APPENDIX

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APPENDIX A

No. 22-CV-0964
DISTRICT OF COLUMBIA COURT OF APPEALS

SARA GONZÁLEZ FLAVELL, APPELLANT,
v.
JIM: YONG KIM, et al., APPELLEEs.

Appeal from the Superior Court of the District of Columbia Civil Division (2020-CA-094944B) (Hon. Yvonne M. Williams, Motion Judge) (Submitted October 16, 2023, Decided October 25. 2024) Before BLACKBURNE-RlGSBY, *Chief Judge*,* BECKWITH, *Associate Judge*, and THOMPSON, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant, Sara González Flavell, was employed by the International Bank for Reconstruction and Development (the "IBRD," commonly known as the World Bank and sometimes referred to herein and in the record as the "Bank," the "World Bank Group." or the 'WBG' until she was terminated in December 2017.[1] In November 2020, she sued the defendants/appellees

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* Associate Judge AliKhan was originally assigned to this case. Following Judge AliKhan's appointment to the U.S. District Court for the District of Columbia effective December 12, 2023, Chief Judge: Blackburne-Rigsby has been assigned to take her place on the division.

[1] Appellant was a Special Assistant to the Bank's Director General of Evaluation in the Bank's Independent Evaluation Group ("IEG').

("appellees"), all of whom were directors, officers, or other employees of the Bank during the relevant time periods, alleging in a seven-count complaint that, in their individual capacities, they variously interfered with her contract with the Bank, fraudulently claimed authority to declare her position redundant misrepresented that they would remedy her situation when they actually were conspiring to end her employment with the Bank, and intentionally inflicted emotional distress. The Superior Court granted appellees' motion to dismiss for lack of subject matter jurisdiction and dismissed the complaint with prejudice, agreeing that the appellees are immune from appellant's suit under the Bank's Articles of Agreement.

Appellant contends that the Superior Court erred in dismissing the complaint because appellees were acting outside the scope of their official duties and functions and thus were not entitled to immunity from the instant lawsuit. Appellant also argues that the Superior Court abused its discretion in denying her the opportunity to conduct jurisdictional discovery and to amend her complaint and in denying her motion for reassignment of the case to a different judge. For the reasons that follow, we affirm the dismissal order.

I. Factual and Procedural Background

The complaint alleges the following: On July 1, 2015, appellant was issued a Notice of Redundancy. She subsequently was told that the Notice of Redundancy was "suspended" while she was on disability leave from the Bank. Appellant's actual termination came in December 2017, after she had been determined fit to return to work and afforded time to conduct a job search.

In the meantime. appellant appealed the redundancy notice to the World Bank Administrative Tribunal (the "WBAT"), contending that the notice violated World Bank rules and therefore was not valid.[2] In its decision, the WBAT found that "there was a legitimate basis for declaring [appellant's] position redundant," but also found that the Bank "ha[d] not convincingly demonstrated that the decision to declare [appellant's] position redundant was taken independently of the perception of her performance and [her difficult] working relationship with the [IEG] Director General." [3]The WBAT also

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[2] The WBAT is "an international employment arbitration court, to which employees of an international organization may take their claims or grievances that arise within the workplace, for a final determination that is binding on the organization." Robert A. Gorman, *The Development of International Employment Law: My Experience on International Administrative Tribunals at the World Bank and the Asian Development Bank*, 25 Comp. Lab. L. & Pol'y J. 423, 424 (2004). The establishment of the WBAT "represents a determination by the Bank that it should be held legally accountable for the decisions made by supervisors and officials in managing the Bank's workforce." *Park v. Brahmbhatt*, 234 A.3d 1212, 1218 (D.C. 2020) (citing *id.*) (quotations omitted).

[3] The quoted language is from WBAT Decision No. 553, which is quoted in the record but not included in full. See González Flavell v. Int'l Bank for Reconst. And Dev. Decision No. 553, Judgment, 152 (Apr. 21, 2017), http:// tribunal. Worldbank.org/ judgments – orders-advanced search//553 https://perma.cc/9MVS-U2F6. Decision No. 553 is also quoted in WBAT Decision No. 597, which appellant fully included in her Supplemental Record. See González Flavell v. Int'l Bank for Reconst. And Dev. Decision No. 553, Judgement (Oct. 18,2018)
https://tribunal.worldbank.org/sites/default/files/Summaries/Summary%,20of>/o20González0/o20Flavell%20v.%20IBRD%20553.pdf;https://perma.cc/; https://perma.cc/G3PR-KL26.

determined that the notice of redundancy was procedurally defective in that "the redundancy decision was made and [appellant's] functions [were] distributed to other staff prior to management obtaining the required approval of the [the WBG Severance and Redundancy Group (the "SRG")]."[4] The WBAT "awarded [appellant] compensation but did not order rescission of the Notice of Redundancy." [5] It stated that its decision was made "without prejudice to any decision that the Bank may make concerning the Notice of Redundancy." [6] After the WBAT issued Decision No. 553, appellant maintained that she could not be terminated based on the 2015 Notice of Redundancy. However, World Bank Human Resources ("HR") staff informed her that the suspension of the Notice of Redundancy had been lifted and that appellant was not to return to work.

After unsuccessfully seeking help from various appellees to avoid termination and to facilitate negotiation of a mutually agreeable separation, appellant filed her pro se complaint in the Superior Court. She alleged a conspiracy among Bank employees, directors, and officers to fraudulently terminate her employment. The complaint includes counts for fraud, promissory fraud, interference with contract rights, conspiracy to commit fraud,

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4 Summary of González Flavell v. IBRD, WBAT 1 (Apr. 21,2017),https://tribunal.worldbank.org.sites/default/files/Summaries/Summary%,20of>/o20González0/o20Flavell%20v.%20IBRD%20553.pdf; https://perma.cc/BC2Z-F3R4.

5 González Flavell v. Int'l Bank for Reconst. and Dev., Decision No. 553, Judgment, 52 (Oct. 18, 2018),https:/tribunal.worldbank.org/sites/default/files(]udgmentsorders/González0/o20Flavell%20%28No.%204%29%20v.%20IBRD%20-%20597.pdf; https: //penna.cc/ SR2X- M6XK

6 Id

intentional infliction of emotional distress, and tort of another.[7] The complaint named *as* defendants *Jim* Yong Kim and David Malpass, each of whom served for a period *as* president of the World Bank Group during the relevant time; Shaolin Yang, a Managing Director and Chief Administrative Officer of the World Bank. Group; Otaviano Canuto, an Executive Director of the World Bank Group and Chair of a subcommittee of the World Bank board; Sophie Sirtaine, a WBG IEG staff member; Jenny Funes, a WBG HR staff member; Philip Beauregard, a WBG HR manager; and "John Does 1 through 4."

Appellees filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Super. Ct. Civ. R. 12(b)(1) and for failure to state a claim pursuant *to* Super. Ct. Civ. R. 12(b)(6). The Superior Court did not reach appellees' Rule 12(b)(6) argument but agreed that it lacked subject matter jurisdiction, concluding that appellant's allegations "relate to actions taken [by appellees] within their official capacities,, and that appellees are "immune from the instant litigation under the [Bank's] Articles of Agreement." The court rejected appellant's argument that **the** appellees waived their immunity by removing the case to federal court. The court did not resolve whether appellees have immunity from the instant litigation under the International Organizations Immunities Act of 1945, 22 U.S.C. §§ 288-2881 (the "IOIA").

Appellant challenges the Superior Court's rulings, arguing that appellees' actions and omissions were beyond the

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7 Appellees removed the case to the United States District Court for the District of Columbia. On March 7, 2022, the district court granted appellant's motion to remand the case to the Superior Court. Both the instant case and the companion case in which appellant sued the IBRD were assigned to the Honorable Yvonne Williams.

scope of their official duties and not covered by immunity because appellees contravened the Bank's internal rules and procedures. Appellees argue that the acts alleged consist of ordinary personnel and business management actions they performed in the course of their official duties within the Bank and that enforcement of the notice of redundancy was "an action quintessentially falling within the ambit of [a]ppellees' official responsibilities," for which they are immune from suit under both the IOIA and the Bank's Articles of Agreement.

II Applicable Law

It is undisputed that the IBRD is an international organizations.[8] *See* 22 U.S.C. §288; Exec. Order No. 9751 of July 11, 1946, 11 Fed. Reg. 7713 (July 13, 1946). Section 7(b) of the IOIA ("§ 7(b)") provides in relevant part that:

[O]fficers and employees of[international] organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such . . . officers, or employees except insofar as such immunity may be waived by the ... international organization concerned. 22 U.S.C. § 288d(b).

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8 The IOIA provides generally that international organizations "enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C. § 288a(b); see also *Jam v. Int'l Fin. Corp.• 586* U.S. 199, 207-08 (2019) (holding that the IOIA "make[s] international organization immunity continuously equivalent" to the immunity that foreign sovereign states enjoy under the Foreign Sovereign Immunities Act 1976, 28 U.S.C. §1602 et seq.).

The World Bank's executive directors, officers, and employees also have immunity from suit under Article VII, Section 8 of the Bank's Articles of Agreement (sometimes referred to herein as the Bank's "Articles")-the institution's governing charter, incorporated in U.S. law under the Bretton Woods Agreements Act, 22 U.S.C. § 286h. *See* Articles of Agreement of the International Bank for Reconstruction and Development, art. VII, § 8, 60 Stat 1440 (Dec. 27, 1945); 22 U.S.C. § 286h (providing that Article VII, sections 2 to 9 of the Bank's Articles "shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of ... the Bank "); *AGS Int'l Servs. S.A.* v. *Newmont USA Ltd.,* 346 F. Supp. 2d 64, 82 (D.D.C. 2004) (noting that the United States is a member of the World Bank). Article VII, Section 8 of the Bank's Articles provides that:

> All governors. executive directors, alternates, officers and employees of the Bank . . . shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity.

