Nos. 23-CV-0836, 23-CV-0837, 23-CV-838

In the

District of Columbia Court of Appeals

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

Plaintiffs-Appellants,

v.

HYUN JIN MOON, *et al.*,

Defendants-Appellees.

On Appeal from the District of Columbia Superior Court,
(Case No. 2011 CA 003721 B)

BRIEF FOR PLAINTIFFS-APPELLANTS

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RULE 28(a)(2) STATEMENT

Pursuant to D.C. App. R. 28(a)(2)(A), Plaintiffs-appellants list the following parties, intervenors, amici curiae, and counsel that were part of the proceedings in the D.C. Superior Court in Case No. 2011 CA 003721 B, or are part of this appeal:

Parties	The Family Federation for World Peace and Unification International The Universal Peace Federation The Holy Spirit Association for the Unification of World Christianity (Japan) Unification Church International Hyun Jin ("Preston") Moon Michael Sommer Jinman Kwak Youngjun Kim Richard Perea
Amici Curiae	CHILD USA
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Pursuant to D.C. App. R. 26.1 and 28(a)(2)(B), Plaintiffs-appellants provide the following corporate disclosure statement: Plaintiffs-appellants 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) state that none of them has a parent corporation and no publicly held corporation holds 10% or more of any of their stock.

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PRELIMINARY STATEMENT

Since 2011, Family Federation for World Peace and Unification International ("Family Federation"), led by its founder Reverend Sun Myung Moon ("Rev. Moon") and his wife Dr. Hak Ja Han Moon ("Mrs. Moon"), together with Plaintiffs The Holy Spirit Association for the Unification of World Christianity (Japan), now known as Family Federation for World Peace and Unification Japan ("UCJ"), and the Universal Peace Federation ("UPF") (collectively, "Plaintiffs"), have been pursuing justice after Hyun Jin "Preston" Moon ("Preston Moon") and his co-defendants breached their fiduciary duties to the Unification Church's financial support organization, Unification Church International ("UCI"). Defendants fraudulently wrested power over UCI, colluded to loot Church assets worth $3 billion from UCI, and then funneled them through a convoluted web of non-religious, international shell companies for personal gain. These assets represented the legacy of the Unification Church and a lifetime of sacrifices by many thousands of members. A church victimized by fraud of this magnitude should not be denied any remedy, but that is what the trial court did on remand from *Moon v. Family Fed'n for World Peace and Unification Int'l*, 281 A.3d 46 (D.C. 2022) ("*Moon III*").

Moon III's abstention rulings did not end this case. This court remanded for the trial court to consider unadjudicated self-dealing and breach of contract theories. *Id.* at 70-71. And, seemingly bothered by the potential injustice of absolute

abstention, this court invoked the Supreme Court's strong suggestion that there is a fraud or collusion exception ("Exception") to religious abstention, implying it may be applicable here. *Id*. This court even expressed "[Plaintiffs] 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 instructed the trial court that "whether there is a fraud or corruption exception" and whether there is evidence to support the self-dealing claim" are for "the trial court to address in the first instance." *Id*. In *Moon III*, this court decided not to deny Plaintiffs a remedy and instead remanded for consideration of the Exception and remaining claims on the merits. But the trial court frustrated the purpose of the remand by brushing aside the Exception as "immaterial" and dismissing all claims with prejudice.

First, the trial court refused to adjudicate the self-dealing and contract claims on the merits, even though these claims do not concern disputes over religious leadership, faith, or doctrine. They involve property claims and actions, not beliefs, which could and should have been adjudicated on remand based on neutral principles of fiduciary and contract law. This court should reverse on these grounds alone.

Second, the trial court failed to decide whether an Exception to religious abstention based on fraud, collusion, or corruption exists. By failing to answer this question, the trial court in effect handed Defendants absolute immunity for misconduct for which everyone else in civil society must be accountable.

