No. 25A___

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), *Applicants*

v.

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

APPLICATION TO EXTEND TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice John G. Roberts, Jr. as Circuit Justice for the District of Columbia Circuit:

In 2010, the directors of a subsidiary entity formed by the Unification Church to support Church operations—known as Unification Church International (UCI)—unilaterally declared themselves and UCI independent of the Unification Church. That action flouted the Church's polity, reflected in decades of unbroken custom and tradition, and resulted in the transfer of $3 billion worth of assets held for the Church's benefit to a non-religious entity with no obligations to the Church. Yet the District of Columbia Court of Appeals held that it could not resolve *any* disputes between the Church and UCI or its directors arising from those actions. And it did so because it misunderstood the First Amendment to forbid the court from deciding the predicate question about whether the Church was a hierarchical entity entitled to

deference. That decision was wrong and, if allowed to stand, will have profound negative implications for all hierarchical religious organizations.

To allow this issue and the underlying dispute to be fully considered by this Court, and pursuant to Supreme Court Rules 13.5, 22, and 30, applicants Family Federation for World Peace and Unification International (the official title of the Unification Church), the Universal Peace Federation (UPF), and the Holy Spirit Association for the Unification of World Christianity (Japan) (UCJ), request a 60-day extension, to December 1, 2025, to petition for a writ of certiorari.[1] The petition will present at least one question of vital importance to virtually all hierarchical religious denominations: Whether the First Amendment forbids a court from deciding whether a denomination is hierarchical when it asserts that the church-autonomy doctrine makes its resolution of questions of polity, governance or doctrine binding on the court.

The D.C. Court of Appeals' opinion finally rejecting all the Church's claims on religious-abstention grounds was issued on July 3, 2025, and the petition is currently due on October 1, 2025. See *Family Fed'n for World Peace & Unification Int'l* v. *Moon* (*Moon IV)*, 338 A.3d 10 (D.C. 2025) (Appendix A); see also *Moon* v. *Family Fed'n for World Peace & Unification Int'l*, 281 A.3d 46 (D.C. 2022) (*Moon III*) (Appendix E)

[1] Pursuant to Rule 29.6, applicants certify that they do not have any parent corporations and that no publicly held companies own ten percent or more of their stock.

(interlocutory decision made final by *Moon IV*). The Court has jurisdiction under 28 U.S.C. § 1257. For the following reasons, the application should be granted.

BACKGROUND

The Reverend Sun Myung Moon founded the Holy Spirit Association for the Unification of World Christianity—generally known as the Unification Church—in 1954. *Moon III*, 281 A.3d at 51. Reverend Moon served as the Church's spiritual and hierarchical leader until his passing in 2012. *Id.* at 59. As the Church grew, it established religious institutions worldwide, including the UCJ, and various nonprofit organizations, including the UPF. *Id.* at 51. Reverend Moon also established UCI, a charitable corporation, to support and fund the Unification Church's activities. *Id.* at 52. For years, UCJ made donations upwards of $100 million annually to UCI to support the overall Church's activities. *Id.* at 53.

Reverend Moon eventually appointed his son, respondent Hyun Jin (Preston) Moon, to various leadership positions in the Church, including to serve as UCI's President and Chairman. *Id.* at 53-54. Later, after Preston "took steps to replace the directors of the UCI board," Reverend Moon lost confidence in Preston and instructed him to resign from all his positions. *Id.* at 54-55. But rather than resign, Preston arranged with certain members of UCI's board to amend UCI's articles to clear the path to move the Church's property (with an estimated market value of $3 billion) to entities not controlled by the Church or obligated to support it. *Moon IV*, 338 A.3d at 20 & n.2. At Reverend Moon's direction, the applicants sued to stop UCI, Preston Moon, and the new board from their diversion of the Church's assets and to hold them

accountable for altering UCI's corporate purposes—in breach of their fiduciary and contractual duties to the Church and its donors. *Moon III*, 281 A.3d at 58-59.