Courts have reasoned that "one of the most important protections granted to international organizations is immunity from suits by employees of the organization in actions arising out of the employment relationship." *Brzak v. United Nations, 551* F. Supp. 2d 313,319 (S.D.N.Y. 2008) *("Brzak I").* "For similar reasons, the courts have consistently found that functional immunity applies to employment-related suits against officials of international organizations." *Id.* The immunity of officers and employees of international organizations applies so long

as the challenged action was "within the outer perimeter of [the defendant's] line of duty." *Tuck v. Pan Am. Health Org.,* 668 F.2d 547, *550* n. 7 (D.C. Cir. 1981) (quoting *Barr v. Matteo,* 360 U.S. 564,575 (1959)); *id.* at 550 ("To the extent that the acts alleged in the complaint relate to Dr. Acuna's functions a[s] PAHO Director, the provisions of 22 U.S.C. § 288d(b) (1976) protect him from suit."). Immunity does not depend on whether the challenged action was proper or based on good "motives." *See id; see also Brzak I,* 551 F. Supp. 2d at 319 ("[O]fficial capacity is determined on the basis of whether the acts alleged occurred in the course of an official's exercise of functions, and not on the nature of the underlying conduct."), *aff'd,* 597 F.3d 107, 113 (2d Cir. 2010) *("Brzak II")* ("When a court attempts to determine whether a defendant is seeking immunity with respect to acts performed by such a person in the exercise of his functions, the court must do so without judging whether the underlying conduct actually occurred, or whether it was wrongful." (internal quotation marks and citation omitted)); *Donald v. Orfila,* 788 F.2d 36, 37 (D.C. Cir. 1986)(dismissing complaint alleging that the Secretary General of the Organization of American States acted in bad faith in interfering with plaintiff's employment contract, reasoning that the termination of plaintiff's employment "unquestionably relates to [the defendant's] official functions," and rejecting the argument that if the motive for an official act was bad, the action must be characterized as "individual" rather than "official."); *De Luca* v. *United Nations Org.,* 841 F. Supp. 531, 535 **(S.D.N.Y.** 1994) ("(The case law applying § 7(b) rejects the notion that a defendant's immunity under IOIA can be defeated by allegations of illegal conduct."); *Boimah* v. *United Nations General Assembly,* 664 F. Supp. 69, 72 (E.D.N.Y. 1987) (stating that "employment-related decisions by officers charged with such responsibilities

fall within the scope of[§ 7(b)'s] immunity ... even where the motives underlying the action are suspect," and declining to reach 'a stricter definition of' official capacity'.... "(citation omitted)).

A defendant's immunity under the IOIA deprives the trial court of subject matter jurisdiction. *Zuza* v. *Off of the High Representative,* 107 F. Supp. 3d 90, 94 (D.D.C. 2015), *aff'd,* 857 F.3d 935 (D.C. Cir. 2017); *see Pardue v. Ctr. City Consortium Schs. of the Archdiocese of Wash., Inc.,* 875 A.2d 669,674 (D.C. 2005) (noting that this court treats claims of immunity from suit as raising an issue of subject matter jurisdiction).

Our review of the Superior Court's dismissal of a complaint for lack of subject matter jurisdiction is de novo. *See Heard v. Johnson,* 810 A.2d 871, 877 (D.C. 2002). We review the court's decisions to deny discovery, to dismiss with prejudice, and not to recuse for abuse of discretion. *See Kay v. Pick,* 711 A.2d 1251, 1256 (D.C. 1998) (review of discovery order); *Crosby v. Brown,* 289 A.3d 696, 699 (D.C. 2023) (dismissal with prejudice); *Reese* v. *Newman,* 131 A.3d 880, 883 n.6 (D.C. 2016) (denial of recusal).

III. Analysis

A. No waiver of immunity

As the discussion above indicates, the World Bank can waive the immunity of its employees from suit. Appellant does not claim that the World Bank expressly waived appellees' immunity. However, she renews her argument that appellees waived their immunity by removing the litigation to the federal district court and by filing non-dispositive motions, including a motion to stay discovery. The Superior Court did not err in rejecting that argument. The express language of both the Bank's Articles and the IOIA permits only the international organization itself to

waive immunity of directors, officers, and employees. Moreover, courts have routinely dismissed lawsuits for lack of subject matter jurisdiction based on immunity even where the defendants had removed the action to federal court. *See, e.g., Rodriguez v. Transnave, Inc.,* 8 F.3d 284, 289 & n.9 (5th Cir. 1993) (reasoning in a case involving immunity of an arm of the Ecuadorian government that "the very presence" of removed cases in which the immunity defense was upheld "refutes the accuracy of any ... claim [that removal constitutes a waiver of immunity].") (citing cases); *Perisic v. Jim Yong Kim,* 2019 WL 5459048, *l, *10 (D.D.C. Oct. 24, 2019) (finding no waiver of immunity of World Bank officials despite World Bank consent to removal);see *also Keeton v. Wells Fargo Corp.,* 987 A.2d 1118, 1121 (D.C. 2010) ("'[P]arties cannot waive subject matter jurisdiction by their conduct or confer it ... by consent .. .'" (quoting *Chase* v. *Pub. Def Serv.,* 956 A.2d 67, 75 (D.C. 2008))). Courts have also routinely held that the filing of non-dispositive "stay" motions does not waive immunity. *See Broidy Capital Mgmt. LLC* v. *Muzin.* 61 F.4th 984, 996-97 (D.C. Cir. 2023) ("[L]itigation conduct such *as* filing motions ... to stay proceedings, or to object to discovery, are not responsive pleadings that result in waiver of immunity.").

B. Whether appellees' alleged actions were within the scope of their official duties and functions as World Bank officers or employees

Appellant further contends that appellees do not enjoy immunity from this suit because they "pursue(d] an independent course of actions wholly outside their official duties and functions," including actions prohibited by the World Bank's rules and actions "motivated purely by spite and personal considerations of malice" that "cannot and did not further the function of the Bank."

Specifically, appellant alleges that appellee Funes, a "junior level" WBG HR staff member, directed appellant not to return to work; told appellant that her employment would terminate in December 2017 based on redundancy; and misrepresented that she had been designated as appellant's sole contact person for communications with the Bank during the months leading up to appellant's termination-actions Funes undertook without authority and even though she was not part of the SRG HR staff that handled redundancies. Appellant alleges that appellee Beauregard, who was manager of the HR unit in which Funes worked but had no supervisory authority over appellant, "prepared wrongful papers concerning the purported redundancy"; falsely claimed that he could effect a redundancy; falsely claimed that valid redundancy documents existed even though a redundancy had never been approved by the SRG; and denied appellant access to her personnel :file to enable her to check whether a validly authorized redundancy had been declared. Appellant further alleges that appellee Sirtaine joined Funes and Beauregard "in the agreement to commit fraud," thwarting appellant's efforts to reach a mutually agreed settlement regarding her employment. All three, the complaint alleges, acted outside their official duties, "not having the duty or responsibility to make such decisions or communications and acting without any, and any proper authority."

Appellant alleges in addition that appellee Canuto misrepresented himself as being in appellant's supervisory chain and promised that he would look into whether a valid redundancy existed, but instead "just stood by and became complicit" in the fraud, Appellant claims that appellee Kim failed to prevent Canuto from approving appellant's termination and, by his refusal to step in and by claiming to have delegated his duty to

appellee Canuto, colluded to defraud appellant and breached his "obligation to ensure that fraud did not occur in respect of a staff member[']s employment." Appellee Yang, the complaint alleges, breached his responsibility to ensure that appellant would have access to a fair and unbiased grievance process, including by representing to the WBAT that res judicata barred appellant's further appeals to that body challenging her termination.[9] Finally, the complaint alleges that appellee Malpass, who became WBG president in April 2019, failed to act after appellant reported the other appellees' wrongful actions to him, thereby breaching his duty "not to allow misconduct and fraud in the WBG."

Appellant contends that the Superior Court improperly relied on whether appellees' conduct "was taken during employment, without questioning whether each act was within each [a]ppellee[']s 'official duties."' She faults the Superior Court for ruling without evidence of the "terms of each of their respective employment contracts and their official functions and duties/job description" and without HR documentation.

Appellant's argument appears to be premised on a narrow construction of the term "acts performed ... in their official capacity" that we think would, if accepted, undermine the "important protections" granted to officials and employees of international organizations. *Brzak I,* 551 F. Supp. 2d at 319. The case law on the so-called "functional

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9 The complaint states that appellant was "forced to protect her interests by bringing [before the WBAT] seventeen appeals against [her] wrongful dismissal and related irregularities and misconduct."

immunity"[10] of officers and employees of international organizations is uniform in explaining that this immunity does not depend on "the nature of the underlying conduct" or on whether the complained-of conduct was "wrongful" in some way. *See id.; see also Brzak II,* 597 F.3d at 113. The relevant inquiry is whether the acts alleged "occurred in the course of an official's exercise of [work] functions[.]" *Brzak I,* 551 F. Supp. 2d at 319. This is so even where the plaintiff alleges that by participating in the claimed misconduct, defendants violated the international organization's "own internal regulations"; "[n]otwithstanding how improper any of these actions may have been, they represent precisely the type of official activity which§ 7(b) of IOIA was intended to immunize." *De Luca,* 841 F. Supp. at 535 (agreeing that to fall outside immunity, the alleged misconduct must be not even "remotely related to the functions" of the defendant's employment by the international organization). *As* the D.C. Circuit has reasoned, if allegations of bad faith, improper motives, or intentional infliction of emotional distress could defeat immunity, the "immunity shield, which Congress intended to afford solid protection, would indeed be evanescent." *Donald,* 788 F.2d at 37.