Defendants' successful manipulation of the religious abstention doctrine sets a dangerous precedent that will encourage others to follow Preston Moon's stratagem of concealing secular wrongdoing behind a religious smokescreen. If not reversed, the trial court's rulings will encourage bad actors to fraudulently misappropriate assets from religious organizations with impunity by manufacturing defenses sounding in religious conflicts. Indeed, this court long ago cautioned against a result that would "approach granting immunity." *Family Fed'n for World Peace and Unification Int'l v. Moon*, 129 A.3d 235, 253 (D.C. 2015) ("*Moon I*").

Finding that the Exception exists is also imperative to uphold religious organizations' First Amendment rights to equal access to public benefits, here, the courts, especially when victimized by fraudulent misconduct of such enormous magnitude. Finding that the Exception exists also will ensure that, in this instance, principles of abstention are not favored over Plaintiffs' competing First Amendment rights to hierarchical deference with respect to use of Church property. This court should not allow the First Amendment to become an impenetrable shield from liability for those who engage in fraudulent or corrupt conduct. Yet, that is what the trial court's Orders did, inverting the balance of constitutional considerations: immunity for fraudulent actors at the expense of religious organizations' constitutional rights. Accordingly, this court should reverse.

STATEMENT OF JURISDICTION

Pursuant to D.C. Code § 11-721(a)(1), this court has jurisdiction over Plaintiffs' appeal of the following final D.C. Superior Court Orders: (1) August 28, 2023 Order granting Preston Moon's Post-Remand Motion to Dismiss for Lack of Standing ("Standing Order"); (2) July 6, 2023 Order granting the Director Defendants' Motion for Judgment on the Pleadings ("Director Defendants Order"); (3) June 15, 2023 Order granting UCI's Motion for Summary Judgment on Counts IV, V, and VI ("UCI Summary Judgment Order"); and (4) August 11, 2023 Order ("Discovery Order") denying Plaintiffs' Motion to Reopen Discovery, to Designate Fraud or Collusion Expert Out of Time, and for Evidentiary Hearing ("Motion to Reopen") (collectively, "Orders").

STATEMENT OF ISSUES

1. Whether this court should find the fraud, collusion, or corruption Exception to religious abstention exists and applies to the claims in this case.

2. Whether this court should vacate the Standing Order granting Preston Moon's motion to dismiss for lack of standing ("Motion to Dismiss"), and remand the self-dealing claims against him with instructions to resolve them on the merits.

3. Whether this court should vacate the Director Defendants Order granting Defendants Jinman Kwak, Youngjun Kim, Michael Sommer, and Richard Perea's ("Director Defendants") motion for judgment on the pleadings, and remand

the self-dealing claims against them with instructions to resolve them on the merits.

4. Whether this court should vacate the Summary Judgment Order granting UCI's Motion for Summary Judgment on Counts IV, V, and VI ("Contract Claims"), and remand with instructions to resolve the Contract Claims on the merits.

5. Whether this court should vacate the Discovery Order, grant Plaintiffs' Motion to Reopen as to limited discovery from Preston Moon and designation of a fraud and collusion expert, and instruct the trial court to hold an evidentiary hearing on the Exception.

STATEMENT OF THE CASE

I. Plaintiffs' Historical Background And Nature Of Claims.

In 1954, Rev. Moon founded the Holy Spirit Association for the Unification of World Christianity, later renamed Family Federation, and known as the Unification Church. (JA.2357-58.) Rev. Moon served as the Church's spiritual and hierarchical leader until his passing in 2012. (*See id*.; JA.1166.) As it grew under Rev. Moon's leadership, the Church established religious institutions worldwide, including UCJ, as well as nonprofit organizations, including UPF. (JA.189-90.) Rev. Moon directed the establishment of Unification Church International, a District of Columbia nonprofit, charitable corporation, to support and fund the Unification Church and related endeavors. (JA.2372-73.) For decades, UCJ made donations to Unification Church International to support Church activities. (JA.1157; JA.2358.)

