UCI directors amended them in 2010, set forth its core purposes as supporting the Unification Church and its principles.[3] The 1980 articles recognized that

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[1] An expert on behalf of the Family Federation, Michael Mickler, estimated that the Unification Church established a presence in 185 nations by the turn of the twentieth century.

[2] Formerly known as the "Interreligious and International Federation for World Peace," UPF's Charter described itself as "a global alliance of individuals and organizations guided by universal values and principles and dedicated to building, through service to others, a world of peace, a world in which everyone can live together in freedom, harmony, cooperation and co-prosperity, as one global family." Like many other organizations under the Unification Church umbrella, UPF is legally independent from the Unification Church; indeed, the words "Unification Church" appear nowhere in its founding documents.

[3] The first version of UCI's articles of incorporation appeared in 1977, when UCI was first incorporated. The articles were

Rev. Moon "has provided the inspiration and spiritual leadership for the founding of [UCI] and is the spiritual leader of the international Unification Church movement." In addition, the 1980 articles specified UCI's five "organizational and operational purposes":

> 1. To serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world.
>
> 2. To promote the worship of God, and to study, understand and teach the Divine Principle,[4] . . . and, through the practical application of the Divine Principle, to achieve the interdenominational, interreligious, and international unification of world Christianity and all other religions.
>
> 3. To establish, support and maintain . . . [such] places for the worship of God and for the study, understanding and teaching of the Divine Principle . . . to further the theology of the Unification Church.
>
> 4. To publish and disseminate throughout the world . . . publications in order to carry forward the dissemination and

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amended in 1980 in order to eliminate reference to an earlier plan for UCI to apply for tax-exempt status. Those revisions are not material to this case.

[4] The Divine Principle is one of Rev. Moon's early theological texts. It elucidates many of the Unification Church's core beliefs.

> understanding of the Divine Principle [or] the unification of world Christianity and all other religions . . . .
>
> 5. To sponsor and conduct cultural, educational, religious, and evangelical programs for the purpose of furthering the understanding of the Divine Principle, the unification of world Christianity and other religions, world peace, harmony of all mankind, interfaith understanding between all races, colors and creeds throughout the world, and for such other purposes consistent with the Divine Principle and the purposes of the Corporation.

UCI served primarily as a "funding source" for organizations and projects Rev. Moon founded or supported. Over the decades, UCI donated funds to a sweeping array of recipients, such as UPF, the Universal Ballet, the University of Bridgeport, *The Washington Times*, a firearms manufacturer, a recording studio and performing arts center, a martial arts association, and the aforementioned seafood distribution network. UCI also transferred limited funds to Unification Church institutions like HSA, but far more money flowed in the opposite direction, with the churches subsidizing UCI, rather than UCI subsidizing them.[5] HSA Japan in particular

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[5] In the twelve years before the UCI board elected Preston as its Chairman in 2006, for instance, it is undisputed that less than five percent of UCI's total disbursements were made to church institutions (such as Holy Spirit Associations, Unification Churches, and the Family Federation).

transferred around $100 million annually to UCI for many years.

A Shift in the Unification Church and Preston's Rise Within It

In the mid-1990s, Rev. Moon established the Family Federation for World Peace and Unification International, intending for it to replace HSA. Through the Family Federation, Rev. Moon sought to commence "the providential age in which families may receive salvation that transcends the boundaries of religion, nationality and race." In a speech he delivered around that time, Rev. Moon announced that "[t]he time is coming that we will not need a church. The time for the Unification Church is passing and a new time for the Family Federation . . . is coming." In another speech, which he delivered in 1997, Rev. Moon declared:

> Now is the time for all these old church or church-related signs to come down; a new form should emerge. The church era focuses on individual salvation; however, it is time to rise from the individual level of salvation to the family level, because the family is the cornerstone or basic unit for building a nation.

During that ceremony, Rev. Moon took down a banner depicting the Unification Church's symbol and buried it. Some of Rev. Moon's followers have since

interpreted these events as marking the "end of the church era."[6]

In 1998, Rev. Moon publicly announced that Preston had been named vice president of the Family Federation. The "significance of this inauguration," Rev. Moon explained, was that it marked "the era of the fourth Adam" (recall that Rev. Moon was the "third Adam"). Rev. Moon continued that it was his hope and prayer that Preston would "become much greater than me, 1,000 times greater, and fulfill the mission which is yet to be done." Preston testified that he understood his "inauguration" to mean that Rev. Moon had recognized him as a "messianic figure" and selected him as the Reverend's spiritual heir.

Almost immediately, Rev. Moon began expanding Preston's leadership role within the movement. Over the next decade, Preston was appointed to high-ranking positions within multiple Church-related organizations. For instance, he began serving as co-chairman of UPF's governing board. Through UPF, with his father's blessing, Preston spearheaded the organization of a number of "global peace festivals"—multi-day events designed to promote world peace, involving speakers, entertainment, and service projects. Under Preston's leadership, UPF was "non-sectarian." In his words, that approach was "based upon [his] father's vision," "rooted in the providential

[6] Notwithstanding these events, adherents and outsiders would still often refer to the Family Federation as the "Unification Church," as they had with HSA.

vision of one family under God"[7] that did not "promote any one religion." Preston was also elected by UCI's board of directors to serve as UCI's president and chairman in 2006. Rev. Moon offered his "wholehearted support" for his son's election.

Preston Breaks from the Family Federation and Solidifies Control of UCI

In 2008, about a decade after Rev. Moon dubbed him the "fourth Adam," Preston's rise within most of the Church's institutional entities came to a halt. In a twenty-five-page letter captioned "Report to Parents," Preston updated Rev. Moon and Hak Ja Han on the Unification Church's state and direction, as he saw them. Sensing a division in the Church, Preston believed the Church was "at a crossroads." He wished "to make [] very clear" where the Church "should be headed and how all the different organizations should align." Preston proposed to break down "the walls of religion" in order to "take on the challenge of a true inter-faith movement that could unite the body of faith through the world . . . rather than trying to protect and grow the institution of the Unification Church." Preston wanted two of the organizations he led, UCI and UPF, to coordinate that vision.

One month after Rev. Moon and Hak Ja Han received the "Report to Parents," the Family Federation announced that Preston's younger brother, Sean Moon, had been named its new president. Sean did not share Preston's views about the direction of the

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[7] According to Preston, "One Family Under God" was his father's non-sectarian "vision of humanity," a vision Preston has since championed.

Unification Church; he supported a "denominational" rather than an "interfaith" vision. In a memorandum purporting to "clarify the structure of all the worldwide organizations according to True Parents' special instruction,"[8] Sean announced to Church leadership that he would be overseeing "[a]ll organizations" moving forward, acting under the direction of his parents. At a "coronation" ceremony around this time, Rev. Moon and Hak Ja Han placed a crown on Sean's head. Preston has not had any involvement with the Family Federation since.

Preston remained Chairman of UCI's board of directors, however. And in 2009, he took steps to replace the four other directors with associates who shared his view of the Unification Church as a decentralized and interfaith movement. Preston first called a special meeting of the board in January 2009, at which the four directors in attendance (with one absent) unanimously elected two of Preston's close associates as directors: Richard Perea and appellant Michael Sommer. Immediately thereafter, then-directors Thomas Walsh and Victor Walters resigned from their seats on the board. Walsh testified that he did so at the request of Preston's brother-in-law and confidante, Jin Hyo Kwak, and only because Walsh mistakenly assumed Rev. Moon had approved the request. Walters similarly testified that Kwak told

[8] Preston and the other UCI directors dispute that Sean had authority to issue these instructions and also that the memorandum truly reflected his parents' (the "True Parents") instructions.

him that resigning would be in his best interests. Kwak disputes asking for Walsh or Walters to resign.

Several months later, the two directors who had not resigned—Peter Kim and Douglas Joo—requested another special meeting to nominate new board members of their own. Neither received a vote. Preston, Sommer, and Perea did not attend the meeting, depriving the board of a quorum. The following month, Preston, Sommer, and Perea voted to remove Kim and Joo from UCI's board. They replaced them with two of Preston's brothers-in-law, appellants JinMan Kwak and Youngjun Kim.

In summary, within the year, every director but Preston had been replaced. The new directors each followed one "school of thought," sharing Preston's view of the Unification Church as a decentralized and interfaith movement. They were generally hostile to those (like Sean) who viewed the Church as denominational and saw the Family Federation as its institutional embodiment or central authority. But the new UCI directors were far from outsiders to the Unification Church. Each of the new board members had grown up in the Unification Church and had spent many decades within it; they had each served as Church missionaries and/or run movement-related businesses or non-profits. Kwak and Youngjun Kim were also born into families of Rev. Moon's earliest disciples—sometimes referred to as the "thirty-six couples"—and Rev. Moon personally named both of them.

Midway through the board's overhaul in 2009, Rev. Moon summoned Preston to a meeting in Korea and

asked him to "step down from UCI and spend one year with him." Preston refused. He testified that, at eighty-nine years of age, his father's "condition was much diminished" and that he was "vulnerable" to manipulation by those who did not share his true vision for the Church.[9] Preston feared that if he stepped down for a year, those loyal to the Family Federation—but heretical to what he believed the Church to be—"would hijack everything in our movement." "[T]hey had the Tongil Foundation; they controlled [HSA] Japan; they controlled the Family Federation; and they controlled UPF." Preston's position in UCI was his last stronghold of institutional power within the religion and he would not relinquish it. Rev. Moon met with Preston again later that year, after the board's overhaul was complete, and asked Preston to resign from all his positions with Unification Church affiliates. Preston again refused to leave UCI. He told a group of supporters that Rev. Moon "turned" on him and is now "on that side."

Preston Establishes the Global Peace Foundation to Displace UPF

Later in 2009, Sean was appointed chair of UPF, replacing his brother Preston. That same day, Preston

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[9] Preston and the directors adduced video evidence from around this time that they contend shows "Hak Ja Han and Sean cajoling a semi-conscious Rev. Moon to sign a document naming Sean as 'representative and heir'" of a contrivance called the "command center of cosmic peace and unity." They aver that the video demonstrates that Rev. Moon, at this stage in his life, "was no longer in control of his faculties and was being manipulated by others." We do not, and need not, assess the extent to which that description of the video is accurate.

published an open letter on UPF letterhead announcing that the global peace festivals already on the calendar would go forward not as projects of UPF, but through "a separate [] foundation" that was "being established for this purpose." This new foundation, Preston indicated, would have no "formal or legal association with" the Family Federation. Preston wrote that Rev. Moon's "vision" had "[a]lways" been UPF's "guiding ideal," and that, through the new foundation, Preston would "remain committed" to achieving that vision of "a God-centered world in which people of every race, religion, nationality and culture live in harmony as members of one family under God."

Soon thereafter, Preston registered the Global Peace Foundation ("GPF") to take over the organization of global peace festivals. The Family Federation issued an announcement opposing the move: "True Parents strongly disapprove of the corporate registration of GPF . . . and have stated that our church and providential organizations, and their members, should not take part in or be involved in its activities." Notwithstanding that directive, UCI (under Preston's control) ceased making contributions to UPF and began funding peace festivals through GPF. Over the next six-plus years—until the Superior Court issued an injunction prohibiting the disbursement of additional funds in 2016, discussed below—UCI donated more than $34 million to GPF, a majority of GPF's total funding.

The UCI Board Amends Its Articles of Incorporation

In April 2010, with Preston at its helm, UCI's board of directors voted to amend the organization's articles of incorporation. Among other changes, the amendments omitted two references to the "Unification Church,"[10] replacing them with a single reference to "the Unification *Movement*" (emphasis added). They also omitted six references to the "Divine Principle," an indisputably central text of the religion, and replaced them with a single reference to the "theology and principles of the Unification Movement." The 1980 articles' first-enumerated purpose, "[t]o serve as an international organization assisting, advising, and guiding the activities of Unification Churches organized and operated throughout the world," was omitted. Finally, the amendments officially changed the corporation's name from "Unification Church International" to "UCI." The following table shows the full extent of the 2010 amendments:

[10] Relatedly, months before these amendments, Sean at least purported to change the name of the Family Federation to "the Unification Church." The name change was reversed several years later when Hak Ja Han wrested control of the Family Federation from Sean, post-Rev. Moon's death, as discussed below.

Amendment to 1980 Articles	2010 Articles
~~(1) To serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world.~~	
~~(2)~~ To promote ~~the worship of God, and to study, understand and teach the Divine Principle, the new revelation of God, and through the practical application of the Divine Principle, to achieve the~~ interdenominational, interreligious, and international unification of world Christianity and all other religions.	(b) To promote interdenominational, interreligious, and international unification of world Christianity and all other religions.
~~(3)~~ To ~~establish,~~ [promote and] support ~~and maintain, anywhere in the world, such place or places for the worship of God and for the study,~~ [the] understanding and teaching of ~~the Divine~~	(c) To promote and support the understanding and teaching of the theology and principles of the Unification Movement.

~~Principle as may be necessary or desirable, to further the~~ theology [and principles] of the Unification ~~Church~~ [Movement].	
~~(4)~~ To publish and disseminate throughout the world, newspapers, books, tracts[,] ~~and~~ other publications [and forms of media] in order to ~~carry forward the dissemination and understanding of the Divine Principle, the unification or world Christianity and all other religions, or otherwise to~~ further the purposes of the Corporation.	(d) To publish and disseminate throughout the world, newspapers, books, tracts, other publications and forms of media in order to further the purposes of the Corporation.
~~(5)~~ To ~~sponsor~~ [promote] and conduct, ~~cultural,~~ educational, [cultural, and] religious, ~~and evangelical~~ programs for the purpose of furthering ~~the understanding of the Divine Principle, the unification of world Christianity and other~~	(a) To promote and conduct educational, cultural, and religious programs for the purpose of furthering world peace, harmony of all humankind, interfaith understanding among all races, colors and

~~religions,~~ world peace, harmony of all [hu]mankind, interfaith understanding ~~between~~ [among] all races, colors and creeds throughout the world, ~~and for such other purposes consistent with the Divine Principle and the purposes of the Corporation~~ [throughout the world].	creeds throughout the world.

According to Preston, these amendments served two purposes: to "modernize" and "professional[ize]" UCI, and to "make [the articles] more accurate" because "the providential shift that [his] father announced" in the 1990s "wasn't captured . . . in the [1980] articles." The directors maintain that these amendments did not effect a "fundamental change" to UCI's corporate purposes because they "incorporated all the purposes" of the 1980 articles, and simply reflected organic "changes in the movement" since 1980. The Family Federation counters that the amendments were meant not to "modernize" UCI at all, but to fundamentally alter its relationship with the Unification Church. They point to an email sent by a lawyer who helped draft the amendments, which suggested that the goal of the amendments was to "stay within a broad 'world peace and harmony' framework" while "eliminating the Unification Church, Divine Principle, and most religious

references" from the document. According to the Family Federation, the real reason the directors sought to dissociate UCI from the institutional Unification Church was "to pave the way" for a corrupt transfer of around half UCI's assets to an unaffiliated (and unaccountable) foundation.

UCI's Massive Donation to the Kingdom Investments Foundation

Shortly after those amendments, UCI's agents set up a Swiss foundation called the Kingdom Investments Foundation (KIF) for the purpose of receiving certain UCI assets.[11] Then-UCI director Perea served as one of KIF's founding board members; the other two were "individuals in whom the UCI board could place confidence." Next, UCI entered into a donation agreement with KIF, under which UCI agreed to "irrevocably transfer" certain assets to KIF to advance the agreement's prescribed purposes.

The purposes outlined in the donation agreement mirrored the purposes set forth in UCI's amended

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[11] Although KIF was not created until after the articles were amended, appellees stress that the transfer of UCI assets to an entity like KIF was contemplated several months in advance. Specifically, they point to an email drafted in February 2010, by a lawyer who was working for the directors. That email contemplated "the donation of certain UCI owned real estate assets to a newly created Swiss foundation," and recommended that "[t]he purposes for which the Swiss foundation is organized should be consistent with, if not identical to, the purposes for which UCI is organized." Because Swiss law required that KIF not be organized to support a particular religious organization, that congruity could only be achieved by eliminating all references to the Unification Church in UCI's articles—including the name of the corporation itself.

articles. In other words, the donation agreement stated that KIF was to use the donated assets to support UCI's own purposes as reflected in its amended articles, for example, to "promote and support the understanding and teaching of the theology and principles of the Unification Movement." KIF's own corporate purposes were also similar to UCI's, although they differed in two ways. First, they omitted any mention of promoting "international unification of world Christianity and all other religions." And second, they replaced the promotion of "theology and principles of the Unification Movement" with the promotion of "ethical principles." Preston explained that those differences stemmed from an understanding that "Swiss law made it very clear that [KIF] could not be a religious entity."

UCI then transferred to KIF its majority interests in two Seoul-based real estate developments: "Parc1" and "Central City Limited." It also transferred to KIF an interest in a Korean ski resort, a 65% interest in a Korean construction company, and roughly $2 million in cash holdings. Together these assets' book value exceeded $469 million, approximately half of UCI's total value.[12] UCI's directors testified that they effected the transfer to reap tax benefits in connection with Parc1 and Central City and to secure financing for Parc1's completion. They also testified that, due to the Unification Church's poor reputation, Korean banks might be reluctant to finance the Parc1 project if those banks perceived that it was affiliated with the

[12] Perea resigned from UCI's board of directors and was appointed as one of KIF's founding board members shortly before UCI approved these transfers.

Unification Church. The directors claim to have understood that a barrier to financing might jeopardize the project's completion. According to Preston and director Kwak, developing the Parc1 plot on Seoul's Yeouido Island was Rev. Moon's "lifelong dream." Yet, they did not inform Rev. Moon—or the Family Federation, Hak Ja Han, or Sean—of UCI's transfer to KIF before making it.[13]

The Underlying Lawsuit, Post-Suit Developments, and Prior Appeals

Appellees Family Federation, HSA Japan, and UPF sued UCI's directors alleging that they breached their fiduciary duties to UCI. These claims have been litigated in the District's courts for over a decade. *See generally Family Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon (Moon I)*, 129 A.3d 234 (D.C. 2015); *Fam. Fed'n for World Peace v. Hyun Jin Moon (Moon II)*, Nos. 16-CV-881 & 17-CV-23, Mem. Op. & J. (D.C. July 22, 2018). A number of developments have occurred in the meantime.

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[13] The Family Federation contends the directors' explanations for the transfer are implausible. It contends that there "were no near-term tax benefits to UCI" from the transfer, that any long-term benefits were "illusory when balanced against the value of what they gave away," and that "[p]revious delays associated with the [Parc1] project" had already been resolved prior to the transfer. The Family Federation further suggests that KIF's prompt sale of the Central City asset for "close to $1 billion," and the fact that the directors have never accounted for how the proceeds of that sale were used, are further indications that they did not act with any intention to advance the religion or its principles, but instead acted in bad faith.

Rev. Moon passed away in September 2012 at the age of ninety-two. His widow, Hak Ja Han, then laid claim to her husband's role as spiritual leader of the Unification Church and stripped Sean of his leadership roles. Sean sued his mother in federal court and sought a declaration that he was the "worldwide Leader of the Unification Church and Family Federation." The court dismissed Sean's claim on First Amendment grounds, and the Second Circuit affirmed. *See Moon v. Moon*, 431 F. Supp. 3d 394, 400 (S.D.N.Y. 2019), *aff'd*, 833 F. App'x 876 (2d Cir. 2020). To this day, Sean maintains that he is Rev. Moon's rightful successor, and he has created the "Sanctuary Church" to carry out that role.

Returning to this case, the trial court initially dismissed the suit against Preston and the UCI directors on the grounds that it "could not be decided without the court's venturing into religious questions forbidden by the First Amendment." *Moon I*, 129 A.3d at 239. The plaintiffs appealed that decision and we reversed, concluding that dismissal was premature because, "on its face," there was nothing about the case that suggested it would not be "susceptible to resolution by 'neutral principles of law'" in a manner that would avoid "any forbidden inquiry into matters barred by the First Amendment." *Id.* at 249. Although we found the dismissal of plaintiffs' claims premature, we acknowledged that the case might later need to be dismissed on First Amendment grounds, but that any such dismissal "should be based on a fuller exposition of the facts underlying each cause of action and not be decided on the pleadings prior to discovery and further evidentiary presentation by plaintiffs." *Id.*

On remand, the trial court entered "a preliminary injunction restricting UCI's disbursement of funds pending trial," as the Family Federation had requested. *Moon II*, Mem. Op. & J. at 2. The directors appealed on First Amendment grounds, contesting two statements of fact that "formed the basis for the court's determination"—that the Family Federation was "the authoritative religious entity that directs Unification Churches worldwide," and that "the Divine Principle is the 'theological textbook' of the Unification Church." *Id.* at 8. We affirmed, but only after stressing that the "lion's share of the documents with which the [directors] seek to substantiate the alleged factual disputes [were] outside the relevant [preliminary injunction] record." *Id.* Our analysis in fact began with 3.5 single-spaced pages describing (1) just how limited the preliminary injunction record on review was, and (2) how the directors had failed to raise in the trial court the various factual disputes they were pressing on appeal. *Id.* at 2-5. This exhaustive caveat preceded our ultimate ruling that "*at the time the preliminary injunction was litigated*, there were 'no theological questions for the court to resolve.'" *Id.* at 9 (emphasis added). We further caveated that the issue should be revisited "if it becomes apparent to the trial court that this dispute does in fact turn on matters of doctrinal interpretation or church governance." *Id.* at 9 n.4.

The litigation returned to the trial court, which ultimately granted summary judgment in favor of appellees on their breach of fiduciary duty claims. The court reasoned that there was no genuine dispute that the directors violated their fiduciary obligations to

UCI by (a) "substantially alter[ing] UCI's corporate purposes" (as reflected in the 1980 articles) and (b) donating around half of UCI's assets to KIF and GPF, two entities that were "unaffiliated with the Unification Church." Following a month-long remedies hearing, the court ordered Preston, Sommer, Kwak, and Youngjun Kim's removal from UCI's board and held them jointly and severally liable to UCI for a $530 million "surcharge."[14] The directors, together with UCI, now appeal the summary judgment and remedies orders. They contend that the trial court's grant of summary judgment contravened the religious abstention doctrine rooted in the First Amendment.[15]

II.

The First Amendment's Religion Clauses "severely circumscribe the role that civil courts may play in the

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[14] Because Perea had stepped down from UCI's board before the KIF transfer took place, *supra* note 12, the trial court granted summary judgment in his favor as to the alleged breach of fiduciary duty related to that transfer. The court also did not impose the surcharge against Perea for that same reason, and for the additional reason that the record did not indicate whether he had personally approved any of the GPF transfers.

[15] While it is not the subject of this appeal, Appellee HSA Japan also sued UCI, raising contract and quasi-contract claims. *See Fam. Fed'n for World Peace v. Hyun Jin Moon (Moon I)*, 129 A.3d 234, 246-47 (D.C. 2015). Those claims remain live in the trial court. The court's remedies order is thus not a final order or judgment, given the still-pending claims, but we nonetheless have jurisdiction to entertain this appeal under D.C. Code § 11-721(a)(2)(A) (conferring jurisdiction over interlocutory orders granting injunctive relief); *see also District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 8 (D.C. 2000) (jurisdiction to review the propriety of injunctive relief extends to review of orders the relief is based on).

resolution of disputes involving religious organizations." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005) (citing *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969)). Courts "must be careful" to avoid adjudicating "church fights that require extensive inquiry into matters of ecclesiastical cognizance." *Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 427 (D.C. 1996) (internal quotation omitted).

For example, civil courts are barred from deciding disputes that turn on "the interpretation of particular church doctrines" or "the importance of those doctrines to the religion." *Presbyterian Church*, 393 U.S. at 450. Likewise, a civil court may not ordain matters of "church polity or administration," *Meshel*, 869 A.2d at 353, by, for instance, "determin[ing] the religious leader of a religious institution." *Samuel v. Lakew*, 116 A.3d 1252, 1261 (D.C. 2015); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012) (religious bodies must have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine") (citation omitted). Court involvement in such disputes would "impermissibly entangle" the judiciary in "ecclesiastical matters," *Meshel*, 869 A.2d at 353, jeopardizing the values underlying the Religion Clauses and "inhibiting the

free development of religious doctrine." *Presbyterian Church*, 393 U.S. at 449.[16]

That is not to say that the First Amendment precludes civil courts from resolving any dispute with religious implications. *See Bible Way Church*, 680 A.2d at 427; *United Methodist Church v. White*, 571 A.2d 790, 795 (D.C. 1990) ("[T]he church is not above the law."). A civil court may, for instance, resolve a property dispute between factions of a church, so long as it can do so through "neutral principles of law"

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[16] Appellees make much of the fact that UCI is not a church, emphasizing that they sued the directors purely in their "secular capacity." They suggest this court already attached significance to that in *Moon I*. *See* 129 A.3d at 249 ("This is not a suit directly against a church, synagogue, or mosque or their immediate leadership. On the contrary, the defendant entity at issue here is a taxable, albeit nonprofit, corporation."). However, the religious abstention doctrine concerns the "subject-matter of [the] dispute," not the identity of the parties. *Watson v. Jones*, 80 U.S. 679, 733 (1871). At its core, it precludes courts from wading into "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Id.* Just as civil courts may not settle a religious succession dispute when it arises between two would-be successors, neither may they ordain the rightful successor where third parties attach some significance to the question (via contract, for instance). We said nothing to the contrary in *Moon I*, as we merely observed that the allegations in the complaint—again, that case came to us at the motion-to-dismiss stage—painted UCI as "basically operating in a secular capacity," which could suggest an absence of religious questions in the case. But the evidence that has since been developed makes clear that the question of whether UCI has breached a fiduciary duty of loyalty to the Unification Church is entangled with religious questions about what the Church is, what its core principles are, and who might rightly be called its spiritual (or institutional) leader.

without deciding contested matters of church doctrine, polity, or practice. *Moon I*, 129 A.3d at 250, 252. Similarly, a court may enforce a contract—even when one or more of the parties to it is a religious organization—when the terms of the contract require no incursion into the ecclesiastical domain. *See, e.g.*, *Meshel*, 869 A.2d at 346 (invoking "neutral principles of contract law" to enforce an arbitration clause, even though the underlying dispute involved a religious controversy); *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 817-18 (D.C. 2012) (holding that a civil court can resolve a dispute over an employment contract between a church and a pastor when the breached provision did not "require the court to entangle itself in church doctrine," and the pastor was not seeking reinstatement). In determining whether a controversy is justiciable, we must look past "the label placed on the action" and consider "the actual issues the court has been asked to decide." *Moon I*, 129 A.3d at 249 (quoting *Samuel*, 116 A.3d at 1259). *Compare Meshel*, 869 A.2d at 358 (suit to compel arbitration appears religious on its face, but sounds in "well-established, neutral principles of contract law"), *with Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) (defamation claim appears secular, but implicates religious practice).

Here, the trial court rejected the directors' argument that the First Amendment barred its adjudication of plaintiffs' breach of fiduciary duty claims. The court then granted plaintiffs' motion for summary judgment as to those claims, finding the directors breached their fiduciary duties as a matter of

law both (1) when they "substantially altered UCI's corporate purposes" by amending the 1980 articles, and (2) when they voted to transfer a large portion of UCI's assets to "entities that are unaffiliated with the Unification Church." The directors contend that the trial court's ruling on plaintiffs' fiduciary-duty claims violated the First Amendment. Based on the record before us, which is far more developed than what was before us in either *Moon I* or *Moon II*, we agree.[17] We address the two theories of fiduciary breach in turn, concluding that the grant of summary judgment on either ground would improperly intrude on religious questions.

A.

We turn first to the trial court's judgment that the directors breached their fiduciary duties to UCI by substantially altering UCI's articles of incorporation.[18]

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[17] While we were obliged to treat the allegations as true at the motion to dismiss stage in *Moon I*, the evidence that has now been adduced through discovery has raised a host of material factual disputes inhibiting our ability to resolve this case on neutral principles of law. Among them, as we detail below, are disputes about whether the Unification Church refers to an institutional actor, or instead a set of theological beliefs; whether the Family Federation is truly the authoritative religious entity directing the Unification Church, particularly if it is indeed a set of theological beliefs; whether the Unification Movement is just another term for Unification Church, and one that is perhaps more faithful to Rev. Moon's vision than what the Family Federation now proselytizes; the centrality of the Divine Principle in that religion; and whether GPF and KIF furthered the goals of the religion, whether it be called the Unification Church or the Unification Movement.

[18] The trial court assumed that UCI's "objects and purposes" could be found in its articles and, therefore, that a substantial

It is "a 'basic principle' of corporate law 'that directors are subject to the fundamental fiduciary duties of loyalty and disinterestedness.'" *Moon I*, 129 A.3d at 251 (quoting *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171, 1174 (Del. 1988)). As we said in *Moon I*, "[i]t can be a breach of duty to 'change substantially the objects and purposes of the corporation.'"[19] *Id.* at 252 (quoting 7A Fletcher Cyclopedia of the Law of Corps. § 3718 (2006)).

That said, directors retain the prerogative to update and adapt a corporation's objects and purposes to suit changing circumstances; those at the helm of a corporation are given a wide berth to steer it. Amendments to corporate articles will not provide viable grounds for suit where they "are designed to enable the corporation to conduct its authorized business with greater facility, more beneficially, or more wisely," 7A Fletcher, *supra*, at § 3684 (2021) (quoting *Sherman v. Pepin Pickling Co.*, 41 N.W.2d 571, 577 (Minn. 1950)), or do not "change the essential character of the business," *id.* (quoting *Wright v. Minn. Mut. Life Ins. Co.*, 193 U.S. 657, 664 (1904)). When evaluating whether a change to corporate articles constitutes a breach of duty, we do not ask merely whether some "substantial" change was made, but

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change to the articles was also a substantial change to UCI's corporate purposes. Because neither party contests that assumption, we proceed under the same premise.

[19] The directors cast doubt on this proposition, describing it as a "novel legal theory." But this principle was central to *Moon I*'s holding, and we as a division are not free to revisit it. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) ("[N]o division of this court will overrule a prior decision of this court.").

whether the change abandoned or contradicted the organization's "central and well-understood mission." *Moon I*, 129 A.3d at 252 (quoting *Matter of Manhattan Eye, Ear & Throat Hosp. v. Spitzer*, 715 N.Y.S.2d 575, 595 (N.Y. Sup. Ct. 1999)). It is only when directors abandon their corporate mission, such as by "creat[ing] an entirely different type of corporation . . . to engage in a business entirely different," that they may have breached a fiduciary duty through the amendments alone. 7A Fletcher, *supra*, at § 3718 (2021).

In *Moon I*, we illustrated the point: "An organization plainly established to promote the preservation of African wildlife and acquiring vast funds on that basis might well be barred from switching its purpose to expenditures on domestic cats and dogs." 129 A.3d at 252. A change like that would abandon the organization's central mission and put it on an entirely different course. On the other hand, directors of an organization established to preserve gorillas would not violate their fiduciary duties simply by broadening that mission to include the preservation of other African great apes. That would "not change the essential character of the business, but" merely "authorize[] its extension" or "enlarge[]" its mission. 7A Fletcher, *supra*, at § 3684 (2021) (quoting *Wright*, 193 U.S. at 664).

The trial court in this case reasoned that neutral principles of law permitted it to conclude that the directors breached their fiduciary duties in amending UCI's articles. The court invoked the common law of contractual interpretation, *see Bd. of Dirs., Wash. City Orphan Asylum v. Bd. of Trs., Wash. City Orphan*

Asylum, 798 A.2d 1068, 1079 n.12 (D.C. 2002), comparing the plain language of the 1980 and amended articles to conclude that the directors' amendments "unmoor[ed]" UCI from its original purposes and that the directors therefore breached their duty. In reaching that conclusion, the court focused on the following two revisions: (1) the directors' decision to nix the term "Unification Church" from the amended articles—replacing two references to the "Unification Church" with a single reference to the "Unification Movement"; and (2) the directors' decision to excise six references to "the Divine Principle" from the amended articles, leaving in their place only a command to "support the understanding and teaching of the theology and principles of the Unification Movement," and another to "disseminate throughout the world[] newspapers, books, tracts, [and] other publications and forms of media" to further UCI's purposes. Appellees also urge us to focus on a third amendment: (3) the directors' decision to strike, in its entirety, the 1980 articles' first-enumerated purpose—"assisting, advising, coordinating, and guiding the activities of Unification Churches . . . throughout the world." We consider each of these changes in turn.

1. From "Unification Church" to "Unification Movement"

The crux of the trial court's reasoning was that the amendments "substantially altered UCI's corporate purposes by eliminating any obligation to the Unification Church." It characterized the 1980 articles' repeated references to the Unification Church as "specific denominational references," which

"narrowed the means to accomplish [UCI's] corporate purpose." Replacing multiple references to the Unification Church with a single reference to the Unification Movement, in the court's view, "unmoor[ed] UCI's purposes from these specific doctrinal ties," emphasizing "admittedly broad goals at the expense" of its prior obligations to the institutional Church.[20]

The problem with that analysis lies in its premise. There is no neutral principle by which we might arrive at the conclusion that the 1980 articles used the phrase "Unification Church" as a "specific denominational reference[]," as opposed to referencing the broader religious movement. There is no dispute that the term may refer to either or both things. And if it refers to a religion—a set of theological beliefs—then there is no way to determine whether a change-of-phrase from "Unification Church" to "Unification Movement" changed the essential character of UCI's

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[20] The trial court emphasized that these amendments were substantial not only in quality but in quantity, finding that "repeated references" to the Unification Church and Divine Principle in the 1980 articles "carried significant . . . and non-duplicative meaning." However, neither appellees nor the court explain how those redundancies bore independent and non-duplicative significance. With the exception of the 1980 articles' call for UCI to promote the "activities of Unification Churches," *see infra* part II.A.3, we see no "significant" or "non-duplicative meaning" conveyed by the repeated use of either term. The repetition of certain terms instead seems to be a means of emphasizing them, in the same way that streamlining the articles and cutting the excess fat might just as well do. If the amended articles wrought a substantial change to UCI's mission, it must be due to their use of distinct terminology, not their failure to repeat that terminology.

purposes without a deep dive into religious questions. After all, the directors maintain that the two terms are "interchangeable labels, both referring to the same charismatic providential movement" founded by Rev. Moon. In their view, the semantic change in the amended articles is more faithful to Rev. Moon's "end of the church era" pronouncement than the Family Federation's institutional conception of the "Unification Church." Whether the directors are correct on that point is a theological question that we have neither the expertise nor authority to answer.

To be sure, the term "Unification Church" refers not only to a religion, but has also colloquially referred to a variety of institutional actors over the years: HSA, at the time the 1980 articles were drafted; the Family Federation, come the mid-1990s; and "the Unification Church," as Sean briefly renamed the Family Federation in 2009. But upon what neutral principle might we rest the conclusion that the 1980 articles gave primacy to an institutional actor if—as the directors claim—that institutional actor had departed from the religion's core principles? Nobody has offered one, and we can discern none. Likewise, how could we reject through neutral principles the directors' claims that the Family Federation did in fact depart from the religion's core tenets so that fidelity to the religion required breaking from the institution?[21] It is not

[21] Indeed, it is particularly unsurprising that UCI would want to dissociate itself from the locution of the "Unification Church" when amending its articles in 2010, as Sean had only months earlier rebranded the Family Federation with that name. If the UCI directors believed their duty was to the Church as a religion, as opposed to that specific institution, it would make sense to

possible to do so because that is a deeply religious judgment.[22]

To illustrate the point, consider a hypothetical 11th century corporation devoted to supporting the "Christian church" that, after the Great Schism, amends its articles to embrace the "Roman Catholic Church." *See Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 699 (1976) (describing the Great Schism). A court operating within the First Amendment's bounds could never countenance a fiduciary-duty suit by the Patriarch of Constantinople based on the premise that Eastern Orthodoxy (not Roman Catholicism) represents the true "Christian church." That would be true even if the Eastern Orthodox branch had come to be known by its followers as "the Christian church" prior to the amendment. Yet that is essentially the type of religious intrusion that the trial court's order here committed.