Thus, taking as true appellant's allegations that appellees declared appellant redundant without SRG approval and without adhering to WBG procedural rules; that WBG HR staff acted outside the supervisory chain and outside their usual job responsibilities and with "nefarious" or retaliatory motives; and that appellees who held WBG leadership positions failed to uphold the Bank's personnel standards, we can find no error in the Superior Court's

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10 *Zuza,* 107 F. Supp. 3d at 99 (referring to the "'functional' immunity accorded to 'officers' of international organizations," i.e., immunity for acts that relate to their job functions).

ruling that appellees were immune from suit. All of appellant's allegations describe "decisions made ... in managing the Bank's workforce," *Park.* 234 A.3d at 1218. and "in implementing [the Bank's] employment ... policy," *De Luca,* 841 F. Supp. at 535, and thus relate to actions within appellees' immunity as international organization employees.[11] *Cf id.* (concluding that immunity barred a

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11 Our citations in the text above to cases applying Section 288d(b) imply that appellees have immunity under the IOIA. However, like the Superior Court. we do not definitively decide whether appellees are immune from the instant litigation under the IOIA rather than (or in addition to) under the Bank's Articles. As the Superior Court noted, Section 8(a) of the IOIA, codified at 22 U.S.C. § 288e, provides that "[n]o person shall be entitled to the benefits of this title unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, or employee." The Superior Court determined that defendants/appellees had "not provided sufficient information to prove their positions were duly notified to and accepted by the Secretary of State." Courts have routinely determined employees of international organizations to be immune from suit without citing proof of State Department acceptance. See, e.g., *Donald* 788 F.2d at 37; *Smith v. World Bank Grp.*, 99 F. Supp. 3d 166, 170 (D.D.C. 2015), aff'd, 694 F. App'x 1 (D.C. Cir. 2017); but see *Zuza v. Off. of the High Representative*, 857 F.3d 935, 938 (D.C. Cir. 2017) (holding that defendant international organization officers were entitled to immunity even though Section 8(a)'s requirements were not met until after the suit was filed); cf. *Samantar v. Yousuf*, 560 U.S. 305, 311-12 (2010) (citing cases holding that "in the absence of recognition of the immunity [of a diplomatic representative of a sovereign} by the Department of State," a district court "had authority to decide for itself whether all the requisites for such immunity existed." (internal quotation marks omitted)). Further, we are doubtful that any State Department substantiation was needed in this case, as appellees' status as employees of the World Bank has never been in dispute; indeed, appellant alleged in her complaint that appellees are all current or former World Bank staff. Complaint ll 2. Nevertheless, upholding the Superior Court's approach, we rest our affirmance on the immunity afforded appellees under the Bank's Articles of Agreement (Contrary to appellant's assertion, appellant's "Addendum

suit against U.N. officials based on allegations that they issued a final pay statement containing plaintiff's forged signature with the intent of defrauding him of his remaining salary and compensatory time, singled him out for a tax audit, and denied continuation of his medical benefits after his resignation, in violation of federal law). Allowing this suit to proceed based on appellant's allegations that some of the appellees exceeded their **assigned** duties or deviated from the Bank's organization chart or permission structure would, like an employment-related suit against the World Bank itself: improperly "entangle th[e] court[ ] in the internal administration "of the Bank. *Broadbent* v. *Org. of Am. States,* 628 F.2d 27, 35 (D.C. Cir. 1980).[12]

C. Whether appellees' alleged actions were within the scope of their employment

Appellant suggests, however, that scope-of-employment case law is the most relevant in assisting the court to determine whether the complaint's allegations are about

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B" does not state that State Department substantiation is required before a court may determine whether a complained-of action was an official act and may rely on a defendant's immunity under the Bank's Articles of Agreement.)

12 Appellant analogizes to the federal Westfall Act to argue that appellees were required to join the Bank as an indispensable party to the extent they claim to have acted in their official capacities. See 28 U.S.C. § 2679(d)(l) (allowing the Attorney General to provide a certification that "the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose[,]" with the result that "the United States shall be substituted as the party defendant."). However, we are aware of no authority that requires an international organization to be substituted as a defendant when the plaintiff's claims are based on conduct of the organization's employees related to their official functions.

acts that appellees "performed ... in their official capacity," Articles of Agreement VII, Section 8, such that they could fall within the immunity from suit that appellees enjoy as World Bank employees. Assuming without necessarily deciding that our scope-of-employment case law is controlling, we conclude that it supports rather than undermines the Superior Court's ruling.

Our scope-of-employment case law instructs that even if, as appellant alleges, appellees' actions were "prompted partially by personal motives, such as revenge/' they were within the scope of appellees' employment if they were "actuated, at least in part, by a purpose to further the [employer's] business" and to **"serve** [the] employer's interest." *District of Columbia v. Bamidele,* 103 A.3d 516, 524-25 (D.C. 2014) (quoting *Hechinger* v. *Johnson,* 761 A.2d 15, 24 (D.C. 2000) (reasoning that it was reasonable to infer that the employee acted at least partially out of a desire to serve the employer's interest where he "acted on behalf of his employer to resolve a job-related dispute.")).[13] We have explained that to determine

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13 See also, e.g., *Park Transfer Co. v. Lumbermens Mut. Casualty Co.*, 142 F.2d 100, 100 (D.C. Cir. 1944) (explaining that an employee's tortious conduct "is not within the scope of the employment if it is done for the agent's purposes only"); *Axman v. Washington Gaslight Co.*, 38 App. D.C. 150, 158 (D.C. Cir. 1912) (stating that an employee's work can be "done in the prosecution of the business either impliedly or expressly intrusted to the agent by the principal" even if the employee.. acted wantonly, recklessly, or against orders" in the manner in which he executed his commission); *Houghton v. Forrest*, 989 A.2d 223,231 (Md. 2010) ("[T]he test for determining whether acts were within the scope of employment is whether the challenged acts were in furtherance of the employer's business and could be fairly termed 'incident to the performance of duties entrusted to' the employee." (quoting *Ennis v. Crenca*, 587 A.2d 485, 489-90 (Md. 1991)); Restatement (Third) of Agency § 7.07 (Am. L. Inst. 2006) (excluding from the scope of employment conduct "not intended by the employee to serve any purpose of the employer"); Restatement

whether a defendant's act fell "within the outer perimeter of the [defendant's] line of duty," *Barr,* 360 U.S. at 575, "it is unnecessary for the acts to be ... performed at the specific direction of a superior; rather, it is sufficient if they are done ... in *relation* to matters committed ... to[the defendant's] control or supervision ... ; or that they have *more or less connection* with the general matters committed ... to his control or supervision[.]" *Moss* v. *Stockard,* 580 A.2d 1011, 1020 (D.C. 1990) (quotation omitted).

Here, again taking as true appellant's allegations about appellees' conduct with respect to the notice of redundancy affecting appellant, we are satisfied as a matter of law that however much motivated by animus against appellant, appellees' actions were not for appellees' purposes only, but were in furtherance of the work of the Bank. To state the point differently, it is clear from the face of the complaint that the actions of which appellant complains "relate[d] to" appellees• functions at the Bank and were "more or less connected" to the type of work that appellees were employed to do for the Bank. Accordingly, the scope-of-employment **analysis** reinforces our conclusion that the Superior Court did not err in concluding that appellant's complaint was barred by appellees' immunity under the Bank's Articles for conduct related to their functions as Bank employees.[14]

(Second) of Agency § 236 cmt. b (Am. L. Inst. 1958) ("The fact that the predominant motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment If the purpose of serving the master's business actuates the servant *to any appreciable extent,* the master is subject to liability if the act otherwise is within the service "(emphasis added)).

14 We acknowledge that appellant's complaint includes an allegation that she was physically abused and "bruis[ed]" by an IEG manager. However, the complaint does not include that incident as the basis for any of the seven counts. We therefore need not address whether a

Appellant correctly notes that "whether an employee was acting within the scope of employment is ordinarily a fact-intensive question for the factfinder," and thus ordinarily "is not subject to determination as a matter of law in resolving a motion to dismiss or a motion for summary judgment." *Trump v. Carroll,* 292 A.3d 220, 230 (D.C. 2023) (en bane). However, courts "are able in appropriate cases to **assess** whether an officer acted within the scope of employment as a matter of law based on undisputed facts in the record." *Johnson* v. *Francis,* 197 A 3d 582, 598 (Ct Spec. Appeal Md. 2018) (citing *Houghton,* 989 A.2d at 231 ("Houghton's arrest of Forrest was incident to his general authority as a police officer. His actions would therefore be within the scope of his employment ")); *see also Brzak II, 591* F.3d at 113 (upholding dismissal based on

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claim of physical assault would have been within the scope of any of the defendants' official functions or within the scope of employment. Compare *Hechinger*, 761 A.2d at 24, 25 (addressing claim alleging that a store supervisor, who had been summoned by cashier to deal with a customer who claimed that he need not pay for wood scraps, struck the customer in the chest during an altercation; stating that it was reasonable "to conclude that the man's actions were motivated by a desire to require [customer] Johnson to pay for the wood which he presumed to be the property of his employer, Hechinger," and that "the employee acted on behalf of his employer to resolve a job-related dispute," and reasoning that the evidence "was adequate to support a finding that the man was responsible for handling disputes with customers and that he acted, at least partially, by a desire to serve Hechinger's interests."), with *Brzak II*, 597 F.3d at 113 (dismissing counts alleging discrimination and retaliation because they "involve[d} personnel management decisions falling within the ambit of the [U.N.-employee] defendants' professional responsibilities," but ruling that plaintiff was "free to re-file her battery claim in the state courts" and to seek a determination that the claim involved conduct outside the scope of the defendants' immunity). Nothing in this opinion should be read to suggest that "no conduct could be outside [appellees'] 'duties' and employment scope."

immunity of U.N. officials because plaintiff's' discrimination and retaliation claims all relate to "acts that the defendants performed in exercise of their official functions, namely, their management of the office in which the plaintiffs worked.").