Beginning in the late 1990s, Rev. Moon appointed Preston Moon to various leadership positions within the Church, including a 2006 appointment as Unification Church International's President and Chairman. (JA.197; JA.1008; JA.2361.) In the years that followed, Rev. Moon lost confidence in Preston Moon and instructed him to resign from all his positions. (JA.2367; JA.2371.) Preston Moon did not resign, and instead colluded with the Director Defendants to corruptly take control of the nonprofit's board, changed the name to UCI to disassociate it from the Unification Church, and pillaged $3 billion worth of Church assets for personal gain.[1] (*See infra*, Statement of Facts ("SOF").) At Rev. Moon's direction, Plaintiffs sued in 2011 to challenge Preston Moon and the Director Defendants' egregious misappropriation of Church assets.

II. After *Moon III*, The Self-Dealing And Contract Claims Remained Live.

Count II alleges, in part, that Preston Moon and the Director Defendants engaged in self-dealing by: (1) causing a UCI subsidiary to purchase a property from an entity ultimately owned and controlled by Preston Moon for $5.9 million – more

[1] The trial court relied on historic book value of $467,427,708 (JA.2404), but market value is much higher. The Central City asset sold for nearly $1 billion in 2012 (JA.2438), and one of the Parc1 towers recently sold for nearly $900 million. (https://www.creherald.com/ara-acquires-landmark-office-tower-in-seoul-korea-for-us897m/ (Oct. 11, 2020 (reporting sale of one of the Parc1 towers for $897 million).) *See Christopher v. Aguigui*, 841 A.2d 310, 312 (D.C. 2003) (citing *Ieradi v. Mylan Lab'ys Inc.*, 230 F.3d 594, 598 n.2 (3d Cir. 2000) (showing courts may take judicial notice of media articles)). Taken together with the other assets diverted from UCI, the total value is likely closer to $3 billion. (JA.1203.)

than fair market value (JA.129); and (2) causing another UCI subsidiary to enter into a $120,000 per month consulting agreement with an entity owned by Preston Moon. (JA.198.) The self-dealing claims also include: (1) the massive transfer of UCI's most valuable assets to a Swiss entity, Kingdom Investments Foundation ("KIF"), which Plaintiffs learned of in discovery and which the trial court found, in an earlier ruling, fell within Count II (JA.503-04); and (2) over $62 million of transfers to Preston Moon's UPF rival entity, Global Peace Foundation ("GPF") (JA.2419.) In the remedies phase, the trial court noted other instances of apparent self-dealing: (1) UCI wired $1 million into Preston Moon's bank account to discharge a specious $500,000 loan with a usurious 25% interest rate to an individual who became a key director of KIF (JA.603-04; JA.2312); and (2) KIF's donations of tens of millions of dollars to organizations affiliated with close associates of Preston Moon. (JA.2312.)

The Contract Claims allege that UCI used hundreds of millions of dollars UCJ donated to it over decades in ways that breached UCJ's donative intent and UCI's promise to support the Church. (JA.216-19.) UCJ seeks to recover these misappropriated donations, which were derived from faithful Church members who made personal and financial sacrifices to fund UCI on the belief their contributions would benefit the purposes to which they dedicated their lives. (JA.221.)

III. Appellate History Concerning First Amendment And Abstention Issues.

Moon I. After the trial court denied their motion to dismiss, which did not raise any First Amendment defenses, Defendants successfully moved for judgment on the pleadings arguing lack of subject matter jurisdiction because of the religious abstention doctrine. (JA.355-400; JA.462-95.) This court unanimously reversed and held that Plaintiffs have special interest standing. *Moon I*, 129 A.3d at 244, 249.