Importantly, the 1980 articles could have provided some neutral principle by which to resolve such disputes, and thereby avoided this judicial impasse. In fact, the year before the 1980 articles were drafted, the Supreme Court suggested religious entities do just

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semantically disentangle themselves from what was then Sean's branch of the Church.

[22] As for the change to the corporation's name—from Unification Church International to UCI—appellees concede that for decades the entity had been known as UCI. Given that concession, along with all of the additional reasons above, formally changing the name of the organization to conform to common usage could not conceivably amount to an essential change in the organization's mission.

that, and "specify . . . what religious body will determine the ownership in the event of a schism or doctrinal controversy." *See Jones*, 443 U.S. at 603. But the articles never did that. UCI was never made subservient to a particular institutional actor, nor did any institutional actor (except the board itself) have direct authority to control UCI or settle disputes over its assets.

Absent such a neutral mechanism, to say that the revision to "Unification Movement" changed UCI's essential character would require us to adjudicate a dispute over not only the meaning of religious terms, but a longstanding debate about the very future of the religion.[23] *See Presbyterian Church*, 393 U.S. at 450 (a

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[23] Appellees seek to downplay these stakes, suggesting that so long as the term Unification Church is understood to refer to the church as *some* institution in the abstract, the court need not identify what that institution is, or determine where spiritual authority lies. Even assuming it were possible to thread that needle for First Amendment purposes, that contradicts how the Family Federation framed its claim. The plaintiffs' complaint states that "[t]he Family Federation . . . is the current name for the authoritative religious entity that directs Unification Churches Worldwide" and repeatedly asserts that Preston, in his role at UCI, was an agent of the Family Federation. As for the trial court, its preliminary injunction order described how the "Unification Church" simply refers to the Family Federation—the "spiritual successor to HSA" and the "authoritative religious entity at the head of the Unification Church." The court later reiterated those same descriptions when granting summary judgment in the Family Federation's favor. Those are far from religiously neutral determinations. There is nothing in the record to suggest that the Family Federation ever exercised legal authority over UCI or the other organs of the religion. Moreover, the directors deny even the Family Federation's spiritual authority, maintaining that there is no hierarchical authority in the Unification polity at all. Because a civil court may not wade

civil court may not decide whether a religious group "substantial[ly] depart[ed] from the tenets of faith and practice," if doing so would require the court to "make its own interpretation of the meaning of church doctrines") (internal quotations omitted). Injecting ourselves into that dispute would place the District's courts in the untenable position of "inhibiting the free development of religious doctrine." *Id.* at 449. That is not our place.

2. From "Divine Principle" to "Theology and Principles of the Unification Movement"

The trial court next focused on the directors' excision of the term "the Divine Principle" from the amended articles. Unlike the term "Unification Church," there is no dispute as to the meaning of "the Divine Principle." It refers to a specific theological text written by Rev. Moon that is central to the religion. *See Meshel*, 869 A.2d at 354 (a court may consider religious language where there is no "material dispute between the parties" as to its meaning). The 1980 articles had referenced the Divine Principle six times. Each reference was excised, and the amended articles now articulate a broader purpose "[t]o promote and support the understanding and teaching of the theology and principles of the Unification Movement," and "[t]o publish and disseminate throughout the world, newspapers, books, tracts, other publications

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into ecclesiastical controversies to "ascertain the form of governance adopted by the members of [a] religious association," *Samuel*, 116 A.3d at 1258 (quoting *Jones*, 443 U.S. at 605), let alone "determine the religious leader of a religious institution," *id.* at 1261, the court was not at liberty to make that determination here.

and forms of media in order to further the purposes of" UCI.

Those amendments enlarge the category of texts that UCI is to promulgate, but that alone does not necessarily amount to changing the essential character of UCI, or abandoning its central mission. Indeed, the directors agree that the Divine Principle remains a central text of the Unification Movement, but point out that it is only one of Rev. Moon's numerous writings—sometimes called the "Eight Great Texts," substantial portions of which were completed after 1980—that collectively make up the "canon" of the religion. According to the directors, the broader language in the amended articles is consistent with the original articles because it "capture[s] all of Rev. Moon's teachings, *including* the Divine Principle."

Appellees counter that the Divine Principle, specifically, was fundamental to the original articles, and that replacing that specific term with "vague" references to "theology and principles" and other "books" and "pamphlets" represents the abandonment of one of UCI's central purposes. The flaw with that argument is that nothing in the amended articles precludes or inhibits UCI from continuing to promote the Divine Principle.[24] And we cannot say, without treading into religious questions, that the Divine Principle is so central to the religion that even

[24] Appellees have not suggested that UCI has, in practice, stopped disseminating the Divine Principle in the years since the amendments were enacted. That might be a valid basis for a breach of fiduciary duty claim, but it is not the claim that appellees have raised.

referring to it only as a part of a broader body of works amounts to heresy or some other fundamental shift. Analogously, we could not say that a Christian church dedicated to teaching "the four gospels" (according to Matthew, Mark, Luke, and John) would fundamentally alter its mission by expanding its purposes to preaching "the gospel" more broadly. It is not for a civil court to determine whether a religion is built around a single canonical text. And it is not for us to determine the religious significance of Rev. Moon's subsequent works expounding upon the Divine Principle.

3. Striking Any Obligation to Assist or Guide "Unification Churches."

Finally, appellees urge us to consider the directors' decision to strike from the 1980 articles the first enumerated purpose of UCI—"assisting, advising, coordinating, and guiding the activities of Unification Churches . . . throughout the world."[25] Appellees argue that the fact that this purpose came first in the 1980 articles means that promoting "brick-and-mortar" churches was UCI's "primary purpose," and that its omission therefore constituted a substantial change.

The directors offer two responses. First, they contend that they did not abandon this purpose because the amended articles' purposes subsume

[25] The trial court did not focus on this aspect of the directors' amendments in its order granting summary judgment, though it did reference the change in its remedies order, finding that "the directors understood that the first purpose of the 1980 articles . . . was one of the primary purposes of [UCI]," and that the amendments eliminated that obligation.

assisting brick-and-mortar churches. In the alternative, they argue that withdrawing support from brick-and-mortar churches (one of five purposes in the 1980 articles) would not be a substantial change at all. As a matter of practice, UCI had never devoted substantial resources to brick-and-mortar churches in the decades when it operated under the 1980 articles. For instance, in the thirteen years before Preston became President of UCI—operating under his predecessor, Douglas D.M. Joo, from 1992 to 2005—it is undisputed that UCI directed less than five percent of its disbursements to traditional church entities. Appellees also do not dispute that UCI was compliant with its obligations under the 1980 articles during that stretch.

Once again, we cannot conclude that excising this first purpose of the 1980 articles, whether or not it was fairly subsumed by other purposes in the revised articles, impermissibly changed the essential character of UCI. Determining whether eliminating the articles' first-enumerated purpose was a substantial change would require us to measure the relative significance of UCI's other purposes—including such goals as promoting "the worship of God," supporting an "understanding and teaching of the Divine Principle," and achieving "the interdenominational, interreligious, and international unification of world Christianity and all other religions." That brings us right back to the bar on extensive inquiries into religious doctrine. *See, e.g.*, *Bible Way Church*, 680 A.2d at 427. There is no neutral principle that allows us to say that support for brick-and-mortar churches was so essential to UCI's

purposes, contrary to its own historic practices and Rev. Moon's apparent aspiration to move beyond them, that pivoting away from them marked an essential change in its mission.

B.

The trial court also granted summary judgment for appellees on their claim that the directors breached their fiduciary duties when they voted to transfer around half of UCI's assets to KIF and GPF. Those two entities were not affiliated with the Unification Church, as appellees contend they had to be under the 1980 articles.[26] Although the court acknowledged that UCI had a history of making donations to "organizations not officially affiliated with the Unification Church," it distinguished those historical donations on two grounds: (1) that the bulk of those donations were either directly approved by Rev. Moon, or were made to entities that he had established or was affiliated with; and (2) that even if UCI had sometimes donated to organizations that were not affiliated with the Church, the donations to KIF and GPF were different because they were made expressly *because* those organizations were unaffiliated. Neither distinction is persuasive. We conclude that the trial

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[26] The trial court assumed the donations had to comply with UCI's corporate purposes as expressed in the 1980 articles, rather than post-2010 amendments. It is not obvious that is the correct approach, but the directors do not cast doubt upon that assumption, so we too will adopt it. It is ultimately an inconsequential point because, for the reasons above, we could not evaluate the KIF or GPF donations' compatibility with *either* version of the articles in a manner that would be consistent with the First Amendment.

court exceeded its authority under the First Amendment when it found that the 1980 articles barred the transfers to GPF and KIF, and that the directors breached their fiduciary duties by effecting those transfers.

As an initial matter, both the trial court and the appellees struggle in vain to differentiate the transfers to KIF and GPF from UCI's historical donations to other unaffiliated organizations.[27] Indeed, UCI's history appears to refute the notion that the articles ever prohibited donations to entities unaffiliated with the Unification Church. Long before the directors held their posts, UCI donated tens if not hundreds-of-millions of dollars to a number of unaffiliated, nonsectarian entities, including the Universal Ballet, the University of Bridgeport, and *The Washington Times*. The Universal Ballet disclaimed any "affiliation with . . . the Unification Church," and calls itself "non-sectarian." The University of Bridgeport had no affiliation either, and it too describes itself as "secular," "independent," and "nonsectarian." The "general-purpose" conservative newspaper, *The Washington Times*, likewise operated independently

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[27] If appellees could show—in a manner consistent with the First Amendment—that the donations to KIF and GPF were fundamentally different than UCI's previous donations, that might be persuasive evidence that the transfers violated UCI's original purposes. But the converse is also true, as it stands to reason that if "a long-standing pattern or practice of corporate behavior may give rise to a by-law" where one did not exist, *see Moon I*, 129 A.3d at 251 (citing *Nat'l Confed. of Am. Ethnic Grps. v. Genys*, 457 A.2d 395, 399 (D.C. 1983)), such a pattern or practice could also inform how to best interpret the bylaws that do exist.

from the Unification Church and espoused no religious ideals. The record also includes evidence of other donations to secular entities, such as a private school in New York attended by Rev. Moon's children, a martial arts organization, several anti-communist organizations, and a firearms manufacturer. It additionally shows a donation to Rev. Jerry Falwell's ministry. Indeed, as the directors point out, there is no language in even UPF's charter to suggest that it had any legal affiliation with the Church that GPF did not.

Appellees concede that those prior donations to unaffiliated organizations were consistent with UCI's corporate purposes. But they attempt to distinguish those transfers, pointing out that "[a]lmost all of the organizations that UCI historically supported were founded by Rev. Moon and/or Mrs. Moon," whereas the transfers to KIF and GPF were made in defiance of Rev. Moon's wishes, because he did not "support[] the creation of and donations to" those organizations. That reasoning exposes the true nature of appellees' claim, the essence of which the trial court adopted: donations approved by Rev. Moon comport with UCI's mission, whereas those approved by Preston (and his co-directors) do not.[28]

We cannot adopt that reasoning. For one thing, it would require us to decree that the Unification Church is a hierarchical organization, in which the judgments

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[28] If Rev. Moon's approval was enough to insulate a given donation from further scrutiny for compliance with the articles, then we see no reason why the approval of his rightful successor would not do likewise. That brings the succession fight to the forefront of this dispute, contrary to appellees' protests that it is immaterial to it.

of church leaders carry dispositive weight in church disputes. That is a contested issue of church polity. *See Samuel*, 116 A.3d at 1259 (finding, under analogous facts, that making such a determination "would entail an impermissible inquiry into 'church polity'" (quoting *Jones*, 443 U.S. at 605)). Moreover, even if we assume that the Unification Church is a charismatic religious movement that places a single individual atop its hierarchy, the First Amendment bars us from resolving a dispute as to the identity of that leader. *Id.* at 1261 ("[T]he First Amendment does not permit a civil court to determine the religious leader of a religious institution."). Here, the directors have offered testimony that Rev. Moon's health was fading and that—at the time of the key events in this case—he was being manipulated by others, contrary to his vision for the religion's future. Preston, on the other hand, had been dubbed the "fourth Adam" by his father. He was elected president and chairman of UCI's board of directors. Several of his co-directors testified that, in their view, Preston was the true leader of the religion—even before Rev. Moon's death. We can discern no neutral principle to resolve a dispute as to which party had "spiritual and charismatic authority" over the Church and its affiliates at the time the relevant transfers were approved. *See Moon*, 431 F. Supp. 3d at 406 (collecting cases to support the proposition that "intrachurch succession disputes . . . fall squarely within the nonjusticiable category").

But the failure to distinguish the transfers to GPF and KIF from UCI's historical donations is not the only basis on which we depart from the trial court's

reasoning. Missing from the court's analysis into those transactions' compatibility with UCI's corporate purposes is any mention of the substance of those purposes. Per the 1980 articles, those purposes include promoting "the worship of God," achieving the "unification of world Christianity and all other religions," and sponsoring cultural, educational, and religious programs "for the purpose of furthering the understanding of the Divine Principle." UCI's stated purposes are plainly broader than merely supporting institutions that are formally affiliated with the Church. And the directors contend that the transfers to GPF were consistent with UCI's purposes because GPF's "peace-building work fulfilled Rev. Moon's providential vision" for the movement, and that the transfer to KIF was consistent with UCI's purposes because it was essential to secure project financing for the Parc1 real estate development, which was necessary to achieve Rev. Moon's "lifelong dream" of developing that plot. The directors further emphasize that KIF was contractually obligated to support "the theology and principles of the Unification Movement" because the donation agreement contained express language to that end.

The court did not consider the directors' argument that the articles should be interpreted to embody a more "providential vision" of the Church. Nor could it have rejected that argument based on neutral legal principles. To determine which party was correct about the meaning of the 1980 articles—which are steeped in overtly religious language—the court would have needed to adjudicate longstanding debates over the direction of the Church, including whether it is

best understood as a denominational institution or an interfaith movement. Such determinations are not permissible under the First Amendment. In short, the trial court erred in finding that UCI's donations to KIF and GPF ran afoul of UCI's corporate purposes.

III.

Appellants ask us to not only reverse the entry of summary judgment against them, but to direct the trial court to dismiss the breach of fiduciary duty claim altogether. One wrinkle precludes us from doing that. While we agree that the two theories of fiduciary breach embraced by the trial court are non-justiciable, there remains a third theory advanced by the appellees that the trial court did not address: that the directors engaged in self-dealing. The complaint averred, as a subpart of the breach of fiduciary duty claim, that Preston and the directors engaged "in a scheme of self-dealing designed to divert corporate assets to the personal pursuits of Preston." That theory may yet have some legs, provided there is evidence to support it.

While religious abstention is a robust doctrine that provides substantial protections to religious organizations' autonomy within the religious sphere, the Supreme Court has strongly suggested that there is a "fraud or collusion" "exception to the general rule of non-interference," under which a civil court may decide a facially ecclesiastical dispute when religious figures "act in bad faith for secular purposes." *Heard*, 810 A.2d at 881 (citing *Milivojevich*, 426 U.S. at 713).[29]

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[29] The Supreme Court has never definitively endorsed the exception. *See Hutchinson v. Thomas*, 789 F.2d 392, 395 (6th Cir.

Under that potential exception, a civil court may have the authority to exercise "marginal" review, even where a dispute implicates ecclesiastical matters. *Id*. This "fraud or collusion" exception, "if [it] exists, . . . would apply where a religious entity" or figurehead "engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen." *Moon v. Moon*, 833 F. App'x at 880. Although it would surely be difficult to disentangle a charge of self-dealing from religious questions when brought against somebody with a claim to messianic status, we need not confront that difficulty today.

The parties have not briefed the legal issue of whether there is a fraud or corruption exception to the religious abstention doctrine, nor have they explained what evidence (or lack thereof) underlies the self-dealing claim, nor have they even discussed whether that claim remains live at this stage of the proceedings in the trial court. Those are all matters we leave the trial court to address in the first instance on remand.

IV.

The trial court erred in awarding appellees summary judgment on their breach of fiduciary duty claims. Mistakenly holding that it could adjudicate those claims via neutral principles of law, the court repeatedly resolved ecclesiastical disputes. We therefore reverse and vacate the trial court's grant of summary judgment, and vacate its ensuing remedies order. We stop short of directing summary judgment

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1986), *cert. denied*, 479 U.S. 885 (1986); *Moon v. Moon*, 833 F. App'x at 880, *cert. denied*, 2021 WL 2405175 (U.S. June 14, 2021). Nor, for that matter, have we. *See Heard*, 810 A.2d at 881.

in the directors' favor on the fiduciary duty claims, however. Appellees have alleged what amounts to a claim of fraud and/or collusion, which may yet be a justiciable claim that does not require delving into religious questions, and the trial court may consider it on remand if appropriate.

The orders of the trial court are reversed. We remand the case for further proceedings consistent with this opinion.

So ordered

Appendix F

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*,	*	**2011 CA 003721 B**
	*	**Judge Jennifer M. Anderson**
Plaintiffs,	*	**Civil I, Calendar 3**
v.	*	
HYUN JIN MOON, *et al.*,	*	
Defendants.	*	

ORDER GRANTING, IN PART, PLAINTIFFS' MOTION FOR REMEDIES FOR THE INDIVIDUAL DEFENDANTS' BREACH OF FIDUCIARY DUTY

The matter is before the Court upon consideration of Plaintiffs' Motion for Remedies for the Individual Defendants' Breach of Fiduciary Duty filed on April 19, 2019; Defendants' Opposition filed on May 24, 2019; and Plaintiffs' Reply to Director Defendants' Opposition filed on June 7, 2019. The Court held a four-week hearing on these issues.

I. Background

Plaintiffs' Motion for Remedies stems from the Honorable Judge Laura Cordero's March 28, 2019 Order in which she granted summary judgment for

Plaintiffs on Count II Breach of Fiduciary Duty by Director Defendants. Judge Cordero ruled that Defendants Hyun Jin Moon ("Preston Moon"), Michael Sommer, Jinman Kwak, Youngjun Kim, and Richard Perea breached their fiduciary duty by amending Unification Church International Inc. ("UCI")'s 1980 Articles of Incorporation ("1980 Articles") in 2010 and by donating UCI's assets to the Global Peace Foundation ("GPF"). Judge Cordero further ruled that all Director Defendants, except Richard Perea,[1] breached their fiduciary duty by donating UCI's assets to the Kingdom Investment Foundation ("KIF"). *See* Summ. J. Op. at 22-34, March 28, 2019.

In its Motion, Plaintiffs ask for the following remedies: (1) rescind the amendments to the Articles of Incorporation and restore the 1980 Articles; (2) remove Preston Moon, Michael Sommer, Jinman Kwak, and Youngjun Kim from UCI's board; (3) remove the two new directors the defendants installed after Judge Cordero issued her ruling; (4) install new directors who can reasonably be expected to manage UCI in accordance with its fundamental purpose; (5) surcharge the Director Defendants the amount of money they wrongfully diverted from UCI; and (6) impose a constructive trust on the assets donated to KIF and GPF for UCI's benefit.

The parties have agreed that, given Judge Cordero's ruling, it is appropriate to rescind the 2010

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[1] Richard Perea left UCI board shortly before the board voted for the KIF donation and therefore was not involved in the decision.

amendments and restore the 1980 Articles. (Defs.' Opp'n at 50, May 24, 2019.)

Defendants object to every other remedy proposed by Plaintiffs. First, they contend that the Court does not have either statutory or equitable authority to remove them from the UCI board. If the Court concludes it has such authority, they argue that any vacancy must be filled by its remaining board members to avoid First Amendment problems. Should the Court believe it has the authority to select new directors, the Defendants request a hearing to assess the suitability of potential candidates. (Defs. Opp'n 38-41.)

As for the surcharge, Defendants contend that Plaintiffs cannot recover monetary damages on behalf of UCI as a matter of law because this lawsuit is not a derivative suit and Plaintiffs did not suffer individual harm on their own. In the alternative, they argue that the Court should not impose a surcharge because they acted in good faith. (Defs. Opp'n 31-37.) Defendants also challenge the amount of any potential surcharge.

As to the constructive trust, Director Defendants again contend that Plaintiffs cannot seek such relief on behalf of UCI because this lawsuit is not a derivative suit. They further argue that the Court cannot impose a constructive trust on KIF, who is not a party to this action. (Defs. Opp'n at 47.)

The Court held a hearing on the Motion for Remedies on July 10, 2019, August 26 and 27, 2019, and from October 7, 2019 to October 31, 2019. On July 19, 2019, the Court issued a *sua sponte* order concerning the motion hearing going forward.

According to this order, in the motion hearing, the parties should present evidence and testimony on (1) whether the Court has the authority to remove Director Defendants, and, if so, how, and by whom, should new directors be selected; and (2) whether a surcharge is appropriate. For the first issue, the parties were asked to submit supplemental briefs[2] to answer four questions: the appropriate D.C. non-profit corporation statute to be applied in this case; judicial authority to remove and replace directors; if the Court concludes it has such authority, how should the Court select replacement directors; and if the Court concludes it does not have such authority, how should the selection of new directors occur.[3] For the second issue, the Court asked the parties to present evidence on whether the Director Defendants' actions were taken in good faith and how to calculate the surcharge amount.

After hearing the evidence presented over multiple days of hearings, reviewing the exhibits admitted into evidence, assessing the credibility, or lack thereof, of witnesses, the Court makes the following findings of fact and conclusions of law:

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[2] Briefs were submitted on August 8, 2019 (Plaintiffs), August 29, 2019 (Defendants), and September 12, 2019 (Plaintiffs' Reply).

[3] In addition, according to the *sua sponte* order, Director Defendants were asked to prepare to answer: (1) UCI's current relationship with KIF, (2) what information UCI is entitled to receive from KIF, and (3) Director Defendants' ability and plan to retrieve the donated assets from KIF and GPF.

FINDINGS OF FACT

A. Background Facts on the Unification Church

1. Reverend Sun Myung Moon founded the Holy Spirit Association for the Unification of World Christianity ("HSA-UWC") in 1954. DX-756.0002.

2. The HSA-UWC came to be widely known as the "Unification Church." DX-756.0004 ("The world has come to call us the Unification Church in place of our full name."). Reverend Moon adopted that terminology. *See, e.g.,* DX-756.0003 ("I have invested the Unification Church ... for the sake of the world and of all humanity."); DX-756.0004 ("the mission of the Unification Church has been to restore and recreate the ideal of God on earth"); DX-747.0002 (Reverend Moon referring to himself as "the founder of the Unification Church").

3. Reverend Moon co-led the Unification Church with Hak Ja Han Moon since their marriage in 1960. DX-914.0006 (Walsh). He believed his "providential messianic mission" was "to create an ideal family." *See* 10/21 Hr'g Tr. at 7:18-8:1 (P. Moon)[4]. Reverend Moon and Hak Ja Han Moon are referred to as "True Parents," and Reverend Moon is referred to as "True Father." 10/8 at 46:2-11 (Y. Kim); *see*

[4] Citations to the remedies hearing transcripts, going forward, will be cited as follows: mm/dd at p.#:line-p.#:line (Witness), e.g. 10/21 at 7:18-8:1 (P. Moon).

also DX-747.0002 (Reverend Moon address stating that "God came up with this terminology [of 'True Parents'] as the symbol of an ecstasy of happiness.").

4. Reverend Moon's ultimate providential goal was to create a "supra-religious, supra-national" realm in which people of all religions and nations would be unified under his spiritual leadership. DX-756.0002, DX-756.0004.

5. Unification Church International (also known as UCI) is a District of Columbia non-profit corporation created in 1977. Unification Church of Japan frequently subsidized the corporation around $100 million each year. While Unification Church International is a religious nonprofit, it is not a church and does not host religious services. 10/8 at 65:12-19 (Y. Kim).

6. In the mid-1990s Reverend Moon emphasized the importance of family salvation, rather than individual salvation, as the vehicle for achieving his providential vision. To reflect that emphasis, Reverend and Mrs. Moon co-founded the Family Federation for World Peace and Unification ("FFWPU"), which became the new formal name of the Unification Church. DX-756.0005; DX-748.0003 (statement of the founders, characterizing the Family Federation as "the culmination of our life's work"); *see also* DX-748.0007 (Hak Ja Han Moon as co-founder);

PRX-20 (P. Moon stating that the "Family Federation represent[s] the culmination of my father's lifelong efforts"); 10/21 at 202:11-19 (P. Moon) (same).

7. By 1998, the formal name for the institution leading the Unification Church was the "Family Federation for World Peace and Unification International," or "FFWPUI," the international headquarters of FFWPU. DX-750. Many national Unification Churches retained their "Holy Spirit Association for Unification of World Christianity" or "Unification Church" name.

8. Once FFWPU, or FFWPUI, was established, its name was used interchangeably with that of the Unification Church. DX 750.0007 (Reverend Moon referring to "the Unification Church FFWPUI"); PRX-102 (Preston Moon referring to "FFWPU, the Unification Church"); 10/9 at 12:2-14:7, 34:16-35:13, 97:6-15, 109:21 (Y. Kim); 10/16 at 134:4-135:1 (J. Kwak).

9. The Unification Church has branches throughout the world including (a) HSA-UWC (USA), PRX-672; DX-914.0017 (Walsh); 10/21 at 144:17-18 (P. Moon); (b) the Unification Church of Japan, a major donor to UCI, *id.* at 217:4-9 (P. Moon); (c) HSA-UWC (Korea), DX-728.002; and (d) the Unification Church of Spain, PRX-137 at 1. *See also* DX 914.0006 (Walsh) (the

Unification Church has "members and churches throughout the world").

10. Dr. Hyun Jin Preston Moon ("Preston Moon") is the oldest living son of Reverend Moon and Hak Ja Han Moon, and was born a member of the movement. 10/21 at 5:9-11; 184:15-18. (P.Moon)

11. Hyung Jin Sean Moon ("Sean Moon") is Reverend Moon's youngest son and the only one available, aside from Preston Moon, to lead the movement.[5] Reverend Moon's other son, Justin, was not eligible because of his divorce. 8/26 at 97:2-24 (M.Sommer)

12. Reverend Chung Hwan Kwak was one of the earliest individuals in Reverend Moon's movement and held virtually all the top positions in the Moon organizations. 10/15 at 31:6-16 (J.Kwak)

13. Jimnan Kwak is Reverend Kwak's son and a close ally and brother-in-law of Preston Moon. He is a graduate of Columbia University. *Id.* at 29:2023.

14. Jinhyo Kwak is a close assistant and brother-in-law of Preston Moon and was Chief Financial Officer of Unification Church

[5] Under Unification theology, Reverend Moon "would only allow a son to actually be the person leading the movement, rather than elders or an institution." 8/26 at 97:2-24 (M.Sommer)

International. 8/26 at 104:13-105:14 (M. Sommer); 10/10 at 155:24-156:4 (C. Kwak).

15. Youngjun Kim is Preston Moon's brother-in-law and volunteers as his translator. 10/8 at 186:4-5 (Y. Kim).

16. Michael Sommer was a long-time member of the Unification Church and an ally of Preston Moon who joined Unification Church International's board at his request.

17. Richard Perea was a long-time member of the Unification Church and an ally of Preston Moon who joined Unification Church International's board at his request. He left the board to join KIF's board. 10/23 at 168:11-169:9. (R.Perea).

18. The Divine Principle is a collection of the teachings of Reverend Moon and is an important theological text of the Unification Church. *See, e.g.,* DX 374.002-003 (P. Moon describing the Divine Principle as "the most important legacy that will have history forever remember Parents as True Parents of mankind and the True King of Peace"); 8/26 at 88:18-23 (M. Sommer); *id.* at 172:11-13 ("the core and most important" of Reverend Moon's theological texts).

B. Events Leading Up to the Directors' Amendment of UCI's Articles of Incorporation and Donation of Substantial UCI Assets to a Swiss Foundation

19. In 1998, Reverend Moon appointed Preston Moon Vice President of FFWPUI. DX-750. Preston Moon believed that this appointment signified that Reverend Moon had selected him as Reverend Moon's spiritual heir (the fourth Adam) to lead the Unification Church and carry on Reverend Moon's providential work. 10/21 at 11:20-22, 174:21-22 (P. Moon). Indeed, as of 1998, Preston Moon believed he was leading the Unification Church movement. 10/21 at 179:21-25, 180:7-24 (P. Moon).

20. The other directors also believed that Reverend Moon selected Preston Moon to be his spiritual heir and the fourth Adam. 10/15 at 51:10-18 (J. Kwak); 10/16 at 47:16-18 (J. Kwak); 10/23 at 77:7-78:9 (R. Perea); 10/7 at 72:4-9 (M. Sommer); 10/8 at 44:14-24, 187:1-17 (Y. Kim).

21. At the 1998 inauguration of Preston Moon as Vice President of FFWPUI, Reverend Moon indicated that Preston (Hyun Jin) Moon "still has a course to go" to "establish the completed foundation of the fourth Adam and the realm of the fourth Adam." DX-740.0007.

22. In the mid-2000s, Reverend and Mrs. Moon's sons assumed various leadership positions. 10/21 at 99:12-16 (P. Moon) ("my two

brothers, with my mother's initiative, started to take responsibility within our movement" and "my younger brother, K.J., was working at Tongil Foundation, the major foundation that we have that holds all of our business units"). Preston Moon became President of Unification Church International and Chair of its Board of Directors in 2006. DX-728.0001; 10/21 at 13:5-6, 40:22-24 (P. Moon); 10/7 at 53:4-6, 71:10-23 (M. Sommer). Sometime before March 2009, Preston Moon's sister, Tatiana (In Jin) Moon, became "CEO of the American church." 10/21 at 152:7-9 (P. Moon).

23. In March 2008, Preston Moon wrote a Report to Parents, in which he was critical of Unification Church leaders and proposed a new direction for the Unification Church. DX-374; *see also* 10/21 at 187:16-188:12 (P. Moon). Specifically, Preston Moon advocated ending the Unification Church as an institution and a religion in favor of a global interfaith movement. DX-374.0008 ("We should 'breakdown' the walls of religion, especially our own walls, and take on the challenge of a true inter-faith movement that could unite the body of faith through the world centered upon the peace vision of creating [One Family Under God, or] OFUG, rather than trying to protect and grow the institution of the Unification Church"); DX-374.0016 ("our movement has to come out of its 'church skin' and become a global inter-

faith movement centered upon the peace vision of OFUG").

24. Preston Moon wanted the organization he led, Unification Church International, to become a coordinating body to manage the economic assets of the larger international movement, and he envisioned himself as the one who would take on the responsibility for all of the Unification Church assets around the world. DX-374.010-11; 10/21 at 193:15-195:9 (P. Moon). He also wanted "all the major Providential Organizations," including FFWPU, to be "subordinate" to Universal Peace Federation, of which he was co-chair. DX-374.009-010.

25. Preston Moon had a history of taking positions that were at odds with the Unification Church who "told Reverend Moon that [Preston is] not teaching the principle right, and Preston was strongly scolded," and "this happened many times, different things, some large, small." 8/26 at 99:14-23 (M. Sommer).

26. Almost immediately after Preston Moon issued his Report, Reverend Moon rejected Preston Moon's suggestions and implemented changes in the organization. On April 17, 2008, FFWPUI announced that True Parents (Reverend Moon and Hak Ja Han Moon) had appointed Sean (Hyung Jin) Moon, Preston Moon's brother, to be the International President, or leader, of FFWPU. PRX-37.

Chung Hwan Kwak, Reverend Moon's "chief lieutenant," signed the announcement. *Id.*; 10/21 at 52:15-18 (P. Moon).

27. Unlike Preston Moon, Sean Moon did not advocate disbanding the institution or religion of the Unification Church. 10/21 at 212:2-3, 212:13-15 (P. Moon); 8/26 at 86:4-8, 95:14-25, 123:10-13 (M. Sommer) (describing Sean's religiosity).

28. Preston Moon was surprised and shocked at Sean Moon's appointment as International President and Michael Sommer was horrified. 10/21 at 201:16-202:1 (P. Moon); *see also* 10/7 at 244:3-245:8 (M. Sommer).

29. Preston Moon spoke with Reverend Moon about Sean Moon's appointment as International President of FFWPU, and Reverend Moon confirmed the appointment of Sean. 10/21 at 205:5-13 (P. Moon). So, Preston Moon knew it was his father's decision to replace him.

30. Sean Moon's status as FFWPU International President was acknowledged in three coronation ceremonies in January 2009, two in Korea and one in New York. *Id.* at 213:1-7 (P. Moon). Preston Moon attended the ceremony in New York and witnessed Sean Moon wearing a crown. *Id.* at 213:1-9, 214:4-24.

31. By early 2009, Preston Moon was frustrated that he did not have more control within the Unification Church. *Id.* at 159:21-25 (P.

Moon) ("Because up until [March 2009,] they had the Tongil Foundation; they controlled Japan; they controlled the Family Federation; and they controlled UPF.").

32. Preston Moon then started to use Unification Church International as the vehicle to obtain more control. PRX-015

33. Preston Moon was Unification Church International's Chairman and President since April 2006 when he was unanimously elected by UCI's Board-which consisted of Douglas Joo, Peter Kim, Chung Hwan Kwak, Thomas Walsh, and Victor Walters. 10/21 at 44:12-15, 45:8-10 (P.Moon); 8/27 at 84:12-24. (M.Sommer).

34. Dr. Moon received a salary, which in 2010 was $425,000. DX-0020.0001. By the time he became Chairman, Dr. Moon had received three degrees—a B.A. from Columbia University in 1995, an M.B.A. from Harvard Business School in 1998, and a Master's in Religious Studies from Unification Theological Seminary ("UTS") in 2001. 10/21 at 6:5-11 (P. Moon).

35. Dr. Moon's goal, consistent with his father's wishes, was to professionalize and modernize Unification Church International and improve its subsidiaries' performances.[6] He

[6] Unification Church International owns a number of for-profit businesses, including seafood distribution company True World Group, and for many years, D.C. based conservative newspaper

hired more professional managers and he restructured money-losing businesses, resulting in substantial improvements. He also established a formal process for reviewing nonprofit grant requests. 10/21 at 43:7-9, 44:24-48:2 (P. Moon)

36. Historically, these for-profit subsidiaries lost money. 10/21 at 42:24-43:1 (P. Moon); MS, 8.26 at 48:7-13. UCI received substantial sums from the Unification Church of Japan, frequently around $100 million each year, which primarily were used to subsidize the money-losing businesses. 8/26 at 49:5-10, 50:3-7, 10.7 at 188:15-189:12, 216:5-13 (M. Sommer); 10/23 at 17:25-18:9 (R. Perea); 10/21 at 43:2-18 (P. Moon); DX-0918 (Pak) at 92:23-93:14.

37. Unification Church International would, at its discretion, donate any remaining funds from the Unification Church of Japan's subsidies to a wide variety of independent cultural, educational, and political nonprofits, including the Universal Ballet, the University of Bridgeport, and anti-communist and pro-family values organizations like CAUSA and the American Family Coalition. 10/8 at 25:18-23, 29:16-21 (Y.Kim); 8/26 at 45:6-46:18 (M.Sommer); 10/15 at 46:1-25 (J.Kwak); 10/21 at 43:10-

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The Washington Times. 8/26 at 41:2-3 (M. Sommer); 10/21 at 124:12-17 (P. Moon); 10/23 at 15:3-23 (R. Perea).

44:11(P.Moon); DX-0918 (Pak) at 122:19-124:9; DX-0919 (Pak) at 205:23-206:9.

38. These organizations were secular and legally independent. DX-0532.0002 ("The Universal Ballet has no affiliation with ... the Unification Church or any of the Church's affiliated entities .... [It] is a distinct, independent legal entity; it is non-sectarian; and it does not espouse or advance any religion, religious belief or ideology."); DX-0593.0162 (University of Bridgeport is "non-sectarian"). 10/8 at 27:25-28:3 (Y. Kim); 8/26 at 46:8-47:24 (M. Sommer); 10/15 at 43:6-15 (J. Kwak). They were not "Unification Churches." DX-0930.0024.