In a series of orders, the lower courts systematically rejected each of applicants' claims as barred by the religious-abstention doctrine. See *Moon III,* 281 A.3d at 61-62; *Family Fed'n for World Peace & Unification Int'l* v. *Moon*, No. 2011 CA 003721 B, 2023 WL 5286266 (D.C. Super. June 15, 2023) (Appendix D); *Family Fed'n for World Peace & Unification Int'l* v. *Moon*, No. 2011 CA 003721 B, 2023 WL 5286264 (D.C. Super. July 6, 2023) (Appendix C); Order, *Family Fed'n for World Peace & Unification Int'l* v. *Moon*, No. 2011 CA 003721 B (D.C. Super. Aug. 28, 2023) (unpublished) (Appendix B). Relevant here, the D.C. Court of Appeals held in a prior interlocutory appeal that it was not even competent to decide whether the Unification Church *was* a hierarchical church such that deference was proper. *Moon III*, 281 A.3d at 65 n.23, 69. That decision carried the day through to final judgment. And on the subsequent appeal, after again concluding that neutral principles could not decide the dispute between the Church and UCI or its directors, the D.C. Court of Appeals expressly declined to consider whether "the Unification Church was a hierarchical organization." *Moon IV,* 338 A.3d at 22.

REASONS FOR GRANTING AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

This Application for an extension of 60 days to file a petition should be granted for several reasons:

1. The forthcoming petition has at least a reasonable chance of being granted. By declining to decide whether the Church was a hierarchical organization, the court below departed from this Court's longstanding recognition that disputes, including disputes over property, in hierarchical churches *can* and sometimes must be resolved by deferring to the church hierarchy's authoritative decisions on polity and governance. *E.g., Watson* v. *Jones*, 80 U.S. 679, 727-730, 734 (1871); *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952); *Kreshik* v. *Saint Nicholas Cathedral*, 363 U.S. 190, 191 (1960); *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 446 (1969); *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 709 (1976).

True, the Court later held that courts may also decide certain intrareligious disputes by applying "neutral principles of law." *Jones* v. *Wolf*, 443 U.S. 595, 602-603 (1979). But even *Jones* recognized that, if efforts to apply such principles "would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.* at 604 (citing *Serbian E. Orthodox Diocese*, 426 U.S. at 709). Thus, *Jones* clarified that,

if the "neutral principles of law" approach would itself require a "civil court to resolve a religious controversy," then *Watson*'s deference rule governs. *Id.*

The Fifth Circuit recently reached the same conclusion, explaining that *Watson*'s default rule of deference prevails when a neutral-principles analysis would require the court to "resolve a religious controversy." *McRaney* v. *North Am. Mission Bd. of the S. Baptist Convention*, Inc., No. 23-60494, __ F.4th __, __ n.3, 2025 WL 2602899, at *8 n.3 (5th Cir. Sept. 9, 2025). And this is consistent with a 2007 holding of the North Carolina Supreme Court, in another church property and breach of fiduciary duty dispute, that, "[b]ecause no neutral principles of law exist to resolve plaintiffs' claims, the courts must defer to the church's internal governing body," "thereby avoiding becoming impermissibly entangled in the dispute." *Harris* v. *Matthews*, 643 S.E.2d 566, 571 (N.C. 2007). The D.C. Court of Appeals' decision in this case conflicts with *Harris,* at a minimum.

There is, moreover, a broader recognized split in the state courts (and the D.C. Court of Appeals) over how to approach church property disputes in the wake of *Jones*. See, *e.g., St. Paul Church, Inc.* v. *Board of Trs. of Alaska Missionary Conf. of United Methodist Church, Inc.*, 145 P.3d 541, 552 (Alaska 2006) (collecting cases). As of 2016, "29 states" had adopted *Jones*' neutral-principles approach and "9 retained the *Watson* approach" of hierarchical deference.[2] And these various approaches have led to what the Tennessee Supreme Court has recognized as "massive inconsistency,"

[2] Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 319 (2016) (citing Jeffrey B. Hassler, Comment, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Intradenominational Strife*, 35 Pepp. L. Rev. 399, 457 (2008)).

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) (citation omitted).

The confusion among the lower courts stems, in substantial part, from a failure to heed *Jones*' caution that, even in jurisdictions that have adopted the "neutral principles of law" approach, decisions of polity or governance made by the highest body of a hierarchical church still prevail where attempts to apply neutral principles of law fail. *Jones*, 443 U.S. at 602, 604. The confusion on this issue nevertheless persists in the lower courts because this Court has not yet corrected some lower courts' misunderstanding of *Jones*, which was decided nearly a half-century ago and remains the Court's most recent guidance on how to resolve disputes over church property consistent with the First Amendment.

There is thus a reasonable likelihood this Court will grant review to clarify this portion of *Jones* and thus resolve an important split over how to decide religious property disputes in *Jones*' wake.