As to Count II's breach of fiduciary duty claims, this court concluded that "[d]etermining . . . whether corporate assets were used in accordance with corporate laws [is] normally governed by neutral principles of law" and allegations "that corporate funds were used . . . *to benefit one of the directors personally* would appear readily subject to court review." *Id.* at 252-53 (emphasis added). This court also found that the Contract Claims did not require any "inquiry banned by the First Amendment" because "[a] church is always free to burden its activities voluntarily through contracts [that] are fully enforceable in civil court." *Id.* at 253 n.25. Were this court to hold that "the First Amendment precludes our civil courts from adjudicating plaintiffs' claims, then it would approach granting immunity to 'every nonprofit corporation with a religious purpose from breach of fiduciary suits . . . and prevent any scrutiny of questionable transactions.'" *Id.* at 253.

Moon II. In 2016, Plaintiffs moved to enjoin UCI's further dissipation of Church assets. The trial court granted the motion, holding Plaintiffs' fiduciary duty

claims were likely to succeed on the merits and that the motion "present[ed] no theological questions." (JA.506.) In 2018, this court affirmed, rejecting Defendants' religious abstention arguments because "there were no theological questions for the court to resolve." (JA.561-75 (*Moon II*).)

Moon III. In 2018, both sides moved for summary judgment on Count II's breach of fiduciary duty claims. Defendants also sought dismissal based on the First Amendment. The trial court rejected Defendants' First Amendment argument, concluding that "[a] determination can be made on neutral principles of law without any religious determinations." (JA.1167.) The trial court granted Plaintiffs' motion in substantial part, ruling that Preston Moon and the Director Defendants breached their fiduciary duties. (JA.1196-97.) The trial court also denied UCI summary judgment on the Contract Claims because of disputed fact issues on whether a contract or other enforceable promises existed based on writings, conversations, and the parties' extensive course of conduct. (JA.1190-95.)

After an evidentiary hearing, the trial court issued an Order ("Remedies Order," JA.2354-2448), finding that Preston Moon and the Director Defendants: (1) displayed "lack of care, lack of due diligence, lack of loyalty and obedience, and disregard of their fiduciary position"; (2) intentionally inflicted harm on UCI; (3) engaged in a "gross abuse of their position"; (4) "caused UCI to lose about half of its assets" and "are not interested in getting those assets back to UCI"; (5) "did not

act in good faith when they approved donations" to KIF and GPF, which were not founded, supported, or approved by Rev. Moon; and (6) gave their allegiance to "Preston's personal agenda, and not to the best interest of UCI." (JA.2419; JA.2422; JA.2426-27.) The trial court found "this case can be decided on neutral principles by looking at the transactions at issue to determine whether they were in the best interest of the corporation," rejecting Defendants' abstention arguments. (JA.2417.) The court removed Preston Moon and the Director Defendants from UCI's board and held them jointly and severally liable for nearly half a billion dollars. (JA.2446.)

In *Moon III*, this court reversed and vacated the trial court's summary judgment order and the Remedies Order based on religious abstention. *Moon III*, 281 A.3d at 51. This court declined, however, to dismiss Count II in its entirety because the trial court had not addressed Plaintiffs' self-dealing theory, which "may yet have some legs," and because Plaintiffs "have alleged what amounts to a claim of fraud and/or collusion." *Id.* at 70-71. This court emphasized that the Supreme Court has "strongly suggested" that the Exception to religious abstention exists. *Id*. Because the parties had not briefed the Exception, nor "explained what evidence (or lack thereof) underlies the self-dealing claim," this court left those matters to "the trial court to address in the first instance on remand." *Id.* This court also concluded that the Contract Claims were not before it and "remain[ed] live." *Id.* at 60 n.15.