39. Many of the businesses and nonprofits actively distanced themselves from the Movement to establish professionalism and credibility among a wider audience. RP, 10.23 at 22:1-23:14; MS, 8.26, at 47:14-24 (donations to University of Bridgeport had to go through independent "middleman" to show "that it was [not] actually anything connected to Unification Church"); DX-0532 (Universal Ballet); DX-0361; DX-0914 (Walsh) #s 85-86 ("[T]here were definitely times, places and organizations where you didn't accent the church.").

40. Unification Church International donated very little money to churches or religious initiatives. 10/21 at 43:21-24 (P. Moon); 8/26 at 48:20-23 (M. Sommer). While Unification

Church International is a religious nonprofit, it is not a church and does not host religious services. 10/8 at 65:12-19 (Y. Kim).

41. Although Unification Church International was a corporation separate and apart from the rest of the Moon organization, in many ways it did not act like one. For example, in early 2000, Reverend Moon sent Preston Moon to conduct an assessment of organizations under Unification Church International's purview, which included attending quarterly or semiannual meetings with the corporation, reviewing presentations of activities and organizations within Unification Church International, speaking with now-former president and chairman of Unification Church International Dong Moon "Douglas" Joo, and reviewing quarterly reports. 10/21 at 40:22-42:19 (P. Moon). Notably, at the time Reverend Moon directed the review, neither he nor Preston Moon were members of the board or officers of the corporation.

    In addition, Reverend Moon was involved in selecting new directors even though he was not an officer or director of the corporation. It also was common that a director would resign at Reverend Moon's request.

42. From January to August 2009, Preston Moon replaced the board of directors of Unification Church International with directors loyal to him rather than to the Unification Church

leadership. 8/27 at 85:13-16, 124:8-17, 124:23-125:1 (M. Sommer). The composition of the board entirely changed, except for Preston Moon. *Id.* at 85:13-16.

43. His first move to consolidate his power was on January 12, 2009 when the Unification Church International board of directors convened in Arizona. PRX-55; DX-914.0057 (Walsh).

44. Then-board member Victor Walters testified that Jinhyo Kwak told him to fly to Arizona for a meeting at a hotel and to leave his cell phone behind. PRX-681 at 8-11. Walters was not informed of the purpose of the meeting. *Id.* at 9.

45. Then-board member Thomas Walsh described it as the "most irregular board meeting [he] ever attended." DX914.0056.

46. At the meeting, the board of directors voted to add Michael Sommer and Richard Perea to the board, following only a brief discussion. PRX-55; DX-914.0057 (T.Walsh).

47. Immediately after the meeting, Jinhyo Kwak asked both Victor Walters and Thomas Walsh to resign from the board of directors. Jinhyo Kwak approached Thomas Walsh with a resignation letter and told him that Reverend Kwak, Reverend Moon's right-hand lieutenant, and Preston Moon wanted him to resign. DX-914.0056 (T.Walsh).

48. Thomas Walsh testified that he resigned from UCI's board because he incorrectly assumed that those asking him to resign had consulted with Reverend Moon. *Id*.

49. Jinhyo Kwak told Victor Walters that resigning would be in his best interests. PRX-681 at 15-16 (V.Walters).

50. In March 2009, Reverend Moon summoned Preston Moon to a meeting at Sokcho, Korea and directed him "to step down from UCI and spend one year with him." 10/21 at 150:22-24, 159:14-17 (P. Moon); 10/22 at 6:15-10:12 (P. Moon); 10/16 at 69:6-9 (J. Kwak).

51. Preston Moon did not step down from Unification Church International, 10/22 at 11:21-24 (P. Moon), "[b]ecause I knew – my fear was that while I stepped down for one year, they would hijack everything in our movement. Because up until then, they had the Tongil Foundation; they controlled Japan; they controlled the Family Federation; and they controlled UPF." 10/21 at 159:21-25 (P. Moon).

52. Following Sokcho, Preston Moon did not discuss the conflict with his father, 10/22 at 10:21-23 (P. Moon), and Jinman Kwak avoided Reverend Moon so that he would not receive direction regarding Preston Moon, PRX-78. 10/16 at 94:15-17 (J. Kwak).

53. Shortly thereafter, Preston Moon told his supporters, including his brother-in-law Jinman Kwak, that Reverend Moon ("Appa")

"has turned" and "is on that side. He is agenda driven now. I need to go down and basically prepare the battleground because there's going to be a bad conflict coming our way." PRX-64 at EP00190389; 10/22 at 14:24-15:10; 10/16 at 78:11-15 (J. Kwak) ("Appa" is Korean for father and, in PRX-64, refers to Reverend Moon).

54. Preston Moon laid out his game plan to a small group of followers including Jinman Kwak and Thomas Walsh: "My feeling is, if I am able to withstand this for two years, three years, my feeling is that things will turn. As this foundation goes like this and my foundation goes like this and as I build more and more foundation ... with the outside world, there is no way that Appa will come out in the public against me .... In other words, I will turn the tables. That's the only chance I have to ... reverse this situation and gain legitimacy. Without it ... I don't become a public person 100% no chance." PRX-64 at EP00190390.

55. Preston Moon went on to tell this small group that it would be a challenge because the other side controlled the media and all channels. But he had a solution. "What did the terrorists do when they realized they were going to fight against the largest military infrastructure of the world? They did asymmetrical warfare. We do asymmetrical warfare." *Id.* at EP00190392.

56. In July 2009, then directors Peter Kim and Douglas Joo sought to convene a meeting of the board of directors of Unification Church International to consider filling two director seats with individuals suggested by Reverend Moon, his daughter Sun Jin Moon and Unification Church Archbishop Ki Hoon Kim. PRX-79. *See also* PRX-80 (Notice of Special Meeting).

57. Preston Moon, Sommer, and Perea deliberately did not attend that board meeting to deprive the board of a quorum. 10/23 at 46:2-9 (R. Perea). Preston Moon, Sommer, and Perea did not want those aligned with the Church leaders, or clerics, including Peter Kim and Douglas Joo, to have a controlling majority vote on the board. 8/26 at 128:9-130:15; 8/27 at 97:15-18, 98:6-9 (M.Sommer); 10/22 at 24:8-16; 10/21 at 188:9-19 (P. Moon); 10/23 at 45:17-21 (R. Perea).

58. Preston Moon, Sommer, and Perea did not seek Reverend Moon's views about appointment of Sun Jin Moon or Archbishop Ki Hoon Kim to the board of directors, nor did they accept the invitation to have lunch with Reverend Moon to discuss the matter. *(see* PRX-80). 10/22 at 18:21-19:6 (P. Moon); 8/27 at 95:2-5 (R. Sommer).

59. After Sokcho, Preston Moon decided that he wanted to remove Douglas Joo and Peter Kim from the board of directors of Unification Church International. 10/22 at 22:22-23:1 (P.

Moon). Douglas Joo and Peter Kim had access to Reverend Moon. 8/27 at 110:16-21 (M. Sommer); 10/8 at 74:5-75:5 (Y. Kim); DX-914 at 53-54 (Walsh) (describing the annual process in which Peter Kim and Reverend Moon would decide how much money to give to providential organizations).

60. On August 2, 2009, Preston Moon, Sommer, and Perea voted to remove Douglas Joo and Peter Kim from the board of directors of Unification Church International. PRX-83. The minutes of the meeting do not give a reason for the removal. *Id.; see also* 8/27 at 115:6-16 (M. Sommer). The July 31, 2009 Notice of Special Telephonic Meeting does not state the purpose for which the August 2nd meeting was convened. PRX 82-A; *see also* 8/27 at 106:1-9 (M. Sommer). Sommer voted to remove them because they were "on the opposite side of Preston," and "on Sean's side." 8/26 at 130:10-14, 135:18-21 (M. Sommer). Perea supported their removal because they were not sufficiently supportive of Preston Moon and because Joo was "trying to control decisions" by "trying to evoke Reverend Moon's name." 10/23 at 49:1-18 (R. Perea).

61. Later in August 2009, Preston Moon, Sommer, and Perea added Youngjun Kim and Jinman Kwak to the board of directors of Unification Church International by unanimous written consent. PRX-92. Both were Preston Moon's brothers-in-law and

shared his "school of thought." 8/27 at 121:10-12, 122:4-9, 123:20-124:1 (M. Sommer).

62. Youngjun Kim was a volunteer translator for Preston Moon. 10/8 at 186: 4-5 (Y. Kim). He had never served on a corporate board prior to his appointment to Unification Church International. *Id.* at 196: 14-18. He did not have any business experience. *Id.* at 51:9-10. He knew very little about the corporation. At his deposition, he could not identify the meaning of basic business abbreviations such as NOL (net operating loss), CFC (control forwarding corporation) and PwC (the accountants Pricewaterhouse Coopers. *Id.* at 54:8-55:21.

63. Jinman Kwak was a confidante of Preston Moon and in his inner circle as evidenced by the fact that he sent out the email outlining Preston Moon's plan to regain his position inside of the movement. PRX-64.

64. Sometime in 2009, this newly constituted board stopped sending money to Family Federation or HSA because it was run by Sean Moon. 10/9 at 40: 13-20 (J.Kim). In addition, the board stopped sending money to the organizations Unification Church International previously supported as discussed above. *Id.* at 40:21-41:25.

65. Preston Moon met with Reverend Moon in September 2009 in Las Vegas where Reverend Moon asked him to resign from all his positions. 10/22 at 39:5-18 (P. Moon);

PRX-96 at EP00096421 ("F(ather) has made it clear that he wants the chair resigning from all posts and handing over all assets"). After the meeting in in Las Vegas, Preston Moon made it clear he had no intention of heeding his father's request to resign from his positions. *Id.* ("I am not going to be dictated by what F [Father] M [Mother] my family says."). Notably, he did not express any reservations about Reverend Moon's mental acuity.

66. On November 4, 2009, FFWPUI announced that True Parents had appointed Sean (Hyung Jin) Moon as Chair and International President of Universal Peace Federation ("UPF"), replacing co-Chairs Preston Moon and Reverend Chung Hwan Kwak. DX-733; DX-388; PRX-102. Other leadership positions in UPF were given to "elders that primarily had religious positions and more of a spiritual element of the movement." 8/26 at 139:25-140:2 (M. Sommer).

67. Sean Moon's appointment was Reverend Moon's decision. 10/22 at 40:17-46:25 (P. Moon). On November 4, 2009, Preston Moon wrote a letter to Reverend Moon to ask him to change his mind about the UPF leadership change. 10/22 at 40:18-41:23, 46:1-21 (P. Moon). He did not.

68. On that same day, Preston Moon wrote a letter to UPF announcing that the Global Peace Festival series in 2010 and the

December 2009 Global Peace Convention in Manila would not go forward as projects of UPF "and will have no formal or legal association with FFWPU. Rather, a separate GPF foundation is being established for this purpose." PRX-102.

69. On November 28, 2009, the Unification Church International Board appointed Paul Rogers "as UCI's agent for any threatened or actual litigation or other legal proceedings by or against UCI, its officers and directors." PRX-106. Rogers was appointed to "receive oral or written communications and legal advice from outside counsel and to convey such communications and legal advice to UCI and its officers and directors." *Id.*

70. On December 30, 2009, the first order of business was to vote to approve Preston Moon's salary of $425,000 and have a compensation committee review his salary with a goal of increasing it. 10/8 at 200:7-21; DX 20.

71. In February 2010, the board of directors of HSA-UWC (USA) voted to remove Preston Moon from its board of directors for cause. 10/22 at 82:9-16 (P. Moon). The basis for his removal is set forth in a February 2, 2010 memo. PRX-672 (identifying "multiple occasions," in which "Hyun Jin Moon has disobeyed instructions from Reverend Moon and from the Church hierarchy and has

caused disruption in the greater Church community").

C. The Directors Did Not Have a Good Faith Basis for Believing That Amending the Articles of Incorporation Was Consistent with Their Fiduciary Duty of Obedience

72. In 1975, Reverend Moon directed Bo Hi Pak to create a bank account at the Diplomat Bank and deposit a $70,000 check into the account in the name of the Unification Church International. Summ. Judg. Def. Ex. 14 at 6, Ex. 27.

73. Reverend Moon directed the funds to be transferred to another entity named Unification Church International, incorporated as a nonprofit corporation in the District of Columbia in 1977. PRX-15.

74. The 1977 Articles of Incorporation were amended in 1980 to recognize that UCI had not sought Internal Revenue Code § 501(c)(3) status and in other minor respects. PRX-17.

75. The 1980 Articles of Amendment identify five "organizational and operational purposes" of UCI, the first of which is: "To serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world." PRX-17 at UCI00004068.

76. On March 23, 2010, Deborah Ashford of Hogan Lovells emailed to the directors draft

amendments to the articles of incorporation of UCI. PRX-636. None of the directors claim to know how the process to change the articles started. A reasonable inference from the evidence is that the change came at the behest of Preston Moon because it was necessary in order to donate the assets that Unification Church International have no religious connection.

77. Ms. Ashford stated: "If you have any questions about the attached document, Steve [Salky, UCI's litigation counsel] or I will be pleased to respond." *Id.* None of the directors took Ms. Ashford up on this invitation. 10/8 at 54:14-55:11, 202:17-207:3 (Y. Kim); 10/23 at 194:19-195:10 (R. Perea); 8/26 at 161:16-17, 162:2-5, 162:18-20 (M. Sommer).

78. On April 12, 2010, Dan Gray, the corporate secretary and general counsel of UCI, sent the directors a notice of a meeting on April 14, attaching proposed amendments to the articles of incorporation, bylaws, and criteria for selection of independent directors. PRX 149.

79. There was no substantive discussion of the reason for amending the articles at the April 14, 2010 meeting. PRX-153; DX-77 (minutes); 8/26 at 174:5-16 (M. Sommer); 10/23 at 72:6-20 (R. Perea) (Perea does not recall discussing the amendments); 10/8 at 206:11-207:8 (Y. Kim) (same).

80. Unlike the January and August 2009 board meetings when the composition of the board was changed, the April 14, 2010 board meeting was not recorded. 10/23 at 163:14-164:17 (R. Perea).

81. On April 14, 2010, directors Preston Moon, Michael Sommer, Richard Perea, Youngjun Kim, and Jinman Kwak voted to approve the amendments to the articles of incorporation. PRX-153. *See also* PRX-155.

82. Among other things, the 2010 amended articles (a) changed the name of the nonprofit corporation from "Unification Church International" to "UCI," and (b) substantially altered the purposes of the nonprofit corporation. *Compare* PRX-17 *with* PRX-155. *See also* Ex. 1 (comparison of 1980 and 2010 articles of incorporation).

83. Among the changes to the purpose provisions, the 2010 amendments: (a) entirely deleted the first purpose of Unification Church International as stated in the 1980 articles; (b) deleted all references to the Unification Church or Unification Churches; (c) deleted all six references to the "Divine Principle"; and (d) deleted all three references to "God." *Compare* PRX-17 *with* PRX-155; *see also* Ex. 1.

84. UCI's articles were amended to facilitate the donation of substantial UCI assets to the Kingdom Investments Foundation, because (a) the articles, which had not been amended

in 30 years, were amended "just shortly before the board voted to donate assets to a Swiss foundation" (10/22 at 93:18-21 (P. Moon)); (b) the Certificate of Amendment was issued on May 13, 2010 (DX-22), the same day the board met to discuss donation of assets to a Swiss foundation (DX-142); (c) the 2010 amendments removed most religious references (Ex. 1), and the directors believed the Swiss foundation could not have a religious purpose or reference religious teachings (10/22 at 132:2-6 (P. Moon); 10/9 at 81:13-82:21 (Y. Kim)); (d) the articles were amended to allow UCI to "gift" shares or other interests in domestic or foreign corporations (PRX-636 at UCI00117387; PRX-155 at UCI0000652); (e) Paul Rogers, who had no position at UCI or role in UCI governance, was actively involved in the donation of assets to the Swiss foundation and was included in correspondence related to the amendment of UCI's articles of incorporation (PRX-636), and (f) Deborah Ashford, UCI's outside counsel on corporate governance drafted both the amended UCI articles and the UCI-KIF donation agreement (8/26 at 228:21-230:15 (M. Sommer); PRX-636; PRX-216). *See also* 10/23 at 195:25-196:4 (R. Perea) (one purpose of the amendments could be to facilitate the donation); 10/7 at 46:22-47:9 (M. Sommer) ("can't remember" if there was a relationship between the amendment and the donation).

85. The Court does not find Mr. Sommer's testimony on this issue credible.

86. The directors did not show adequate regard for their fiduciary duty of obedience to the purposes of Unification Church International as set forth in the 1980 articles.

87. Youngjun Kim does not know why the board amended the articles, did not ask whose idea it was to amend the articles, and was not even curious. 10/8 at 206:11-207:8 (Y. Kim). He had not seen the 1980 articles until Deborah Ashford circulated the proposed amendments. *Id.* at 54:19-24. He does not recall any substantive discussion of the reason for the amendments at the April 14, 2010 meeting. *Id.* at 206:11-207:8. He agreed to amend the 1980 articles because, "[i]f I apply the UCI articles to the letter, then that letter would limit what UCI could do." 10/9 at 9:3-11:1 (Y. Kim). Rather than following the articles to the letter, he believed that his duty was to make decisions for UCI based on his "own conscience." 10/8 at 21:11-23, 22:22-23, 48:6-8 (Y. Kim).

88. Jinman Kwak did not ask who drafted the amendments or why the corporation's name was being changed. 10/16 at 146:13-15, 161:2-4 (J. Kwak). Though he agrees the April 14, 2010 meeting to approve the amendments was "an important meeting," he claims to not recall any aspects of the meeting (his location, who he was with, time of day,

length) or any the discussion of the reasons for the amendments. 10/16 at 146:16-149:1 (J. Kwak).

89. The Court does not find Mr. Kwak's testimony on this issue credible.

90. Richard Perea does not recall ever in two decades of working with UCI-related companies having "any use of the articles"; they were just "dead documents in headquarters someplace." 10/23 at 73:10-14 (R. Perea). He claims that the corporate purposes needed amendment because they were "very elementary." *Id.* at 60:8-61:11. Perea does not recall discussing the reason for the 2010 amendments at the April 14 board meeting.

91. Even though Michael Sommer worked with outside counsel Deborah Ashford on "[d]ifferent areas of governance" on which he reported to the UCI Board in December 2009, he did not consult with her on the amendment of the articles of incorporation. 8/26 at 161:16-17, 162:2-5, 18-20 (M. Sommer); DX-20. *See also* 10/7 at 187:14-19 (M. Sommer) (believes the purpose of UCI is to be faithful to Reverend Moon's "vision").

92. Preston Moon did not ask outside counsel whether amending the articles could be a breach of fiduciary duty because, according to him, "internal counsel [referring to Dan Gray] was the one who actually suggested those recommendations," 10/22 at 71:7-17 (P.

Moon), but that is not true. PRX-678 at 14-15 (D. Gray) (Gray does not know why the articles were amended); 10/22 at 100:19-102:5, 103:3-7 (P. Moon "stand[ing] by" deposition testimony that he does not recall whose idea it was to amend the articles). Preston Moon also believes it is "good fiduciary policy" to change UCI's purposes "to best reflect the reality of our Movement"). *Id.* at 90:18-25 (P. Moon).

93. The Court does not find Preston Moon's testimony credible; the evidence suggests he was the driving force behind the amendments.

94. The directors' claim that the purpose clauses in the 1980 and 2010 amended articles of incorporation are substantially the same and that the 2010 amendments constituted mere "housekeeping" or "shopkeeping," *see, e.g., id.* at 94:12-22 (P. Moon), 10/23 at 73:2-6 (Perea), is not credible. *Compare* PRX-17 *with* PRX-155; Ex. 1. As of March 2010, the directors understood that the first purpose in the 1980 articles, which the 2010 amendments deleted, was one of the primary purposes of the Unification Church International. PRX-130 (unanimous written consent signed by directors).

95. Michael Sommer's claim that the first purpose in the 1980 articles ("To serve as an international organization assisting, advising, coordinating, and guiding the

activities of Unification Churches organized and operated throughout the world.") was "essentially reworded," 8/26 at 167:25-168:13 (M. Sommer), is not credible. The first purpose in the 1980 articles was entirely deleted; the fifth purpose of the 1980 articles was substantially reworded and became the first purpose in the 2010 articles. *Compare* PRX-17 at UCI00004069 *with* PRX-155 at UCI00000651; *see also* Ex. 1.

96. The 2010 articles do not require UCI to support the "activities of Unification Churches." *See* PRX-155; 10/9 at 39:20-42:3 (Y. Kim).

97. Richard Perea's claim that the 1980s articles were amended because they were "very elementary," 10/23 at 60:8-61:11 (Perea), is not credible. The 2010 amendments eliminated one of the corporate purposes and stripped out language from the remaining four purposes, especially references to religion, the Unification Church, and Divine Principle. *Compare* PRX-17 *with* PRX-155; *see also* Ex. 1.

98. The directors' explanation for changing Unification Church International's name is not credible. Defendants' testimony that no one previously called Unification Church International by its full name is not credible. *See* DX-374 at p. 10 (Report to Parents) (Preston Moon referring to "Unification Church International"); PRX-52; PRX-54;

PRX-82A. The claim that the name was a "misrepresentation" because "UCI is not a church," 10/21 at 66:19-67:7 (P. Moon), is not credible because Unification Church International is a nonprofit whose primary purpose is to support Unification Church activities. PRX-17 at UCI00004068.

99. The directors' claim that the elimination of references to the "Divine Principle" was insignificant because the term was replaced, they claim, with a reference to the "theology and principles of the Unification Movement," is not credible. Four of the five purposes of the 1980 articles referenced the Divine Principle. The second purpose was to "promote the worship of God, and to study, understand and teach the Divine Principle." PRX-17 at UCI00004069. In the 2010 amendments, the directors eliminated that language and did not replace it with the "theology and principles of the Unification Movement." PRX-155 at UCI00000652. The fourth purpose of the 1980 articles focused on using print media to "carry forward the dissemination and understanding of the Divine Principle." PRX-17 at UCI00004069. The directors eliminated that language, did not replace it with a reference to the "theology and principles of the Unification Movement," but instead provided that the publications should "further the purposes of the Corporation." PRX-155 at UCI00000652. The fifth purpose in the 1980 articles dealt with

programs to "further the understanding of the Divine Principle." PRX-17 at UCI00004069. The directors eliminated references to the Divine Principle and did not replace it with a reference to the "theology and principles of the Unification Movement." PRX-155. Although references to the Divine Principle appear throughout the 1980 articles, "theology and principles of the Unification Movement appears only once in the 2010 articles. *Compare* PRX-17 *with* PRX-155; *see also* Ex. 1. These amendments, along with the deletion of references to "God," "church," "places of worship," and "evangelical" were consistent with Preston Moon's hostility to "protect[ing] and grow[ing] the institution of the Unification Church") and his position that "our movement has to come out of its church skin." *See* DX-760.0005 (the "Unification Movement must get rid of its church-centered framework").

100. The directors did not consider the reference to "Unification Movement" in the 2010 articles as an important aspect of UCI's corporate purposes because they viewed KIF's purposes omitting that term as "almost identical" to UCI's purposes that included that term. *See* 10/9 at 133:3-10 (Y. Kim) ("almost identical"); 10/16 at 42:13-16 (J. Kwak) ("very similar purpose"); 10/21 at 136:16-18 (P. Moon) ("almost identical").

101. The directors' justifications for deleting references to Unification Church from the 1980 articles are not credible. *See, e.g.,* 8/26 at 173:7-18 (M. Sommer) (citing end of church era as rationale for amendment); 10/21 at 61:2-12 (P. Moon) (same); 8/26 at 173:11-15 (M. Sommer) ("Reverend Moon did not use that word 'church,'" except "once in a while" when he "talked about taking down the church sign, when he talked about the end of the church movement"); 10/21 at 60:6-11 (P. Moon) ("there was no organization named the Unification Church"); 8/26 at 133:20-21 (Sommer) ("the Unification Church/ movement is not a religion").

    (a) With respect to the supposed "end of the church era" in the mid-1990s, references to the "end of the church era" were aspirational. *See* 10/8 at 60:12-17 (Y. Kim).

    (b) With respect to claims that there was "no organization called the Unification Church," the Unification Church exists to this day and existed in 2010, when the directors amended the 1980 articles. PRX-678 at 42-43 (Gray testimony that the Unification Church still exists and that, until 2013, he attended "one of the many local Unification Church congregations around the world"); DX-142.0002 (Rogers claiming, in May 2010, that UCI's association with the "Unification Church" jeopardized Parc1 project financing); 10/21 at 217:4-9 (P. Moon) (the Unification Church of Japan contributed approximately

$100 million per year to Unification Church International); DX-468 (P. Moon 2012 statement repeatedly referring to the "Unification Church"); DX-374 at 8 (P. Moon Report to Parents referring to the "institution of the Unification Church"); DX-767 (2010 letter signed by Sommer, J. Kwak, and Y. Kim referring to "meetings held in every Unification Church in America this past weekend" and "organizations such as the Unification Church"); PRX-231 (2010 UCI letter to "Members of the Unification Church"); PRX-137 at 1 (UCI ledger as of 3/31/2010 showing disbursements to Unification Church Spain); PRX-89 ("UC is one of many churches, many faith traditions engaged in coalition to fulfill OFUG").

(c) Defendants' assertion that the Unification Church is not a religion is also belied by the record. DX-917.0014 (Hendricks) ("yes, we are a religion"). Reverend Moon's followers believe he is "the third Adam" and a "second coming to Christ." 10/21 at 18:20-21 (P. Moon); *see also* 10/21 at 63:10 (P. Moon) ("my father we believe is a messianic figure"). It has missionaries. *Id.* at 51:18-52:1. It has a theology. *Id.* at 60:1-2 ("our movement is a live-in church, meaning closer to Mormonism, we believe in the revelation"); *id.* at 64:8 ("we believe in new revelation"); *id.* at 28:1-5 ("one of the theological components that we stress a lot is

the resolution of the Cain and Abel conflict"); 8/26 at 172:6 (M. Sommer).

102. Historically, in addition to supporting "brick and mortar" Unification Churches, UCI supported Unification Church activities, *e.g.,* organizations founded by or supported by Reverend Moon. 10/16 at 107:20-25 (J. Kwak) (As of 2009, UCI had never given money to an organization that was not founded or supported by Reverend Moon); 10/9 at 11:20-21 (Y. Kim) ("UCI has been supporting what Reverend Moon wanted to do"); DX-914.0032 (Walsh) (UCI "funded organizations that Reverend Moon founded and that he had identified as organizations that should be funded"); 10/21 at 47:13-24 (P. Moon) (UCI donations would go to "type of organizations my father will fund"); *id.* at 66:16-18 (UCI promoted organizations that Reverend Moon wanted to support). Almost all the organizations that UCI historically supported were founded by Reverend Moon and/or Mrs. Moon, including the Washington Times (DX-593.0096; DX-914.0035); the Universal Ballet (DX-593.0192); the Professors World Peace Academy (DX-593.0128); CAUSA (DX-593.0042), IIFWP, Youth Federation for World Peace, and Women's Federation for World Peace (DX-357.0004). Although the University of Bridgeport was not founded by Reverend Moon, "Reverend Moon chose to invest in the school to develop a world-class international

university that develops leaders for the global civilization of the 21st century." DX-593.162. *See also* DX-914.0035-36 (Walsh) (Univ. of Bridgeport had an association with Professors World Peace Academy, which wanted to create a global network of universities as part of Reverend Moon's providential vision).

103. Neither the KIF nor GPF was founded by Reverend Moon. UCI advisers, led by Paul Rogers, organized KIF, and Peter William Rogers was the founder. DX-142; PRX-220 at UCI0000256, 261, 266. Preston Moon founded GPF. 10/21 at 92:20-22 (P. Moon).

104. Historically, UCI donated cash, not interests in real estate or limited partnership interests. 10/7 at 59:18:25 (M. Sommer).

D. The Directors Did Not Have a Good Faith Basis for Believing That the Donation of Assets to KIF Was Consistent with Their Fiduciary Duty of Obedience

105. The KIF was created in June 2010 for the express purpose of receiving assets from UCI. DX-151.0033. The Donation Agreement is dated June 28, 2010. DX-151. *See also* DX-142 ("Board members asked about the formation of the Swiss Foundation to which the Landmark assets might be transferred."). *See also* 10/22 at 110:4-5 (P. Moon) (KIF was created "[t]o be an entity that can hold these assets").

106. KIF is domiciled in Zug, Switzerland. PRX-220 at UCI00000257. It is organized under the laws of Switzerland. DX-151.0001. KIF's purposes, as stated in the Deed of Foundation (Art. 2), do not reference the Unification Church, Unification Movement, Unification theology, or Reverend Moon. PRX-220. Instead, its purposes are broad, abstract, and non-sectarian, including "furthering world peace, harmony of all humankind, interfaith understanding among all races, colors and creeds throughout the world." *Id.* at UCI00000257.

107. The directors believed that, under Swiss Law, KIF could not support a religious institution. 10/22 at 132:2-6 (P. Moon) (testifying that the Deed of Foundation does not mention Unification Movement because "Korean banks will not give to an organization that is associated or affiliated with our Movement or entities. And, I believe, also Swiss law made it very clear that it could not be a religious entity"); *see also* 10/9 at 81:13-82:21 (Y. Kim) (under Swiss law, KIF could not reference religious teachings in its purposes).

108. The first KIF board consisted of Aya Goto, Richard Perea, and Jonathan Ivinson. PRX-220 at UCI00000253 (German), 258 (English). Under the Deed of Foundation, the "members of the Foundation Board shall be appointed for a term of one year and may be re-elected." *Id.* at UCI0000258. *See also id.* at UCI00000266.

109. On June 28, 2010, UCI, Landmark Investment Company, Inc. ("Landmark"), and KIF entered into a Donation Agreement. DX-151.0001. Landmark is a subsidiary of UCI. 10/23 at 94:10-11 (R. Perea); DX-151.0001. *See also* DX 141.0002 (corporate structure chart showing donated assets indirectly held by Landmark).

110. The Donation Agreement was signed by Michael Sommer for UCI, by Michael Sommer for Landmark Investment Company, Inc., and by Aya Goto and Richard Perea for KIF. DX-151.0010.

111. At the time he signed the agreement for the donee, Richard Perea was also President of Landmark, the donor entity holding the assets. 10/23 at 6:11-17, 91:22-92:1 (R. Perea) (President of Landmark from 2008-present). Perea had resigned from the UCI board before the May 13, 2010 meeting. DX-142/PRX-180.

112. UCI agreed to "irrevocably transfer, convey and assign or cause to be transferred, conveyed and assigned" to KIF the "Transferred Interests" identified in Exhibit A of the Donation Agreement. DX-151.0001.

113. UCI transferred the interests described in Exhibit A "through its wholly owned subsidiaries, One Up Enterprises, Inc., One World Holding, LLC, and Landmark." DX-151.001.

114. The Transferred Interests listed in Exhibit A of the Donation Agreement are: (1) "a majority interest in a property development in Seoul, Korea known as 'Parcl'"; (2) "approximately a 60% interest in Central City Limited"; (3) "an interest in a ski resort in Yong Pyong, Korea"; (4) "a 65.3% interest in Ilsung Corporation, a listed construction company in Korea"; and (5) "all cash holdings and minor interests in other financial and non-financial assets, held by Zeus Capital Ltd, an indirect subsidiary of Landmark." DX-151.0011.

115. Central City is a completed real estate development in the central business district of Seoul, Korea, with a Marriott hotel, major department store, other retail space, large convention hall, sports facility, movie theatre, and bus terminal. DX-140.0137-44.

116. The project owner for Parc1 was Y22 Project Financing Investment Ltd., the asset manager was Y22 Asset Management Ltd., and the project manager was Skylan Development Ltd.. DX-140.0208. Parcl was to include hotel, retail, and office space in Seoul's commercial district in twin towers of 72 and 54 floors. DX-140.0204.

117. The Transferred Interests listed in the Donation Agreement constituted approximately one-half of UCI's assets. PRX-140 at UCI00110137; PRX-681 at 4-6 (Walters); PRX-23 at UCI00034883 (net

assets of $380,662,550 as of 3/31/2011), UCI00034878 (net assets of $1,464,838,558 as of 3/31/2010); 10/7 at 11:16-23 (M. Sommer) ("would no disagree").

118. Article 1.2 of the Donation Agreement identifies the "Purpose of Funding the Foundation with the Transferred Interests," and lists four purposes, none of which references the Unification Church or Divine Principle. DX-151.0002. The Donation Agreement did not require KIF to support the "Unification Church and its activities." DX-151.0002.

119. Article 1.4 of the Donation Agreement requires KIF to "furnish to UCI or its designee (a) within 45 days after the end of its fiscal year appropriate financial reports describing in reasonable detail the status and use of the Transferred Interests by the Foundation; and (b) within 90 days after the end of each of the Foundation's fiscal years an audited balance sheet and income statement as of and for such fiscal year, all in reasonable detail and certified by a recognized firm of independent accountants selected by the Foundation, as presenting fairly in all material respects the financial position and results of operations of the Foundation with respect to the Transferred Interests." DX-151.0003.

120. Under article 7.10 of the Donation Agreement, the Agreement shall be governed

by the laws of Switzerland and the parties agree to submit any disputes they cannot resolve themselves to the courts of Switzerland. DX-151.0009.

121. Article 5.1 of the Donation Agreement is a Confidentiality provision, which provides, in part: "the receiving Party shall not disclose or otherwise make available, at any time, any Confidential Information of the disclosing Party to any other person or entity *except as required to comply with any law or governmental regulation.*" DX-151.0006 (emphasis added).

122. Article 6.1 of the Donation Agreement is an Indemnification provision. It provides:

> The Foundation hereby agrees to and does fully indemnify, defend and hold harmless UCI, its current officers, directors, attorneys and agents and its successors and assigns thereof; and Landmark and/or other UCI's subsidiaries that own the Transferred Interests, directly or indirectly, and their current officers, directors, attorneys and agents and their successors and assigns, from and against any and all assessments liability, damages, losses, debts, costs, expenses (including, without limitation, attorney's fees and costs) or other charges (including settlements, judgments and decrees which give rise

> to any of the foregoing), arising out of, or relating to, this Agreement, any material breach of any covenant, agreement or undertaking made by the Foundation in this Agreement, or in any way resulting from any activity undertaken by the Foundation with, or in connection with, the Transferred Interests. The total amount of and all indemnifications is limited to the net value of the Transferred Interests.

DX-151.0006-7.

123. Under Article 1.3.2 of the Donation Agreement, KIF agreed to not change the composition of its governing board within one year of the date of the agreement without written consent of UCI. DX-151.0002. This agreement was not *"per se* enforceable." DX-140.0242.

124. The UCI board of directors first discussed the donation of assets to KIF on May 13, 2010. DX-142/PRX-180. None of the directors can clearly recall how long the meeting lasted, but no one testified it lasted more than two hours. 10/15 at 165:4-14 and 167:14-19 (J. Kwak); 10/16 at 169:19-170:20 (J. Kwak); 10/22 at 196:9-197:5 (P. Moon). The notes of the meeting suggest a much shorter meeting. DX-143.

125. Importantly, KIF did not exist as of the May 13th meeting.

126. The directors did not evaluate the KIF donation prior to the May 13, 2010 meeting. 10/22 at 200:8-13 (P. Moon); 8/26 at 180:1-10 (M. Sommer) (Sommer may have spoken with Jinhyo Kwak or Preston Moon but he cannot recall specific conversations); 10/16 at 167:14-17 (J. Kwak) (first heard of the proposed donation at the May 13th meeting).

127. The directors met again in June 24, 2010, after KIF had been formed, to approve the donation. PRX-225; 10/16 at 185:18-24 (J. Kwak)(). This meeting lasted roughly one hour. 10/23 at 133:9-10 (R. Perea).