As the en banc court recognized in *Trump v. Carroll,* "[the issue whether an act was in the scope of employment] becomes a question of law for the judge" if a reasonable mind could decide the issue only one way. 292 A.3d at 230 n.6; *cf Schecter v. Merchs. Home Delivery, Inc.,* 892 A.2d 415,428 (D.C. 2006) ("[W]hcn all reasonable triers of fact must conclude that the servant's act was independent of the master's business, and solely for the servant's personal benefit, then the issue becomes a question of law ... .") (internal quotation marks and added emphasis omitted). That is the case here, where the allegations of the complaint, taken as true, establish that appellees' complained-of actions or omissions were employment,. related actions taken in furtherance of World Bank personnel business. *Cf See Perisic,* 2019 WL 5459048, at *10 (dismissing complaint against World Bank defendants "[b]ecause any involvement by Dr. Kim in the employment actions giving rise to [plaintiff's] claims would relate to 'acts performed by [him] in [his] official capacity and falling within [his] functions,' 22 U.S.C. § 288d(b), Dr. Kim is immune from suit.");[15] *Nouinou v. Smith,* 2021 WL 4340952, •2, •4 (S.DN.Y. Sept 22, 2021) (dismissing suit alleging that defendant United Nations employee..

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15 Notably, similar to the facts here, the *Perisic* court dismissed the claims against the individual World Bank defendants even though the plaintiff had obtained a WBAT ruling that there were "procedural flaws" that entitled the plaintiff to some compensation. See 2019 WL 5459048 at •2. We similarly reject appellant's argument that "[a]ppellees could not have been acting to serve IBRD in 2017, since its Tribunal had already ruled in [a]ppellant[']s favor."

launched [a] campaign to get rid of' plaintiff, "built a false image about [plaintiff]" among other employees, and wrongly restricted plaintiff's access to her office, computer, and email, because the claims against the defendant related to acts he performed as a U.N. employee "in connection with [plaintiff's] employment and ... other UN matters"); *Van Aggelen* v. *United Nations,* 2007 WL 1121744, at•2 (S.D.N.Y. Apr. 11, 2007)(dismissing claims of discrimination because the claims covered employment-related decisions that were "in furtherance of UN. business ...."*) aff'd,* 311 F. App'x 407 (2d Cir. 2009). It is of no moment that some World Bank officers may have agreed that the actions by some of the appellees went beyond their job responsibilities (see the complaint's allegation that the Bank's HR vice president confirmed to appellant that the actions of appellees Funes and Beauregard were "outside any authority of HR"); the relevant and dispositive point *is* that appellees' alleged actions were "an outgrowth of a job-related controversy." *Trump v. Carroll,* 292 A.3d at 232. Appellant's complaint alleged no facts that, if true, would demonstrate that appellees were acting outside the scope of their employment in pursuit of personal interests or private needs rather than in pursuit of Bank-related goals. *Cf El-Fad/ v. Cent. Bank of Jordan, 15* F.3d 668, 671 (D.C. Cir. 1996) (dismissing claims against a deputy governor of the Central Bank on the basis of sovereign immunity because he had no personal interests at stake and his activities "were neither personal nor private, but were undertaken only on behalf of the Central Bank."); *Swarna v. Ai-Awadi,* 622 F.3d 123, 138 (2d Cir. 2010) (no immunity from suit based on consulate employee's alleged physical and psychological abuse of household personal servant).

D. Whether the Superior Court abused its discretion in dismissing the complaint with prejudice without affording appellant the opportunity to conduct jurisdictional discovery

We recognize that appellant sought discovery (e.g., "State Dept. and IBRD letters and descriptions of each Defs. 'official role' and job description") to test appellees' claim of functional immunity and contends that the Superior Court abused its discretion in not permitting her to undertake jurisdictional discovery and giving her the opportunity to amend her complaint. [16] However, given our agreement with the Superior Court that, in light of the detailed allegations of the complaint, there was no need for the development of evidence about whether appellees were acting in their official capacities, we cannot agree that the Superior Court abused its discretion by granting appellees' dismissal motion before appellant could conduct discovery. Jurisdictional discovery "should be ordered circumspectly and only to verify allegations of specific facts crucial to an immunity determination." *Nyambal* v. *Int'l Monetary Fund,* 772 F.3d 277, 281 (D.C. Cir. 2014) (quoting *First City, Texas-Houston, N.A. v. Rafidain Bank,* 150 F.3d 172, 176 (2d Cir. 1998)).[17] Moreover, functional immunity from suit and legal process shields employees of international organizations

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16 The Superior Court reasonably concluded that there were "no conceivable facts that [appellant] could plead that would alter the legal conclusion that the [trial court] lacks subject-matter jurisdiction."

17See also, e.g., *Goodman Holdings v. Rafidain Bank*. 26 F.3d 1143. 1147 (D.C. Cir. 1994) (upholding denial of discovery because "we do not see what facts additional discovery could produce that would affect our jurisdictional analysis...").

"'not only from the consequences of litigation's results but also from the burden of defending themselves"' by responding to discovery. *Tuck,* 668 F.2d at 549 (D.C. Cir. 1981) (quoting *Dombrowski v. Eastland,* 387 U.S. 82, 85 (1967) (per curiam)). Courts do not abuse their discretion in declining to allow even jurisdictional discovery if it would "frustrate the significance and benefit of entitlement to immunity from suit" *El-Fad/,* 75 F.3d at 671 (over both matters (each of which is premised on actions taken in connection with termination of appellant's employment). Nor has appellant pointed to anything in the record demonstrating that the court had difficulty treating the two cases as separate matters. The allegedly unequal treatment appellant highlights, such as the court's repeated postponement of a status conference (ordered, appellant suggests, to accommodate the completion of appellees' dispositive motion filings, all the while appellees were failing to comply with appellant's discovery requests), falls far short of the "exacting standard" we have set as warranting disqualification of a judge for bias. *Plummer v. United States,* 870 A.2d 539, 547 (D.C. 2005) ("[L]egal rulings against appellant of course, do not constitute grounds for recusal, for any prejudice must stem from an extra-judicial source," except where "the circumstances are so **extreme** that a judge's bias appears to have become overpowering." (internal quotation marks omitted)).

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For the foregoing reasons, we affirm the judgment of the Superior Court dismissing the complaint for lack of subject matter jurisdiction, based on **appellees'** functional immunity .*So ordered.*

ENTERED BY DIRECTION OF THE COURT:
JULIO A. CASTILLO Clerk of the Court

APPENDIX B

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

SARA GONZÁLEZ FLAVELL *Plaintiff*
v.
JIM YONG KIM et al., *Defendants*

2020 CA 004944 B
Judge Yvonne Williams

OMNIBUS ORDER

There are four pending motions before the Court in this matter. Defendants Jim Yong Kim, David Malpass, Shaolin Yang, Otaviano Canuto, Sophie Sirtaine, Jenny Funes, and Phillip Beauregard's (collectively, "defendants") Motion to Dismiss} ("Motion to Dismiss"), tiled on July I, 2022. *Pro se* Plaintiff Sara González Flavell ("Plaintiff') filed an opposition ("Opposition'') on September 19, 2022 and Defendants filed **a** reply thereto ("Reply") on October 21, 2022. Defendants also filed two Opposed Motions to Stay Discovery ("Motions 10 Stay Discovery'') on October 6, 2022 and October 7, *2021* respectively. Plaintiff filed an Opposition Brief to the Opposed Motions to Stay Discovery on November 4, 2022 and Defendants filed **a** Reply thereto on November 14, 2022. Finally, Defendants filed an Opposed Motion for Court Order Requiring Plaintiff to Communicate Through Counsel Only ("Motion for Court Order'') on November 4, 2022. On November 29, 2022, Defendants filed a Notice of Filing to Supplement Motion for Court Order Requiring Plaintiff to Communicate

Through Counsel indicating that Ms. González Flavell does not oppose the relief requested. For the, reasons explained below, the Motion to Dismiss shall be **GRANTED**, The Defendants' Opposed Motions to Stay Discovery filed on October 6, 2022 and October 7, 2022 shall be **DENIED AS MOOT**, and the Motion for Court Order shall be **DENIED AS MOOT**.

I. FACTUAL BACKGROUND

Ms. González Flavell was employed as a "Special Assistant" to the Director General of Evaluation at the International Bank for Reconstruction and Development, an agency of the World Bank Group. from October 3, 1988 until December 2017. Compl. ¶ 22, 33. Defendants arc current and former executive directors, officers, or employees of the World Bank Mot 2. Specifically, Defendant Jim Yong Kim was the President of the World Bank Group until January 2019, Defendant David Malpass is the current President of the World Bank Group, Defendant Shalin Yang it a Managing Director and World Bank Chief Administrative Officer, Defendant Otaviano Canuto is a former Executive Director of the World Bank Group, Defendant Sophie Sirtaine is a director of the Independent Evaluation Group at the World Bank Group, Defendant Jenny Funes is a Human Resources Specialist at the World Bank, and Defendant Philip Beauregard is a Manager in the Human Resources Development Corporate Operations unit at the World Bank. Comp ¶¶ 24-29, Mot. 2.