IV. The Trial Court Dismissed All Claims Without Deciding The Exception.

Preston Moon's Motion to Dismiss for Lack of Standing. On January 20, 2023, Preston Moon filed a Motion to Dismiss for Lack of Standing, arguing that *Moon III* is the law of the case and forecloses standing. On August 28, 2023, the trial court granted the motion and denied Plaintiffs' request for an evidentiary hearing on the Exception. (JA.3216-59.) The trial court justified this ruling in part by finding *Moon I* and two prior trial court rulings finding that Plaintiffs had standing were not law of the case. (JA.3227-34.) Preston Moon's motion did not raise prudential standing (JA.2554-67), but the trial court concluded Plaintiffs lack prudential standing, which allowed it to dismiss with prejudice. (JA.3223-27; JA.3252-59.) The trial court also sua sponte denied Plaintiffs leave to amend the Complaint, finding that it would be untimely and prejudicial even though binding precedent prohibits disposing of claims with prejudice on standing grounds without allowing leave to amend. (JA.3244-58.) The trial court again did not decide whether the Exception exists, despite Plaintiffs requesting that it do so.

Director Defendants' Motion for Judgment on the Pleadings. On January 25, 2023, the Director Defendants filed a motion for judgment on the pleadings, arguing *Moon III* bars claims based on the KIF and GPF transfers, and these transfers are not part of Count II's self-dealing claims. On July 6, 2023, the trial court granted the Director Defendants' motion by excising the KIF and GPF transfers from

Plaintiffs' self-dealing theories, reasoning that without the KIF and GPF transfers, the Complaint no longer alleged sufficient facts to state a claim for self-dealing against the Director Defendants. (JA.3158-69.) The trial court again refused to decide whether the Exception exists, saying it was "immaterial." (JA.3150.)

UCI's Motion for Summary Judgment on the Contract Claims. On January 20, 2023, UCI filed a second summary judgment motion on the Contract Claims based on *Moon III*'s abstention rulings. On June 15, 2023, the trial court granted UCI's motion without allowing an evidentiary hearing or deciding whether the Exception exists. (JA.3121-42.) The trial court assumed there would be no facts to support the Exception, without deciding if it exists, effectively denying Plaintiffs an evidentiary hearing on the Exception. (JA.3140-41.) The trial court also found the Contract Claims were barred by *Moon III*, contrary to prior rulings of the trial court finding disputed issues that could be decided on neutral principles of law. (*Id.*)

Plaintiffs' Motion to Reopen. On February 15, 2023, Plaintiffs filed their Motion to Reopen, which requested an evidentiary hearing on the Exception and limited new discovery on Preston Moon's post-discovery statements expressing control and responsibility for a real estate project UCI transferred to KIF, contrary to his prior testimony disavowing any association with KIF. Plaintiffs also requested designation of a fraud or collusion expert, and attached a preliminary expert report of a former federal financial fraud investigator, opining on the indicia of fraud and

collusion by Defendants. (JA.2605-39 ("Tendick Report").) In its August 11, 2023 Omnibus Order, the trial court denied the Motion to Reopen in full. (JA.3214.)

STATEMENT OF FACTS[2]

I. Facts Relevant To Self-Dealing, Fraud, And Collusion.

A. UCI Is A Holding Company For Church Assets, But Preston Moon Fraudulently Took Over Its Board To Seize Church Assets.

In 1977, at Rev. Moon's direction, UCI was incorporated as a District of Columbia nonprofit charitable corporation to act as the treasury to hold certain assets belonging to the Unification Church, and to disburse funds to support Unification Church activities. (JA.2372-73.) UCI is not a church and does not host religious services. (JA.2358.) Until Preston Moon fraudulently seized control of UCI's board in 2009, Rev. Moon designated all individuals to serve on UCI's board, directed how UCI distributed the funds it held for the Church, and UCI never gave money to an organization that was not founded or supported by Rev. Moon. (JA.2366; JA.2414.)