128. The directors did not discuss the KIF donation between the May 13, 2010 meeting, when the proposal was presented, and the June 24, 2010, meeting, when the donation was approved. 10/7 at 93:22-94:6 (M. Sommer); 10/7 at 110:14-111:13 (Y. Kim).

129. Some of the directors did not understand basic aspects of the KIF donation proposal, including that Landmark was a subsidiary of UCI. 10/21 at 128:13-20 (P. Moon); 10/22 at 54:22-57:3, 144:6-23 (P. Moon); 10/15 at 121:12-22 (J. Kwak); 10/8 at 108:5-17 (Y. Kim) (believing that all Landmark assets were "collateral" for Y22 loan).

130. Kim, who had no business experience, did not discuss the KIF donation with other members of the board or any of the stated experts because he claimed that he did not want to be biased by their opinions. 10/9 at 56:2-57:22

(Y. Kim). Instead, he googled terms in the donation documents to try to understand what they meant. *Id.* at 57:2-14.

131. The Court does not find his testimony credible. He clearly did not have any interest in going behind a decision that Preston Moon supported.

132. Unlike the January and August 2009 board meetings when the composition of the board was changed, the May 13, 2010 and June 24, 2010 board meetings were not recorded. 10/23 at 163:14-164:17 (R. Perea).

133. According to the directors, the KIF donation proposal was prepared by Paul Rogers and his team. *See, e.g.,* 10/21 at 126:10-13 (P. Moon); *see also* 10/22 at 114:25-115:8 (P. Moon) (describing Rogers as leading the project). The materials presented for the Board's review on May 13, 2010 were prepared by Rogers and those working with him. 10/21 at 127:13-15; 10/23 at 106:17-107:12 (R. Perea).

134. The directors did not seek any legal advice on whether donation of substantial assets to a Swiss foundation, established to have no association with the Unification Church, was consistent with their fiduciary duty. 10/22 at 67:11-68:9, 71:7-72:12, 122:6-7 (P. Moon) ("I was waiting for the sausage to be presented before the board"), 202:25-203:12 ("I don't know who did what or whatnot in terms of the sausage making"), 205:8-13 (the directors

"weren't involved in" the "sausage making part"); 10/7 at 42:18-43:12, 129:23-130:7 (M. Sommer); 10/8 at 110:14-111:13 (Y. Kim) ("I didn't want to get biased by other people's opinions. I want to be independent and I want to be responsible for my own decision and I do not see any necessity to discuss this important matter with other board members or any other people.").

135. UCI paid for lawyers or accountants hired by Paul Rogers in connection with development of Y22. 10/21 at 112:10-15 (P. Moon).

136. The directors abdicated their fiduciary duty by relying on non-fiduciary Paul Rogers, the asset manager for the Parc1/Y22 project, to determine whether to donate UCI's assets to KIF without at least considering his potential conflict of interest and how that might affect his assessment of the deal. *See* 10/22 at 50:22-51:4 (P. Moon) (Rogers had no fiduciary duty to UCI); *id.* at 69:23-70:4 (P. Moon "did not want to be burdened with it, so [he] handed it off"); *id.* at 69:10-15 (P. Moon "didn't want to really deal with all this litigation stuff"); 10/16 194:12-17 (J. Kwak) (J. Kwak "trusted Paul Rogers" and "did not ask questions"); 8/26 at 189:20-191:8, 193:20-194:7, 209:16-211:17, 212:7-19, 215:3-13 (M. Sommer); 10/8 at 111:24-112:3 (Y. Kim).

137. In March 2009, Landmark entered into a limited partnership agreement with Auckland Investment Ltd. to form Auckland

Investment Partners, L.P. DX-140.0181. Landmark was the limited partner, and Auckland Investment Ltd. was the general partner. *Id.* Landmark contributed all of the capital to the partnership, including the assets subsequently donated to KIF. DX140.00202; PRX-140 ("Landmark is the sole true equity investor"). Under the agreement, Landmark "shall take [no] part in the management or control of the business and affairs of the partnership." DX 140.00188, Sec. 13.2. *See also* 10/21 at 131:2-5 (P. Moon).

138. In August 2009, the UCI board of directors, by unanimous written consent, authorized Landmark to enter into the limited partnership agreement with Auckland Investment Limited. DX-131.0002. Preston Moon did not review the Auckland Investment Partners, L.P. limited partnership agreement. 10/22 at 54:2-4 (P. Moon).

139. The directors imply that, with respect to the KIF donation, they were obligated to follow the direction of Paul Rogers, variously described as managing director, asset manager, or general partner with respect to Y22/Parc1. *See* 10/21 at 107:24-108:3, 109:1-3, 110:24-111:2 (P. Moon); 10/22 at 114:25-115:8 (P. Moon); 8/26 at 205:6-16 (Sommer) ("The general partner is the one who makes all the decisions."); *see also* 10/21 at 113:12-14 (P. Moon) ("It's the managing director

who's actually running the program, who's managing the program. UCI has no rights to manage or interfere with this project."). But, Rogers did not control whether UCI's subsidiary Landmark donated the interests it held under the limited partnership agreement to a Swiss Foundation. UCI and Landmark, not Auckland Investment Partners, L.P., were the parties who signed the Donation Agreement on behalf of the donors. DX-151. Moreover, the UCI board of directors approved the donation. *See* PRX-225; PRX-220.

140. The directors' claim that the limited partnership was beneficial to UCI because Auckland Investment Ltd. bore all the risk (10/21 at 107:24-108:3, 111:3-7 (P. Moon)) is not credible. Landmark contributed all the capital to the partnership and, according to Preston Moon, Landmark's 60% interest in Central City was put at risk securing a construction loan for Y22/Parc1. 10/21 at 126:1-7 (P. Moon).

141. Preston Moon's testimony that Reverend Moon had selected Paul Rogers to manage the Y22/Parc1 project, 10/21 at 104:23-105: 15 (P. Moon), is inconsistent with his testimony that he is the one who introduced Paul Rogers to the project. *Id.* at 102:19-103:5. The Court finds it more likely that Preston Moon brought Paul Rogers to the deal.

142. The directors claim that the primary reason they agreed to donate assets to KIF was to secure project financing for the Y22/Parc1 construction. *Id.* at 133:2-5 (P. Moon) ("primary reason); 10/7 at 130:8-131:19 (M. Sommer) ("main driver"); 10/9 at 79:9-80:13 (Y. Kim) ("most important issue"). According to the directors, the assets had to be donated to an organization that had no affiliation with the Unification Church. 10/21 at 116:20-25, 133:13-19 (P. Moon); 8/26 at 210:24-211:9 (M. Sommer); DX-140.0237.

143. The directors claim to have based their conclusion that donation of assets to KIF would facilitate the construction of Y22/Parc1 in part because of a May 10, 2010 memo from Korean law firm Hwang Mok Park, which was included in the materials they were provided for the May 13, 2010 board meeting. *See* DX-140.0237. The one-page memo is directed to the project owner, Y22 Project Financing Investment Limited ("Y22"), and "comment[s]" on the "potential effect" of an affiliation between Y22 and the Unification Church or its affiliates. *Id.* The memo references the sensitivity of Korean banks to compliance and business risks associated with "the involvement of certain religious groups" and states the view that "any overt association or further link" of the Y22 project with the Unification Church *"may* jeopardize" project financing. *Id.* (emphasis added).

144. The memo does not identify a single bank that declined to finance the project, does not explain why Korean banks would view a D.C. non-profit corporation, recently renamed, "UCI," to have an overt link or association with the Unification Church, does not attempt to square its conclusion with the prior instances in which Korean banks participated in Y22 financing, and does not explain why the Y22 development rights would need to be held by a Swiss foundation to secure financing. *Id.*

145. According to the minutes of the May 13, 2010 board meeting, Perea informed the board that "Parc1's affiliation with the Unification Church had become an impediment to project financing." DX-142.001. But, according to Perea, the reason for changing the corporation's name to "UCI" was to avoid the "stigma" of being associated with the "bad image" of the Unification Church. 10/23 at 70:9-71:19 (R. Perea). However, it was "public knowledge" that the land on which Parc1 was being developed was owned by the Unification Church," 10/15 at 136:9-16 (J. Kwak). The transfer of development rights did not change that association.

146. According to the minutes of the May 13, 2010 meeting, Paul Rogers informed the UCI board of directors that Korean banks were "hostile to the Unification Church," that a "consortium of lenders would not likely agree to the necessary permanent financing if UCI,

or any entity associated with the Unification Church, continued to hold a controlling beneficial interest in Parc1," and that project financing for Parc1 "would be more forthcoming" if the "new beneficial owner was a foundation that would neither be owned nor controlled by UCI." DX-142.0002. Rogers did not explain why Korean banks would be hostile to a D.C. nonprofit corporation named UCI being the ultimate beneficial owner, nor did he identify any banks that had declined project financing because of the existing ownership structure of the Parc1 development rights. *Id.* *See also* 10/23 at 117:9-22, 118:15-119:1 (R. Perea) (cannot recall Rogers mentioning specific banks that declined financing); 10/16 at 197:14-17 (J. Kwak) (same); 10/9 at 75:11-15 (Y. Kim) (same); 10/7 at 138:6-139:12 (M. Sommer) (same), 149:4-6 ("I don't think anyone could say that" project financing "couldn't be done.").

147. The directors' claim that delays in developing Parcl were attributable to UCI's ultimate controlling ownership interest in the development rights is not credible.

148. The original plan was to develop a church on that site and this plan met with opposition because the site is in a predominantly Christian community and near the largest church in Korea. 10/21 at 97:17-98:17 (P. Moon). In the latter part of the 1990s, the Korean financial crisis hampered real estate

development. *Id.* at 98:10-19 (P. Moon) ("basically the Korean economy collapsed"). During the 2006-2009 period, according to three witnesses, Justin ("Kook Jin" or "K.J.") Moon and the Tongil Foundation interfered in the project. *Id.* at 99:10-100:10, 100:22-25, 102:16-18, 119:17-22, 121:4-9 (P. Moon); 10/23 at 96:20-97:17, 98:6-98:9, 100:10-14, 114:19-117:8 (R. Perea); 10/10 at 105:4-106:13 (C. Kwak).

149. Before the donation to KIF, the earlier obstacles were resolved, and the Parc1 project was moving forward. Construction began in 2007. DX-140.0204. As of March 2010, the foundation was 100% complete. DX-140.0206. Paul Rogers told the board of directors on May 13, 2010 that he previously had obtained $300 million in bridge or interim financing. DX-142.0002. The board of directors also was presented with a term sheet for permanent project financing for up to KRW 1,790 billion, with Y22 Project Financing Investment, Ltd. as the borrower. *See* DX-140.0001, 140.0224-229. Shinhan Bank, a Korean bank, is listed as the "arranger and agent" for the permanent project financing. DX-140.0228. *See also* 10/21 at 133:11-12 (with respect to permanent project financing, "Paul [Rogers] was assuring us that he had raised most of it"). Shinhan Bank was also the agent for the existing bridge loan. DX-140.0224. The lenders for the existing bridge loan were

Shinhan capital and 13 other financial institutions. *Id.*

150. Accordingly, Preston Moon's position that the donation to KIF was necessary to obtain financing from a consortium of lenders is not accurate and therefore not credible. *See* 10/21 at 116:13-117:10 (P. Moon); *see also* 10/16 at 197:14-24 (J. Kwak) (expressing the same view).

151. The directors' claim that they approved the donation to KIF to secure permanent project financing for Parc1 because UCI/Landmark's interest in Central City had been pledged as collateral for a bridge loan coming due is not credible. Neither the minutes nor the unofficial notes of the May 13th or June 24th meetings, nor the package of materials emailed to the directors before the May 13th meeting, discusses Central City being pledged as collateral or otherwise at risk. *See* DX-140, DX-142, DX-143, DX-149, DX-150. The board materials identify a single $300 million bridge loan associated with the Parc1 development, and UCI/Landmark's interest in Central City is not listed among the collateral for that loan. DX-140.0224; DX-142.0002. A separate loan from a department store (Shinsegae) that Richard Perea described in his testimony, 10/23 at 101:4-104:20 (R. Perea), and as to which other directors testified, 10/21 at 126:1-7 (P. Moon), 10/22 at 106:6-9, 199:1-11 (P. Moon), 10/7 at 10:24-11:13 (M. Sommer); 10/15 at 144:6-9 (J.

Kwak), is not reflected in the contemporaneous documentation, and there is no evidence that Central City's status as supposed collateral for a loan was contemporaneously known to the directors in June 2010 or formed a basis for their decision to donate assets to KIF.

152. The directors did not believe that transferring assets to an entity in Switzerland, as opposed to the United States, was necessary to facilitate project financing of the Parc1 project. 10/22 at 106:15-23 (P. Moon); 10/9 at 69:17-72:2 (Y. Kim); 10/7 at 132:8-133:15 (M. Sommer); 10/24 at 10:22-11:2 (R. Perea).

153. There were no near-term tax benefits to UCI of donating the assets to KIF. 10/21 at 133:23-24 (P. Moon) ("Tax issues were more long-term issues."); DX-143.003 (Paul Rogers informing board of directors that UCI had approximately $700 million in loss carry forwards, which could be used to offset tax liability); *accord* 10/21 at 138:3-6 (P. Moon) (UCI had a "tremendous amount" of net operating losses).

154. UCI's General Counsel Dan Gray did not directly interact with outside tax counsel, Mark Weinstein, and did not know who retained him. PRX-679 at 4-5 (Gray).

155. The directors claim that the donation of assets to KIF was consistent with their fiduciary duty because they had confidence in

the KIF board of directors. *See* 8/27 at 9:8-12:6 (M. Sommer); 10/21 at 136:11-18 (P. Moon); 10/22 at 198:8-11 (P. Moon). 10/8 at 109:16-110:1, 122:3 -123:9 (Y. Kim).

156. This claim is not credible. After one year, KIF could change the composition of its board without UCI's consent. DX-151.0002. The UCI board was informed that even the one-year "right of objection given to UCI is rather a contractual courtesy than a duty and, therefore, not *per se* enforceable." DX-140.0242. Two of the three initial board members resigned in 2011. PRX-274; PRX-297; 10/24 at 52:19-55:7 (R. Perea).

157. The directors' claims that they could reasonably rely on the Donation Agreement to ensure that KIF used its assets in conformance with UCI's purposes are not credible. *See* 8/26 at 203:14-22 (Sommer); 10/8 at 109:16-110:3 (Y. Kim); 10/15 at 160:7-16 (J. Kwak); 10/22 at 206:3-8 (P. Moon). The directors claim to have had no visibility into how KIF is using the donated assets and whether KIF is complying with the Donation Agreement. UCI has not received any financial statements or activity reports from KIF for years 2012 to the present. 10/7 at 168:8-170:8 (Sommer). Accordingly, they are in no position to know if the Donation Agreement is being violated, much less to enforce it. *See* 10/22 at 207:11-19 (P. Moon) ("obvious" that "UCI would have to know" what KIF was doing with the assets if it

wanted to enforce its rights under the Agreement). More importantly, they have taken no steps to determine whether KIF is in compliance with the Agreement.

158. It is inconsistent with the directors' fiduciary duty to keep UCI's General Counsel in the dark about the KIF donation. Dan Gray did not learn of the KIF donation until five years after it happened. PRX-678 at 30-31. As President of UCI and Chair of its Board, Preston Moon did not speak with UCI's General Counsel about a major donation involving a substantial share of UCI's assets. 10/22 at 121:23-122:21 (P. Moon). Dan Gray did not attend the May 13, 2010 board meeting. *See* PRX-180 (Dan Gray was "unable to attend"); 10/22 at 122:14-16 (P. Moon). Dan Gray also did not attend the June 24, 2010 board meeting. *See* DX-149; DX-150. In fact, despite being General Counsel and corporate secretary of UCI, Dan Gray was not aware of the June 24, 2010 board meeting. PRX-678 at 28-29; DX-145 (notice of the meeting not sent to Gray). Gray also was not copied on the June 22nd email transmitting the draft UCI-KIF Donation Agreement, PRX-216, or the June 22nd email with the minutes of the May 13 meeting and the proposed resolution for the transfer of the assets. DX-148.

159. In April 2010, Dan Gray had expressed concerns to Jinhyo Kwak, Injoong Kim, Richard Perea, Deborah Ashford and Steve

Salky about a potential conflict of interest of Paul Rogers as it related to Landmark restructuring issues. PRX-140. Injoong Kim is Preston's assistant. 10/22 at 115:21-22 (P. Moon). In his response, Jinhyo Kwak directed Gray to stand down. PRX-679 at 8-13 (D. Gray); 10/22 at 126:4-13 (P. Moon) ("I guess he asked Dan to sit out because Dan didn't seem to comprehend the urgency of the nature."). Subsequently, Jinhyo Kwak asked Gray to resign as General Counsel of UCI. PRX-678 at 25-29, 31. The resignation was formalized shortly before the June 24th board meeting. PRX-221; 10/7 at 120:23-122:5 (M.Sommer); PRX-225.

160. The directors kept the KIF donation secret from FFWPUI. 8/27 at 66:25-67:11 (M.Sommer) ("There was a concern that the Family Federation ... would create some sort of trouble or problem."); 10/22 at 136:1-16 (P. Moon) (Preston Moon did not discuss or attempt to discuss the KIF donation with Reverend Moon, Hak Ja Han Moon, Sean Moon, or FFWPUI. *Id.; see also* 10/16 at 196:10-14 (J. Kwak) (no effort to inform Reverend Moon about the donation); 10/8 at 69:8-19 (Y. Kim) (did not inform Reverend Moon because he did not get involved in "nitty-gritty ... small kind of governance" and it would be "wasting his time"); 10/9 at 61:6-15 (Y. Kim).

E. The Directors Did Not Have a Good Faith Basis for Believing That Donations to GPF Were Consistent with Their Fiduciary Duty of Obedience

161. Preston Moon founded the Global Peace Festival Foundation (later renamed the Global Peace Foundation ("GPF")) in March 2009. DX-408. *See also* 10/21 at 92:20-22 (P. Moon). The initial directors of GPF were Preston Moon, Jinman Kwak, and Michael Sommer. PRX-66. Michael Sommer also was the treasurer. 8/27 at 131:16-25 (M. Sommer). Jinman Kwak has served on the board of directors of GPF since 2009. 10/15 at 78:25-79:6 (J. Kwak). Youngjun Kim served as International President beginning in 2010. 10/10 at 45:19-22 (J. Flynn).

162. GPF is not affiliated with the Unification Church and is not an activity of the Unification Church. Its corporate purposes, as stated in its certificate of incorporation, do not reference the Unification Church or Divine Principle. DX-408. Reverend Moon was not its founder. 10/21 at 92:20-22 (P. Moon). Reverend Moon did not attend any GPF events in 2009 or after. 8/27 at 133:16-134:15 (M. Sommer). In 2009, Unification Church leaders directed Preston Moon to not go forward with a GPF Convention in the Philippines. *See* PRX-98; 10/21 at 90:19-91:5 (P. Moon). Preston Moon repeatedly announced that GPF was not affiliated with the Unification Church or FFWPUI. DX-

388/PRX-102; PRX 582 at EP-189547 (creating GPF as a "separate vehicle"); 10/22 at 153:11-154:23 (P. Moon). The other directors also did not view GPF as affiliated with or an activity of the Unification Church. *See also* PRX-89; PRX-90; PRX-645; 10/8 at 179:8-180:9 (Y. Kim).

163. UCI stopped donating money to UPF when Preston Moon started supporting GPF. 10/21 at 93:18-20 (P. Moon).

F. The Directors Are Hostile to the Purposes of Unification Church International and Therefore Will Not Act in the Corporation's Best Interests

164. Preston Moon has had a falling out with his parents and siblings over control of the corporation and that continued after Reverend Moon's death in September of 2012. 8/27 at 40:13-16 (M.Sommer). *See, e.g.,* DX 468.0002 (criticizing Justin (Kook Jin) Moon and Sean (Hyung Jin) Moon for their "lust for acquisition," among other things). 10/21 at 152:7-17 (P. Moon) *id.* at 202:20-203:10 (critical of Sean Moon and Hak Ja Han Moon regarding Sean Moon's appointment as International President of FFWPUI); 10/22 at 17:13-18:2 (P. Moon) (claiming Sun Jin Moon was not qualified to serve on UCI's board); *id.* at 18:12 ("Sun Jin had her own agenda").

165. Preston Moon is incapable of being obedient to UCI's primary purpose of supporting the Unification Church and its activities because

he holds the Church's leadership, including his own mother, in such disdain. *See, e.g., id.* at 159:18-163:14 (P. Moon); Preston Moon believes that the "entire church structure and culture is corrupt" and that "[t]his current church is a cancer on our Movement." 10/22 at 160:16-25 (P. Moon). *See also* PRX-551 ("If you're part of the Unification Church and you're enabling this only begotten daughter [Mrs. Moon], you should be ashamed of yourself."); *id.* ("And to this day – the Unification Church, to this day, is trying to destroy the elder son ... for almost a decade now... to save their pathetic stupid little church legacy, because that's what they cared about").

166. Preston Moon created his own rival organization, the Family Peace Association ("FPA"). 10/22 at 171:23-172:3 (P. Moon); 8/27 at 64:7-9 (M. Sommer); PRX-582; PRX-552 ("FPA is what Family Federation for World Peace should have been but because all of these gangsters, they stole all our Father's foundation. That is why I'm creating FPA.... I basically held this off because that, that clearly means that everything that the Church represents today I will have nothing to do with it. So I gave that warning, did I not? I gave that warning did I not? When FPA is inaugurated and created that will be the case. So for our Blessed Families it's very simple, if you are part of the Tongilgyo ship, you will sink with the Tongilgyo ship. But

now there is the FPA ship, there is no two identities as far as I'm concerned. Either you're an FPA member, that means you are Blessed Family, Blessed Central Family, or you're not."). The Tongilgyo ship refers to the Unification Church ship and Family Federation. 10/22 at 164:21-165:11 (P. Moon); 10/9 at 104:17-22 (Y. Kim). Jinman Kwak is the international president of the Family Peace Association. 10/16 at 51:18-20 (J. Kwak).

167. The other directors also are hostile to the Unification Church and therefore unlikely to comply with their fiduciary obligations to support the Unification Church's activities. Youngjun Kim has stated: "Making donations to organizations affiliated with FFWPUI is inconsistent with my conscience and my religious and other beliefs and with the religious and other beliefs of UCI and the other UCI directors." PRX-660; *accord* PRX-662. *See also* 10/8 at 158:20-25 (reflecting Y. Kim hostility to Mrs. Moon), 146:1-13 (Y. Kim accusing FFWPUI leaders of spreading false reports about him), 179:8-180:9 (Y. Kim claiming Unification Church leaders are destroying Reverend Moon's work). Michael Sommer "would prefer not to donate" to Family Federation. 10/7 at 238:12-239:2 (M. Sommer); *see also* 8/27 at 73:12-18 (M. Sommer) (again stating his reluctance to have UCI support FFWPUI).

168. Michael Sommer persists in his belief that Judge Cordero made a mistake in concluding he breached his fiduciary duty. 10/7 at 180:1-10 (M. Sommer). He persists in claiming there is.no substantial difference between the 1980 articles and the 2010 articles. *Id.* at 180:11-17 (M. Sommer). Sommer also refuses to recognize the existence of the Unification Church, professing he does not know what the term means. *Id.* at 182:9-20 (M. Sommer). Sommer does not know how "to be faithful to something that may not exist and is left undefined." *Id.* at 186:18-187:6 (M. Sommer).

169. In serving as directors of UCI, Michael Sommer, Jinman Kwak, and Youngjun Kim cannot be trusted to exercise their independent judgment but instead they are likely to unquestioningly follow Preston Moon. 10/21 at 174:21-22 (P. Moon); 10/16 at 47:1-3 (J. Kwak); 10/8 at 44:16-24 (Y. Kim). Jinman Kwak and Youngjun Kim are related to Preston Moon by marriage. 10/8 at 182:25-183:1 (Y. Kim); 8/27 at 122:4-9, 123:20-124:1 (M. Sommer). Youngjun Kim testified that there is no one in the world he respects as much as Preston Moon, whom he views as a "true brother," and cannot think of a single time he has disagreed with Preston Moon while serving on the UCI board. 10/8 at 183:6-13, 185:13-21 (Y. Kim); 10/9 at 58:21-59:7 (Y. Kim). Michael Sommer has worked for Preston Moon affiliated organizations for the past 25 years, Preston Moon helped Sommer

with his MBA tuition, and Sommer does Preston Moon's personal tax returns. 8/26 at 35:1-5, 35:17-19, 110:16-20 (M. Sommer); 10/7 at 190:9-12, 198:23-25 (M. Sommer); 10/21 at 49:19-23, 225:13-15 (P. Moon). Jinman Kwak also has spent substantial time working for Preston Moon's organizations. *See, e.g.,* 10/16 at 51:18-52:4 (J. Kwak) (International President of Family Peace Association); *id.* at 53:2-10 (J. Kwak) (GPF board). He also edited a book about Preston Moon and wrote a tribute to him titled, "A Filial Son Fully Devoted to God's Will." 10/16 at 47:19-48:3, 49:3-10 (J. Kwak).

G. Even After the Summary Judgment Ruling, the Directors Are Not Acting in UCI's Best Interests

170. Judge Cordero issued her Omnibus Order on Motions for Summary Judgment on October 30, 2018. At a hearing on November 1, 2018, Plaintiffs' counsel stated Plaintiffs' intent to seek the removal of the directors, 11/1/18 Tr. at 11:18-23, as also requested in the Complaint (at 37). On December 28, 2018, Preston Moon, Michael Sommer, Youngjun Kim, and Jinman Kwak appointed three new directors (Masue Sakurai, Nicolas Ardito-Barletta, and Marcos Regalado) to the UCI board of directors. Def. UCI's Mem. of P. & A. in Opp'n to Pls.' Mot. for Remedies for the Individual Defendants' Breach of Fiduciary Duty (May 24, 2019) ("UCI Opp."), Ex. J. *See also* 10/22 at 103:16-21 (P. Moon).

171. Preston Moon's testimony that new directors were brought on in 2018 "to comply with the articles" rather than because of the litigation is not credible. *See id.* at 103:16-104:8. Even though UCI's bylaws were amended in April 2010 to require seven directors, at least one of which had to be independent, DX-76.0020, UCI did not have seven directors or any independent directors for most of the 2010-2018 period. *See* 8/26 at 179:4-11 (M. Sommer); 10/7 at 81:9-82:3 (M. Sommer) (describing short tenure of Samaniego and Field).

172. The directors sought indemnification from UCI. UCI Opp., Ex. K; 8/27 at 80:6-25 (M. Sommer). On March 28, 2019, Judge Cordero issued her Amended Omnibus Order on Motions for Summary Judgment. On April 26, 2019, the "Independent Directors Committee of the Board of Directors of UCI," consisting of newly appointed Sakura, Ardito-Barletta, and Regalado, determined that UCI would indemnify Preston Moon, Michael Sommer, Youngjun Kim, and Jinman Kwak for their attorneys' fees and any judgments incurred in this litigation. UCI Opp., Ex. K.

173. The directors have made no efforts, and have no desire, to recover the wrongly donated assets from KIF or GPF. 8/27 at 73:12-18 (M. Sommer); 10/21 at 170:8-12 (P. Moon); 10/16 at 44:17-18, 45:23-24 (J. Kwak); 10/8 at 181:6-25 (Y. Kim).

174. The directors have made no effort to enforce the Donation Agreement's financial reporting provision or to otherwise learn how KIF is using the donated assets. 10/9 at 86:9-87:14 (Y. Kim) (has spoken to current KIF director many times but does not feel he needs to ask what KIF is doing with the assets); *id.* at 84:1-23 (Y. Kim) (Y. Kim does not believe UCI violated the confidentiality provision of the Donation Agreement but does not resist KIF's claim that it did); 10/22 at 140:3-20, 142:15-17 (P. Moon) (P. Moon has made no effort to obtain KIF financial reports and believes it is "idiotic" to challenge KIF's claim that UCI breached the confidentiality provision when UCI produced KIF documents in response to court-ordered discovery). Preston Moon does not want to obtain KIF financial reports because he does not want Plaintiffs to obtain copies. *Id.* at 143:7-12 (P. Moon).

175. Preston Moon has ties to KIF's current directors, Yann Sandt and Su Thye Teh. 10/22 at 145:14-17 (P. Moon). Preston Moon loaned Sandt $500,000 at 25% interest, which Sandt repaid in the amount of $1 million with a loan from UCI. *Id.* at 145:18-146:20 (P. Moon). Sandt also borrowed millions of dollars from UVF, which Preston founded. 10/22 at 151:8-12 (P. Moon); 10/7 at 163:1-12 (M. Sommer) (when Sandt joined the KIF board, he owed UVF about $8 million and, as of April 2018, he still owed UVF money). Su Thye Teh works for GPF Malaysia. 10/22 at

151:15-18 (P. Moon); 10/7 at 163:16-164:4 (M. Sommer) (Teh has been an employee of GPF).

176. KIF donates to organizations affiliated with close associates of Preston Moon. DX-158.10; 10/7 at 178:19-179:7, 10/24 at 48:5-16 (KIF granted $40M to Universal Peace Foundation, a Swiss Foundation founded by Jinhyo Kwak); DX-158.8-9; 10/24 at 40:4-42:25, 43:15-44:19 (KIF granted $1.2 million to Asociacion para el Desarollo del Chaco, a Paraguayan entity where Ernesto Orbegoso was the "top guy" and Thomas Field was an executive. Orbegoso is the "secretary general" for GPF in Paraguay and Field is an executive at GPF Paraguay and a former Board member of UCI); DX-158.10; 10/24 at 49:11-50:14; PRX-344 at UCI00008161; 10/28 at 64:8-65:9 (KIF granted $5M to World Bright Foundation, a Labuan entity that supports One Family Forum, an entity to which UCI has donated $1.09M. DX-158.11; 10/24 at 50:15-51:24 (KIF granted $5M to Green Vision Foundation, a Labuan entity that exists for the sole purpose of making donations to "a South American organization" whose described activities match those of GPF Paraguay).

177. In short, it appears that the money "donated" to KIF is simply being funneled to the defendants and their own projects.

H. Surcharge Amount

178. Usually, when a large, non-cash donation is made by a not-for-profit corporation, an appraisal or valuation is prepared to ascertain the value of the contribution. 10/28 at 137:14-20, 138:9-15 (D.Williams).

179. The UCI board of directors did not obtain an appraisal or market valuation of the assets donated to KIF prior to the donation, nor have they subsequently obtained such an appraisal or valuation. 10/22 at 120:22-24 (P.Moon); 10/28 at 205:2-10, 208:25-209:16 (G.Bell).

180. During the time Perea was on the board, UCI donated $1,106,000 to GPF entities. *Id.* at 15:3-13, 17:4-18:12 (D. Williams); *id.* at 208:4-10 (G. Bell); PRX-627 at 3, 6-7; PRX-137. Although he agreed with the donations, Perea was not asked whether he voted for any donations to GPF.

181. During the time Moon, Sommer, Kwak & Kim were on the board, UCI donated $62,810,278.70 to Global Peace Foundation entities. 10/28 at 18:13-19:2, 19:19-22:2 (D. Williams); *id.* at 208:4-10 (G. Bell); PRX-627 at 5-7; PRX-137, 266, 344, 385, 424, 446, 482.

182. The reasonable amount of a surcharge for Moon, Sommer, Kwak, and Kim for Global Peace Foundation donations is $62,810,278.70, along with prejudgment interest calculated at the rate provided in D.C. Code § 28-3302 to the date of this Order

and post-judgment interest. 10/28 at 9:7-11:5, 14:14-18, 19:3-5 (D. Williams); PRX-627 at 5, 7.

183. UCI donated $2,000,000 in cash and assets with a historic book value of $467,420,708.26 to Kingdom Investments Foundation ("KIF"). 10/28 at 22:22-23:13, 23:25-26:19 (D. Williams); *id.* at 208:11-24 (Bell); PRX-627 at 9-10, 13; PRX-264, 265, 266.

184. Book value is the cost paid to buy an asset, recorded on the balance sheet or general ledger; it does not represent the value that might have changed because of the passage of time; it may be higher or lower than the current market value. 10/28 at 24:22-24 (D. Williams); *Id.* at 162:14-163:3 (G. Bell).

185. Where market value can be reasonably estimated, that market value is a more appropriate measure of surcharge than book value. 10/28 at 80:21-81:16 (D. Williams); *id.* at 163:4-10 (G. Bell).

186. The market value of the donated assets at the time of donation is how much UCI could get from selling the assets on the date of donation. *Cf. id.* at 162:23-163:10 (D. Bell)

187. The Court does not have enough information to calculate the market value of the donated assets. Accordingly, it will use the historic book value of the assets as a reasonable estimate of the appropriate amount of surcharge for Moon, Sommer, Kwak & Kim for the KIF donations, along with

prejudgment interest calculated at the rate provided in D.C. Code § 28-3302 to the date of this Order and post-judgment interest.

188. Plaintiffs' damages expert, David Williams, estimated KIF's 60% share in Central City, a multi-use real estate complex in Seoul, Korea consisting of a hotel and shopping mall, as having a value of $922,500,000 on October 15, 2012, because, according to a submission by KIF to Swiss taxing authorities and press reports, KIF's 60% share sold on that date for that amount in a market transaction. 10/28 at 29:15-22, 42:1-45:2, 46:17-47:13, 47:23-48:5, 60:23-61:5 (D. Williams); 10/28 at 203:9-12 (G. Bell). While the Court does not believe it appropriate to use this figure to calculate the market value at the time of sale, it does take it into account when it decides to award pre-judgement interest as the value of the donated assets far exceed the book value.

CONCLUSIONS OF LAW

In granting the Plaintiffs' summary judgment on their breach of fiduciary duty claim, Judge Cordero ruled that directors Preston Moon, Michael Sommer, Richard Perea, Youngjun Kim, and Jinman Kwak breached their fiduciary duty when they amended the articles of incorporation of Unification Church International and donated assets to organizations not affiliated with, or activities of, the Unification Church. Summ. Judg. Op., 3/28/2019.

The matter now turns on what is an appropriate remedy for breaching their fiduciary duty. Plaintiffs ask the Court to rescind the Articles of Incorporation, remove the directors, impose a surcharge on them for the market value of the assets transferred, and impose a constructive trust on KIF. Directors, on the other hand, argue that the only remedy available to the Court is the rescission of the articles. They argue that: (1) Plaintiffs lack standing to recover money damages; (2) even if they have standing, Plaintiffs should not recover money damages because the directors acted in good faith; (3) the Court lacks the legal authority to remove the directors; and (4) the Court lacks the legal authority to impose a constructive trust on KIF, who is not a party to this action.

I. Plaintiffs' Standing to Recover Money Damages

Directors present two arguments to support their assertion that Plaintiffs, as a matter of law, cannot seek monetary relief on behalf of UCI. First, directors assert that Plaintiffs have not suffered concrete, individualized injuries and that Plaintiffs have no

claim of right to the assets misappropriated by UCI. Defs.' Opp'n at 42-43. Second, directors assert that Plaintiffs can only seek monetary relief on behalf of UCI through a derivative action, and that the current action is not a derivative action. *Id.* at 42. Directors' arguments can be viewed more generally as attacks on Plaintiffs' standing to recover money damages on behalf of UCI.

"[T]he question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin,* 422 U.S. 490, 498 (1975). "This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Id.* The constitutional limitations focus on whether a plaintiff has established an Article III "case or controversy" between himself and the defendant. *Id.* "The Article III judicial power exists only to redress or otherwise to protect [a plaintiff] against injury." *Id.* at 499. A "court's jurisdiction, therefore, can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action.'" *Id.* (quoting *Linda R. S. v. Richard D.,* 410 U.S. 614, 617 (1973)). *But see Schlesinger v. Reservists to Stop the War,* 418 U.S. 208, 222 (1974) (holding that when the harm alleged is a "generalized grievance" shared substantially by a large class of citizens, that harm does not warrant exercise of jurisdiction).