From April 2012 through May 2015, Ms. González Flavell complained to Constance Bernard, the World Bank Group Ombudsman, about suffering daily physical and emotional workplace abuse from her manager, and Director General of the Independent Evaluation Group ("IEG") at the World

Bank Group, Caroline Heider. Compl 134. lo November and December 2014, Ms. González Flavell met with the World Bank Group's Ethics and Business Conduct Unit to discuss Ms. Heider's workplace abuse. Compl. ¶ 35.

On November 14, 2014, Ms. González Flavell claims the Director General, Ms. Heider, insisted she sign **a** mutually agreed upon separation because her position was determined redundant under **a** strategic staffing exercise ("SSE") and would be abolished. Compl. ¶ 36. Ms. González Flavell further alleges that Ms. Heider did
not seek approval for the separation from the Severance and Redundancy Group ("SRG"), which is the only entity authorized to determine and approve World Rank staff members' redundancy. Compl. ¶ 36. However, Ms. Heider asserted that IEG was not required to follow the World Bank's rules and policies for declaring and enforcing redundancies. Compl. ¶ 36. On the same date Ms. González Flavell was deemed redundant, an email was sent to all IEG staff announcing that an SSE was to be launched in December 2014 to evaluate positions and staffing needs; Ms. González Flavell, however, asserts she had already been told to "go home." Compl. ¶ 36.

At some point in 2014, Ms. González Flavell filed a complaint with the World Bank's Ethics and Business Conduct Unit ("EBC") about Ms. Heider. Compl. ¶ 39. The EBC investigated the complaint allegations and issued an Investigative Report and Recommendations to the Vice President of Human Resources to June 2015. Compl. ¶ 39. Ms. González Flavell claims the Vice President did not act on EBC's recommendations concerning Caroline Heider and, instead absolved Ms. Heider of her misconduct. Compl. ¶ 39, Ms. Heider's initial redundancy proposal was, however, rejected on April 29, 2015. Compl. ¶ 40. Ms.

González Flavell claims that an IEG Human Resources manager subsequently informed her that redundancy had not been approved and tried to assist her in finding a new position. Compl. ¶ 37. At this time, President Jim Yong Kim was downsizing the internal staff at the World Bank Group and few job vacancies existed. Compl. ¶ 137.

In May 2015, Ms. González Flavell was allegedly taken to the World Bank's internal health unit by the Ombudsman because she was suffering severe stress and illness "with Caroline Heider demanding the Plaintiff to leave meetings and continuing abuse." Compl. ¶ 38. The health staff advised Ms. González Flavell to take sick leave and short-term disability. Compl. ¶ 38. Ms. González Flavell consequently took twenty-one days of sick leave and commenced short-term disability on June 24, 2015. Compl. ¶ 38.

On May 8, 2015, Caroline Heider submitted a second proposed Staff Redundancy to the SRG, explaining the reason for the elimination of Ms. González Flavell's position. Compl. ¶ 40. After SRG's review, Ms. Heider incorporated SRG's feedback and the Redundancy was approved on June 30, 2015. Compl. ¶ 40. A Notice of Redundancy ("Notice of Redundancy") was issued to Ms. González Flavell on July l, 2015, while she was on short-term disability. Compl. ¶ 40. Ms. González Flavell was granted an immediate six-month job search period, after which her position would become redundant Compl. ¶ 40. According to Ms. González Flavell, a Human Resources Manager agreed to the redundancy, but insinuated that Caroline Heider did not have the authority to approve the Notice of Redundancy because it could only be approved by SRG. Compl. ¶ 40. On September 10, 2015, Ms. González Flavell received an email from Caroline Heider indicating

that the Notice of Redundancy was retroactively suspended on July 1, 2015, until Ms. González Flavell's short-term disability ended, or until the Reed Group, an external leave of absence management company used by the World Bank, concluded that Ms. González Flavell was fit to engage in a job search. Compl. ¶ 42. On February 14, 2017, Caroline Heider informed Ms. González Flavell that the redundancy process would resume on July l, 2017. Compl. ¶ 43.

Ms. González Flavell challenged the validity and issuance of the Notice of Redundancy through the World Bank's internal justice system ("IJS"). Compl. ¶ 143. First, Ms. González Flavell challenged the Notice of Redundancy through the Peer Review Services and then filed an appeal to the Administrative Tribunal on October 28, 2015. Compl. ¶ 143. The Administrative Tribunal considered Ms. González Flavell's appeal. in October 2015 and issued Decision 553 on April 21, 2017. According to Plaintiff, the Administrative Tribunal reached the following conclusion:

> Having reviewed the record the [T]ribunal finds that. despite the legitimate reorganization Oat IEG. the decision to abolish the Applicant's position and declare her employment redundant was affected by management's perception of the Applicant's performance deficiencies and the working relationship she had with the Director [G]eneral. In addition the Bank failed to comply with the requisite procedures by effectively abolishing the Applicant's position distributing her functions to others and failing to give her a work program prior *to* obtaining formal SRG approval. The

> Tribunal's decision was made without prejudice to any decision the Bank may make concerning the Notice of Redundancy.

Compl. ¶ 49. As a result of the Tribunal's findings, Ms. González Flavell received nine months' net salary and $5,000 towards her legal fees. Compl. ¶ 51.

Ms. González Flavell claims "it was at this point that the fraudulent actions of the Defendants giving rise to the Plaintiff's causes of action commenced." Compl. ¶ 53. Plaintiff alleges that Defendant Jenny Funes., a Human Resources staff member, began sending emails to Ms. González Flavell's personal email address purporting to have information about Ms. González Flavell's health status, medical condition, and disability leave status. In May 2017, Defendant Funes also stated that she was Ms. González Flavell's "contact person." Compl. ¶ 55. Defendant Funes claimed to have power over Ms. González Flavell's position and would cause Ms. González Flavell salary to be suspended if she did not contact the Reed Group. Compl. ¶ 56. Ms. González Flavell asserts that Defendant Funes was neither a staff member in the World Bank's disability or health unit nor within the IEG. Compl. ¶ 55. As such, Plaintiff claims Defendant Funes made fraudulent representations and was acting outside the scope (of her employment because she was not rightfully in possession (of Ms. González Flavell's private and personal medical information and had no right to contract Ms. González Flavell or the Disability Administrator about these matters. Compl. ¶ 55-57.

On June 7, 2017, the World Bank Disability Administrator notified Ms. González Flavell th.at she was retroactively approved to return to work as of June 2, 2017. Compl. ¶

58. Assuming that the redundancy decision had been ruled unlawful by the Administrative Tribunal, Ms. González Flavell prepared to return to work. Compl. ¶ 58. However, that same day, on June 7, 2017, Ms. González Flavell received an email from Defendant Funes that her status would be changed from "Leave Without Pay" to "Administrative Leave," to apply retroactively to June 2, 2017, and that the Notice of Redundancy was also retroactively effective as of June 2, 2017. Compl. ¶ 59. This meant Ms. González Flavell would remain on administrative leave for six additional months, until December J, 2017, to conduct a job search and that after December I, 2017, her employment would terminate. Compl. ¶ 59. Subsequent emails from Defendant Funes to Ma. González Flavell provided information about her severance package and required that she not to contact any other members of the World Bank. Compl. ¶ ¶ 61-66. Defendant Funes was to remain Ms. González Flavell's point of contact Compl. ¶¶ 61-6.1

Ms. González Flavell also claims Defendant Philip Beauregard, a manager in the World Banks' Human Development Corporate Operations unit, aided and abetted Defendant Funes' actions by preparing documents supporting the Notice of Redundancy and indicating that Ms. González Flavell would receive a redundancy payment upon her termination in December 2017. Compl. ¶¶ 69, 72. Ms. González Flavell alleges that Defendant Beauregard was not acting in his official capacity, but outside the scope of his employment. and had no authority or power to create the ending employment paperwork. Compl. ¶ 83.

On September 27, 2017, Safietou Sarr met with Ms. González Flavell to discuss the potential terms of a

mutually agreed upon separation agreement Compl. ¶ 78. Ms. González Flavell requested that Ms. Sarr bring all the relevant redundancy documents to the meeting. Compl. ¶ 78. The only documents Ms. Sarr produced were related to the 2015 redundancy decision that Ms. González Flavell claims the Administrative Tribunal declared unlawful Compl. ¶ 79. Ms. Sarr confirmed that no other redundancy papers existed. Compl. ¶ 79. In addition to the 2015 redundancy papers, Ms. Sarr produced a draft of the approval of Ms. González Flavell's severance pay, which had not been approved or signed by all members of the SRG. Compl. ¶ 80. Ms. Sarr also provided Plaintiff with the "ending employment" document prepared by Defendant Beauregard, indicating the monetary amount Ms. González Flavell would receive upon her redundancy. Compl. ¶ 183.

On November 15, 2017, Ms. González Flavell approached Defendant Otaviano Canuto. Compl. ¶ 85. Defendant Canuto allegedly claimed he was Plaintiff's supervisor because Caroline Heider reported to him as chair of the Committee for Development Effectiveness ("CODE"), a World Bank sub-committee. Compl. ¶ ¶ 24, 85. Plaintiff, however, denies that Defendant Canuto was her supervisor because she argues a sub-committee could not be given supervisory functions. Compl. ¶ 85. During the November 15, 2017 meeting, Defendant Canuto also allegedly asserted that if Caroline Heider negotiated a mutually agreed upon separation agreement, then no valid redundancy existed. Compl. ¶ 86. Despite claiming that he would look into Ms. Heider's alleged misconduct, Ms. González Flavell asserts that Defendant Canuto did nothing. Compl. ¶ ¶ 87-88.