Beginning in the late 1990s, Rev. Moon appointed Preston Moon to various Church leadership positions, including co-chair of UPF, which hosted multi-day events designed to promote world peace. (JA.2360; JA.2371.) In 2006, Rev. Moon

[2] The SOF includes facts learned in discovery and summary judgment findings. This court may consider these facts on *de novo* review, *Radbod v. Moghim*, 269 A.3d 1035, 1041 (D.C. 2022), and under the standard applicable to Preston Moon's motion to dismiss without converting it to a Rule 56 motion. *See Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 426 n.4 (D.C. 1996).

also designated Preston Moon to serve as Unification Church International's President and Chairman. (JA.197; JA.2361.) Within two years, Preston Moon had lost Rev. Moon's confidence by advocating, in a 2008 Report to Parents, that he should assume absolute authority over Family Federation and all related "providential organizations," including UCI, and that all for-profit businesses should become "subordinate" to him under his leadership of UPF. (JA.850-51; JA.2361-62.) He also proposed in this Report to take the "institution of the Unification Church" in "a new direction." (JA.849-50.) It was clear from this Report that Preston Moon recognized Rev. Moon had sole authority to make changes to the Church's direction, leadership, and theology. (*Id.*; JA.1334; JA.1336; JA.2381 (acknowledging Rev. Moon as the hierarchical leader of the Church).) Rev. Moon rejected these proposals, and in 2009 twice told Preston Moon to "step down" from UCI and resign from all positions with Church affiliates. (JA.2367; JA.2371.) One Church affiliate voted to remove Preston Moon from its board because he "disobeyed instructions from Rev. Moon and the Church hierarchy." (JA.2372.)

Appalled at losing these positions and fearful of losing the "power and money" that came with them, (JA.2417), Preston Moon refused to step down from UCI. (JA.2367.) After Rev. Moon removed him from other positions, (JA.2371), Preston Moon embarked on a plan of, in his words, "asymmetrical warfare" like "the terrorists do." (JA.2368; JA.2419.) His plan included colluding with the Director

Defendants to defraud UCI out of Church assets to enrich himself and entities he owns and/or controls. Preston Moon's scheme started with his fraudulent replacement of UCI's board with individuals, including the Director Defendants, who would "unquestioningly follow" him and were "loyal to him rather than to the Unification Church leadership." (JA.2366-70 (describing fraudulent acts to take over the board, including removing directors who questioned Preston Moon's actions); JA.2400; *see also* JA.2612-14 (Tendick Report summarizing same).) By August 2009, UCI's board was comprised of Preston Moon's family and unqualified loyalists who granted him a new $425,000 salary with consideration for further increases. (JA. 2366-67; JA.2372.) The new UCI board stopped sending money to Family Federation and to Church-related organizations UCI previously supported, and, as explained next, colluded to cause UCI to give its "most valuable assets" away to benefit themselves. (JA.2371; JA.2382-97; JA.2417; *see also* JA.2614-23.)

B. Preston Moon Created GPF So That He Could Divert Church Assets To It For His Personal Gain.

On November 4, 2009, Rev. Moon removed Preston Moon as co-chair of UPF. (JA.2283.) The same day, Preston Moon announced the peace conferences UPF had planned would instead go forward under "a separate [] foundation" he was establishing to have no "formal or legal association with" Family Federation. (*Id*.) Preston Moon founded GPF as a "rival organization" to take control of UPF's global peace conferences under his own leadership, control, and branding. (*See* JA.2410;

JA.2420.) GPF is not affiliated with the Unification Church or Family Federation. (JA.2397.) Yet, Preston Moon and the Director Defendants caused UCI to transfer over $62 million to GPF and to cease funding UPF, so they could start up and operate this copy-cat entity from which Preston Moon and his followers gained financial and reputational benefits. (JA.2419; JA.2442-47.)

C. Preston Moon And The Director Defendants Colluded To Create KIF For The Sole Purpose Of Misappropriating UCI's Assets.