In addition to establishing an "actual or imminent injury", a plaintiff must establish a "causal connection between the injury and the conduct complained of – the injury has to be 'fairly trace[able] to the challenged

action of the defendant.'" *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992) (quoting *Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. 26, 41 (1976)). A third requirement of standing is that it be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561 (internal quotations omitted). Ultimately, "to establish standing, a party must demonstrate: (1) concrete injury, (2) that the injury is traceable to the defendant's action, and (3) that the injury can be redressed." *Daley v. Alpha Kappa Alpha Sorority, Inc.,* 26 A.3d 723, 729 (D.C. 2011).

"With respect to charitable trusts and charitable corporations 'only a public officer, usually the state Attorney General, has standing to bring an action to enforce the terms of the trust.'" *Family Fed'n for World Peace,* 129 A.3d at 244 (quoting *Hooker v. Edes Home,* 579 A.2d 608,612 (D.C. 1990). The Plaintiffs' claims survived the motion to dismiss stage, however, because the Court of Appeals found that an exception to the general rule applied. *See id.* Specifically, Plaintiffs qualified for special interest standing, which is granted "in situations where an individual seeking enforcement of the trust has a 'special interest' in continued performance of the trust distinguishable from that of the public at large." *Hooker v. Edes Home* 579 A.2d at 612.

Turning to this case, directors first attack Plaintiffs' standing on the basis that Plaintiffs have not suffered a concrete, individualized injury. The Court disagrees, and finds that Plaintiffs have suffered actual, individualized injuries that are both redressable and traceable to directors' conduct. This

finding confirms the holding made by the Court of Appeals when it affirmed this Court's Order Denying Directors' Motion to Dismiss at the earlier stages of litigation. *See Family Fed'n for World Peace,* 129 A.3d at 247 ("all plaintiffs have alleged their respective injuries, traceable to the directors' actions, and the trial court can provide redress if the plaintiffs meet their respective burdens.").

While Plaintiffs are not the legal title owners of the diverted assets, they *did* occupy a position akin to an equitable owner of the diverted assets because their interests were affected by directors' diversion of the assets. For the reasons set forth below, each Plaintiff had a cognizable interest in UCI's assets. When directors diverted those assets away from the corporation, each plaintiff suffered a unique, individualized concrete injury.

Plaintiff Family Federation is an "overarching superior and benefiting entity in UCI's proper role to further the mission of Family Federation and the Unification Church." *Family Fed'n for World Peace,* 129 A.3d at 245. Family Federation was founded by Reverend Moon and Mrs. Moon and is the institution leading the Unification Church. DX-756.0005; DX-748.0003; DX-750. Family Federation is the main body of Reverend Moon's movement; all other entities were created with the intention of supporting Family Federation. DX-913 at 11; DX-912 at 2-4. Family Federation assumed the spiritual role previously assumed by HAS-USA in the Unification Church. *see* Summ. Judg. Op., 3/28/2018 at 4. The original purpose of creating Unification Church International was to support the Family Federation and its worldwide

mission. DX-912 at 14. Unification Church International's 1980 Articles lists as one of its purposes is "to serve as an international organization assisting the activities of the Unification Churches, and to further the theology of the Unification Church." PRX-17 at UCI00004068.

In amending the 1980 Articles in 2010, however, directors removed all references to Unification Church or Family Federation and thereby allowed directors to divert assets that were intended to support Family Federation to unrelated entities. Prior to 2009, about five to ten percent of UCI's annual funding went directly to Family Federation. 10/9 at 9:1-6 (Y. Kim). Since 2009, when Preston Moon changed the composition of the board, Unification Church International has not given any money to Family Federation at *Id.* at 35:15-22. Directors contend that UCI stopped contributing because Family Federation's new leader, Sean Moon, deviated from Rev. Moon's original path. *Id.* Setting aside directors' professed motivation, the mere acknowledgment that UCI stopped contributing funding to Family Federation entirely is a strong indication that Family Federation may have suffered a concrete injury which is traceable to the directors' actions. In addition to the quantifiable loss of funding, Family Federation was also injured to the extent that its mission and purpose were undermined by that lack of funding. In addition, directors gave the financial resources that were supposed to go to Family Federation/Unification Church supported entities to other organizations, further undermining their mission. While some of those organizations were not religious in nature, they

were an essential part in furthering the Unification Church's goals as Reverend Moon himself selected what entities should receive funding.

Turning to Plaintiff UPF, the Court of Appeals has previously held that special interest standing applied because UPF "was a major beneficiary of UCI for three decades." *Family Fed'n for World Peace,* 129 A.3d at 245; *see* Summ. Judg. Op., 3/28/2018 at 21. ("UPF has the standing to challenge UCI's alleged diversion of funding from UPF since 2010."). Prior to Sean Moon taking leadership, UPF had received over $26.5 million from UCI since 2005. *Id.* After Preston Moon started working with GPF, UCI stopped donating money to UPF. 10/21 at 93 (P. Moon). Preston Moon expressly created GPF as an alternative to UPF and intended that it control events that had previously been UPF's responsibility. 10/21 at 92-93 (P. Moon); PRX-102. UPF lost funding precisely because the directors chose to support GPF, which is not affiliated with the Unification Church. Accordingly, UPF's loss of funding is a concrete injury which is traceable to the directors' conduct. UPF has standing to ask the Court to redress its financial injury.

UCI Japan is also a plaintiff in this matter. At the summary judgment stage, Judge Cordero denied the directors' challenge to UCI Japan's standing on the basis that there remained a genuine issue of material facts as to whether UCI Japan's gifts to UCI were unconditional or restricted. Summ. Judg. Op. 3/28/2018, at 21. That factual issue will remain unresolved until resolution of the contract-based claims (Count IV-VI). If after those claims have been

resolved, directors still insist that UCI Japan lacks standing, the Court will address the issue at that time.

Directors' second general contention is that Plaintiffs lack standing to seek damages on behalf of UCI because a derivative lawsuit is the only means by which Plaintiffs can have monetary compensation paid to the corporation. Directors describe an overly-expansive view of the role that derivative suits play. To the contrary, caselaw indicates that a plaintiff in a non-derivative suit can seek and obtain a court order directing a defendant to pay monetary compensation to a corporation. In *Owen v. Board of Directors,* a non-derivative suit, the plaintiffs alleged that the trustees of a nonprofit corporation breached their fiduciary duties. *Owen v. Bd. of Dirs,* 888 A.2d 255, 259 (2005). The plaintiffs successfully obtained a restitution order directing the directors to repay legal fees to the corporation. *Id.* at 258-61. The Court of Appeals affirmed the restitution order. *Id.* at 270.

As such, the mere fact that Plaintiffs suit is not a derivative suit, does not necessitate a finding that Plaintiffs lack standing to seek money damages on behalf of the Corporation.

II. Plaintiffs' Standing to Request Removal of the Directors

Plaintiffs argue that the version of the D.C. statute governing non-profit corporations which should apply to the Court's determination on remedies is that which was in effect at the time Plaintiffs filed their Complaint. (Motion for Remedies for the Individual Defendants' Breach of Fiduciary Duty at 21). Plaintiffs filed their Complaint on May 11, 2011,

and at that time, D.C. Code §29-301.53(a) (2010) governed non-profit corporations.[1] Plaintiffs assert that the 2010 D.C. Code Nonprofit Act did not explicitly address any judicial remedies for a director's breach of their fiduciary duty, and instead provided judicial remedies only for the corporation's misconduct, and therefore the Court may look to the D.C. Trust Code to contribute to the Court's understanding of the available remedies. *Id.*

In contrast, directors contend that, under the current D.C. nonprofit statute, D.C. Code §29-406.09, only the plaintiff in a derivative action can invoke the remedy of judicial removal of directors, and because Plaintiffs here did not bring the action as a derivative action, there is no statutory basis for Plaintiffs to demand the removal of directors. Defs'. Opp'n, at 25-26.

In determining whether a statute applies retroactively or prospectively, there is a rebuttable presumption that statutes are applied prospectively. *See Bank of Am., N.A., v. Griffin,* 2 A.3d 1070, 1073-74) (D.C. 2010) (providing that in general, "statutes are to be construed as having only a prospective operation, unless there is a clear legislative showing that they are to be given a retroactive or retrospective effect.") (quoting *Wolf v. Dist. Of Columbia Rental,* 414 A.2d 878, 880 n.8 (D.C. 1980)). In the Amended Omnibus Order, Judge Cordero found that there was no statutory language in the Act providing that the

[1] The current D.C. Code Nonprofit Corporation Act became effective on July 2, 2011 – six weeks after Plaintiffs' filed their Complaint.

provision in D.C. Code § 29-408.01 applies retroactively. Similarly, the Court now does not find a clear legislative showing that provision in D.C. Code § 29-406.09 applies retroactively.

Defendants rely on *Landgraf v. USI Film Prods.* for their contention that removing and replacing the directors is prospective relief, and where the intervening statute affects the propriety of prospective relief, "application of the new provision is not retroactive," but "unquestionably proper." (Opp'n at 22) (citing *Landgraf,* 511 U.S. 244, 273-74 (1994). The Defendants mischaracterize the Supreme Court's decision in *Landgraf,* and the segmented quotes which appear in Defendants' Opposition are misleading. The portions of *Landgraf* which the Defendants quote, apply to the specific instance of an intervening statute where the relief operates *in futuro,* such as the instance of relief by injunction. The *Landgraf* exception does not apply in this case where the equitable remedy affected by the intervening statute is not injunctive relief.

Defendants' opposition to the removal of directors is an attack on the Court's authority to order such a remedy. *See* Defs'. Opp'n., at 26-30. A court's authority to issue injunctive relief is not limited when neither the statute's language nor legislative history provides for any such limitation. *Califano v. Yamasaki,* 442 U.S. 682, 705 (1979). Even when a statute expressly lists the types of remedies that a court can award, the list is assumed to be non-exhaustive, allowing the court to issue any other injunctive relief within the Court's authority. *Id.* at 705 (holding that the enumerated list of judicial remedies contained in the

Social Security Act does not limit the court's authority to issue injunctive relief when no express limitation was found in either the statutory language or legislative history of the Act). Further, even if the plaintiff's injury stems from a statutory violation and the statute prescribes a specific remedy for that violation, a court retains the authority to award remedies beyond those statutory remedies to ensure that the plaintiff is granted full relief. *Green v. Connally,* 330 F. Supp. 1150, 1177 (D.D.C. 1971). In fact even the current statute does not support Defendants' position. To the contrary, D.C. Code § 29-406.09 explicitly states that "nothing in this section limits the equitable powers of the court to order other relief." D.C. Code § 29-406.09(d). Accordingly, the Court finds that nothing in D.C. Code § 29-406.09 precludes the Court from exercising its equitable authority to order the removal of the directors.

Directors also question Plaintiffs' use of the trust code, the Restatement of Trusts (Second), and caselaw involving trusts to support its request to remove the directors. Directors assert that "all of that authority is inapposite because UCI is not a trust. It is a nonprofit corporation." Defs' Opp'n., at 29-30.

Although the Court will not define the precise parameters as to when trust law applies and when it does not, the Court acknowledges that no writing or formal process is required to create a valid trust. *Family Fed'n for World Peace,* 129 A.3d at 246. Rather intent to create a valid trust may be established by "written or spoken language or by conduct, in light of all surrounding circumstances." *Cabaniss v. Cabaniss,* 464 A.2d 87, 91 (D.C. 1983); *see also Family Fed'n for*

World Peace & Unification Int'l, 129 A.3d at 244 n. 15 (applying the rules for charitable trusts to a non-profit corporation); *Owen v. Bd. of Dirs.,* 888 A.2d at 260 (finding that rules governing charitable trusts could be applied to charitable corporations). Further, the trustee of a trust has the "[p]ower to form a corporation or other entity ... for the purpose of carrying on business or investment activities of the trust." Restatement (Third) of Trusts § 86, cmt. E (2007).

The Court finds that it is appropriate to take trust law into consideration because Reverend Moon's conduct, the goals of the Unification Movement, and the relationship between the corporate and non-corporate entities involved in this matter, indicate that Reverend Moon intended to create a trust for the benefit of the members of the movement and that UCI was intended to continue that trust in corporate form. Specifically, in 1975 Reverend Moon directed Bo Hi Pak to create a bank account at the Diplomat Bank and deposit $70,000 into the account. Summ. Judg. Def. Ex. 14 at 6; Summ. Judg. Def. Ex. 27. The account was in the name of Unification Church International. Summ. Judg. Def. Ex. 14 at 6. In 1977, Reverend Moon directed those same funds to be transferred to another entity named Unification Church International, the Defendants in this matter. Summ. Judg. Def. Ex. 14 at 12; Summ. Judg. Def. Ex. 33; Summ. Judg. Def. Ex. 35. In the subsequent decades, UCI distributed funding to organizations throughout the world to support the activities of the Unification Church. Summ. Judg. Def. Ex. 31 at 18. Until Preston Moon changed the composition of the board, Reverend Moon

directed that funding, and money had never been given to an organization that was not founded or supported by Reverend Moon. 10/16 at 107:20-25 (J.Kwak). The Court finds that Reverend Moon's conduct in depositing money to support the activities of the Unification Church evinces his intent to create a trust for the benefit of the Church and its members.

Further, applying trust laws and principles is appropriate here because UCI does not have members who can elect and remove the directors like a traditional corporation. The directors of UCI "occupy a status both as the alleged successor trustees to the Moon trust and as directors of a charitable corporation akin to a charitable trust." *Family Fed'n for World Peace & Unification Int'l,* 129 A.3d at 244.

Finally, the Restatement of Trusts (Second) provides that a person with a special interest in the enforcement of a charitable trust can obtain relief in the form of an order removing the trustees and appointing other trustees. Restatement (Second) of Trusts, § 392 (2012). For the reasons stated above, Plaintiffs have a special interest in the enforcement of the trust created by Reverend Moon. As such the Court finds that they have standing to request that the Court issue an order removing UCI's directors.

III. Factors Considered in Removing Directors

The decision of whether to order a certain equitable remedy is left to the sound and informed discretion of the trial court, and that discretion is grounded in the trial court's findings of facts. *Tauber v. Quan,* 938 A.2d 724, 732-33 (D.C. 2007);

Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 867-68 (D.C. 2005).

As discussed above, despite being a corporation, UCI does not have members or shareholders who elect and remove the directors. Also, UCI does not have a board of trustees, which is common in non-profit corporations, who share the management responsibilities with the directors. UCI's board of directors is self-perpetuating and has unlimited authority and discretion in all of UCI's affairs and assets, without any oversight. *Cf. Stern,* 381 F. Supp. at 1019 (noting that because the board there was self-perpetuating and the corporation was not regulated by any public authority, the management of such charitable corporation imposes a severe obligation upon its fiduciaries).

After examining the laws and principles of charitable trusts[2], the current D.C. Code governing judicial removal of non-profit corporate directors, and a number of District of Columbia cases, the Court takes the following factors into consideration: (1) whether the director grossly abused the position of director, (2) whether the director intentionally inflicted harm on the corporation, (3) the director's course of conduct including whether he exercised ordinary caution and care in performing his fiduciary duties, his individual responsibility for the breach, and whether he acted in good faith, (4) the seriousness of the breach, (5) the inadequacy of other available

[2] Restatement (Second) of Trusts Chapter 11–Charitable Trusts was cited by the D.C. Court of Appeals in *Hooker* and *Owen,* and both cases involved non-profit corporations.

remedies, (6) removal would be in the best interests of the corporation including whether allowing a director to remain would be detrimental to the accomplishment of the purposes of the corporation, defendant's hostility to the purpose of the corporation, the necessity to prevent the recurrence of improper conduct, and ensuring a clean break between the past and the future. *See* D.C. Code § 29-406.09(a); Restatement (Second) of Trusts, § 107[3], 387. *See also Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries,* 381 F. Supp. 1003 (D.D.C. 1974); *United States v. Mount Vernon Mortg. Corp.,* 128 F. Supp. 629 (D.D.C. 1954).

A. Gross abuse of their position

The directors' fiduciary duty required them to be faithful to Unification Church International's original purposes and to use corporate assets consistent with those purposes. Amended Omnibus Order at 22. They did not do so.

At the hearing, much time was spent on the schism between the Moon family and Preston Moon and his followers, and who was following Reverend Moon's vision. The Court, however does not see the need to delve into this dispute because this case can be decided on neutral terms by looking at the transactions at issue to determine whether they were in the best interest of the corporation.

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[3] The grounds for the removal of a trustee of a charitable trust are in general the same as the grounds for the removal of a trustee of a private trust in § 107. Restatement (Second) of Trusts, § 387.

This case is nothing more than the age-old tale of a struggle for power and money. Preston Moon was the anointed heir of his father's vast empire for many years. When Reverend Moon became disenchanted with Preston Moon's actions, for better or worse, he switched his allegiance to his younger son Sean. Rather than resigning and leaving the corporation in the care of directors loyal to its purpose, Preston Moon decided to change the name and purpose of the corporation with the express goal of diverting its most valuable assets to non-Unification Church-affiliated organizations, so those assets could no longer be used to support the Unification Church. Once that was accomplished, Preston Moon, along with his hand-picked board, loyal only to Preston Moon, proceeded to pillage the company's assets. He did it in a way that was secretive, out of the bounds of any kind of review process, and not in the best interests of the corporation.

In April 2010, the directors amended the articles of incorporation to change the corporation's name and to strip it of its primary purpose in order to facilitate the donation of substantial UCI assets to a newly created Swiss corporation named the Kingdom Investments Foundation ("KIF"), with no religious affiliation. These amendments were not mere "housekeeping" or "shopkeeping" as alleged by the directors.

The amendments changed the name of the nonprofit corporation from "Unification Church International" to "UCI" because they did not want the corporation to be associated with the Unification Church, which would have made the donation to the

Swiss corporation impossible. The directors amended the statement of the corporate purposes by (a) entirely deleting the first purpose of Unification Church International, as stated in the 1980 articles; (b) deleting all references to the Unification Church or Unification Churches in the statement of the corporation's purposes; (c) deleting all six references to the "Divine Principle"; and (d) deleting all three references to "God." By doing so, as Judge Cordero previously found, the directors altered the corporation's very nature.

In June 2010, the directors transferred assets with a book value of $467,420,708 to KIF, a Swiss corporation created for the express purpose of receiving assets from UCI. Notably, when the directors voted in favor of the donation to KIF in May 2010, KIF did not exist as it had yet to be founded. Although the directors assert that KIF is part of the Unification Church, the evidence shows otherwise. The Deed of Foundation of KIF, which sets forth the foundation's purposes, makes no reference to the Unification Church, Divine Principle, or even the Unification Movement. Neither KIF nor GPF was founded, supported, or approved by Reverend Moon. Instead, Paul Rogers, who is not part of the Unification Movement, organized KIF, and his relative Peter William Rogers was the founder of KIF.

The directors gave away half of the value of the corporation to an entity that, by law, could not have any religious affiliation. This was a gross abuse of their position as directors of the corporation.

In addition to the KIF donation, the directors donated roughly $63 million of corporate funds to the GPF. Whether or not GPF supported some of the same organizations previously supported by the Unification Church, the record shows that these particular donations were not done in support of the Church. Indeed, GPF was created with the express purpose of funding UPF precisely because of UPF's affiliation with the Unification Church. On November 4, 2009, the date on which Sean Moon was announced as chairman of UPF, Preston Moon released a public letter that peace festivals "will not go forward as projects of UPF, and will have no formal or legal association FFWPU. Rather, a separate GPF foundation is being established for this purpose." PRX-102. So, all directors knew that when they voted for donations to GPF, they were diverting UCI assets from UPF, an organization founded and supported by Reverend Moon.

In short, the directors used their position to serve the personal agenda set by Preston Moon. As the trustee and fiduciary to UCI's assets, instead of using the assets to support the work of the Unification Church as the articles require, they transferred the assets to entities as directed by Preston Moon. This was a gross abuse of their position.

B. The Directors Intentionally Inflicted Harm on UCI

The donation made to KIF and GPF is the culmination of a series of carefully orchestrated events that aim to divert UCI's assets from supporting Unification Church entities after Preston Moon

realized that he was not the chosen successor to Reverend Moon as head of the Unification Movement. This was precisely the asymmetric warfare that Preston Moon told his inner circle was needed to win his personal battle for control of the Unification Church's assets.

It started with replacing those board members loyal to Reverend Moon with directors loyal solely to Preston Moon. Once that was accomplished, corporate obstacles were removed by changing the 1980 Articles to allow the donation to KIF to go through. Preston Moon and Jinman Kwak have no credible explanation of why they deleted UCI's first primary corporate purpose from its Articles, other than they no longer wanted UCI to support the Unification Church and its affiliation because Preston was not appointed as the leader of the Unification Church. They wanted to donate substantial UCI assets to KIF, which has no association with the Unification Church, and to Preston Moon's own rival organizations such as GPF.

After KIF received the donation, there has been no oversight from the directors as to whether the donated assets are used to support the Unification Church activities. Although the donation agreement requires KIF to submit financial reports on their management of the donated assets, UCI only received the reports for one year. When KIF stopped sending the reports, the directors took no action to request the reports. Notably, after KIF sold one of the transferred assets for close to a billion dollars, the directors took no action to determine how those proceeds were used.

Also, the KIF transaction was intentionally veiled in secrecy and deviated from the usual way of conducting corporate business. The directors kept the donation to KIF secret from Reverend Moon and the Unification Church leadership, as well as from UCI's General Counsel Dan Gray. Unlike the January and August 2009 board meetings when the composition of the board was changed, the May 13, 2010, and June 24, 2010 board meetings, where the board discussed and voted for the KIF donation, were not recorded. Before the board even discussed the KIF donation in the May 13, 2020 meeting, the donation agreement had already been drafted, and the creation of KIF was in the final stages.

The directors give two reasons for the transfer of approximately one half of UCI's value to KIF. First, they claim that there was a tax advantage to UCI. Whatever tax advantage there may be from the transfer, it was fat outweighed by the value of the assets given away.

The directors' second explanation for the donation is that the only way to get financing for the Parc1 project was to cut ties with the Moon organization.[4] The Court does not find this explanation credible. It is

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[4] At the hearing, the Defendants testified that they approved the KIF donation in part because UCI's interest in Central City had been pledged as collateral for an interim, bridge loan, which was at risk of default without permanent project financing. As Plaintiffs point out, there was no evidence presented that Central City had been pledged as collateral or that the Defendants were aware of a risk to Central City when they approved the KIF transaction. This was not in the board materials nor was it discussed at either board meeting. Plaintiffs' Findings at 53.

true that, over the course of many, many years, it was difficult to secure financing for this site. That was in large part attributable to the fact that Reverend Moon wished to build his church and headquarters on the site, which was viewed unfavorably by the surrounding Christian community. The calculus changed, however, when the decision was made to build offices and a luxury hotel instead. The initial stage of that project was financed so whatever barriers had existed previously, were no longer an outright impediment.

At the hearing, there was very little evidence presented on what efforts, if any, UCI took to obtain financing for the second phase. The directors relied on a one-page memo from a Korean law firm indicating challenges with obtaining financing, included in their materials for the May 13, 2010 board meeting, but the memo is very general and was created at the last minute to provide "cover" for the donation. Paul Rogers did not provide the name of any bank that had declined financing. Importantly, there was no rationale for creating a Swiss corporation as opposed to a U.S. entity.

But there were some very significant advantages to donating to a Swiss company. First, Swiss secrecy laws make the details of the transaction almost inscrutable. The Court notes that the only way the Plaintiffs received any information about the KIF donation is because the Swiss board member's law firm maintained their computer server in Washington, DC. And even then, it took an order from Judge Cordero holding the law firm in contempt before they produced any documents. Even though the directors

created KIF, they chose Swiss law as applied by Swiss courts to govern any disputes, a decision which is not in UCI's best interest. Importantly, they did not exercise the limited oversight which the agreement allowed.

All these actions demonstrate that the directors' allegiance was owed to the best interest of Preston Moon's personal agenda, and not to the best interest of UCI. As a result, the directors caused UCI to lose about half of its assets, and there is no realistic way to recover the assets; in fact, the directors are not interested in getting those assets back to UCI.

C. The Directors' Course of Conduct

The directors' conduct reflects their lack of care, lack of due diligence, lack of loyalty and obedience, and disregard of their fiduciary position. They made sweeping changes to the articles of incorporation with no substantive discussion or careful deliberation. Similarly, the directors did not seek any legal advice or exercise any due diligence to determine whether the KIF donation was consistent with their fiduciary duty.

Notably, UCI's articles, which had not been amended in 30 years, were amended just shortly before the board voted to donate assets to KIF, an entity that did not yet exist. The Certificate of Amendment was issued on May 13, 2010, the same day the board met to discuss the donation of assets to KIF. Paul Rogers, UCI's advisor in the KIF donation, was included in correspondence related to the amendment of UCI's articles of incorporation, despite having no position at UCI, no role in UCI governance, and owing no fiduciary duty to UCI.

Nonetheless, the directors went out of their way to make sure the KIF donation would go through. Michael Sommer talked about the need to keep the donation secret, which is an indication that he knew it was not in the corporation's best interest. The directors hid the KIF donation from UCI's general counsel Dan Gray, and froze him out when he raised questions about Paul Rogers and potential conflicts of interest. While that discussion arose in the context of another transaction, Gray's concerns equally were applicable to the KIF donation. The directors set up Paul Rogers as a convenient barrier between themselves and the "sausage making" process, in which the lawyers and other advisors may have raised concerns about litigation risks associated with both the precipitous amendment of the articles and donation to KIF.

Preston Moon systematically overhauled the board of directors to pave the way for the amendment of the 1980 articles and donation to KIF. He summoned Walters and Walsh to a secret board meeting to secure their vote to appoint Sommer and Perea, only to demand their resignation immediately thereafter. He summarily removed longstanding Unification Church leaders Joo and Peter Kim from the board, and appointed directors who lack business and corporate board experience.

Youngjun Kim, who had no business experience, did not discuss the KIF donation with other members of the board or any of the stated experts. Instead, he googled terms in the donation documents to try to understand what they meant. The self-directed study was not fruitful. Kim, at his deposition, could not

identify the meaning of basic business abbreviations such as NOL (net operating loss), CFC (control forwarding corporation) and PWC (Price Waterhouse Cooper).

As a sitting UCI board member, the first time Kim read UCI's articles was on March 23, 2010, seven months after becoming a board member, through the email containing the draft amendment. Kim does not know why the board amended the articles, did not ask whose idea it was to amend the articles, and was not even curious. Kim had never served on any corporate board before his appointment to the UCI board. He claimed that his fiduciary duty was to make decisions for UCI based on his own conscience, instead of following what is clearly written in the articles. The Court does not find this explanation credible. It is clear that Kim did whatever was asked of him by Preston Moon. Even during his conversations with KIF's board members, Kim did not bother to ask how KIF used the donated assets.

Jinman Kwak did not ask who drafted the amendments or why the corporation's name was being changed. Though he agrees the April 14, 2010 meeting to approve the amendments was an important meeting, he claims to not recall any aspects of the meeting (his location, who he was with, time of day, length) or any discussion of the reasons for the amendments. Kwak acknowledged that GPF is not affiliated with the Unification Church, and agreed that before summer 2009, UCI had never given money to an organization that was not founded or supported by Reverend Moon. Nevertheless, Kwak approved the donations to GPF. As for the KIF donation, Kwak does

not know how much the donated assets were worth before or after voting for the donation. He also does not know KIF's reporting obligations under the donation agreement. Kwak, who is the son of Reverend Moon's long-time lieutenant, made no effort to inform Reverend Moon about the KIF donation, despite knowing the long-existing practice that UCI did not give money to entities not founded by or supported by Reverend Moon.

Michael Sommer worked with outside counsel Deborah Ashford on different aspects of governance, on which he reported to the UCI board in December 2009, but he did not consult with her on the amendment of the articles of incorporation. Sommer is aware that Reverend Moon did not attend any GPF events after 2009, and he claimed to be unsure as to whether Reverend Moon approved of GPF; nevertheless, Sommer voted for donations to GPF. The Court does not find this claim credible. Preston Moon's break with his father was very public, rending it likely that Sommer was well aware of Preston Moon's disavowal of UPF. Sommer understood that UCI's value decreased substantively after the KIF donation, and that UCI has no control over KIF outside of the donation agreement. But he nevertheless approved the KIF donation. Like Kim, Sommer never asked anyone he knew on KIF's board about the status of the donated assets.

Richard Perea was on the board for a short period when donations were made to GPF. While he acknowledged that he thought such donations were appropriate, he was not asked whether he approved

them. Perea had left the UCI board by the time the board approved the donations to KIF.

The KIF donation was not a routine transaction. The assets transferred to KIF constituted approximately one-half of UCI's book value. Abdicating their fiduciary duty, and attempting to deflect responsibility, the directors entirely deferred to Paul Rogers when deciding to give away UCI's most valuable assets, despite knowing Paul Rogers had no duty to act in the best interest of UCI.

It is clear that Preston Moon drove the decision, but a look at how he evaluated these momentous events, amending the articles and donating UCI assets, is most telling. This Harvard and Columbia educated man testified that he couldn't be bothered to learn the details of the deal, describing it as "sausage making" that he "did not want to be burdened with." He gave away half of the value of the company without a single question as to whether there was a different way to accomplish his alleged goals. He did not consider creating a company that was not bound by Swiss secrecy laws to ensure that he could monitor the fate of his donation.

Every single witness testified about the "value" of the deal, and how it saved the company substantial money in taxes. Any savings, however, were illusory when balanced against the value of what they gave away. Notably, the directors never undertook a market valuation of the assets at the time of the transfer, a failure that fully undercuts their argument about tax savings. Presumably if they in fact sought a substantial tax break, a higher company value was to

their advantage. Instead, they used book value, which undervalued the assets substantially. ·

The directors argue to this Court that the newly formed Swiss corporation was fulfilling their goals, and that they had oversight ability to ensure this continued. The fact that they didn't exercise their oversight responsibility speaks most strongly to their bad faith. They stood by and watched when KIF sold the Central City property for close to $1 billion. Preston Moon and the rest of his board all testified that they have no idea what happened to the substantial proceeds of that sale. When taken together as a whole, the directors' actions demonstrate that they did not act in good faith when they approved donations to KIF and to GPF. To the contrary, the directors' pattern of conduct demonstrates a gross abuse of their position.

D. Seriousness of the Breach

The evidence related to the previous factors (the directors' gross abuse of their position, the intentionality of the breach, and their course of conduct) demonstrates that the directors' breach of their fiduciary duty is so egregious as to warrant their removal. The directors made substantial changes to UCI's articles of incorporation, the corporate document that guides all activities of the UCI. The changes removed UCI's original primary purpose and altered its nature. The amount of donation to GPF – over $62 million – and to KIF – book value of over $400 million – is undoubtedly significant.

E. Inadequacy of other available remedies

The directors are incapable of fulfilling their fiduciary duty of obedience to Unification Church International's purposes. They have demonstrated through their actions that their loyalty lies with Preston Moon, rather than the articles of incorporation of the Unification Church International. Preston Moon made clear in very public declarations that he severed ties with the Unification Church, and the remaining directors assisted his diversion of funds from UCI, fully aware of that fact.

Again, it is important to focus on the corporate structure of UCI. If the directors are not removed, there is no oversight of their actions. Allowing the directors to remain on the board inevitably will lead to ongoing breaches and future lawsuits. To this day, the directors do not acknowledge that the donations to KIF and GPF actions were inconsistent with the 1980 articles. If they remain on the board, there is every reason to expect they will continue to strip UCI of its assets, so that they cannot be used to support the Unification Church.

Further, if UCI remains under the control of the directors, it will not make any effort to recover the wrongfully donated assets from KIF or GPF. Put simply, if they remain in control, there will be no consequences for the directors' intentional, gross abuse of their fiduciary duty, and Plaintiffs will be left without a remedy.

F. Removal is in UCI's best interest

The directors' utter lack of care indicates that they were acting in pursuit of a pre-arranged plan that

violated UCI's interests. They wanted no part of the Church, and they wanted to ensure the organizations and assets they controlled had no connection to the Church. Fidelity to UCI's corporate purposes was directly contrary to their agenda.

Removal is in the best interests of Unification Church International, for the reasons stated above, and because the directors (1) are hostile to the Unification Church and its leadership; (2) undertook monumental decisions affecting the corporation without seeking legal advice as to whether it breached their fiduciary duty and without careful consideration; (3) do not exercise independent judgment, rather, they all belong to the same "school of thought," following the direction of Preston Moon; and (4) put their personal beliefs and animosities before the interests of UCI.

Finally, Plaintiffs ask the Court to rescind the December 2018 appointment of three new directors. The Court declines to do so. There is no allegation that these three directors violated their fiduciary duty. But as they are undoubtedly loyal to Preston Moon, there is a concern that they will install new directors equally loyal to him, which would nullify the equitable relief given to Plaintiffs. Accordingly, they remain on the board and will identify new board members in conjunction with Plaintiffs.

IV. Surcharging the Individual Director Directors

Equity courts possess the power to provide relief in the form of monetary compensation for a loss resulting from a trustee's breach of duty; despite

taking the form of money payment, this remedy still falls into the category of equitable relief. *CIGNA Corp. v. Amara,* 563 U.S. 421, 441 (2011). The decision of whether to order a certain equitable remedy is confided to the sound and informed discretion of the trial court. *Tauber v. Quan,* 938 A.2d 724, 732 (D.C. 2007). The discretion is grounded in the trial court's findings of facts. *See id.* at 733; *Independence Mgmt. Co. v. Anderson & Summers, LLC,* 874 A.2d 862, 867-68 (D.C. 2005). Surcharging is a recognized equitable remedy available to the Court for a "breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary." *CIGNA Corp.,* 563 U.S. at 442. Plaintiffs ask the Court to surcharge directors Sommer, Kim, Kwak, and Moon, at a minimum, the KIF donation's book value in the amount of $469,420,708.26 plus compounded pre-judgment interest through October 31, 2019 for a total amount of $589,913,976.12. (PPFF at 57; PPFF ¶ 134.) Plaintiffs further argue that value of the assets could be reasonably estimated by expert David Williams, (PPFF ¶¶ 136-141), and since both sides' experts agree that market value is a better measure of surcharge than book value, Plaintiffs ask the Court to enter the estimated market value of the donated assets as of October 31, 2019 in the amount of $3,248,842,758.13. (PPFF ¶ 142.) For the donations made to the GPF, Plaintiffs ask the Court to surcharge Perea $1.106 million, (PPFF at 57), plus prejudgment interest in the total amount of $1,428,664.11 (PPFF ¶ 130), and to surcharge other Directors $62,810,278.70 (PPFF ¶ 131), plus prejudgment interest in the total amount of $74,501,170.71 (PPFF ¶ 132).

The directors assert that Plaintiffs failed to prove they were entitled to any surcharge. (DPFF at 37.) They argue that Plaintiffs' expert did not analyze what would have happened to the KIF assets had they remained at UCI (DPFF ¶ 146), did not deduct liabilities such as debt and account for risk that a project will fail (DPFF ¶ 147), did not determine the market value of the assets donated to KIF, did not conduct an appraisal, or "issue a valuation opinion (DPFF ¶ 148). The directors also challenged Williams' reliance on the documents from which he calculated the market value of KIF donation. *Id.* As to book value, the directors argue that Williams ignores changes due to "the passage of time", and no evidence in the record as to how the $467 million "book value" was derived. *Id.*

V. Factors considered in ordering surcharge

In considering whether to impose a surcharge on the Directors, the Court considers, (1) all facts and circumstances of the case, (2) the entirety of the defendant's conduct, (3) molding the relief to protect the rights of the beneficiary, and (4) making the corporation whole following the breach. *See CIGNA Corp. v. Amara,* 563 U.S. 421, 444 (2011) (when ordering surcharge, equity courts simply ordered a trust or beneficiary made whole following a trustee's breach by molding the relief to protect the rights of the beneficiary according to the situation involved); *Clark v. Route,* 951 A.2d 757, 765 (D.C. 2008) (considering equitable relief based on all the circumstances and the entirety of the conduct of the parties).