On December I, 2017, Ms. González Flavell and her appointed attorney, Stephen Scott. met with officials of the

World Bank's Legal Department to discuss a mutually agreed upon separation amount Compl. 192, Defendant Beauregard allegedly inserted himself into the meeting unannounced and unrequested. Compl. ¶ 92. At the meeting, Ms. González Flavell asked Defendant Beauregard, as a member of the Human Resources staff, to arrange for her to access and view her staff personnel file from May 2015 to December 2017, but Defendant Beauregard refused. Compl. ¶ 92. Ultimately ,a mutually agreed upon separation agreement could not be reached. Compl. ¶ 93.

On December 6, 2017, Defendant Sirtaine emailed Ms. González Flavell requesting that she retrieve her personal belongings from IEG, however. Plaintiff claims it was not in Defendant Sirtaine's supervisory line of reporting to take this action. Compl. ¶ ¶ 95-96. Defendant Sirtaine allegedly sent another email to Ms. González Flavell on December 11, 2017, representing that Plaintiff's position with the World Bank Group terminated on December 2, 2017. Compl. ¶ 97. Ms. González Flavell claims that she subsequently emailed Defendant Canuto and Sean McGrath, Vice President of the World Rank's Human Resources Development Corporate Operations unit, about Defendant Sirtaine's emails. Compl.¶ 99. Defendant Beauregard, however, responded on December 15, 2017 that he does "not agree with [her] mischaracterization of events below" and that Ms. González Flavell has "known well about the effectiveness of [her] redundancy, [her] termination date from the WBG, and its implications for [her)." Compl. ¶ 99.

In December 2017, Ms. González Flavell also wrote to Defendant Jim Yong Kim, the then President of the World Bank Group, to apprise him of the situation. Compl. ¶ 102.

Mr. McGrath had already informed Defendant Kim about Ms. González Flavell's complaints. Compl. ¶ 102. Ms. González Flavell claims that Defendant Kim had an obligation to correct the misrepresentations and his refusal to do so made him a party to the collusion, deception, and conspiracy to defraud. Compl. ¶ 02. She also claims that Defendant. Kim was complicit in the fraudulent acts by claiming to have had the right to delegate supervision of Plaintiff to the Chair of a sub-committee of the Board of the World Bank and failing to prevent Defendant Canuto from approving Ms. González Flavell's termination. Compl. ¶ 103.

The: World Bank's Human Resources department eventually allowed Ms. González Flavell access lo her personnel files in March 2018. Compl. ¶ 106. Ms. González Flavell maintains that there were no documents to support the redundancy decision and that the notice of redundancy was therefore invalid. Compl. ¶ 106. Ms. González Flavell also claims that she attempted to bring her grievances to the World Bank's Peer Review System, but that the secretarial interfered with these attempts, informed her that she had no right to use the Peer Review System, and asked what "her game" was. Compl. ¶ 108. On both July 6, 2018 and July 9, 2018, Ms. González Flavell contacted Defendant Shaolin Yang, the Managing Direct and Chief Administrative Officer of the World Bank Group, to assert that he failed to exercise due process by denying her access to the internal grievance structures. Compl. ¶ 109. Ms. González Flavell claims that since 2018, she had been regularly updating Defendant Yang of the circumstances surrounding her termination. Compl. ¶ 109. She alleges that Defendant yang joined the conspiracy to commit fraud against her because he knowingly

concealed the misconduct and failed to allow her access to a fair and unbiased Peer Review System. Compl. ¶ 109.

In 2018, Ms. González Flavell engaged attorneys and appealed her wrongful termination to the World Bank's Administrative Tribunal. Compl. ¶ l10. On October 18, 2018, the Administrative Tribunal issued its judgment in Decision No. 597. Compl. ¶ 110. The Administrative Tribunal dismissed the appeal, finding that *res judicata* applied because the Tribunal had heard and decided Ms. González Flavell's prior case challenging redundancy in Decision No. 553 in April 2017. Compl. ¶ 110. The Tribunal concluded that it therefore could not hear an appeal of Ms. González Flavell's termination. Compl. ¶ 110. However, Ms. González Flavell claims the Administrative Tribunal mischaracterized her application as challenging the reactivation of the Notice of Redundancy rather than challenging her December 2017 termination. Compl. ¶ 111. She maintains that Defendants Kim and Yang intervened in the Administrative Tribunal's decision-making process to ensure that it failed to consider the fraudulent acts made against her. Compl. ¶ 12.

In April 2019, Defendant David Robert Malpass replaced Defendant Kim as President of the World Bank Group. Compl. ¶ 114. Ms. González Flavell wrote Defendant Malpass about the alleged fraud perpetrated against her with respect to her employment. Compl. ¶ 114. Defendant Malpass did not answer or take any action taken to investigate the allegedly fraudulent acts. Compl. ¶ 114. Ms. González Flavell thus accuses Defendant Malpass of being a conspirator to the fraud, acting outside of the scope of his employment, and failing to carry out his official duties. Compl. ¶ 114.

II. PROCEDURAL BACKGROUND

On November 12, 2020, *pro se* Plaintiff Ms. González Flavell filed the instant Complaint for Fraud ("Complaint") seeking $5,200,000 in compensatory damages. The Complaint includes seven claims against all seven individual Defendants: Count I, Fraud - Intentional Misrepresentation (Fraudulent Misrepresentation); Count II, Fraud - Concealment; Count IV, Interference with Contractual Rights and Constructive Fraud; Count VI, Intention Infliction of Emotional distress; and Count VII, Tort of Another. Count III, Promissory' Fraud, is only against Defendant Otaviano Canuto and Count V, Conspiracy to Commit a Fraud, is only against Defendants Jenny Funes, Philip Beauregard, and Sophie Sirtaine.

Defendants filed a Notice of Filing a Notice of Removal to Federal Court ("Notice of Removal") on January 13, 2021 to have the matter removed to the United States District Court for the District of Columbia (the "District Court") based on federal question jurisdiction. In the Notice of Removal, Defendants also argued that the District Court had original jurisdiction under the Bretton Woods Agreements Act, 22 U.S.C. § 286g, and the International Organizations Immunities Act of 1945 ("'IOlA"), 22 U.S.C. § 288a. Notice of Removal 3. On March l, 2021, Ms. González Flavell filed an opposed Motion to Remand. Defendants filed a Motion to Dismiss the District Court case on March 4, 2021, and Plaintiff filed a Motion to Stay Briefings Pending the District Court's Decision on the Plaintiff's Motion for Remand the same day. The motion to stay proceedings was granted on March 11, 2021. On March 7, 2022, the District Court granted the Motion for Remand because "Defendants [had] not demonstrated that Plaintiff's tort-law claims wider District of Columbia

common law 'necessarily' raise **a** federal issue" and the District Court "conclude[d] that the significant federal issues doctrine articulated by *Grable* docs not provide a basis for removal jurisdiction in this case." *Flavell* v. *Kim,* No. 21-00115 (CKK), 2022 U.S. Dist. LEXIS 40294, at• 1, •15 (D.D.C. Mar. 7, 2022). "In reaching this conclusion, the [District] Court d[id] *not* render any decision about Defendants' immunity or reach any conclusion as to whether any conduct alleged in the Complaint was undertaken in their 'official' capacities." *Id.*

The case was formally remanded, a mandate was issued, and this case was reopened on March 28, 2022. Defendants then filed the instant Motion to Dismiss on July l, 2022. The Motion to Dismiss seeks to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(l), or, alternatively, for failure to state a claim upon which relief can be granted under Rule 12(b)(6). Specifically, Defendants claim this Court lacks subject matter jurisdiction to hear this case because Defendants are immune from civil litigation by the International Organizations Immunity Act of 1945, 22 U.S.C. § 288d(b) and the Articles of Agreement of the World Bank, a treaty incorporated in United States law by the Bretton Woods Agreements Act, 22 U.S.C. § 286h. Mot I. Defendants also filed Opposed Motions to Stay Discovery on October 6, 2022 and October 7, 2022 and an Opposed Motion for Court Order Requiring Plaintiff to Communicate Through Counsel Only on November 4, 2022. Plaintiff filed an Opposition to the Motions to Stay Discovery on November 7, 2022 and Defendants filed 11 Reply in support of their Motions to Stay on November 14, 2022. Finally, on November 29, 2022, Defendants filed a Notice of Filing to Supplement Motion for Court Order Requiring Plaintiff to

Communicate Through Counsel indicating that Ms. González Flavell docs not oppose the relief requested.

For the reasons stated below, the Court finds that this case shall be dismissed for lack of subject matter jurisdiction and the Motions to Stay Discovery and the Motion for Court Order shall be denied **as** moot.

III. DISCUSSION

A. Motion to Stay Discovery

The Opposed Motions to Stay Discovery shall be denied as moot. The two motions are identical except that the motion filed on October 7, 2022 adds a memorandum in support, which was likely inadvertently omitted from the October 6, 2022 motion. Further, the Motions to Stay Discovery request that this matter be stayed until the resolution of Defendants' Motion to Dismiss.
. Because the Motion to Dismiss is resolved with this Order the Opposed Motions to Stay shall he denied as moot.