In sanctions discovery, Plaintiffs learned that UCI created a Swiss entity, KIF, for the purpose of receiving UCI's assets. (Feb. 24, 2023 Pls.' Opp'n to Mot. to Dismiss at 6, n.1; JA.2382.) Under Swiss law, KIF could not have any religious affiliation. (JA.661-62; JA.2185; JA.2373-75; JA.2382-83; JA.2418.) So, for Preston Moon and the Director Defendants to succeed in the scheme to divert UCI's assets to KIF, they had to change UCI's articles so that the KIF transfer could take place. (JA.2373 (finding that decision to amend UCI's articles "came at the behest of Preston Moon because it was necessary," in order to transfer assets to KIF, that UCI "have no religious connection"); *see also* JA.2382-83 (finding that 2010 amendments to UCI's articles removed most religious references because KIF could not be associated with religion; KIF's foundation documents are "broad, abstract, and non-sectarian" and do not reference the Unification Church or Movement); JA.2419 (finding UCI's directors breached their fiduciary duties by giving away UCI's assets to an entity that, "by law, could not have any religious affiliation").)

Thus, even though KIF could not be associated with religion, UCI's attorneys foresaw that Preston Moon and the Director Defendants might need a religious veneer to evade liability in U.S. courts or justify the transfer, and proposed to "keep some 'religious' purposes, but to deemphasize them." (JA.570; JA.648-49.)

Preston Moon and the Director Defendants strategically changed the dissolution terms of UCI's articles to remove the restriction that "no director, officer or employee . . . or person connected with [UCI] . . . or any other private individual" could share in any distribution of UCI's assets upon dissolution (JA.582), clearing the path for the Defendants to potentially engage in the ultimate self-dealing of shutting down UCI altogether, and taking its assets for themselves. (*See* JA.753.)

On April 14, 2010, the UCI board approved the amendments to UCI's articles without any substantive discussion. (JA.2374-75.) The trial court, before *Moon III*, found "the evidence suggests [Preston Moon] was the driving force behind the amendments" of UCI's articles to effectuate the transfer, and rejected Preston Moon's testimony to the contrary as not "credible." (JA.2375-77.) The Director Defendants blindly followed Preston Moon's lead and took no interest in why UCI's articles were being amended. (*Id.*; JA.2400.) The 2010 amendments substantially changed the purposes of UCI, deleting: (1) the first purpose of supporting the "activities of Unification Churches"; (2) all references to the Unification Church or Unification Churches; (3) all references to Rev. Moon's Divine Principle; and (4) all

references to God. (JA.2374.) Similarly, KIF's Deed excluded any reference to the Unification Church, Unification theology, or even Rev. Moon. (JA.2382-83.)

UCI's board first discussed donating its most valuable assets to KIF on May 13, 2010, before KIF had even been formed. (JA.758-60; JA.2386.) On June 24, 2010, UCI's board approved the KIF transfer without obtaining an appraisal or market valuation of the assets, and without seeking any legal advice on whether such a substantial transfer violated their fiduciary duties. (JA.2387-88; JA.2403-04.) Four days later, on June 28, 2010, Landmark Investment Company, Inc. (a UCI subsidiary) and KIF executed a "Donation Agreement," whereby UCI agreed to "irrevocably transfer" to KIF the vast majority of UCI's assets, including the largest income-generating assets, specifically: (1) "a majority interest in a property development in Seoul, Korea known as 'Parc1'"; (2) "approximately a 60% interest in Central City Limited"; (3) "an interest in a ski resort in Yong Pyong, Korea"; (4) "a 65.3% interest in Ilsung Corporation, a listed construction company in Korea"; and (5) all cash holdings and minor interests in other assets held by an indirect subsidiary of Landmark. (JA.428-461; JA. 2383-85.) Perea signed the Donation Agreement on June 14, 2010, before UCI's board approved the transfer. (JA.458.) UCI also transferred $2 million in cash to KIF. (JA.2404.) After the transfer, KIF distributed most of its assets, including UCJ's donations, to subsidiaries and Caribbean holding companies. (JA.1300-02; JA.1308; JA.2622-63.)