A. To protect the rights of the beneficiary

The directors approved and voted for the donations to KIF and GPF, with the full knowledge that the two entities are not affiliated with the Unification Church and not founded or approved by Rev. Moon and that the donations are irrevocable. The directors' conduct directly caused financial injury to UCI and caused UCI's beneficiaries, such as Family Federation and UPF, to be deprived of funding that is supposed to go to them or organizations they support. The Court here does not make the determination on which beneficiary should get funding, but at least UPF and Family Federation received funding from UCI until Preston Moon started his asymmetrical warfare against Family Federation. To protect the beneficiaries' rights to receive the funding that they may be entitled from UCI, the wrongfully dissipated assets, whether in its original type or in its monetary equivalence, would have to be first returned to UCI.

B. To make UCI whole

In making the charitable trust or corporation whole in the monetary form, the directors shall be charged with the value of the property they donated at the time of the donation. If a trustee breached his duty of loyalty, the trustee is chargeable with any loss or depreciation in value of the trust property resulting from that breach.[5] Restatement (Second) of Trusts,

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[5] The liabilities of the trustee of a charitable trust for breach of trust are similar to the liabilities of the trustee of a private trust; therefore, section 197 through section 226 is applicable to a charitable trust and its fiduciaries. *See* Restatement (Second) of Trusts, § 386.

§ 206 cmt. a. (2012). If a trustee sells a property that he has the duty to retain, the trustee should be charged with the value of such property at the time he sold it with interest thereon. *Id.* § 208, cmt. c. The directors made an irrevocable asset donation to KIF and cash donations to GPF, and neither donation has a real possibility of being returned to UCI. In essence, the donated assets are deemed as destroyed and lost as a direct consequence of the directors' breach of their fiduciary duty. Therefore, the directors should be charged with the value of the donations made to KIF and GPF at the time of donation.

C. The entirety of the defendant's conduct in the facts and circumstances of the case

Most of the directors' conduct and surrounding facts have been discussed in previous sections. With respect to KIF donation, the directors (except Richard Perea) did little to no due diligence to educate themselves about the nature of the transaction and did not do a proper valuation on the donated assets. As a result, directors Kim and Kwak did not even know the estimated value of the assets they irrevocably transferred to KIF; in other words, they have no idea of the negative financial impact their actions caused the corporation to which they owed a fiduciary duty. As for Preston Moon, diverting assets from UCI and the Unification Church entities that UCI historically supported based on the original articles of UCI to KIF was a calculated effort to execute an insidious plan launched by transforming the board.

With respect to the GPF donation, the directors have no excuse since they themselves have prominent

roles in GPF, and therefore are fully aware that GPF was not approved or supported by Reverend Moon, and that GPF is not under the broad umbrella of the Unification Church. Nevertheless, they made regular and frequent cash donations to GPF for years. Kim wore the dual hat of GPF's executive officer (International President and Senior Vice President) and UCI's board member, posing a clear conflict of interest. While he might not be involved in the committee's analysis of GPF's funding request, he cast his votes to approve GPF's funding requests.

D. The directors' equitable defense

The directors argue they have equitable defenses to the surcharge because they acted in good faith and received no personal benefit. Even if the Court believed the directors acted in good faith, which it does not, good faith and the lack of personal benefit do not offer much solace to a defendant who breaches his fiduciary duty.

The fact that the directors did not personally benefit from the donations is largely irrelevant because the remedy sought here is restitution, instead of disgorgement. Even in disgorgement, the court can order the breaching fiduciary to pay back the benefit that was received by the third party when the fiduciary did not enjoy any personal benefit. *Avianca, Inc. v. Corriea,* 1993 U.S. Dist. LEXIS 20954, *12-13 (D.D.C. 1993). The nature of this surcharge is to order the individuals who caused monetary damage to UCI to pay the money back to UCI. The directors, as the sole decision makers in the KIF and GPF donations, approved the irrevocable transfer of assets from UCI

to GPF and KIF, and thereby directly caused the monetary damage to UCI. It is irrelevant whether the directors personally received benefit; what is relevant is that they caused substantial financial damage to UCI.

As for acting in good faith, *Cahn v. Antioch University,* 482 A.2d 120 (D.C. 1984), is instructive. In *Cahn,* law school co-deans spent the university's funds without authorization. Although the spending was for retaining legal counsel for the university, which the deans might believe was in the university's interest, the Court of Appeals affirmed the trial court's finding that good faith is irrelevant to a damages' claim for a breach of fiduciary duty.

Turning to trust law for more guidance, the mere fact a trustee acted reasonably and in good faith may not be sufficient to excuse the trustee from liabilities for his breach; however, if the court concludes it would be unfair or unduly harsh to require the trustee to pay or pay in full the liability, and the trustee has made a conscientious effort to understand his duties and comply with the fiduciary standards, the court may excuse the trustee in whole or in part from having to pay that liability. Restatement (Third) of Trusts §§ 93-95[6].

The Court cannot find any evidence that shows that any of the directors made a conscientious effort to understand his duties and comply with their fiduciary obligations. There is plenty of evidence that shows the

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[6] Restatement (Third) of Trusts was cited by the D.C. Court of Appeals in *Family Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon,* 129 A.3d 234 (D.C. December 24, 2015).

contrary. They did not seek legal counsel to understand whether their actions would breach their fiduciary duty to UCI. Nobody asked counsel why the articles needed to be amended in such a profound manner. They made little effort to understand the transactions that would have a substantial impact on UCI's finances before casting their votes. Their understanding of corporate governance is quite troubling: regarding the corporate articles as a dead document, justifying amending the articles as elementary housekeeping, making corporate decisions based on their own conscience instead of the corporate purpose, etc. There is no effort, let alone a conscientious effort, made by the directors to fulfill their most basic fiduciary obligations to UCI. Therefore, the directors are not entitled to the defenses based on good faith and lack of personal benefit. The directors shall be ordered to repay UCI the value of the donated properties at the time of donation, in the amount determined below.

1. Donation to KIF

At the time of the June 28, 2010 donation to KIF, UCI listed the assets with a historical book value of $467,420,708.26. The $467 million asset donation was recorded as one single transaction on Landmark Investment Company's trial balance, a midlevel summary of all the data that is in the general ledger.[7]

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[7] The transferred interests listed in the Donation Agreement are: (1) a majority interest in a property development in Seoul, Korea known as Parc1; (2) approximately a 60% interest in Central City Limited; (3) an interest in a ski resort in Yong Pyong, Korea; (4) a 65.3% interest in Ilsung Corporation, a listed construction company in Korea; and (5) all cash holdings and minor interests

PRX-264; 10/28 at 25:11-26:19 (D. Williams). In addition, on January 3, 2011, UCI donated $2 million in cash to KIF. *Id.* at 23:5-6. The $2 million cash donation was recorded in UCI's general ledger. *Id.* at 24:5-24; PRX-266.

The amount in both transactions represents the book value of the donated assets, based on which Plaintiffs' expert calculated $120,493,267.86 worth of pre-judgment interest compounded, using the interest rate prescribed in D.C. Code § 28-3302(c), resulting in a total surcharge of $589,913,976.12. 10/28 at 23:8-24 (D. Williams). Plaintiffs request, at a minimum, that Directors Sommer, Kim, Kwak, and Moon be surcharged for the KIF donation in that amount.[8]

Book value is the cost paid to buy an asset, recorded on the balance sheet or general ledger; it does not represent the value that might have changed because of the passage of time; it may be higher or lower than the current market value. 10/28 at 24:22-24 (D. Williams); *Id.* at 162:14-163:3 (G. Bell). The experts from both sides agree that the book value is a less appropriate measure for surcharge than the market value, if the market value can be reasonably estimated. *Id.* at 80:21-24 (D. Williams); *Id.* at 163:4-

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in other financial and non-financial assets, held by Zeus Capital Ltd, an indirect subsidiary of Landmark. (DX-151.0011.) Plaintiffs do not ask for a surcharge for the interest held by Zeus Capital (Pls.' Proposed Findings at 45), and Plaintiffs' expert was not provided with any documentation relating to Zeus Capital and therefore assigned no value to that part of the donation. (Williams at 31.)

[8] Defendant Richard Perea left UCI board in April 2010 before the board voted for the donation to KIF.

10 (G. Bell). The market value of the donated assets at the time of donation is how much UCI could get from selling the assets on the date of donation. *Cf. id.* at 162:23-163:10 (D. Bell)

Notably, directors did not do a market valuation of the assets at the time of donation, a failure which is not typical and makes the surcharge calculation based on market value difficult later. *See* 10/26 at 137:14-138:15 (D. Williams) ("in my experience, when a large donation is made by a not-for-profit or by a corporate entity, for that matter, and all of the assets are not strictly cash, there is some valuation, some appraisal or valuation exercise done to understand exactly the value of the contribution"); *id.* at 208:25-209:12 (G. Bell); 10/22 at 120:13-24 (P. Moon) (testifying no market valuation was done before the assets were donated to KIF).

Mr. Williams attempted to calculate the market value for each donated asset (except for the interest held by Zeus Capital) by relying on documents experts in his field routinely rely on for damage calculation and the best documents available to him. 10/28 at 92:11-19 (D. Williams). He based his opinion on a board circular resolution in 2018 for the development right in Y22, a tax report and media report on the sales price in 2012 for Central City, a tax return filed in 2006 for interest in the ski resort, and the share price in 2019 for Ilsung Construction Company. The detailed method of calculation used by Plaintiffs' expert for each asset will be discussed later.

Directors' expert, George Bell, testified that Plaintiffs' calculation of the market value has several

problems. First, measuring the damage using a date after the donation runs into the risk of overcompensating or undercompensating UCI, since the change in value after the donation is the result of how KIF managed the assets, and Plaintiffs' expert did not analyze what would have happened to the donated assets had UCI retained the assets. 10/28 at 157:11-23, 161:1-163:10 (G. Bell); *id.* at 77:5-24 (D. Williams). Second, Defendant's expert testified that the documents upon which Plaintiffs rely are not the type of documents upon which experts would normally rely. 10/28 at 167:10-25 (G. Bell). Third, a market valuation would deduct debt, liabilities, and a variety of costs, which Plaintiffs' expert did not take into his calculation. 10/28 at 164:2-169:14 (G. Bell). Directors' expert was not asked by Directors to come up with his own market value of the donated assets. *Id.* at 209:13-16 (G. Bell).

A plaintiff is not required to prove the amount of his damages precisely, but a reasonable estimate must be established. *Bedell v. Inver Housing, Inc.,* 506 A.2d 202, 205 (D.C. 1986). Mathematical certainty is not required, but there must be some reasonable basis on which to. estimate damages. *Cahn v. Antioch University,* 482 A.2d 120, 130 (D.C. 1984). A plaintiff must prove the amount of those damages suffered because of the defendant's conduct with reasonable certainty. *Manes v. Dowling,* 375 A.2d 221, 224 (D.C. 1977).

As discussed below, the Court finds Plaintiffs failed to prove the market value of the assets donated to KIF with reasonable certainty. Their calculations are after the fact and do not consider what would have

happened if UCI retained the assets. Plaintiffs have proven the book value of the donated assets with reasonable certainty, as the transactions were recorded in UCI's general ledger. In addition, KIF sold one of the assets, Central City, a mere two years later for almost a billion dollars, rendering it palpably clear that the assets were undervalued at the time of the transfer. So, even considering directors' arguments, the market value, while not perfect, is enough to show with reasonable certainty that the assets were worth at least that much at the time of transfer.

b. The Development Right in Parc 1

Plaintiffs' expert used the "2 billion" in a circular resolution of KIF board in 2018 as the market value of Parc 1 and multiplied that figure by 95.1% to conclude KIF's interest in Parc 1 was worth 1.902 billion. 10/28 at 127:7-15, 57:22-58:9 (D. Williams). The phrase in the circular resolution is "a 2 billion real estate construction project." *Id.* at 130:3-5 (D. Williams). Plaintiffs' expert interpreted the "2 billion" as the market value of Parc 1, but both sides' experts agree that it was uncertain what the 2 billion referred to, and it could certainly refer to another concept, such as construction cost. *Id.* at 168:20-25 (G. Bell); 130:3-19 (D. Williams). There was also no clear indication in the document as to what currency was denoted in the 2 billion number. Plaintiffs' expert testified that based on the collective documentations, he was comfortable with the "assumption" that it was 2 billion dollars. *Id.* 130:1-2 (D. Williams).

Even assuming the 2 billion was in U.S. dollars and was intended by the KIF board to be the market

value of Parc 1, it was the market value in 2018, eight years after the donation. Mr. Bell testified there would be no basis from which to infer the 2010 market value based on this figure because of a myriad of factors in the intervening eight years, including various necessary costs that need to be subtracted. *Id.* at 171:4-15 (G. Bell). Based on the limited information provided, the Court cannot determine the market value of UCI's development right in Parc 1 in 2010 with reasonable certainty.

c. Central City

Central City is a multi-use real estate complex in Seoul, Korea, which includes a hotel, a mall, retail component, and other components, with the hotel and the mall as its major portion. 10/28 at 42:3-9 (D. Williams). UCI had a 60% ownership interest in Central City. KIF sold the entire Central City on October 15, 2012, for 125 billion Korean won, and 60% of that is $922.5 million. *Id.* at 43:3-45:2 (D. Williams). Mr. Williams found this sales price on a document submitted by KIF counsel to the Swiss tax authority and on media reports[9]. *Id.* 42:10-47:13. (D. Williams). He testified that he did not consider the expenses associated with this sale because expenses have nothing to do with the value of the asset, and he did not consider tax or loans on this transaction either. *Id.*

[9] The Court rejected the admission of the tax document submitted to Swiss tax authority for lack of foundation and because it was hearsay; Plaintiffs' counsel did not ask Williams whether experts in his field would reasonably rely on a document like this to form their opinion. As for the media report, Plaintiffs' expert testified that experts would normally rely on media reports to form their opinion for sales like this.

at 123:15-125:1 (D. Williams). He testified that he calculated the 2010 market value with specificity by taking the 2012 market value backward with time value of money (interest rate). *Id.* at 118:19-24 (D. Williams)

Mr. Bell testified that Plaintiffs' expert's valuation was unreliable because he did not consider the tax and liabilities associated with the property, and the sale was two years after the donation. *Id.* at 188:7-13 (G. Bell). He also testified that the 2010 market value could not be calculated by simply taking the 2012 sales price backwards with the time value of money (interest rate) because the real estate market two years ago could be dramatically different along with the interest rate. *Id.* at 188:14-189:10 (G. Bell).

The Court cannot determine the market value of UCI's interest in Central City in 2010 with reasonable certainty.

d. YongPyong Ski Resort

As of March 2006, the ski resort was wholly owned by Pickwick Investments, a subsidiary of UCI. Pickwick reported to the IRS in 2006 that its interest in the ski resort was worth $20,258,863, and Mr. Williams used that number as the estimated value of UCI's interest in the ski resort. 10/28 at 38:8-12 (D. Williams). But he testified that he was "struggling to answer" the question if he knew the actual value of the ski resort in 2010 without a market valuation done in 2010. *Id.* at 115:6-18 (D. Williams). He admitted it was "quite possible" that the value would have changed from 2006 to 2010, and the $20 million did not reflect any changes in the value of this asset between 2006

and today. *Id.* at 115:1-116:22 (D. Williams). Mr. Bell testified that the number on the 2006 tax return was the book value of UCI's interests in the ski resort in 2006, and it cannot be used as a basis to infer the market value in 2010. *Id.* at 191:21-192:8 (G. Bell). The Court cannot determine the market value of UCI's interest in YongPyong Ski Resort in 2010 with reasonable certainty.

e. Ilsung Construction Company

UCI donated a 65.3% interest in publicly-traded Ilsung Construction Company to KIF. Mr. Williams used the enterprise value to estimate the value of a company on a given date (enterprise value = share price x number of outstanding shares plus debt and minus cash). *Id.* at 107:15-108:17 (D. Williams). He used the share price of Ilsung on April 15, 2019 (the date of his analysis) and the amount of debt and cash in December 2018 to calculate the enterprise value of Ilusing as of April 15, 2019. *Id.* at 112:15-113:20 (D. Williams). Mr. Williams further testified that to reach the market value of the shares held by UCI, experts would normally make a number of adjustments from the enterprise value, but he did not make any adjustment in this case. *Id.* at 109:4-110:24 (D. Williams).

Mr. Bell testified that market capitalization (share price x number of outstanding shares) is proper representation of the market value of Ilsung; then multiplied by the percentage of UCI's ownership which is 65.3%, for the market value of UCI's interests. *Id.* at 192:21-193:5 (G. Bell). He explained that Plaintiffs' method overstated the value because it

included debt. *Id.* at 193:11-23 (G. Bell). Also, significant changes might have happened from the date of donation (2010) to the date of his calculation (2019). *Id.* The Court finds in addition to the conflicting calculating methods, Ilsung's share price on April 15, 2019 is irrelevant to Ilsung's share price on the date of donation and therefore cannot be used as a basis to calculate the market value of UCI's interest in Ilsung at the time of donation.

For the foregoing reasons, the Court concludes that the market value of donated assets, including the development right in Parc 1, the interest in Central City, YongPyong ski resort, and Ilsung Construction Company, cannot be calculated with reasonable certainty based on the evidence presented by plaintiffs. The Court, therefore uses the book value of these assets, which is $469,420,708.26.

2. Pre-judgment Interest for KIF Donation

The decision to apply pre-judgment interest lies in the equitable discretion of the trial court judge, and statutory authorization is not required. *Burke v. Groover, Christie & Merritt, P.C.,* 26 A.3d 292,306 (D.C. 2011). A defendant's obligation to pay interest is intertwined with the obligation to make restitution. *In re Huber,* 708 A.2d 259, 260 (D.C. 1998). When deciding whether the plaintiff is entitled to pre-judgment interest, the important question is whether the plaintiff has been deprived of the use of the money withheld and should be compensated for the loss. *Riggs Nat'l Bank v. District of Columbia,* 581 A.2d 1229, 1253 (D.C. 1990); *see District of Columbia v.*

Potomac Elec. Power Co., 402 A.2d 430, 441 (D.C. 1979) (imposing interest is not to punish the debtor, but to compensate the creditor for the loss of the use of his money).

Where there has been such a deprivation, pre-judgment interest is an element of complete compensation for the loss of use of such money from the time the claim accrues until the judgment is entered, thereby achieving full compensation for the injury. *Riggs Nat'l Bank,* 581 A.2d at 1253 *(quoting West Virginia v. United States,* 479 U.S. 305, 310-11 n.2 (1987)).

Here, UCI was deprived of some very valuable assets. In addition, it is clear that, because of directors' failure to conduct a market analysis at the time of the donation, the amount of the judgement the Court now enters is almost certainly significantly below what the assets were worth at the time of the transfer. So, the Court exercises its discretion and awards pre-judgment interest.

Plaintiffs argue that the Court should award compound interest and rely on two grounds. First, they cite D.C. Code § 28-3302 which provides that, "the rate of interest on judgments and decrees ... shall be 70% of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code ... for underpayments of tax to the Internal Revenue Service." Plaintiffs then argue that the IRS compounds interest when calculating the underpayment of tax. Second, plaintiffs note that financial institutions customarily compound the interest when calculating loan balances. Plaintiffs also

cite *Burke v. Groover, Christie & Merritt, P.C.,* 26 A.3d 292, 305-06 (D.C. 2011) to support its position.

The Court finds Plaintiffs' position lacks legal support. First, the practice of compounding interest by financial institutions varies greatly: it could be compounded on a daily basis, monthly basis, yearly basis, or other intervals, so the Court does not find it to be a reliable reference point, nor does it constitute a legal basis. Second, *Burke* does not answer the question of whether pre-judgment interest should be compounded or compounded daily; instead, it answers the question of whether the trial court has the equitable authority to award interest on the delayed payment of post-judgment interest. The *Burke* court explained that the delayed payment of post-judgment interest, at the trial judge's discretion, could be considered as a new principal; therefore, it does not change the basic idea that interest is imposed on the principal. The *Burke* court did not explain how the interest rate itself should work.

The Court of Appeals has been reluctant to allow pre-judgment interest to be compounded absent statutory provision or contractual provision. *See Rastall v. CSX Transp.,* 697 A.2d 46, 53 (D.C. 1997) ("These statutes [D.C. Code §§ 15-108, 28-3302] do not specify that compound interest may be awarded. Absent a contractual provision, pre-judgment, and judgment interest are not usually compounded."). On the other hand, if the legislature intended to award compound interest, it would have expressly said so and provided how to compound, such as in D.C. Code § 34-2110, which provides the interest on unpaid sewer service charge shall be compounded monthly. Here,

since we do not have a contract that provides interest shall be compounded (or any contract between the opposing parties) and the statute does not expressly provide for compound interest, the Court finds that compounding interest on the judgement is not warranted.

Accordingly, the Court awards Plaintiffs the book value of the assets donated to KIF in the amount of $469,420,708.26 along with pre-judgment interest calculated the interest formula at the rate provided in D.C. Code § 28-3302.

3. Donation to GPF

UCI started making donations to GPF entities in November 2009 and stopped in April 2016 pursuant to the court's injunction order. During this time, UCI made donations to GPF entities in the amount of $62,810,278.70 in cash recorded in UCI's general ledger,[10] resulting in a total of $74,501,170.71 with pre-judgment interest added. 10/28 at 18:7-19:15 (D. Williams).

From November 2009 to April 2010, when all five defendant directors were on the UCI board, UCI donated $1,106,000 to GPF entities, resulting in $1,428,664.11 with pre-judgment interest added. *Id.* at 15:8-24 (D. Williams). From April 2010 when Richard Perea left the board to April 2016, the other

[10] Plaintiffs expert testified that he searched UCI's general ledger to find transactions associated with the Global Peace Festival Foundation, the Global Peace Festival, and the Global Peace Festival Foundation for two other locations, Hong Kong and Paraguay; The names of these organizations have changed over time in the context of doing the work (D. Williams at 17).

four directors voted to donate $61,704,278 ($62,810,278.70 minus $1,106,000) to GPF entities, resulting in $73,072,506 with pre-judgment interest added. Directors' expert voiced no opinion on the GPF donation. *Id.* 208:4-10 (D. Williams).

Directors argue that Plaintiffs failed to link UCI's discrete donations to GPF entities to any decision or action by the individual directors; for example, director Kim recused himself given his role as GPF's President. (DPFF ¶ 91.) However, this is not quite accurate. Kim testified that because he was president of GPF, he did not participate on the committee that reviewed their budget request. 10/9 at 120-121 (Y.Kim). He did, however, vote to approve grants once they came before the Board. 10/8 at 145:5-9 (Y. Kim).

Unlike the donation made to KIF, the donations to GPF entities were made as frequently as several times a month in a relatively small amount throughout the year. *See e.g.* PRX-224 (donations made on 04/17/2013 for $285,900, 04/29/2013 for $162.367, 06/27/2013 for $203,000). Neither UCI's bylaws nor any applicable statute requires this type of transaction to be approved by the board in a board meeting. *(See* Defs.' Opp'n. to Mot. Ex. 84.) The nature of these small transactions makes it impossible to trace each individual director's voting record on each donation. But the circumstantial evidence strongly suggests that all directors, except Perea, during their tenure at UCI, voted for donations made to GPF entities.

On May 11, 2012, UCI board members, including Sommer, Preston Moon, Kim, and Kwak, unanimously approved a donation to GPF in the amount of

$8,190,000 as part of UCI's annual non-profit budget from April 1, 2012, to March 31, 2013. (Pls.' Mot. for Remedies, Ex. 4.) Consistent with this voting record, all directors testified that they firmly believed UCI's donations to GPF entities legitimately advanced the mission of the Unification Movement. Sommer testified that "during my time on UCI's board, UCI's donations to other non-profits – including GPF and KIF – have faithfully advanced the principles and theology of the Unification Movement." (Sommer Decl. at 19, Defs.' Opp'n to Mot. Ex. 65.) Kwak, a GPF board members since 2009, elaborated in detail how GPF was guided by Rev. Moon's teaching through an innovative approach. (Kwak Decl. at 17, Defs.' Opp'n to Mot. Ex. 67). Kim, GPF's International President from 2012 to 2013 and SVP from 2013 to 2016, testified that GPF was in accordance with Rev. Moon's teaching and mission. (Kim Decl. at 17, Defs.' Opp'n to Mot. Ex. 68). Perea testified that before he left UCI board in April 2010, the donations made to GPF were consistent and in full compliance with UCI's purpose. 10/23 at 157:21-158:5 (R. Perea). Kim testified that he could not think of any instance where he or other board members disagreed with Preston Moon. Dep. 359-360; 10/9 at 59:1-7 (Y. Kim).

Mr. Perea was on the board a shorter period. While he testified that grants approved during his tenure were appropriate, he was not asked whether he actually approved any such grants. 10/23 at 157-158. Accordingly, the Court declines to impose a surcharge on him.

VI. Imposition of a constructive trust

A constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if permitted to retain it." *Gray v. Gray,* 412. A.2d 1208, 1210 (D.C. 1980) (internal citations omitted). "When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." *Hertz v. Klavan,* 374 A.2d 871, 873 (D.C. 1977) (internal citations and quotations omitted.) "Thus, restitution by way of constructive trust may be appropriate in a wide range of situations, including, for example, where the transfer of property was induced by a mistake of fact, for embezzlement, conversion of goods, fraud, duress, undue influence, and breach of fiduciary duty." *Id.* (internal citations and quotations omitted.) "A court of equity could then order a defendant to transfer title (in the case of a constructive trust) ... to a plaintiff who was, in the eyes of equity, the true owner." *Great-West Life & Annuity Co. v. Knudson,* 534 U.S. 204,214 (2002).

Plaintiffs argue that the Court should direct that the assets wrongfully donated to KIF and GPF "be returned to a properly managed UCI, which will then determine how to allocate them among Unification Church activities" to prevent unjust enrichment. (Mot. at 48.) Plaintiffs also invoke Rule 65(d)(2), noting that injunctive orders are applicable to persons who "are in active concert or participation" with the directors *Id.* at n. 12.

The directors argue that Plaintiffs fail to meet the requirements of imposing a constructive trust because they do not have the assets in their possession; KIF and GPF are not parties to this action, and a constructive trust cannot be imposed against non-parties. Opp'n at 48-49.

While the Court understands that a constructive trust is an available equitable remedy, the directors do not have possession of the assets, and KIF and GPF are not parties to this action. Accordingly, the Court declines to impose a constructive trust.

WHEREFORE, it is this 4th day of December 2020 hereby

ORDERED that the 2010 amendments to the Articles of Incorporation are hereby **RESCINDED**; it is further

ORDERED that the 1980 Articles of Incorporation are hereby **REINSTATED**; it is further

ORDERED that Preston Moon, Jinman Kwak, Michael Sommer, and Youngjun Kim are removed as directors of UCI and from any positions they hold as officers of UCI; it is further

ORDERED that the remaining two directors of UCI shall remain on the board and identify new directors, in conjunction with Plaintiffs, to replace Preston Moon, Jinman Kwak, Michael Sommer, and Youngjun Kim; it is further

ORDERED that Preston Moon, Jinman Kwak, Michael Sommer and Youngjun Kim are jointly and severally liable to UCI for a surcharge in the amount of $62,810,278.70 (which is the value of the principal

of the value of donations from UCI to GPF from 11/13/09 to the present) along with prejudgment interest calculated at the rate provided in D.C. Code § 28-3302 to the date of this Order. Post-judgment interest shall run from the date of this Order; it is further

ORDERED that Preston Moon, Jinman Kwak, Michael Sommer, Youngjun Kim are jointly and severally liable to UCI for a surcharge in the amount of $469,420,708.26 (which is the value of donations from UCI to KIF) along with pre-judgment interest calculated at the rate provided in D.C. Code § 28-3302 to the date of this Order. Post-judgment interest shall run from the date of this Order; it is further

ORDERED that the Department of Consumer and Regulatory Affairs be directed to remove all copies of, and any references to, the 2010 amendments to UCI's Articles of Incorporation from the official file and place a copy of this order in the official file.

/s/ Jennifer M. Anderson
Judge Jennifer M. Anderson
Signed in Chambers

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Appendix G

DOCKETED in Chambers
MAR 28 2019

SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
CIVIL DIVISION

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*,	*	Case No. 2011 CA 003721 B
Plaintiffs, v.	*	Judge Laura A. Cordero
HYUN JIN MOON, *et al.*, Defendants.	*	

AMENDED[1] OMNIBUS ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on the following motions for summary judgment filed on May 31, 2018: (1) Plaintiffs' Motion for Summary Judgment

[1] On March 28, 2019, the Court granted in part Plaintiffs' Motion to Correct Mistake in Omnibus Order on Motions for Summary Judgment and Memorandum of Points and Authorities in Support and denied Defendants' Motion to Alter or Amend Judgment. This amended order is issued to provide clarification of the October 30, 2018 Omnibus Order on Motions for Summary Judgment.

on Count II of the Complaint ("Plaintiffs' Motion"); (2) Defendants' Motion for Summary Judgment No. l: All Counts on First Amendment Grounds ("Defendants' First Motion"); (3) Defendants' Motion for Summary Judgment No. 2: Counts I, III, IV, V, and VI ("Defendants' Second Motion"); (4) Defendants' Motion for Summary Judgment No. 3: Count II ("Defendants' Third Motion"); and (5) Outside Director Defendants' Motion for Partial Summary Judgment on Plaintiffs' Aiding and Abetting Claims ("Directors' Motion"). Defendants filed amended motions for summary judgment on July 20, 2018. The parties filed oppositions on August 10, 2018, and replies on August 20, 2018.

Plaintiffs filed a Complaint against Defendants on May 11, 2011. In Count I, Plaintiffs allege breach of trust and aiding and abetting against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim. In Count II, Plaintiffs allege breach of fiduciary duties, *ultra vires* acts, and aiding and abetting again the same individual Defendants.[2] Specifically Count II alleges,

> The individual Defendants breached their fiduciary duty, engaged in, and caused UCI to engage in, *ultra vires* acts, and aided and abetted their fellow Directors' breaches of fiduciary duties and commission of *ultra vires* acts (1) by amending UCI's Articles of Incorporation to permit the Corporation's

[2] Individual Defendants refer to Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim.

> assets to be used for purposes other than the mission and purpose for which the Corporation was formed, (2) by manipulating the designation and removal of Directors to the Corporation in defiance of Reverend Sun Myung Moon's explicit instructions and in violation of UCI's longstanding and uniform custom and practice of following Reverend Moon's directives concerning the appointment and removal of Directors, (3) by engaging in a scheme of self-dealing designed to divert corporate assets to the personal pursuits of Preston Moon, (4) by permitting the Corporation's assets to be used for purposes other than the mission and purpose for which the Corporation was formed, (5) by failing to use the assets of the Corporation to support the mission and activities of the Unification Church, all of which has jeopardized the existence of UCI as originally incorporated and threatens to fundamentally alter the nature of UCI.

Compl. ¶ 117.

In Count III, Plaintiff Family Federation for World Peace and Unification International alleges breach of fiduciary duties as agents and aiding and abetting against the same individual Defendants. Lastly, in Counts IV-VI, Plaintiff Holy Spirit Association for the Unification of World Christianity (Japan) ("UC Japan"), alleges breach of contract, promissory estoppel, and unjust enrichment against Defendant Unification Church International ("UCI"). In Plaintiffs' opposition to Defendants' First Motion,

Plaintiffs elected not to pursue Count I and Count III. Pl. Op. 1 at l n. 1; Pl. Op. Stat. Mat. Fact at 3-15. In addition, Plaintiffs opted not to pursue segments of their claim in Count II. Specifically, Plaintiffs elected not to pursue claims in Count II against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim for "aid[ing] and abet[ing] their fellow Directors' breaches of fiduciary duties and commission of *ultra vires* acts" and "manipulating the designation and removal of Directors of the Corporation" Pl. Resp. Directors' Mot. at 1 *(quoting* Comp. ¶ 117 (initial clause), (2)).

Therefore Count I and Count III are dismissed in their entirety. In addition, claims in Count II for aiding and abetting against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim are dismissed. Claims in Count II alleging Defendants' appointment and removal of directors is *ultra vires* or a breach of fiduciary duty are also dismissed against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim.

As such, the following allegations remain: Count II (breach of fiduciary duty against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim), Count IV (breach of contract against Defendant UCI), Count V (promissory estoppel against Defendant UCI), and Count VI (unjust enrichment against Defendant UCI). Each of these claims will be addressed in turn.

I. BACKGROUND

A. Reverend Moon's Spiritual Movement

Reverend Sun Myung Moon ("Reverend Moon") founded the Holy Spirit Association for the Unification of World Christianity, known as the Unification Church, in 1954 in Seoul, Korea. Pl. Ex. 1; Def. Ex. 12 at 1-2; Def. Ex. 57 at 77; Pl. Op. Ex. 108 at 384; Def. Op. Ex. 184 at 239. As the organization grew, it sought to expand its influence in the United States and to further this goal, the Holy Spirit Association for the Unification of World Peace ("HAS-USA") was incorporated in California in 1961. *See* Preston Moon Ans. at ¶ 25. Later, in 1963, Reverend Moon directed his advisor Bo Hi Pak to incorporate a non-profit association in Virginia, named the Holy Spirit Association for the Unification of World Christianity ("Virginia Association"). Pl. Ex. 14; Pl. Ex. 15 at 42.

In 1975, Reverend Moon directed Bo Hi Pak to create a bank account at the Diplomat Bank and deposit a $70,000.00 check into the account. Def. Ex. 14 at 6; Def. Ex 27. The account was in the name of the Unification Church International. Def. Ex. 14 at 6. In 1977, Reverend Moon directed the funds to be transferred to another entity named Unification Church International, incorporated as a non-profit in the District of Columbia. Def. Ex. 14 at 12; Def. Ex. 33; Def. Ex. 35. Unification Church International amended its Articles of Incorporation in 1980 ("1980 Articles"). Pl. Ex. B. In the subsequent decades, Unification Church International distributed funding to organizations throughout the world to support the activities of the Unification Church, and it received

donations from entities affiliated with the Unification Church, including Plaintiff UC Japan for this purpose. *See* Def. Ex. 31 at 18; Def. Ex. 46; Def. Ex. 52.

B. Creation of the Family Federation for World Peace and Unification International

FFWPUI was founded in 1994 and assumed the spiritual role in the Unification Church previously held by HSA-USA. Def. Ex. 12 at 3; Def. Ex. 13 at 7; Def. Ex. 152 at 2. Plaintiffs consider FFWPUI to have existed prior to this date because, in their view, it is merely another name for the Unification Church. Def. Ex. 14 at 18. The parties do not dispute FFWPUI's name was not used by any Unification Church-affiliated entity prior to 1994. *Id.* at 19. FFWPUI has not been incorporated and has no articles of incorporation or bylaws. *Id.* at 15-16. Hyun Jin "Preston" Moon ("Preston Moon") became vice president of FFWPUI in 1998. Pl. Ex. 4 at 47. At that time, Preston Moon believed that he was being "appoint[ed] to carry on the mantle of [Reverend Moon's] providential work...." Pl. Ex. 8 at 53-55.

C. Preston Moons Alleged Actions as President of the Unification Church International

Preston Moon became the chair of Unification Church International in 2006. Pl. Ex. 8 at 21; Pl. Op. Ex. 96 at 2; Def. Ex. 14 at 26; Def. Ex. 79. On March 23, 2008, Preston Moon drafted a document entitled "Report to Parents" regarding Preston Moon's vision for the future of the Unification Church. Pl. Ex. 11. Subsequently, Preston Moon's younger brother, Hyung Jin "Sean" Moon ("Sean Moon"), was named

president of FFWPUI and recognized as Reverend Moon's spiritual successor.[3] Pl. Ex. 11; Def. Ex. 12 at 10-11; Def. Ex. 13 at 9. Plaintiffs contend that Preston Moon expected to receive this honor himself and was upset by this turn of events. *See* Pl. Ex. 8 at 53-54; Def. Ex. 12 at 11.