B. Defendants' Motion to Dismiss

The Motion to Dismiss shall be granted under Rule 12(b)(l) for lack of subject matter jurisdiction. At issue 1s whether Defendants are immune from civil litigation as officers and employees of the World Bank. Alternatively, Defendants argue that the Complaint should be dismissed under Rule 12(b)(6) because all seven of Plaintiff's counts against Defendants fail to assert claims upon which relief can be granted. Upon consideration of the Motion to Dismiss and the Opposition and Reply thereto, the Court finds the Complaint must be dismissed because Defendants are immune from civil liability

i. Legal Standard

A complaint should be dismissed under Rule 12(b)(l) and Rule 12(h)(3) if the Court lacks subject matter jurisdiction. See D.C. Super. Ct R. Civ. P. 12(b)(l) (allowing parties to assert lack of subject-matter jurisdiction by motion); see also D.C. Super. Ct R. Civ. P. 12(h)(3) (stating that "[if the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.") Without subject matter jurisdiction a court lacks the "authority to adjudicate the type of controversy presented by the case under consideration." In re J.W., 837 A. 2d 40, 44 (D.C. 2003). Whether a court has subject matter jurisdiction can be raised at any time by any party or by the court itself. Keeton v. Wells Fargo Corp., 987 A.2d l l 18, 1121 (D.C. 2010). Parties may not waive a tack of subject matter jurisdiction. Td. The D.C'. Superior Court. Is a court of general jurisdiction, meaning that it has the power to hear any case in law or equity arising under the laws of the District of Columbia or the laws of the United Stat.es except in such instances whether jurisdiction is solely vested in a federal court or jurisdiction is prohibited by local or Federal statute. D.C. Code §11-921 (2022 Rcpl.); *see Andrade* v. *Jackson,* 401 A. 2d 990, 992-93 (D.C. 1979).'

A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the requirement of Rule 8(a)that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Potomac Dev. Corp. District of Columbia* 28 A.3d 531,543 (D.C. 2011)(quoting Super. Ct Civ. R. 8(a))."To survive a motion to dismiss, a complaint must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist" *Williams*

v. *District of Columbia,* 9 A.3d 484, 488 (D.C. 2010) (citation and quotations omitted); *see Doe* v. *Bernabei &: Wachtel PLLC,* 116 A.3d 1262, 1266 (D.C. 2015) ("To survive a motion to dismiss, a complaint must set forth sufficient (acts to establish the elements o(**a** legally cognizable claim..") (Citations and quotations. omitted)).

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do."' *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, *555* (2007)); *see Sundberg* v. *TTR Realty, UC,* 109 A.3d 1123, 1128-29 (D.C. 2015) ("W]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (Citations and quotations omitted)). "To satisfy Rule 8(a), plaintiffs must nudge their claims across the line from conceivable to plausible." *Tingling-Clemmons* v. *District of Columbia,* 133 A.3d 241, 246 (D.C. 2016) (citation and quotations omitted). However, "[w]hen there are well pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Carlyle Inv. Mgmt., L.L.C. v. Ace Am. Ins. Co.,* 131 A.3d 886, 894 (D.C. 2016) (alteration in original) (citation and quotations omitted).

"A complaint should not be dismissed because **a** court does not believe that a plaintiff will prevail on its claim; indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test,, *Id* (citation, quotations, and brackets omitted). In addition, the Court should "draw all inferences from the factual allegations of the complaint in the plaintiff's favor." *Id.* (citation omitted). However, legal conclusions "are not

entitled to the assumption of truth," *Potomac* Dev. *Corp.,* 28 A.3d at 544 (quoting *Iqbal.* 556 U.S. at 664), so "[t]hrcadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Sundberg,* 109 A.3d at 1128-29 (quoting *Iqbal, 556* U.S. **at** 678). The complaint must plead "factual content that allows the court to draw the reasonable inference that defendant is liable for the misconduct alleged." *Pool a* v. *Howard Univ.,* 147 A.3d 267, 276 (D.C. 2016) (citation and quotations omitted).

When the nonmoving party is *pro* re, the rules of pleading arc construed liberally. *Indus. Bank of Washington* v. *Allied Consulting Servs., 511* A.2d 1166, 1167-68 (D.C. 1990); *MacLeod* v. *Georgetown Univ. Med. Ctr.* 736 A.2d 977, 980 (D.C. 1999) (stating "pro se litigants are not always held to the same standards as arc applied 10 lawyers"); *Farmer-Celey v. State Farm Ins. Co.,* 163 A.3d 761, 767 (D.C. 2017) (stating that "technical procedural pleading requirements should not be used to thwart pro se litigants"). Simultaneously, the Court "may not act as counsel for either litigant" or "apprise pro se litigants *of* defects" in their pleadings. *Flax v. Schertler,* 935 A.2d 1091, 1107, n. 14 (D.C. 2007) (internal citations and quotations omitted).

ii. Defendants are Immune from this Action Under the IOIA

The International Organizations Immunities Act "IOIA") strips federal and state courts of subject matter jurisdiction over controversies involving officers and employees of international organizations unless the organization has expressly waived immunity. 22 U.S.C. § 288d(b) (stating that officers and employees of international organizations "shall be immune from suit

and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives., officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.") An international organization's officers' and employees' immunity may only be limited in two circumstances: (l) when the organization itself waives immunity; and (2) if the President of the United States specifically limits the organization's immunity when they selected the organization as one entitled to enjoy privileges and immunities under the IOIA. *Perisic v. Jim Yong Kim,* 2019 U.S. Dist. LEXIS 184346, at •1, *26 (D.D.C. 2019).

It is undisputed that the World Bank Group is an international organization. Compl. ¶ 2, Mot 1. Furthermore, when the World Bank Group and *its* members were designated as international organizations, entitled to the privileges, exemptions, and immunities under the IOIA, by Executive Order, the President did not limit the scope of the immunity for the World Bank's representatives, officers, or employees. *See* Exec. Order No, 9,751, 11 Fed. Reg. 7,713 (July 13, 1946). Thus, the only other way that immunity to officers and employees of the World Bank could have been limited is if the World Bank waived that immunity.

a. The World Bank Group Did Not Waive Immunity

An international organization can waive its immunity to suit on behalf of its officers and employees only by *on* express waiver. *Rosenkrantz v. Inter-Am. Dev. Bank, 35* P. 4th 854, 861-62 (D.C. Cir. 2022) (citing 22 U.S.C. 288d(b)); *see also Perisic,* 2019 U.S. Dist. LEXIS at •26 (quoting *Hudes* v. *Aetna Life Ins. Co.,* 806 F. Supp. 2d 180, 187 (D.D.C. 2011)). The United States Court of Appeals for the District

of Columbia Circuit has found "that the World Bank has not waived its immunity in connection with internal employment-related lawsuits." *Perisic,* 2019 U.S. Dist. LEXIS at •26 (citing *Mendaro v. World Bank,* 717 F.2d 610, 617, 230 U.S. App. D.C. 333 (D.C. Cir. 1983)).

While Ms. González Flavell is correct that the instant case does not *per re* involve employment law, this case directly relates to her former employment at the World Bank. There would be no basis for the instant lawsuit if Plaintiff had not been removed from her position as Special Assistant to the Director General of Evaluation of the International Bank for Reconstruction and Development Ms. González Flavell asserts that the World Bank did not expressly waive immunity against her instant claims because Defendants were never protected by immunity under the IOIA. Plaintiff further argues that the World Bank implicitly waived immunity when Defendants filed the January 13, 2021 Notice of Removal on the sole basis of subject-matter jurisdiction, thus accepting the jurisdiction *of* both this Court and the District Court. Opp'n 8. This argument is not convincing.

Defendants maintain that the World Bank never expressly waived Defendants' immunity under the IOIA and Ms. González Flavell has not alleged facts or presented evidence that an express waiver exists. Mot. 9; Reply.
4. Removing a case to a federal court does not automatically subject a party to this Court's jurisdiction. *See Keeton v. Wells Fargo Corp.,* 987 A.2d 1118, 1121 (D.C. 2010) (quoting *Chase v. Public Defender Serv.,* 956 A.2d 67, 75 (D.C. 2008)) (holding that '"[p]arties cannot waive subject matter jurisdiction by their conduct or confer it ... by consent, and the absence of such jurisdiction can be raised at any time."') Thus, without evidence of an express

waiver, the Court finds that the World Bank did not waive immunity on behalf of Defendants.

Ms. González Flavell alternatively argues that Defendants are not entitled to immunity under the IOIA because they have not met the requirements of 22 U.S.C. § 288c. Under 22 U.S.C. § 288c:

> No person shall be entitled to the benefits of this title unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

According to Ms. González Flavell, Defendants have produced neither a letter from the State Department as to their official status as World Bank officials or employees nor a letter from the World Bank as to their official duties. Opp'n 9. The Court agrees with Ms. González Flavell that Defendants have not provided sufficient information to prove their positions were duly notified to and accepted by the Secretary of State. However, Defendants are still immune from this action pursuant to the Articles of Agreement of the World Bank.

a. Defendants are Immune under the Articles of Agreement

Article VII, Section 8 of the Articles of Agreement of the International Bank for Reconstruction and Development

("Articles of Agreement") states that "[a]ll governors, executive directors, alternates, officers and employees of the Bank (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity." Articles of Agreement of the International Bank fix Reconstruction and Development, art. VU§ 8 (Dec. 27, l 945). This section of the Articles of Agreement was incorporated into the United States Code by the Bretton Woods Agreements Act. *See* 22 U.S.C. § 286h (the Bretton Woods Agreements Act) (providing that "article VII, sections 2 to 9, both inclusive of the Articles of Agreement of the Bank, shall have full force and effect in the United States and its Territories"). The United States Court of Appeals for the District of Columbia Circuit has held "a waiver of immunity to suits arising out of the Bank's *Internal* operations, such as its relationship with its own employees, would contravene the express language of Article VII section I." *Mendaro,* 717 F.2d at 618; *see also* Articles of Agreement, art. VII § (stating "(t]o enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.)