2. Additionally, the D.C. Court of Appeals' misapprehension that it was forbidden from reaching the issue of whether the Church was hierarchical was outcome determinative here. In both the prior interlocutory appeal and at final judgment, that court repeatedly (and erroneously) found that its chosen approach—the neutral principles of law approach—did not allow it to decide the disputes before it. *Moon III*, 281 A.3d at 64, 70; *Moon IV*, 338 A.3d at 35-36. As discussed, once the court held that neutral principles could not be applied without "requir[ing] the court

to resolve a religious controversy," the court should have "defer[red] to the resolution of the doctrinal issue by the authoritative ecclesiastical body"—here, the Church. *Jones,* 443 U.S. at 604.

Rather than doing that, the court concluded that deciding whether the Church was hierarchical was itself an impermissible religious question that it could not answer. *See Moon III*, 281 A.3d at 65 n.23, 69; *Moon IV*, 338 A.3d at 22. But that is not the law: For courts to be able to defer to hierarchical religious organizations, they must first be able to decide whether a given religious organization is, in fact, hierarchical. Nothing in this Court's precedent forbids such an inquiry for the simple reason that reaching that issue does not violate the First Amendment. To the contrary, deciding that question when it presents itself simply reflects the First Amendment's guarantee that a hierarchical religious organization has a path to vindicate its autonomy in matters of church government, including its control over subordinate entities and the property they hold for the benefit of that organization.

3. The D.C. Circuit's contrary conclusion renders illusory an imperative First Amendment protection for hierarchical religious organizations. Here, that conclusion—that the court cannot even answer the question of who sits atop the Church's hierarchy—allowed UCI's rogue board to divert $3 billion in Church assets despite the Church's claims that such activities were impermissible and even though all agree that "UCI is not itself a church." *Moon III,* 281 A.3d at 52. The First Amendment should not be interpreted to allow bad actors to take resources from churches and then hide behind the bare assertion that resolving any resulting

disputes would require civil courts to address theological questions about the church's structure—especially where those questions are interposed by directors of entities that are not themselves churches.

Thus, by declining to address the Unification Church's structure outright, the Court of Appeals allowed the Church's right to deference under the First Amendment to go unanswered. But this is not religious neutrality—it is a way of deciding the very disputed religious issues that the court purported to avoid. Citing the First Amendment, the court effectively substituted its own judgment and understanding for the Church's authoritative decisions regarding its polity and governance, embodied in 60 years of unbroken custom and tradition. In doing so, it favored one religious "vision"—what Preston Moon thought the Church *ought to* become—over another—that of the living and presiding hierarchical authority of the Church at the time of the challenged conduct. That error, which resulted from a misreading of this Court's precedent, cries for this Court's review.

4. To fully present these issues in a proper petition, an extension of time is warranted. Applicants have recently retained the undersigned counsel of record as Supreme Court counsel. But Mr. Schaerr has several other pressing professional obligations that complicate his ability to complete and file the petition by its current due date.

Among those obligations are two other petitions for certiorari. The first, in *Page* v. *Comey*, will seek review of the D.C. Circuit's rule for the accrual of claims arising from the clandestine intelligence operations of the FBI. It is due on October 14, 2025.

The second, in *Project for Privacy and Surveillance Accountability* v. *United States Department of Justice*, will seek review of the D.C. Circuit's *Glomar* doctrine under which agencies invoking certain exceptions to the Freedom of Information Act's disclosure requirements can refuse to even search for responsive records. It is due on October 16, 2025.

Mr. Schaerr is also busy preparing multiple *amicus* briefs in this Court with immovable deadlines, including in:

- *Hecox* v. *Little*, No. 24-38 (due September 19, 2025);
- *West Virginia* v. *B.P.J.*, No. 24-43 (due September 19, 2025);
- *Millar* v. *Civil Rts. Dep't*, No. 25-233 (due September 29, 2025); and
- *Gilliam* v. *Gerregano*, No. 25-107 (due October 6, 2025).

And that says nothing of the many other briefs Mr. Schaerr is preparing in courts across the country that will make his active participation in the timely preparation of a petition for a writ of certiorari here difficult.

5. No apparent prejudice will arise from the requested extension. Having prevailed below, respondents will suffer no disability from an extension.

CONCLUSION

For the foregoing reasons, applicants request an extension of time to file a petition for a writ of certiorari to and including December 1, 2025.

September 17, 2025

Respectfully submitted,

/s/ Gene C. Schaerr

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APPENDIX

TABLE OF APPENDICES

APPENDIX A

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."

[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.

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

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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.

[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.

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. 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

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[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 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).

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 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 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."

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 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]

- *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.

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 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

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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.

[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.

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 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 defined and its members are limited in number"; and (2) the plaintiffs challenge an "extraordinary measure" taken by the charitable corporation. *Hooker*,

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

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.

[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.

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 *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]

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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*.

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 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 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

[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.

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 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)).