Following Sean Moon's appointment as FFWPUI's president, Preston Moon took several alleged actions as president of the Unification Church International. First, Plaintiffs allege that Preston Moon unlawfully orchestrated a corporate takeover of the Unification Church International by removing board members and installing board members without permission. Preston Moon also allegedly refused to install board members Reverend Moon requested be appointed. Second, Unification Church International's Articles of Incorporation were allegedly amended to remove any reference to Reverend Moon's theology, renaming the corporation "UCI" in the process. Third, Preston Moon allegedly oversaw the transfer of assets to a Swiss entity, allegedly bearing no relation to the original purposes for which Unification Church International was founded. Fourth, Preston Moon founded an entity Global Peace Federation Foundation ("GPPF") and allegedly diverted funds to it from Plaintiff Universal Peace Federation ("UPF"). Plaintiffs also challenge three transactions, undertaken before Sean Moon's appointment as FFWPUI's president, as self-dealing.

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[3] Sean Moon was later suspended as president of FFWPUI on February 25, 2015. Def. Op. Ex. 189; *see* Def. Op. Ex. 182 at 60-61.

i. *Board of Directors*

The board of directors of Unification Church International consisted of six directors at the start of 2009: Preston Moon, Chung Hwan Kwak, Douglas Joo (a plaintiff in this matter), Peter Kim (a plaintiff in this matter), Victor Walters, and Thomas Walsh. Pl. Ex. 21. Chung Hwan Kwak resigned on January 6, 2009. Pl. Ex. 21; Pl. Ex. 22; Def. Ex. 99. Subsequently, Victor Walters and Thomas Walsh were asked to resign. Pl. Ex. 23 at 120-23; Pl. Ex. 24 at 222-25. They complied and resigned on January 12, 2009. Pl. Ex. 25; Pl. Ex. 26. According to their depositions, both Victor Walters and Thomas Walsh complied with this request because they believed their resignation was sought or approved by Reverend Moon. Pl. Ex. 23 at 120-23; Pl. Ex. 24 at 222-25. Also on January 12, 2009, Preston Moon nominated Michael Sommer and Richard Perea, defendants in this matter, as directors; they were elected to the board the same day. *See* Pl. Ex. 21; Def. Ex. 14 at 27; Def. Ex. 99.

In June 2009, Reverend Moon communicated that he wished two individuals to be appointed to Unification Church International's board of directors: Ki Hoon Kim and Sun Jin Moon, one of Reverend Moon's daughters. Pl. Ex. 28 at 176. Peter Kim and Douglas Joo, members of the board of directors and plaintiffs in this action, called a vote in order to appoint these potential board members, but, allegedly, Preston Moon, Michael Sommer, and Richard Perea refused to attend, depriving Unification Church International of a quorum. Pl. Ex. 33; *see* Pl. Ex. 35 at 238. Finally, at a board meeting held on August 2, 2009, Douglas Joo and Peter Kim were voted off the

board of directors and replaced by Preston Moon's brothers-in-law Jinman Kwak and Youngjun Kim, who are also defendants in this matter. Pl. Ex. 36; Pl. Ex. 37; Def. Ex. 14 at 28-29; Def. Ex. 100.

ii. *Amended Articles of Incorporation*

On April 14, 2010, UCI amended the 1980 Articles. Def. Ex. 81. According to Plaintiffs, the amendments drastically altered the purposes of the corporation. These amended articles of incorporation ("Amended Articles") changed the name of the corporation to UCI, eliminated all references to the Unification Church and the Divine Principle, and added procedural provisions. *Compare* Pl. Ex. B *with* Pl. Ex. C. Plaintiffs contend the Amended Articles were drafted to eliminate all references to the Unification Church and the Divine Principle, a sacred text, and added one reference to the Unification Movement. *See* Pl. Ex. 68.

iii. *Transfer of Assets*

At roughly the same time the Amended Articles were enacted, an entity in Switzerland named Kingdom Investments Foundation ("KIF") was in the process of being formed. Pl. Ex. 65; Pl. Ex. 66. The purposes of KIF were designed to be similar to those of UCI under the Amended Articles in contemplation of a transfer of substantial assets from UCI to KIF; however the reference in the Amended Articles to the Unification Movement was not included in KIF's purposes due to constraints of Swiss law. Pl. Ex. 59; Pl. Ex. 66; Pl. Ex. 67; Def. Ex. 96. A plan to transfer assets to a Swiss entity had been contemplated since 2007. *See* Pl. Ex. 8 at 298; Def. Op. Ex. 190 at 314-15.

According to Defendants, KIF was established in June 2010, with a founding board of directors consisting of Richard Perea and nonparties Aya Goto and Jonathan Ivinson. Pl. Ex. 59 at 27; Def. Ex. 96. Richard Perea signed the Administrative Regulations for the Foundational Board of KIF ("Administrative Regulations") on June 14, 2010. Nonparty Aya Goto signed the Administrative Regulations on June 11, 2010, and Nonparty Jonathan Ivinson signed the Administrative Regulations on June 6, 2010. Richard Perea had resigned as a member of UCI's board of directors prior to a UCI board meeting on May 13, 2010, but he remained president of UCI subsidiary Landmark Investment Company. Def. Ex. 97 at l; *see* Pl. Ex. 38 at 309-10. On June 24, 2010, UCI's board of directors voted to donate assets to KIF, and on June 28, 2010, the parties executed a donation agreement restricting KIF's use of the assets. Def. Ex. 98. The assets included:

- A majority interest in Parc I, a property development in Seoul, Korea;
- An approximately 60% interest in Central City Limited;
- An interest in a ski resort in YongPyong, Korea;
- A 65.3% interest in Ilsung Corporation, a Korean construction company; and
- All cash holdings and minor interests in other financial and non-financial assets held by Zeus Capital, Ltd., an indirect subsidiary of Landmark Investment Company.

Id.

iv. *Diversion of Funds to GPF*

Preston Moon also founded Global Peace Festival Foundation ("GPFF"), on March 4, 2009.[4] Pl. Ex. 44. The Universal Peace Federation ("UPF"), a plaintiff in this action formerly known as the Interreligious and International Federation for World Peace ("IIFWP"), had received $26,611,800.00 in funding from UCI between 2005 and 2010 for the operation of events known as global peace festivals. Pl. Ex. 24 at 17; Def. Ex. 19; Def. Ex. 94. When Sean Moon was appointed chair of UPF on October 24, 2009, Preston Moon announced UCI's intention to distance itself from UPF. Pl. Ex. 46; Pl. Ex. 47; Pl. Op. Ex 124. Specifically, Preston Moon announced that he "remain[s] committed...to developing this Global Peace Festival series...[t]hese programs will not go forward as projects of UPF, and will have no formal or legal association with FFWPU. Rather a separate GPF foundation is being established for this purpose." Pl. Ex. 47. Preston Moon established GPF "Global Peace Foundation" ("GPF"); and UCI began providing funding to GPF in lieu of supporting UPF. *See* Pl. Ex. 44; Pl. Ex. 47; Pl. Ex. 48; Pl. Ex. 67.

v. *Self-Dealing Transactions*

In addition, Plaintiffs allege that UCI engaged in three self-dealing transactions under Preston Moon's leadership prior to 2009: (1) a 2008 real property purchase by a UCI subsidiary, (2) a 2007 loan, and (3) procurement of consulting services provided by a

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[4] On March 4, 2009, Preston Moon incorporated GPFF and on November 13, 2012, GPFF filed a Certificate amending its name to Global Peace Foundation. *See* Pl. Ex. 44.

different UCI subsidiary on August 23, 2006. Pl. Compl. at ¶¶ 49-5l. Prior to 2009, UCI's board of directors consisted of six directors: Preston Moon, Chung Hwan Kwak, Douglas Joo (a plaintiff in this matter), Peter Kim (a plaintiff in this matter), Victor Walters, and Thomas Walsh. Pl. Ex. 21. Defendants Michael Sommer and Richard Perea joined the board on January 12, 2009, and Defendants Jinman Kwak and Youngjun Kim joined the board on August 2, 2009.

II. STANDARD OF LAW

Motions for Summary Judgment are governed by Rule 56(c). *See* Super. Ct. Civ. R. 56(c). To prevail on a motion for summary judgment, Rule 56(c) requires a moving party to demonstrate—based on pleadings, discovery, and any affidavits—that there is no genuine issue of any material fact and that the movant is entitled to judgment as a matter of law. *Grant v. May Dep't Stores Co.,* 786 A.2d 580, 583 (D.C. 2001); *see* Super. Ct. Civ. R. 56(c). As such, the moving party on summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact, after which the burden shifts to the non-moving party to establish specific material facts showing that there is a genuine issue for trial. *Musa v. Continental Ins. Co.,* 644 A.2d 999, 1002 (D.C. 1994) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986)).

When considering a motion for summary judgment, the Court must view all evidence in the light most favorable to the non-moving party. *Brown v. George Washington Univ.,* 802 A.2d 382, 385 (D.C. 2002). Therefore, the Court may grant the motion only

if a reasonable finder of fact, having drawn all reasonable inferences in favor of the non-moving party, could not find for that party based on the evidence in the record. *Bailey v. District of Columbia,* 668 A.2d 812, 816 (D.C. 1995). The non-moving party must do more than assert "[t]he mere existence of a scintilla of evidence...there must be sufficient evidence on which the jury could reasonably find for the [non-moving party]." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252 (1986)); *see also* Super. Ct. Civ. R. 56(e). "The mere fact that the parties to an action made cross-motions for summary judgment, does not in itself establish that there are no genuine issues of material fact." *Holland v. Hannan* 456 A.2d 807, 815 (D.C. 1983). Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson,* 447 U.S. at 248.

III. DISCUSSION

A. Religious Abstention

Defendants' First Motion contends that the First Amendment of the United States Constitution forecloses contemplation of Plaintiffs' claims. According to Defendants, this case is impossible to resolve without delving into theological questions and weighing in on a doctrinal dispute. This Court accepted this argument at the pleadings stage and dismissed the Complaint in its entirety. 12/19/13 Order. The Court of Appeals reversed and remanded, directing this Court to revisit this issue upon the completion of discovery. *Family Federation for World Peace and Unification International v. Moon,* 129 A.3d

234 (D.C. 2015) (hereinafter "*Moon I*"). Defendants raised this argument again in challenging Plaintiffs' motion for temporary restraining order, but this Court rejected this argument in an order entered on July 22, 2016, which was affirmed by the Court of Appeals on June 8, 2018. *Family Federation for World Peace and Unification International v. Moon,* No. 16-CV-881 (D.C. June 8, 2018) (slip op.) (hereinafter "*Moon II*"). Defendants argue that the factual development of the case compels the same conclusion this Court previously made in the pleadings stage.

Under the First Amendment, the Court has a jurisdictional obligation to abstain from deciding questions of theology. *Moon I,* 129 A.3d at 248. The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof." U.S. Const. amend. I. This Amendment "severely circumscribe[s] the role that civil courts may play in the resolution of disputes involving religious organizations." *Meshel v. Ohev Sholom Talmud Torah,* 869 A.2d 343, 353 (D.C. 2005). Courts may not resolve "matters of church government as well as those of faith and doctrine." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC,* 132 S.Ct. 694, 704 (2012). Neither can this Court adjudicate matters of church polity or administration. *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710 (1976). However, a civil court may consider whether a professed religious conviction is truly held. *United States v. Seeger,* 380 U.S. 163, 185 (1965).

This prohibition does not apply to all church actions challenged in civil court. *See Heard v. Johnson,*

810 A.2d 871, 879 (D.C. 2002). On the contrary, some legal matters involving religious institutions do not implicate the First Amendment. *See Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Wash., D.C. v. Beards,* 680 A.2d 419, 427 (D.C. 1996). As such, courts have the authority to resolve some disputes involving religious institutions or persons, including property disputes, without deciding questions of faith. *See Jones v. Wolf,* 433 U.S. 595, 602 (1979); *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449 (1969).

Disputes involving religious institutions or persons may be properly resolved by a civil court when they turn on neutral principles of law. *Moon I,* 129 A.3d at 249. In deciding whether a matter may be decided solely on neutral principles of law, a court looks to the issues it must decide in adjudicating the matter, regardless of how the claims are pled. *See Meshel,* 869 A.2d at 356. A civil court may also resolve a dispute involving religious institutions when pertinent internal theological matters have already been determined by a recognized paramount religious entity. *See Samuel v. Lakew,* 116 A.3d 1252, 1259 (D.C. 2015); *Meshel,* 869 A.2d at 353. So long as the Court can make a ruling without resorting to determining matters of faith, the Court has no obligation to abstain, and instead has a "constitutional duty to carry out [its] basic function to the maximum possible extent." *Moon I,* 129 A.3d at 249.

In Defendants' view, this matter hinges solely upon whether UCI and its directors correctly interpreted Reverend Moon's dogma. Defendants

submit that Preston Moon's actions at the center of this litigation were entirely in line with the theology of the "Unification Movement," while Plaintiffs espouse a different interpretation of the movement's tenants. Defendants outline how they believe each count of the Complaint is inextricably bound with the parties' conflicting interpretations of unification theology. Because the Court may not make determinations regarding the purportedly correct interpretations of religious doctrine, Defendants claim that this case cannot move forward.[5]

Defendants contend that the conflict in this matter is a theological dispute; however, the Defendants' actions unfolded amidst the conflict between Preston Moon and his parents—Reverend Moon and Hak Ja Han Moon. Specifically, Preston Moon anticipated inheriting his father's role as leader of the Unification Church upon his death. Pl. Ex. 8 at 53-54; Def. Ex. 12 at 11. The challenged actions come shortly after his younger brother, Sean Moon, was nominated by his father, Reverend Moon, to head the religious movement in late 2008. Pl. Ex. 11; Def. Ex. 13 at 9. On November 4, 2009, the day Sean Moon's appointment as the head of UPF was announced, Preston Moon

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[5] Plaintiffs emphasize that this suit does not name a church or religious institution as a party, instead alleging that a secular nonprofit corporation was taken over and subsequently misappropriated Plaintiffs' funds. The Court of Appeals also noted that UCI is a secular entity and the individual defendants were "basically operating in a secular capacity." *Moon I,* 129 A.3d at 249. Nonetheless, the First Amendment covers "[b]usiness practices that are compelled or limited by the tenets of a religious doctrine...." *Burwell v. Hobby Lobby Stores, Inc.,* 134 S.Ct. 2751, 2770 (2014).

announced that UCI would cease support for the activities of UPF. Pl. Ex. 47; Pl. Ex. 50; Def. Ex. 144; Def. Ex. 151 at ¶ 18; Pl. Op. Ex. 124. Likewise, Preston Moon oversaw the allegedly unauthorized personnel changes in UCI's board of directors starting in early 2009, following the announcement that Sean Moon was appointed FFWPUI's president on April 17, 2008, and Sean Moon's subsequent nomination to head the religious movement. *See* Pl. Ex. 11; Pl. Ex. 21; Pl. Ex. 22; Pl. Ex. 23 at 120-23; Pl. Ex. 24 at 222-25; Pl. Ex. 26; Def. Ex. 14 at 27; Def. Ex 99. These actions were followed by the amendment of the 1980 Articles and transfer of assets to KIF. Def. Ex. 81; Def. Ex. 98. As the chronology reveals, the alleged acts were undertaken following Sean Moon's appointment to leadership positions in the Unification Church, prompting Preston Moon to divest corporate assets. As such, the conflict does not require that the Court wade into theological matters; the Court can resolve the dispute solely through application of neutral legal principles.

Similarly, none of the counts remaining in the complaint necessitate a theological determination. Plaintiffs' claim in Count II against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim may be resolved on the basis of neutral legal principles. Defendants argue that the determination of whether UCI's 1980 Articles require directors to support the Unification Church and promote the Divine Principle, a sacred text written by Reverend Moon, necessitates a determination as to whether the challenged actions furthered or conflicted with the principles of the

Unification Church and the Divine Principle as embodied in the "Unification Movement." *See* Pl. Ex. B; Def. Ex. 1 at 284; Def. Ex. 12 at 2. Not so. As this Court stated in its order entered on July 22, 2016, "Plaintiffs' theory is not based on the notion that [donations to] KIF and GPF failed to promote 'Unificationist' values; rather, plaintiffs claim that defendants have violated the fiduciary duty to UCI's original mission of supporting *the* Unification Church...." 7/22/16 Order at 12. A determination can be made on neutral principles of law without any religious determinations. Plaintiffs claim that Defendants misappropriated assets legally belonging to Plaintiffs, not that the corporate actions of Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim were spiritually unsound. The breach of fiduciary duty allegations in no way hinges on an interpretation of either Unification Church or Unification Movement tenets.

This is especially so with regards to the allegations concerning the amendments to UCI's articles of incorporation. The language of the 1980 Articles and the Amended Articles were before the Court of Appeals at the pleadings stage. *See* 12/19/13 Order at 18-19. The Court of Appeals determined that the First Amendment did not yet bar the case from proceeding, but instructed that religious abstention may be necessitated as a result of factual discovery. *Moon I,* 129 A.3d at 249-53. The same language of the 1980 Articles and the Amended Articles is again before the Court. There is no basis to conclude that the developed record includes evidence indicating that the language

in the 1980 Articles and Amended Articles can be interpreted only by resorting to religious interpretation. *See Wash. Inv. Partners of Del., LLC v. Sec. House,* 28 A.3d 566, 573 (D.C. 2011) (noting that courts interpret contracts based on the plain language unless ambiguous); *Bd of Dirs., Wash. City Orphan Asylum v. Bd. of Trs., Wash. City Orphan Asylum,* 798 A.2d 1068, 1079 n.2 (D.C. 2002) (indicating that courts apply contract interpretation canons when asked to interpret corporate charters).

Plaintiffs' remaining claims likewise lend themselves to resolution through the application of neutral legal principles. The contract and quasi-contract claims require no interpretation of religious tenets and can be resolved through the standard application of well established common law elements. Although employment conflicts within religious institutions may implicate the First Amendment because these conflicts involve ecclesiastical decisions, the issue before this Court is whether an enforceable contract or promise exists at all. *See Heard,* 810 A.2d at 882. No question of theology need be addressed in order to determine whether an enforceable contract or promise was made, and the Court need not interpret dogma in order to determine whether the elements of these common law claims have been established.

B. Standing

Defendants argue that the named plaintiffs have no standing in this matter. First, Defendants claim that FFWPUI lacks standing to bring this challenge because it is not a legally cognizable entity. Plaintiffs argue that FFWPUI is an unincorporated nonprofit

association, which has standing to sue in its own name pursuant to District of Columbia Code Section 29-1109(a). An unincorporated nonprofit association is "an unincorporated organization, consisting of 2 or more members joined under an agreement that is oral, in a record, or implied in conduct, for one or more common, nonprofit purposes." D.C. Code § 29-1102(5); *see Act Now to Stop War & End Racism Coal. v. District of Columbia,* 846 F.3d 391, 400-01 (D.C. Cir. 2017) (hereinafter "*Act Now*"*)*. A member is "a person that...may participate in the selection of persons authorized to manage the affairs of the unincorporated nonprofit association or in the development of the policies and activities of the association." D.C. Code § 29-1102(4). An unincorporated nonprofit association is a legal entity distinct from its members and managers and has legal standing to sue and be sued in its own name. D.C. Code §§ 29-1102(5), 29-1109.

FFWPUI was founded in 1994 as a spiritual successor to HSA. Pl. Ex. 7 at 41; Def. Ex. 12 at 3; Def. Ex. 13 at 7; Def. Ex. 152 at 2. Plaintiffs maintain that FFWPUI existed prior to this date because it is merely another name for the Unification Church. *See* Pl. Op. Ex. 87 at 19; Def. Ex. 14 at 18. The Court agreed in its order entered on December 23, 2016, and further determined that the record suggests that FFPWUI is "an authoritative religious entity at the head of the Unification Church religious denomination that directs other entities that are members of the denomination." 12/23/16 Order at 4-6. The parties do not dispute that FFWPUI's name was first used in 1994. Def. Ex. 14. at 19. FFWPUI has not been incorporated in any country and has no articles of

incorporation or bylaws. *Id.* at 15-16; Pl. Op. Ex. 94 at 127-28; Def. Ex. 180 at 71, 125.

The parties do not dispute that FFWPUI exists "for a...nonprofit purpose." *Act Now,* 846 F.3d at 401. Instead, Defendants argue that FFWPUI does not benefit from unincorporated nonprofit status because it lacks the requisite two members. *See* D.C. Code § 29-1102(5). In support, Defendants rely on the testimony of FFWPUI's corporate deponent, who was unable to identify particular members of the association. Instead, the corporate deponent stated: "[W]hen we assemble under the international headquarters, whether that's in Korea or elsewhere, pretty much everybody else in the room I consider as members of Family Federation around the world. But all of us are also members of the local church or community." Def. Ex. 1 at 122. When asked whether anyone is a member of FFWPUI, the corporate deponent responded, "I don't think so. I think the people who work in the headquarters actually attend a local church in the nearby town." *Id.* at 123. While this testimony may suggest that FFWPUI does not have church members, it does not bear on whether FFWPUI has members as statutorily required.[6] FFWPUI's corporate deponent further testified that officers are "appoint[ed] by the Reverend Moon or today, Mrs. Moon." *Id.* at 125.

Plaintiffs have put forth a declaration indicating FFWPUI has more than 2 members. The declaration,

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[6] Likewise, the statement by Reverend Chung Hwan Kwak that "Unification Church members became members of FF[WPUI]" describes the state of FFWPUI's religious membership rather than the organization's members as defined by the statute. Pl. Ex. 7 at 41.

from FFWPUI's corporate deponent dated June 22, 2018, purports to clarify his deposition responses regarding FFWPUI's membership, naming seven "Regional Chairs" of FFWPUI who "help to select Regional Presidents and National Directors, who are authorized to manage the affairs of FFWPUI." Pl. Op. Ex. 87 at ¶¶ 13, 15. Although Reverend Moon and Mrs. Moon "have the final authority to make all appointments," the corporate deponent's declaration indicates that the "Regional Chairs" have the authority to "participate in the selection of persons authorized to manage the affairs" of FFWPUI. D.C. Code § 29-1102(4); Def. Ex. 1 at 126; *see* Pl. Op. Ex. 87 at ¶ 15; *see also* Pl. Op. Ex. 86 at 316-17 ("[M]ajor decisions of policy would always be discussed by a group of people and certainly not entered into by one person alone."). Accordingly, FFWPUI has sufficient membership under the statute to confer standing to bring this suit. *See Act Now,* 846 F.3d at 400-01.

Defendants contest the sufficiency of the declaration in light of the corporate deponent's prior sworn testimony. Generally, "courts will disregard an offsetting affidavit that is submitted to withstand a motion for summary judgment when the affidavit contradicts prior deposition testimony without adequate explanation and creates only a sham issue of material fact." *Sibley v. St. Albans Sch.,* 134 A.3d 789, 814 (D.C. 2016). However, courts will disregard the superseding affidavit only if "the affidavit...clearly contradict[s] prior sworn testimony, rather than clarify confusing or ambiguous testimony...." *Id.* at 814. In the context of a corporate deposition, Federal Rule of Civil Procedure 30(b)(6) precludes a corporate

deponent from submitting an affidavit espousing a "theory of the facts that differs from that articulated by the designated representative[]." *Rainey v. Am. Forest & Paper Ass'n, Inc.,* 26 F.Supp.2d 82, 94 (D.D.C. 1998) ("[A] corporation cannot later proffer new or different allegations that could have been made at the time of the 30(b)(6) deposition."). The effectiveness of corporate deposition testimony would be hampered if the deponent were permitted to "simply replace his deposition answers with ones that better serve their current purposes." *Beck v. Test Masters Educ. Servs., Inc.,* 2012 U.S. Dist. 190127 LEXIS, *18 (D.D.C. 2012).

The declaration of FFWPUI's corporate deponent does not implicate these concerns, as it does not "clearly contradict prior sworn testimony" and instead merely "clarif[ies]...ambiguous testimony." *Sibley,* 134 A.3d at 814. Furthermore, the deposition testimony that FFWPUI's officers are appointed by Mrs. Moon does not contradict the statement in the declaration that "Regional Chairs" help to select persons who manage FFWPUI's affairs. D.C. Code § 29-1102(4); Def. Ex. 1 at 126; Pl. Op. Ex. 87 at ¶ 15. There is no reason to disregard the declaration.

In light of Plaintiffs' voluntary dismissal of Count I and Count III, Defendants further argue in their reply that FFWPUI no longer has special interest standing as to Count II. The Court of Appeals identified three bases for FFWPUI's standing at the pleading stage: "as successor in interest to Reverend Moon and his role as settlor of the trust, nominations of directors, and as an overarching superior and benefiting entity in UCI's proper role to further the mission of the Family Federation and the Unification

Church." *Moon I*, 129 A.3d at 245. In the absence of Count I—alleging breach of trust—and Count III—alleging breach of fiduciary as agent—Defendants argue that no ground for standing remains, and FFWPUI must be dismissed as a result. Plaintiffs' voluntary abandonment of these counts does not deprive FFWPUI of standing on the basis of its special interest as a "benefiting entity" from UCI's fidelity to its original purposes. *See* Pl. Ex 3; Pl. Ex, 4; Pl. Ex. 5 at 19; Pl. Ex 7 at 41 ("The actual original title of the unification Church is HSA-UWC, but then Reverend Moon levelled [sic] up the identity of...HSA-UWC...and then named it into FFWPU."); Pl. Op. Ex. 94 at 126-127 ("Family Federation is Unification Church, this whole umbrella....."). FFWPUI is not stripped of standing on this basis.

Defendants also challenge the standing of the ousted former UCI directors, Douglas Joo and Peter Kim. According to *Moon I,* the pleadings established that these Plaintiffs "occupy a status both as the alleged successor trustees to the Moon trust and as directors of a charitable corporation akin to a charitable trust." *Moon I,* 129 A.3d at 244. Defendants maintain that discovery has shown that no oral trust was formed, that the individual Plaintiffs never served as trustees, and they were properly removed as directors according to the procedures in UCI's bylaws.

In their opposition, Plaintiffs represent that they no longer seek to pursue Count I of the Complaint alleging breach of oral trust. Pl. Op. 1 at 1 n.1. Indeed, Plaintiffs make no argument in their opposition suggesting that an oral trust was ever formed. In addition, Plaintiffs no longer pursue the portion of

Count II alleging that the unauthorized removal of Plaintiffs Douglas Joo and Peter Kim constituted a fiduciary breach. *Id.* Nonetheless, they maintain that these Plaintiffs have standing to bring Count II "[a]s directors of UCI who were wrongfully removed as part of a plan to seize control of UCI and its assets." Pl. Op. 3 at 23.

As Plaintiffs no longer pursue a claim for breach of oral trust, the sole basis put forth for Defendants Douglas Joo and Peter Kim's standing is based on their purported special interest in UCI's directors adhering to their fiduciary duties. Generally, "only a public officer, usually the state Attorney General, has standing to bring an action to enforce the terms of the trust." *Moon I,* 129 A.3d at 244 (quoting *Hooker v. Edes Home,* 579 A.2d 608, 612 (D.C. 1990)). In addition, an aggrieved party may not assert a generalized or public injury; the injury must be particularized and unique. *Bd. of Dirs. of the Washington City Orphan Asylum v. Bd. of Trs. of the Washington City Orphan Asylum,* 798 A.2d 1068, 1074 (D.C. 2002). Nonetheless, an exception to this rule exists "where an individual seeking enforcement of the trust has a 'special interest' in continued performance of the trust distinguishable from that of the public at large." *Hooker,* 579 A.2d at 612. *Moon I* makes clear that this rule applies to individuals seeking relief from "a charitable corporation akin to a charitable trust." 129 A.3d at 244.

Corporate directors and removed corporate directors may have a special interest in challenging prospective or retrospective actions undertaken to remove them from their positions. *Owen v. Bd. of Dirs.,*

888 A.2d 255, 260 (D.C. 2005), *cited in Moon I,* 129 A.3d at 245; *Bd of Dirs.,* 798 A.2d at 1075 ("The overarching issue on which the Directors seek to be heard is whether the Trustees have the authority to terminate the statutorily-created role of the Directors of the corporation."). This Court previously recognized Douglas Joo and Peter Kim's standing as removed directors, noting that they "represented forty percent of the decision-making body of UCI before being removed from the Board." 6/19/2012 Order at 20.

Accordingly, Douglas Joo and Peter Kim have standing to raise claims in Count II only insofar as that count challenges their removal. Neither party points to any authority regarding the standing of former directors to raise challenges to other business actions of their successors as breaches of their fiduciary duties. In the absence of an active claim in the complaint alleging that the removal of Douglas Joo and Peter Kim constituted a breach of fiduciary duty, these Plaintiffs lack a basis for standing. *See Bd. of Dirs.,* 798 at 1075. As such, Douglas Joo and Peter Kim lack standing to bring the remaining claims in Count II, and they are dismissed as plaintiffs in this matter.

Defendants next challenge the special interest standing of UPF. A "clearly identified intended beneficiary" of a charitable corporation has standing to seek redress in a court on the basis of its special interest. *Hooker,* 579 A.2d at 612-13. The Court of Appeals found special interest standing for UPF at the pleadings stage because it was alleged that UPF "was a major beneficiary from UCI for three decades, comfortably falling within the *Hooker* requirement that a beneficiary be in a class limited in number and

that the nature of the challenge be to an extraordinary measure." *Moon I,* 129 A.3d at 245. Discovery has revealed that UCI began supporting UPF financially in 2005, and ceased doing so in 2010. Def. Ex. 3 at 196; Def. Ex. 94 at 10-11. Plaintiffs do not dispute this evidence.

ln *Moon I,* the Court of Appeals noted that the beneficiaries recognized in *Hooker* were prospective beneficiaries, "quite contrary to the Universal Peace Federation's long-term status here." 129 A.3d at 245. Moreover, the record indicates that UPF received over $26.5 million from UCI over the course of six years. Def. Ex. 94 at 10-11. This undisputed record establishes that UPF was an actual beneficiary of UCI and received substantial funding as a result of this relationship. *See Moon I,* 129 A.3d at 245. As such, UPF has standing to challenge UCI's alleged diversion of funding from UPF to GPF after 2010.

Finally, Defendants challenge UC Japan's standing based on UCI's substantive argument that UC Japan's donation of funding to UCI constituted absolute gifts rather than restricted donations. As discussed below, there remains a genuine issue of material fact as to whether the gifts at issue were unconditional or restricted. The standing challenge is denied as to UC Japan.

C. Breach of Fiduciary Duty (Count II)

Plaintiffs Family Federation, UPF, and UC Japan allege that Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim breached their fiduciary duties by amending UCI's Articles of Incorporation to fundamentally alter

the corporation's purposes. Plaintiffs further allege that the same individual Defendants breached their fiduciary duties when they transferred assets donated to UCI for purposes outside the purview of the original 1980 Articles. Def. Ex. 97 at 1; *see* Pl. Ex. 38 at 309-10.

Both the Court of Appeals and this Court have recognized that fiduciary duty "requires a director to remain faithful to the corporation's original purpose." 7/22/16 Order at 14. The Court of Appeals addressed the breach of fiduciary duty in its decision in this matter entered on December 24, 2015. There, the Court acknowledged that "[i]t can be a breach of duty to change substantially the objects and purposes of the corporation." *Moon I,* 129 A.3d at 252. The Court reasoned that "[a]n organization plainly established to promote the preservation of African wildlife and acquiring vast funds on that basis might well be barred from switching its purpose to expenditures on domestic cats and dogs regardless of how technically such a switch might be read into the text of its articles of incorporation." *Id.* at 252.

The parties each claim that a plain meaning comparison between the two versions of UCI's articles of incorporation supports their positions. The parties also debate the legal significance of UCI's longstanding practices. Defendants further argue the directors did not breach a fiduciary duty by engaging in the alleged self-dealing transactions because the transactions were fair to UCI. These issues will be addressed in turn.

i. Amended Articles

The parties first direct the Court to compare the plain language of the 1980 Articles and the Amended Articles. Although nonprofit corporations are statutorily permitted to amend their articles of incorporation to add or remove provisions, "[i]t can be a breach of duty to change substantially the objects and purposes of the corporation." *Moon I,* 129 A.3d at 252 (internal quotation and citation omitted); D.C. Code § 29-408.01.[7] Courts apply rules of contractual interpretation in interpreting corporate charters. *Bd. of Dir., Wash. City Orphan Asylum v. Bd. of Trs., Wash. City Orphan Asylum,* 798 A.2d 1068, 1079 n.2 (D.C. 2002). If the plain language of a contract is unambiguous, the trial court interprets the contract solely on the basis of the contractual language. *Wash. Inv. Partners of Del., LLC v. Sec. House,* 28 A.3d 566, 573 (D.C. 2011).

The relevant portion of the 1980 Articles reads as follows:

> This Corporation is organized exclusively for charitable, religious and/or educational purposes. Although this Corporation has not sought to qualify for tax exempt status

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[7] This provision was enacted on July 2, 2011, after the complaint in this matter was filed on May 11, 2011. There is no statutory language providing that this provision applies retroactively. *See Bank of Am., N.A., v. Griffin,* 2 A.3d 1070, 1073-74 (D.C. 2010) (providing that in general, "statutes are to be construed as having only a prospective operation, unless there is a clear legislative showing that they are to be given a retroactive or retrospective effect.") (quoting *Wolf v. Dist. Of Columbia Rental,* 414 A.2d 878, 880 n.8 (D.C. 1980)).

pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, it may choose to do so at some point in the future. Unification Church International, both in the past and in the future, has and will dedicate itself to the following activities:

1. To serve as an international organization assisting, advising, coordinating, and guiding the activities of the Unification Churches organized and operated throughout the world.
2. To promote the worship of God, and to study, understand and teach the Divine Principle, the new revelation of God, and, through the practical application of the Divine Principle, to achieve the interdenominational, interreligious, and international unification of world Christianity and all other religions.
3. To establish, support and maintain, anywhere in the world, such place or places for the worship of God and for the study, understanding and teaching of the Divine Principle as may be necessary or desirable, to further the theology of the Unification Church.
4. To publish and disseminate throughout the world, newspapers, books, tracts and other publications in order to carry forward the dissemination and understanding of the Divine Principle, the unification of world Christianity and all other religions, or otherwise to further the purposes of the Corporation.

5. To sponsor and conduct cultural, educational, religious, and evangelical programs for the purpose of furthering the understanding of the Divine Principle, the unification of world Christianity and other religions, world peace, harmony of mankind, interfaith understanding between all races, colors and creeds throughout the world, and for such other purposes consistent with the Divine Principle and the purposes of the Corporation.

Pl. Ex. B. In contrast, the Amended Articles read, in pertinent part, as follows:

> The purpose for which the Corporation is organized is to conduct activities that support educational, cultural, charitable, and religious purposes; and within such limits,
>
> a) To promote and conduct educational, cultural, and religious programs for the purpose of furthering world peace, harmony of all humankind, interfaith understanding among all races, colors and creeds throughout the world; and
> b) To promote interdenominational, interreligious, and international unification of world Christianity and all other religions; and
> c) To promote and support the understanding and teaching of the theology and principles of the Unification Movement; and

> d) To publish and disseminate throughout the world, newspapers, books, tracts, other publications and forms of media in order to further the purposes of the Corporation....

Pl. Ex. C.