As established in the section immediately above, the World Bank has not expressly waived immunity on behalf of Defendants as it relates to Ms. González Flavell's allegations. The Articles of Agreement do not include a section analogous to 22 U.S.C. § 288e that requires Defendants to show proof of their status as an official or employee of the World Bank. Thus, Defendants need only show thot they were acting in their official capacity to be immune from this lawsuit.

b. Defendants were Acting in their Official Capacities

The United States District Court for the District of Columbia has held that '"international official immunity' is 'immunity coextensive with functional necessity."' *Zuza v. Off. of the High Representative,* 107 p Supp. 3d 90, 98 (D.D.C. 2015), *add'd sub nom. Zuza v. Off. of the High Representative,* 857 F.3d *935* (D.C. Cir. 2017) (quoting *Tuck v. Pan American Health Organization,* 668 F.2d 547, *550* n. 7 (D.C. Cir. 1981) (citation omitted)). Thus, to the extent the acts alleged in the Complaint related to the Defendants' functions as an officials of an international organization, the provisions of 22 U.S.C. § 288d(b) (1976) protect them from suit *Id.*

The 'functional' inquiry governs the determination or international official status under the IOIA. *Tuck,* 668 F.2d at *550* n. 7. Acts related to a defendant's official functions include those "acts falling 'within the outer perimeter of the official's line of duty."' *Zuza,* 108 P. Supp. 3d at 98 (brackets omitted) (quoting *Barr v. Matteo,* 360 U.S. 564, 79 S.Ct. 1335, 3 L. Ed. 2d 1434 (1959) (plurality opinion)). Employees and officials of an international organization may not be immune from liability if the complaint alleges actions taken by the official in their individual capacities. *Id.* (quoting *Tuck,* 668 F.2d at 551); *see also Donald v. Orfila,* 788 F.2d 36 37 (D.C. Cir. 1986) (dismissing the complaint because it did not present "any objectively observable action taken by [defendant] in his individual capacity.")

Defendants argue that Plaintiff's allegations relate solely to actions taken by Defendants in their official capacities within the World Bank Group. Mot. 10. Ms. González Flavell, however claims that Defendants took all relevant actions their personal capacities and that Defendants bear the burden of establishing that they were acting in their

official capacities as officers and employees of the World Bank. Opp'n 4 (quoting *Moss v. Stockard,* 580 A.2d 1011, n. 18 (D.C. 1990) (concerning absolute immunity under 42 U.S.C. § 1983)). Regardless of the Defendants' evidentiary burden, the Court finds the allegations raised in the Complaint fall within Defendant's official functions at the World Bank.

The bulk of Ms. González Flavell's claims concern the actions of Defendants Jenny Funes and Philip Beauregard.[2] Ms. González Flavell claims that Defendant Funes acted outside the scope of her employment as a staff member of the World Bank's Human Resources unit by: (1) possessing private and personal information about Ms. González Flavell concerning her medical condition and disability leave; (2) contacting Ms. González Flavell about these matters; (3) claiming she had power to suspend Ms. González Flavell's salary if Ms. González Flavell did not contact the Reed Group; (4) identifying herself as Ms. González Flavell's point of contact; and (5) ordering Ms. González Flavell not to contact any other members of the World Bank. Ms. González Flavell also argues that Defendant Beauregard, a Manager in the Human Resources Development Corporate Operations unit at the World Bank, aided and abetted Defendant Funes' actions by: (1) creating Ms. González Flavell's ending employment paperwork; (2) supporting the Notice of Redundancy; and (3) indicating that Ms. González Flavell would receive a redundancy payment upon her termination. Ms. González Flavell asserts that Defendant Beauregard had no authority or power to create the ending employment paperwork but does not cite to any authority to support this assertion.

All of Defendant Funes' and Defendant Beauregard's actions were conducted within their official, not their

personal capacities. The World Bank's Human Resources unit was clearly under the impression that the Notice of Redundancy against Ms. González Flavell was valid and took stops accordingly. The Court does not need to analyze Defendant Funes and Beauregard's official employment descriptions to find it reasonable for Human Resources staff members to contact an employee separating from an employer about that employee's employment status and take actions in support of a seemingly legitimate redundancy termination. That Ms. González Flavell disagrees with Defendants' actions and challenges their authority to take these steps is irrelevant to the court's determination as to whether Defendants Funes and Beauregard acted in their official capacities. Every allegation raised against Defendant Funes and Beauregard arise from their actions or inactions as members of the World Bank's Human Resources unit and align with their duties within those positions. Defendant Funes and Defendant Beauregard were therefore acting in their official capacities and are consequently immune from the instant litigation.

Ms. González Flavell asserts, in all seven Counts in the complaint except for Count V, allegations against Defendant Otaviano Canuto, the former Executive Director and Chair of the World Bank sub-committee, the Committee for Development Effectiveness "CODE"). Plaintiff alleges that she contacted Defendant Canuto about her complaints related to the Notice of Redundancy, but that Defendant Canuto incorrectly asserted that he was Ms. González Flavell's supervisor and failed to report the alleged misconduct. Ms. González Flavell alleges that Defendant Canuto's actions were fraudulent, designed to shield the fraudulent acts of the other Defendants, and were outside the scope of Defendant Canuto's

employment The Court disagrees. Whether Defendant Canuto acted improperly in failing to report Ms. González Flavell's misconduct concerns is not for the Court to decide; the decision, however, was clearly made by Defendant Canuto acting in his official capacity as Executive Director and Chair of CODE. Because Ms. González Flavell has not alleged a single fact that supports her claim that Defendant Canuto was acting in his individual capacity, Defendant Canuto is immune from liability under the Articles of Agreement.

Defendant Sophie Sirtaine, Director of the Independent Evaluation Group ("IEG") at the World Bank Group and sued in all counts in the Complaint except Count III, is also immune from civil liability. Ms. González Flavell claims Defendant Sirtaine joined in the conspiracy to uphold the unauthorized Notice of Redundancy when Defendant Sirtaine emailed Ms. González Flavell, on December 6, 2017, asking her to retrieve her personal belongings from the IEG office and, on December 11, 2017, informing her that her position with the World Bank Group terminated on December 2, 2017. Ms. González Flavell argues that Defendant Sirtaine's email were outside of her supervisory line of reporting and therefore outside of her official capacity. Regardless of the official chain of supervision, it is evident that when Defendant Sirtaine sent the emails, she was acting in her official capacity as the Director of IEG by taking steps to terminate employment. Thus, the Court finds that, based on the allegations made in the Complaint, Defendant Sirtaine was acting within her official capacities and is immune from the instant litigation.

Counts I, II, IV, VI, and VII are plead against Defendants Jim Yong Kim, the former President of the World Bank Group,

David Robert Malpass, the current President of the World Bank Group, and Shaolin Yang, the Managing Direct and Chief Administrative Officer. Ms. González Flavell claims that Defendants Yong Kim, Malpass, and Yang were apprised of her employment situation, but failed to address Plaintiffs grievances. Simply stated, Ms. González Flavell claims that these three Defendants failed to act within their official capacities when they could have. Regardless of whether their non-performance was proper under the circumstances, Ms. González Flavell's factual allegations do not show that Defendants Yong Kim, Malpass, or Yang were ever acted outside their official capacity. Consequently, Defendants Yong Kim, Malpass, or Yang are immune from litigation on the actions alleged in the instant matter.

Ms. González Flavell's allegations against each of the seven Defendants relate to actions taken within their official capacities, thus, all individual Defendants are immune from the instant litigation under the Articles of Agreement. Because all Defendants are protected by the immunity granted by the Articles of Agreement, the Court locks subject-matter jurisdiction to bear the merits of Ms. González Flavell's claims, and this case must be dismissed.

c. This Case Shall Be Dismissed with Prejudice

The case is dismissed with prejudice because Ms. González Flavell cannot possibly cure the defects in her Complaint. Generally, complaints arc dismissed without prejudice to allow plaintiffs an additional chance to plead amended or additional facts which allow the plaintiff to state **a** claim. *See, e.g.. Hillbroom v. Price Waterhouse LLP,* 17 A.3d 566, 569, n. 3 (internal citations omitted). Ms. González Flavell's Complaint has never been amended, which would

usually mean that a dismissal without prejudice would be appropriate. However, when the reasons for dismissal arc based on a conclusion of law that would not be altered by pleading "additional factual assertions... [which] do not conflict with the allegations of the [c]omplaint," then dismissal with prejudice is appropriate. *Id.* Here, Ms. González Flavell's claims are being dismissed for lack of subject jurisdiction **because the** Defendants' acted in their official capacities in ending Ms. González Flavell's employment and arc thus immune from civil litigation - this is a defect that cannot be cured. Moreover, there are no conceivable facts that she could plead that would alter the legal conclusion that the Court lacks subject-matter jurisdiction. Therefore, Ms. González Flavell's Complaint is dismissed with prejudice. Because this case is dismissed, the Motion for Court Order shall be denied as moot Accordingly, it is on this 7th day of December, 2022, hereby,

ORDERED that Defendants' Opposed Motion to Stay Discovery, filed on October 6, 2022, shall be **DENIED AS MOOT;** and it is further

ORDERED that Defendants' Opposed Motion to Stay Discovery, filed on October 7, 2022, shall be **DENIED AS MOOT;** and it is further

ORDERED that Defendants' Motion to Dismiss shall be **GRANTED;** and it is further

ORDERED that Plaintiff's Complaint, filed on November 12, 2020, shall be **DISMISSED WITH PREJUDICE;** and it is further

ORDERED that all future deadlines and events in this matter are **VACATED;** and it is further

ORDERED that Defendants' Opposed Motion for Court Order Requiring Plaintiff to Communicate Through Counsel Only shall be **DENIED AS MOOT.**

IT IS **SO ORDERED.**