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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 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.

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 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 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

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

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 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

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[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.

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 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.

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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.

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 than do other

[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.

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.*, **Plaintiffs,** **v.** **HYUN JIN MOON*, et al.*,** **Defendants.**	**2011 CA 003721 B** **Judge Alfred S. Irving, Jr.**

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 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

[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.

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,

> 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 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

[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).

> 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 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

[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).

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

[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).

earlier order[5] declining to dismiss the *Complaint* "on the 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 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

[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 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).

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]

[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

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 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*,

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mootness doctrine), the requisite that 'must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'").

[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.

"evidence in a 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] *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).

[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 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).

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 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 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

[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))).

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

[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' 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

constituting "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 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

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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.

> 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

[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.

charitable nonprofit 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, 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).

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

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 amendment at this juncture would significantly

[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 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.

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 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").

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.

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").

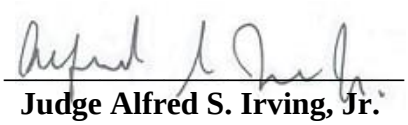
Therefore, in view of the extensive and protracted proceedings in this case, Plaintiffs' lack of prudential standing to advance their remaining claims on remand, and the lack of merit in Plaintiffs' requests, the Court will dismiss the *Complaint* with prejudice under Rule 12(b)(6) of the Superior Court 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**.



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.*, **Plaintiffs,** **v.** **HYUN JIN MOON*, et al.*,** **Defendants.**	**2011 CA 003721 B** **Judge Alfred S. Irving, Jr.**

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 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

[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.

> 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.

[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-

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

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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).

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 *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).

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]

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-

[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.

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

[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

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 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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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.

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

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

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 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

[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.

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); *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 also Tompkins*, 433 A.2d at 1098 (holding two summary judgment motions were not

[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, 1196-97 (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).

"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-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

[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.").

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 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.

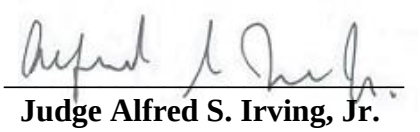
ACCORDINGLY, it is by the Court this 6th day of July, 2023, hereby

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.



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.*, **Plaintiffs,** **v.** **HYUN JIN MOON*, et al.*,** **Defendants.**	**2011 CA 003721 B** **Judge Alfred S. Irving, Jr.**

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 replaced Preston

[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

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 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

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spiritual leader of the Unification Church[.]" *Moon III*, 281 A.3d 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.

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

[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).

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 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 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

[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.

> 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.

[5] UCJ also contends that "the Court should consider that neither the donor UCI, nor the donee 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.

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).

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.

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] 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,

[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).

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

[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.

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 "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]

[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.

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

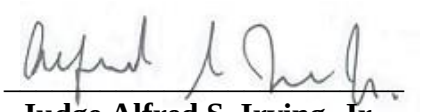
The Court further observes that UCJ's invocation of the fraud or collusion exception as to its claims against UCI appears, as UCI noted, to conflate the contractual nature of its three counts with the *Complaint*'s other counts, alleging breaches of fiduciary duty and self-dealing, that are immaterial 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*.



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

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, The

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*.

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

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

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.

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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.

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

> 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 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 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.

[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).

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

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

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 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

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

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 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

[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.

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 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

[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

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 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

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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.

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:

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	(b) To promote interdenominational, interreligious, and international unification of world

[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.

international unification of world Christianity and all other religions.	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 Principle as may be necessary or desirable, to further the~~ theology [and principles] of the Unification ~~Church~~ [Movement].	(c) To promote and support the understanding and teaching of the theology and principles of the Unification 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 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].	(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.

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 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

[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.

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 Unification Church. The directors claim to have understood that a barrier to financing might jeopardize the project's completion. According to Preston and

[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.

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.

[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

[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.

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 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).

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[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).

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]

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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

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

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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.

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] 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

[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 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.

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 whether the change abandoned or contradicted the organization's "central and well-understood mission." *Moon I*, 129 A.3d at 252

[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.").

(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]

[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.

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 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 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

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[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 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.

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 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 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.

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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 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.

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 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 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

[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.

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 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

[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.

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

[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.

were unaffiliated. Neither distinction is persuasive. We conclude that the trial 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

[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.

"nonsectarian." The "general-purpose" conservative newspaper, *The Washington Times*, likewise operated independently 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]

[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

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. *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

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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.

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] 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

[29] The Supreme Court has never definitively endorsed the exception. *See Hutchinson v. Thomas*, 789 F.2d 392, 395 (6th Cir. 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.

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 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.