Notably, the Amended Articles eliminate all references to the Unification Church and the Divine Principle from each of the five stated "activities;" specifically, two references to the Unification Church in activity one and three, and six references to the Divine Principle in activities two, three, four, and five. The Amended Articles also eliminated the reference to the Unification Church in the corporation's official name, changing it from Unification Church International to UCI. *Id.* In Defendants' view, these reflected a mere streamlining and modernizing of the 30-year-old 1980 Articles. *See* Def. Ex. 9 at 314; Def. Ex. 58 at 289-90, 327-28; Def. Ex. 82 at 269-70. They contend that removal of specific references to the Unification Church and the Divine Principle were not significant changes because the spirit of the revisions captured the original intent. *See* Def. Ex. 9 at 314; Def. Ex. 58 at 327-28; Def. Ex. 82 at 269-70.

This argument lacks merit. It defies reason to suggest that the purposes espoused in the 1980 Articles are unchanged if the specific connections to the Unification Church are removed entirely. Indeed, the repeated references to the Unification Church in the 1980 Articles carried significant independent and non-duplicative meaning, which is precisely why Plaintiffs argue that they were removed. Defendants'

changes to the articles of incorporation emphasized admittedly broad goals at the expense of specific doctrinal references that narrowed the means to accomplish the corporate purpose by design.[8] The 1980 Articles are written to promote broad charitable purposes specifically by supporting "the activities of the Unification Churches." Pl. Ex. B. The Amended Articles unmoor UCI's purposes from these specific doctrinal ties by removing the reference to the Unification Church and replacing it with a single reference to the Unification Movement. Pl. Ex. C. Undoubtedly, removal of specific denominational references to the Unification Church and Divine Principle in the Amended Articles served to broaden UCI's purposes.

Previous rulings in this case support this interpretation. This Court previously considered the language of the Amended Articles when presented. with Plaintiffs' motion for preliminary injunction. The motion was granted on July 22, 2016, in a decision that was affirmed by the Court of Appeals on June 8, 2018. The order indicated that UCI's purposes expressed in the 1980 Articles establish that "Unification Church International's primary mission was to support the Unification Church and to spread that organization's particular doctrine." 7/22/17 Order at 18. The Court rejected Defendants' argument that the plain language of the 1980 Articles indicated a broader

[8] To the extent that Defendants argue that UCI's original purpose was never tied to Unification Churches or the Divine Principle, this contention is belied by the plain language of the 1980 Articles.

purpose and not a specific religious denomination. *Id.* at 7.

Moreover, the Divine Principle was written out of the Amended Articles entirely.[9] *See* Pl. Ex. C. Defendants submit that the Divine Principle is merely an early work of Reverend Moon's which has since been subsumed by the "Eight Great Textbooks." *See* Def. Ex. 13 at 8. Yet, the Amended Articles do not reference the Divine Principle, the Eight Great Textbooks, or any other spiritual text. *See* Pl. Ex. C. This change lends further support to Plaintiffs' argument that the Amended Articles substantially changed UCI's purposes.

Defendants point out that the Amended Articles reference the "Unification Movement" and they submit that there is no functional difference between the terms. *See, e.g.,* Def. Op. at 13; Def. Ex. 2 at 219; Def. Ex. 7 at 284-85; Def. Ex. 82 at 53; Pl. Op. Ex. 99 at 16. However, Defendants also argue that the term "Unification Church" has a particular and negative meaning. Defendants posit that the term "Unification Church" became antiquated after the "end of the church era," which Defendants maintain is a pivotal moment in the history of the religion. *See* Pl. Ex. 1; Pl. Op. Ex. 108 at 384-85; Pl. Op. Ex. 132 at 31; Def. Ex. 9 at 248; Def. Ex. 150. Indeed, Defendants contend that church-like institutions were antithetical to Reverend Moon's ideals since the inception of the

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[9] Evidence in the record suggests that the Divine Principle and other sacred texts of the Unification Church have undergone several revisions over time. *See* Pl. Op. Ex. 86 at 308; Def. Ex. 108 at 77.

Unification Church. Def. First Mot. at 3; Def. Ex. 12 at 1; Def. Ex. 51 at 3-4; Def. Ex. 150 at 121. Preston Moon deliberately sought to separate from the Unification Church. *See* Pl. Ex. 55 (stating that Preston Moon is "walking a separate path and ha[s] no part in any supposed 'succession struggle' within the Unification movement."); Pl. Ex. 68; Def. Op. Ex. 814 at 172-73. This position supports the conclusion that the removal of references to the Unification Church enacted a substantial change.

Defendants further argue that the Amended Articles implemented no change to UCI's purposes because they "remain committed to 'the Unification Church' religion and its theology." Def. Op. at 11. However, Defendants' asserted commitment to Unification Church theology under the Amended Articles does not give rise to a legally binding obligation to provide any support whatsoever to the activities of the Unification Church as existed under the plain language of the 1980 Articles.

The articles of incorporation were amended on August 14, 2010, when Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim were on UCI's board of directors. As the plain texts of the 1980 Articles and the Amended Articles unambiguously shows, the Amended Articles substantially altered UCI's corporate purposes by eliminating any obligation to the Unification Church. As such, Plaintiffs Family Federation, UPF, and UC Japan are entitled to summary judgment against Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim as to their

claim that the amendments to the 1980 Articles constituted a breach of fiduciary duty.

ii. Asset Donations

Plaintiffs allege additional breaches of fiduciary obligations based on Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim's donation of assets to KIF and donations to GPF. First, Defendants claim that UCI's asset donations under Preston Moon comported with UCI's past practice before Preston Moon became president of UCI. *See* Def. Ex. 14 at 45-46 ("[D]uring the period 1977 to 2005, UCI made donations to nonprofit organizations that were neither Unification Churches nor Providential Organizations."). As such, Defendants argue, UCI's actions under Preston Moon were compliant with UCI's original purpose. This argument depends on a purported equivalency between the challenged corporate actions and those taken before Preston Moon's chairmanship. Similarly, Defendants argue that diverting funds from UPF to GPF complied with UCI's purposes because UPF and GPF had substantially similar institutional goals. Def. Ex. 3 at 131-32; Def. Ex. 91. Likewise, the donations to KIF were contractually restricted to a purpose, Defendants contend, that fell comfortably within UCI's original purposes. Def. Ex. 95; Def. Ex. 97; Def. Ex. 98.

Defendants bolster their argument by citing several donations UCI made throughout the course of its history to organizations not officially affiliated with the Unification Church. *See* Def. Ex. 31 at 92-93, 95, 106, 110, 122-23, 205; Def. Ex. 35 at 4; Def. Ex. 45 at

130-31, 135, 275-78; Def. Ex. 46; Def. Ex. 47. For instance, UCI provided substantial funding to the Universal Ballet. *E.g.,* Def. Ex. 31 at 122-21; Def. Ex. 45 at 130-31. Likewise, UCI donated money to the Hackley School, a school in New York. Def. Ex. 31 at 105. Reverend Moon was also linked to this entity, as his children attended school there. *Id.* at 106. Reverend Moon made the decision for UCI to donate funds to the Washington Times newspaper, a UCI subsidiary, and the newspaper was subsequently asked to provide its budget for Reverend Moon's review. Pl. Ex. 85 at ¶ 8; Pl. Op. Ex. 88 at 277; Def. Ex. 31 at 92; Def. Ex. 45 at 106. UCI also donated $3.5 million to One Way Productions in connection with the production of a movie entitled "Inchon," "the great movie Reverend Moon created many years ago...." Def. Ex. 31 at 109. In addition, UCI donated funds to Liberty House Publishers, an organization associated with Reverend Jerry Falwell, "based on a very important guidance that was given by Reverend Moon." Def. Ex. 45 at 277. UCI further funded the Little Angels cultural group, for which Hak Ja Han Moon cooked and traveled to attend performances. Pl. Op. Ex. 88 at 228-30. UCI also donated funding to the Martial Arts Federation, which "was established by inspiration from Reverend Moon...." Def. Ex. 7 at 140. Furthermore, UCI owned and operated American Life TV based on Reverend Moon's decision. Def. Ex. 45 at 249-50. In Defendants' view, the donations challenged by Plaintiffs are not significantly different from these historical donations. Defendants emphasize that Douglas Joo stated that "millions" of activities could support the broad purposes of the Unification Church, and therefore fall within the purposes enumerated in

UCI's 1980 Articles. Def. Ex. 45 at 123. Defendants further contend that the purpose of UCI's 1980 articles "plainly authorized support of GPF's global peace festivals as well as the donation to KIF, which was restricted to purposes that align with UCI's own." Def. Reply at 2.

As Defendants concede, "each provision" of a corporation's articles "should be given effect," specifically in regards to the multiple excised references to "Unification Church" and Divine Principle from UCI's 1980 articles. *See Bd. of Dirs. v. Bd. of Trs.,* 798 A.2d 1068, 1080 (D.C. 2002); *See also,* Pl. Reply at 4. Defendants readily acknowledge that "there is now no dispute that UCI's articles impose no affiliation requirement." Def. Reply at 9. Accordingly, UCI's donation to KIF, subject to the express restriction that the donation must align with UCI's Amended Articles, equally has no affiliation requirement whatsoever, contrary to the express affiliation to the Unification Church in the text of the 1980 articles. Def. Ex. 98.

Indeed, there is evidence in the record that UCI sought to donate assets to KIF specifically because KIF is completely unaffiliated with the Unification Church; the assets' "affiliation with the Unification Church had become an impediment to project financing," as UCI discussed at a board meeting on May 13, 2010. Def. Ex. 97 ("[I]f the new beneficial owner was a foundation that would neither be owned nor controlled by UCI, but with the same purposes of UCI, permanent financing would be more forthcoming...."); *see* Pl. Ex. 8 at 318; Pl. Ex. 43 at 186;

Pl. Ex. 73; Def. Op. Ex. 185 at 344; Def. Op. Ex. 187 at 392.

Similarly, evidence in the record suggests that GPF was created as an entity totally separate from the Unification Church. *See* Pl. Ex. 47. On November 4, 2009, the date on which Sean Moon was announced as chairman of UPF, Preston Moon released a public letter that peace festivals "will not go forward as projects of UPF, and will have no formal or legal association with FFWPUI. Rather, a separate GPF foundation is being established for this purpose." *Id.* at 2; *see* Def. Op. Ex. 184 at 172-73. Reverend Moon instructed Preston Moon to cease GPF operations in 2009 to no avail. Pl. Op. Ex. 102. Therefore, the record indicates that Defendants engaged in transactions with the express purpose of contravening UCI's original corporate charter.

Defendants further ask the Court to resolve any ambiguities in the various articles of incorporation in favor of the directors' interpretation. The cases Defendants cite for this proposition do not support absolute deference to a board's interpretation of its bylaws. In *Oberbillig v. West Grant Towers Condominium Ass'n,* for example, the Iowa Supreme Court enforced a written provision expressly granting the board of directors authority to interpret ambiguous bylaws. 807 N.W.2d 143, 153 (Iowa 2011). In *IBJ Schroeder Bank & Tr. Co. v. Resolution Tr. Corp.,* the Second Circuit Court of Appeals interpreted corporate bylaws "arising from their conduct and methods of transacting business," as evidenced by "customary practice." 26 F.3d 370, 374-75 (2d Cir. 1994) (internal citation omitted). The Supreme Court

of Illinois similarly relied on past business behavior in *Joy v. Ditto, Inc.,* looking to the consistent conduct of the board of directors and interpreting the corporate bylaws to harmonize with twenty years of past practice. 190 N.W. 671, 675 (Ill. 1934), *cited in Voss v. Lakefront Realty Corp.,* 365 N.E.2d 347, 357 (Ill. Ct. App. 1977). These decisions uniformly concern disputes over whether a board of directors complied with duties imposed on them by corporate bylaws, not whether directors breached fiduciary duties by rewriting articles of incorporation to untether the corporate entity from its very foundation.

Defendants also cite District of Columbia Code Section 29-406.31(a) for the proposition that Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim may not be held liable "for any decision to take or not to take action" unless one of several exceptions are satisfied. This argument is flawed. This provision was enacted on July 11, 2011, after the complaint was filed on May 11, 2011. Regardless, the Court of Appeals noted that fiduciary duty "aligns with the District's current statutory scheme governing nonprofit entities...." *Moon II* at *11. Moreover, this statute protects directors from liability "to the nonprofit corporation or its members," not special interest beneficiaries alleging a breach of fiduciary duty. D.C. Code § 29-406.31(a).

Defendants further premise their request for interpretive deference on the business judgment rule. The business judgment rule is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith

and in the honest belief that the action taken was in the best interest of the company." *Willens v. 2720 Wis. Ave. Coop. Ass'n,* 844 A.2d 1126, 1137 (D.C. 2004). Courts generally respect a board of directors' discretion to make business decisions and will not substitute their own judgment for that of the board of directors, an entity recognized to have a higher level of institutional competence to make business decisions. *Id.* at 1137; *see In re: infoUSA, Inc. Shareholders Litigation,* 953 A.2d 963, 984 (Del. Ch. 2007). The business judgment rule "protects only *business* decisions, not decisions about how to interpret and apply the corporation's by-laws." *Armenian Assembly of Am., Inc. v. Cafesjian,* 692 F. Supp. 2d 20, 47 (D.D.C. 2010) (emphasis in original). For example, courts deferred to the board of directors decision when it rejected a demand from a stockholder. *See Behradrezaee v. Dashtara,* 910 A.2d 349, 361 (D.C. 2006).

However, civil courts routinely and competently interpret the legal effect of written instruments, without the presumption afforded by business judgment rule. The business judgment rule is inapplicable "where there is a breach of the duty of loyalty." *See Willens,* 844 A.2d at 1136-37 ("[t]hus, the duty of loyalty must be satisfied before the business judgment rule is applicable to actions of corporate fiduciaries.") (internal citations omitted)). Specifically, "[t]he duty of loyalty is transgressed when a corporate fiduciary, whether director or officer, uses his or her corporate office to promote, advance or effectuate a transaction between the corporation and such person,

and that transaction is not substantively fair to the corporation." *Id.* at 1136.

At the time the individual Defendants rewrote UCI's articles of incorporation and subsequently donated UCI's assets to entities unaffiliated with the Unification Church, they "owed the duties of a fiduciary to [UCI] and...among those duties is the duty of loyalty." *See Id.* at 1136 *(citing Wisconsin Ave. Assocs. Inc. v. 2720 Wisconsin Ave. Coop. Ass'n,* 441 A.2d 956, 963-93 (D.C. 1982)); *Contra, Silberberg v. Becker,* 191 A.3d 324 (D.C. 2018). As the individual Defendants breached their fiduciary duty owed to UCI when they used their position as board members to fundamentally alter its articles of incorporation for the express purpose of making asset donations unaffiliated with the Unification Church, the business judgment rule is not applicable. *Willens,* 844 A.2d at 1136. Specifically, on January 12, 2009, Defendant Preston Moon nominated and appointed to UCI's board of directors Defendants Michael Sommer and Richard Perea, who later left UCI to become a foundational KIF board member. Pl. Ex. 59 at 27; Def. Ex. 96. On August 2, 2009, Preston Moon elected and appointed his brothers-in-law, Defendants Jinman Kwak and Youngjun Jim, to the board of directors. In amending the articles on August 14, 2010, Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim removed every reference to the Unification Church and the Divine Principle in contravention of UCI's original purpose. Indeed, the individual Defendants discussed donating UCI's assets to KIF prior to the establishment KIF. Pl. Ex. 59 at 27; Def. Ex. 96. While KIF was established

in June 2010; individual Defendants first discussed donating assets to KIF on May 13, 2010, decided to donate UCI's assets to KIF on June 24, 2010, and then signed a donation agreement on June 28, 2010. Def. Ex. 97 at 1; Def. Ex. 96; Pl. Ex. 38 at 309-10. Further, the record demonstrates that the Amended Articles served to broaden UCI's purposes in order to make donations to entities that are unaffiliated with the Unification Church. Pl. Ex. B; Def. Ex. 3; Def. Ex. 95. Accordingly, there is no genuine issue of material fact that Defendants Preston Moon, Michael Sommer, Jinman Kwak, and Youngjun Kim engaged in corporate transactions contrary to UCI's original corporate purposes by donating assets to KIF. Further, there is no genuine issue of material fact that Defendants Preston Moon, Richard Perea, Michael Sommer, Jinman Kwak, and Youngjun Kim, engaged in corporate transactions contrary to UCI's original corporate purposes by providing monetary support to GPF on November 13, 2009, an organization expressly and distinctly separate from the Unification Church.

Thus, Plaintiffs are entitled to summary judgment on their claim that Defendants Preston Moon, Michael Sommer, Jinman Kwak, and Youngjun Kim breached their fiduciary duty for the donation to KIF. Further, Plaintiffs are entitled to summary judgment on their claim Defendants Preston Moon, Richard Perea, Michael Sommer, Jinman Kwak, and Youngjun Kim breached their fiduciary duty for the donations to GPF. However, as Defendant Perea had left the board to become a signatory of the donation agreement from UCI to KIF at the time of the transfer of assets,

Defendant Perea is entitled to summary judgment as to the KIF donation.

iii. Fairness of Alleged Self-Dealing Transactions

Defendants next argue that they did not breach their fiduciary duties by engaging in the alleged self-dealing transactions because the transactions were fair to UCI. *See* Def. Ex. 9 at 179. A transaction does not constitute a breach of the duty of loyalty merely due to a conflict of interest if the transaction is also "substantively fair to the corporation." *Willens v. 2720 Wis. Ave. Coop. Ass'n,* 844 A.2d 1126, 1136 n.13 (D.C. 2004).[10]

Plaintiffs challenge three transactions under Preston Moon's leadership as self-dealing. First, in February 2008, a UCI subsidiary, True World Group, LLC ("True World"), purchased real property from UV Sales, Inc. ("UV Sales"), a corporation owned by Preston Moon. *See* Pl. Op. Ex. 121 at 356; Def. Ex. 102; Def. Ex. 103 at 9. Second, in 2007, UCI loaned $1.5 million to United Vision Group, Inc. ("UVG"), a

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[10] Section 29-406.70 of the District of Columbia Code provides that a potentially self-dealing transaction involving a nonprofit corporation is not void if fair to the nonprofit corporation. This provision was enacted on July 2, 2011, after the complaint in this matter was filed on May 11, 2011. There is no statutory language noting that this provision applies retroactively, and neither party argues that it applies retroactively. *See Bank of Am., N.A., v. Griffin*, 2 A.3d 1070, 1073-74 (D.C. 2010) (providing that in general, "statutes are to be construed as having only a prospective operation, unless there is a clear legislative showing that they are to be given a retroactive or retrospective effect.") (quoting *Wolf v. Dist. Of Columbia Rental,* 414 A.2d 878, 880 n.8 (D.C. 1980)).

corporation wholly owned by Preston Moon. Def. Ex. 105; Def. Ex. 109 at 11. The pleadings state that the loan was for $2 million. Pl. Compl. at ¶ 50; Def. Mot. 3 at 30. This loan was paid in full around October 2009. Def. Ex. 9 at 179; Def. Ex. 19 at 38; Def. Ex. 106. Third, starting in 2006, another UCI subsidiary, One Up Enterprises, Inc. ("One Up"), retained UVG Strategic Consulting, LLC ("UVGSC"), a consulting firm wholly owned by UVG that was created in 2006. Pl. Op. Ex. 109 at 138-39; Pl. Op. Ex. 121 at 358; Def. Ex. 109 at 10-11; Def. Ex. 111.

Defendants submit that UCI was reasonably compensated as a result of each of the challenged commercial transactions. *See* Def. Ex. 103. But reasonable economic compensation does not end the inquiry into the fairness of an allegedly self-dealing transaction. Generally, courts addressing an allegedly self-dealing transaction examine the "entire fairness" of the transaction. *See Pub. Invest. v. Bandeirante Corp.,* 740 F.2d 1222, 1234 n.72 (D.C. Cir. 1984); *Alberts v. Tuft,* 353 B.R. 324, 347 (Bankr. D.C. 2006) (applying Delaware law); *Weinberger v. Uop,* 457 A.2d 701, 711 (Del. 1983). Courts have held that the dealings between a corporation and one of its officers "must be *fair and in the interest of the corporation....*" *Fill Bldgs., Inc. v. Alexander Hamilton Life Ins. Co.,* 241 N.W.2d 466 (Mich. 1976) (emphasis in original), *quoted in Cookies Food Prods., Inc. v. Lakes Warehouse Distributing, Inc.*, 430 N.W.2d 447, 453 (Iowa 1988).

Here, Plaintiffs do not allege that the transactions violated UCI's corporate purposes. Instead, Plaintiffs argue that the transactions were not substantively

fair to UCI. Pl. Op. to Def. Third Mot. at 17. First, Plaintiffs challenge True World's purchase of real property from UV Sales. According to Plaintiffs' expert witness, David Williams, True World "agreed to pay $5.9 million, which exceeds the $5.8 million fair market value," a figure gleaned from an appraisal by a third party. Pl. Op. Ex. 106; Def. Ex. 141 at 8. Defendants' expert witness, Kevin Kernen, came to a different conclusion, determining the market value to be $5.95 million. Def. Ex. 103 at 10 ("[A] small variance in market value conclusions is not uncommon."); *see* Pl. Op. Ex. 106 at 42.

Consequently, a genuine issue of material fact exists as to whether UCI received fair market value compensation for the real property transaction between True World and UV Sales; the allegations against Defendant Preston Moon remain with regard to this transaction. However, as this transaction was undertaken prior to the appointment of Defendants' Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim to UCI's board of directors, Defendants Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim are entitled to summary judgment on this aspect of Count II.

Second, Plaintiffs argue that One Up's procurement of consulting services from UVGSC was not economically fair. Defendants present an expert witness report from Gregory Bell concluding that the services UVGSC provided One Up were commercially reasonable. Def. Ex. 109 at ¶ 6. The expert report includes a detailed explanation of the institutional and economic value of consulting services and analyzed specific services UVGSC provided to One Up in

reaching his conclusion. *See id.* However, Plaintiffs' expert witness Kevin Kernin states in his report that the $20.8 million in economic damages resulted from payments to UVGSC. Def. Ex. 141 at 8; *see* Pl. Op. Ex. 105 at 188; Def. Ex. 38 at 345; Def. Ex. 142 at ¶ 11. Plaintiffs further maintain Defendants failed to show that Preston Moon disclosed any conflict of interest and that consulting services from UVGSC were economically reasonable and fair.

Thus, there remains a genuine issue of material fact as to the consulting services between One Up and UVGSC and whether they give rise to Defendant Preston Moon's breach of fiduciary duty. However, as this transaction was undertaken prior to the appointment of Defendants Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim to UCI's board of directors, Defendants Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim are entitled to summary judgment on this aspect of Count II.

Third, Plaintiffs claim that the loan agreement between UCI and UVG was economically unfair.[11] Defendants concede that Preston Moon did not disclose his interest in UVG but assert the loan was fair. Def. Reply at 12. Plaintiffs make no argument that the loan was not fair. Indeed, Plaintiffs fail to offer any evidence in support of the proposition that the agreement was economically unfair. As no evidence suggests that UCI's loan to UVG was

[11] Defendants contend that the loan was substantively fair because UVG repaid the loan in full. *See* Def. Ex. 9 at 179; Def. Ex. 106; Def. Ex. 107 at 283; Def. Ex. 108 at 60.

substantively unfair, Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim are entitled to summary judgment on this aspect of Count II.

D. Contract Claims (Count IV-VI)

UC Japan brings counts for breach of contract, promissory estoppel, and unjust enrichment, each on the basis of an obligation allegedly arising out of funding it provided to UCI. Defendants argue that there is no basis upon which to conclude that UCI was under any contractual or quasi-contractual obligation to restrict the use of funds donated to it.

A party bringing a claim for breach of contract "must establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach." *Tsintolas Realty Co. v. Mendez,* 984 A.2d 181, 187 (D.C. 2009). A contract need not be evidenced by a writing or an oral agreement; an implied-in-fact contract "is inferred from the conduct of the parties in the milieu in which they dealt" and, where valid, is legally no different from any valid written contract. *Boyd v. Kilpatrick Townsend & Stockton,* 164 A.3d 72, 81 (D.C. 2017) (quoting *Vereen v. Clayborne,* 623 A.2d 1190, 1193 (D.C. 1990)).

Traditionally, "a donor who has made a completed charitable contribution as an absolute gift had no standing to bring an action to enforce the terms of his or her gift or trust." *Moon I,* 129 A.3d at 247 (quoting *Carl J. Herzog Found., Inc. v. Univ. of Bridgeport,* 699 A.2d 995, 997 (Conn. 1997)). However, the Court of Appeals in *Moon I* specifically recognized the

enforceability of a "restricted gift made to a charitable corporation." *Id.* at 247. Some jurisdictions have held that restrictions on charitable donations must be specific, limited, and definite to be enforceable. *See Woman's Hosp. League v. City of Paducah,* 223 S.W. 159, 162 (Ky. 1920). Others have held that even absolute charitable subscriptions, with no express or communicated restrictions, must be used for the recipient's original charitable purpose regardless of whether there is consideration or detrimental reliance. *See Salisbury v. Northwestern Bell Tel. Co.,* 221 N.W.2d 609, 613 (Iowa 1974). With respect to charitable trusts, the Court of Appeals has noted, citing the Restatement (Second) of Trusts: "Where property is given to a charitable corporation without restrictions as to the disposition of the property, the corporation is under a duty...not to divert the property to other purposes but to apply it to one or more of the charitable purposes for which it is organized." *Bd. of Dirs.,* 798 A.2d at 1075 n.6. In this case, the Court of Appeals wrote, "While a restricted gift is not a 'trust in the technical sense' and is 'not bound by all the limitations and rules which apply to a technical trustee,' the nonprofit organization 'may not receive a gift made for one purpose and use it for another.'" *Moon I,* 129 A.3d at 247 n.20 (internal citations omitted). These two pronouncements make clear that a donation to a charitable organization gifted in furtherance of the organization's charitable purposes must be used for those purposes.

The Complaint alleges that UCI breached a contract with UC Japan when UCI used funds donated by UC Japan beyond the scope of UCI's original

corporate purposes. Although this claim is billed as a breach of contract claim, it alleges a breach of promises concerning allegedly restricted gifts of funding to UCI. Plaintiffs argue that a mutual understanding existed between UCI and UC Japan that funds would be used for UCI's charitable corporate purposes, as evidenced by decades of letters from UCI soliciting funding from UC Japan, and UCI breached that agreement by using UC Japan's funds in other ways. Pl. Op. Ex. 114; Def. Ex. 114-137. Defendants counter that no such understanding existed, positing that UC Japan provided funding to UCI in years when UCI did not send UC Japan a solicitation letter, and regardless, UC Japan did not view the donations as restricted to a particular purpose. *See* Def. Ex. 39 194, 198-99, 202; Def. Ex. 45 at 103-04; Def. Ex. 52 at 202-208, 228.

There is no evidence that UC Japan donated funds to UCI pursuant to a written agreement or written instrument. Defendants submit a declaration indicating that UC Japan made donations to UCI "unconditionally and without restrictions." Def. Ex. 113 at ¶ 6. Nonetheless, the record suggests that UC Japan understood that UCI was to use donated funds to further UCI's charitable corporate purposes. UC Japan's corporate deponent testified as to a conversation between the presidents of UCI and UC Japan confirming that the purpose of the donated funds was "to support activities under the guidance of the True Parents and international headquarters," and UCI's president at the time, Douglas Joo, promised that "everything is for—for missionary activities, missionary purposes." Def. Ex. 52 at 202.

UC Japan's corporate deponent further testified as to UC Japan's understanding that funds donated to UCI would be used "to support world mission activities." *Id.* at 268. Bo Hi Pak testified at his deposition that he shared this understanding when he chaired UCI. Pl. Ex. 88 at 26. Evidence further suggests that UC Japan's regular donation of funds to UCI was not contingent upon a written promise or repeated assurances about the use of the funds, as UC Japan donated funds to UCI even in years in which UCI made no funding requests or representations as to how donated funds would be used. Def. Ex. 45 at 103-04.

The record also contains decades of letters from UCI to UC Japan soliciting funding or thanking UC Japan for providing funding between 1977 and 2005. Pl. Op. Ex. 114; Def. Ex. 114-137. Each letter attaches minutes of the year's "Annual Conference of the Unification Church Leaders" held each January concerning, among other matters, the purposes of the year's budget for UCI and the monetary pledges of the various Unification Church entities in attendance. *See* Pl. Op. Ex. 138. The solicitation letters to UC Japan in the record thank UC Japan for its pledge and requests UC Japan to supply the promised funds.

Starting in 1985, the enumerated budgetary purposes included the catchall: "Related Business Projects." Def. Ex. 118 at 11. In 1988, another budgetary purpose was added, providing "[s]uch public relations and other activities as the Board or officers shall determine from time to time to be in furtherance of the Corporation's purposes and objectives." Def. Ex. 121 at 1. In addition, the "Related Business Projects" catchall was expanded to include "[s]uch business

projects as the Board or officers shall determine from time to time to be economically or otherwise supportive of the Corporation's activities and objectives." *Id* at 2. A change in Japanese law in 1997 required UC Japan to submit to the Japanese government financial reports including details regarding funds provided to UCI, prompting UC Japan to request a more specific categorization of UCI's use of funds. Pl. Op. Ex. 139 (expressing concerns over classifying funds as used for general business purposes); Pl. Op. Ex. 140. This prompted a slight change in the form of the solicitation letters, but the letters sent after 1997 nonetheless included a catchall for "[b]usiness and other projects which, economically or otherwise, help advance the mission of UCI and the worldwide Unification Church movement." Def. Ex. 131-137. These purposes were intentionally written with broad scope, "allow[ing] for flexibility in case a more detailed description is needed later," again suggesting a measure of discretion on UCI's behalf, albeit consistent with the Unification Church. Pl. Op. Ex. 139; Def. Ex. 131-137.

Evidence indicates that despite its lack of knowledge as to UCI's business activities, UC Japan expected UCI to use funds in furtherance of its "original purposes." Pl. Op. Ex. 117. For these reasons, a genuine issue of material fact remains as to whether conditions were placed on UC Japan's donations and whether they were enforceable.[12]

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[12] Plaintiffs note that Defendants previously argued before this Court and the Court of Appeals that the donations at issue were absolute gifts rather than restricted gifts. This argument was rejected. *Moon I,* 129 A.3d 247. The Court of Appeals's decision in

Defendants also challenge UC Japan's promissory estoppel (Count V) and unjust enrichment (Count VI) claims. To prevail on its claim for promissory estoppel, UC Japan must show: (1) the existence of a promise, (2) expectation that the promisee would rely on the promise, and (3) the promisee's detrimental reliance on the promise. *See Howard Univ. v. Good Food Servs., Inc.,* 608 A.2d 116, 121 (D.C. 1992). A court will enforce a promise under this theory only if injustice can be avoided in no other way. *Id.* at 121. For Count VI, UC Japan must demonstrate that "(1) the plaintiff conferred a benefit on the defendant; (2) the defendant retains the benefit; and (3) under the circumstances, the defendant's retention of the benefit is unjust." *News World Communications, Inc. v. Thompsen,* 878 A.2d 1218, 1222 (D.C. 2005) (quoting *4934, Inc. v. District of Columbia Dep't of Employment Servs.,* 605 A.2d 50, 55 (D.C. 1992)).

Defendants' challenge to these claims depends on the purportedly unrestricted nature of UC Japan's donations to UCI. In Defendants' view, UCI made no promise to UC Japan as to the manner in which the funds would be utilized. *See New Econ. Capital, LLC v. New Markets Capital Grp.,* 881 A.2d 1087, 1097 (D.C. 2005) ("Since there was no promise, [the defendant] could not have expected [the plaintiff] to

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Moon I rested heavily on the stage of the case and was couched on the allegations in the complaint. *Id.* at 247. The standard for summary judgment is starkly different. In order to survive on summary judgment, Plaintiffs must do more than allege a cognizable claim; they must demonstrate the existence of a genuine issue of material fact. *See* Super. Ct. Civ. R. 56(c); *Grant,* 786 A.2d at 583.

rely on any promise."). As discussed above, evidence in the record contradicts this position. As such, there remains a genuine issue of material fact as to Count V and Count VI as well.

E. Aiding and Abetting Claims Against Individual Directors

As noted at the outset, Defendants Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim moved for partial summary judgment on the segment of Count II, which alleges that they aided and abetted their fellow directors in breaching their fiduciary duties. Directors' Motion argues that the aiding and abetting claims against Defendants Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim should be dismissed as no independent tort for aiding and abetting exists in the District of Columbia. This Court has previously noted in this matter that no independent tort for aiding and abetting exists in this jurisdiction. 12/19/13 Order at 14 n. 15.

In their Opposition, Plaintiffs indicate that they no longer wish to proceed with these claims for aiding and abetting against Defendants Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim. Accordingly, the Outside Director Defendants' Motion for Partial Summary Judgment on Plaintiffs' Aiding and Abetting Claims is granted.

IV. CONCLUSION

Wherefore, upon consideration of the motions, the oppositions thereto, the replies thereto, and the entire record herein, it is this 28th day of March, 2019, hereby:

ORDERED, that Plaintiffs' Motion for Summary Judgment on Count II of the Complaint is **GRANTED IN PART**; it is further

ORDERED, that Defendants' Motion for Summary Judgment No. 1: All Counts on First Amendment Grounds is **DENIED**; it is further

ORDERED, that Defendants' Motion for Summary Judgment No. 2: Counts I, III, IV, V, and VI is **DENIED**; it is further

ORDERED, that Defendants' Motion for Summary Judgment No. 3: Count II is **GRANTED IN PART**; it is further

ORDERED, that Peter Kim and Douglas Joo are **DISMISSED** as plaintiffs in this matter; it is further

ORDERED, that Count I and Count III of Plaintiffs' complaint are **DISMISSED**; it is further

ORDERED, that Outside Director Defendants' Motion for Partial Summary Judgment on Plaintiffs' Aiding and Abetting Claims is **GRANTED**; it is further

ORDERED, that Defendants Preston Moon, Michael Sommer, Jinman Kwak, Richard Perea, and Youngjun Kim are dismissed as to claims set forth in Count I, Count III, and on claims in Count II, predicated on aiding and abetting their fellow Directors' breaches of fiduciary duties and manipulating the designation and removal of Directors of the Corporation; it is further

ORDERED, that summary judgment is **GRANTED** in favor of Plaintiffs against Defendants

Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim as to the claim in Count II of the complaint for breach of fiduciary duty arising out of the amendment of UCI's articles of incorporation; it is further

ORDERED, that summary judgment is **GRANTED** in favor of Plaintiffs against Defendants Preston Moon, Michael Sommer, Jinman Kwak, and Youngjun Kim as to the claim in Count II of the complaint that the asset donations to KIF constituted breaches of fiduciary duties; it is further

ORDERED, that summary judgment is **GRANTED** in favor of Defendant Perea as to the claim in Count II of the complaint that the asset donations to KIF constituted breaches of fiduciary duties; it is further

ORDERED, that summary judgment is **GRANTED** in favor of Plaintiffs against Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim as to the claim in Count II of the complaint that the asset donations to GPF constituted breaches of fiduciary duties; it is further

ORDERED, that summary judgment is **GRANTED** in favor of Defendants Preston Moon, Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim as to the claim in Count II for breach of fiduciary duty arising out of the loan agreement between UCI and UVG; it is further;

ORDERED, that summary judgment is **GRANTED** in favor of Defendants Michael Sommer, Richard Perea, Jinman Kwak, and Youngjun Kim as

to the claims in Count II for breach of fiduciary duty arising out of the following alleged self-dealing transactions: (1) True World's purchase of real property from UV Sales; and (2) One Up's procurement of consulting services from UVGSC; it is further

ORDERED, that Count II of Plaintiffs' complaint remains pending as to claims for breach of fiduciary duty arising out of the following alleged self-dealing transactions against Defendant Preston Moon: (1) True World's purchase of real property from UV Sales and; (2) One Up's procurement of consulting services from UVGSC; it is further

ORDERED, that Count IV, Count V, and Count VI of the complaint remain pending against Defendant UCI.

SO ORDERED.

/s/ Laura A. Cordero
Laura A. Cordero
Associate Judge
(Signed in Chambers)

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