Two years after the KIF transfer, Central City sold for nearly $1 billion dollars. (JA.2436.) The Director Defendants claimed they had no idea what happened to the proceeds of this sale and took no action to find out. (JA.2420.) In fact, the terms of the Donation Agreement reinforced that UCI retained no oversight of the transferred assets. (JA.429.) After one year, KIF could change the composition of its board without UCI's consent, and UCI's board was informed that even the one-year "right of objection given to UCI is rather a contractual courtesy than a duty and, therefore, not *per se* enforceable." (*Id.*; JA.1652.) The Director Defendants claimed they had no visibility into how KIF was using the Church's assets, and admitted they had neither taken steps to determine whether KIF complied with the Donation Agreement, nor could they enforce it (JA.2395; JA.2402); and, Preston Moon expressly denied controlling KIF in testimony during the remedies hearing. (JA.2250-51; Ex. 184 to Aug. 10, 2018 Defs.' Opp'n to Mot. for Summ. J. (P. Moon Dep. Tr. at 339-40).) The Remedies Order rejected as "not credible" Preston Moon and the Director Defendants' contention that KIF would use the assets in conformity with UCI's purposes without any oversight. (JA.2395.)

The KIF transfer was unprecedented and highly unusual. Historically, UCI donated cash, not real estate or limited partnership interests. (JA.2382.) Never before had UCI made a single, one-time "donation" of this magnitude to another entity unrelated to the Unification Church or Rev. Moon. (*Id.*) Further, Preston

Moon and the Director Defendants shrouded the KIF transfer in secrecy. (JA.2420; JA.2423; JA.2395-96.) They deliberately concealed it from Rev. Moon (despite there being no dispute that, at that time, Rev. Moon was the hierarchical head of the Unification Church), from other members of the Moon family, and from UCI's general counsel and corporate secretary Dan Gray, who did not learn about the KIF transfer until five years later. (*Id*.) In fact, in a June 25, 2010 email, outside counsel received instruction to exclude Gray entirely from the KIF transfer to prevent him from revealing it, which became an issue after Gray raised concerns a few months earlier about other conflicts of interest. (JA.601; JA.2396.) After voicing those concerns, Gray was directed to resign from UCI. (JA.2396; JA.2423.) As the trial court found in the Remedies Order, "Swiss secrecy laws make the details of the transaction almost inscrutable," and the Swiss choice of law provision was not in UCI's best interests. (JA.2422.) In addition, Preston Moon and the Director Defendants proffered pretextual reasons for the scale, structure, and secrecy of the KIF transfer that the Remedies Order found were not credible. (JA.2390-95.) For example, they claimed there was "sensitivity" of Korean banks "associated with 'the involvement of certain religious groups,'" such as the Unification Church, to justify UCI concealing from potential lenders that KIF was, as Preston Moon later tried to claim, a part of the Unification Church in order to secure construction financing for Parc1. (JA.2390-91.) *Moon III*, 281 A.3d at 59. However, the evidence showed

that lenders had previously loaned substantial amounts to UCI without concern about Church affiliation, and no lender had declined financing to UCI. (JA.2391-93.)

Preston Moon has since publicly touted his relationship with KIF, associating himself with Parc1 by stating: "I undertook responsibility of this project," "I might create another Parc1 facility," and "we built this facility . . . that I'm tremendously proud of." (JA.2590-91.) These statements contradict Preston Moon's testimony denying association with KIF or control over its assets, (JA.2250-51), and show he put himself on both sides of the KIF transfer to personally enrich himself with money and assets to which he was not entitled as a UCI director, to UCI's detriment. UCI received no benefit from the transfer. It was substantively unfair to UCI and was not in its best interest. (JA.2417 ("Preston Moon, along with his hand-picked board, loyal only to Preston Moon, proceeded to pillage the company's assets. He did it in a way that was secretive, out of the bounds of any kind of review process, and not in the best interests of the corporation."); JA.2426 ("The fact that [Preston Moon] didn't exercise [his] oversight responsibility [for the KIF assets] speaks most strongly to [his] bad faith.").) *Moon III* recognized this record supports "what amounts to a claim of fraud and/or collusion . . . ." *Moon III*, 281 A.3d at 71.

II. Facts Relevant To The Contract Claims.

Since the 1970s, UCJ has dispatched missionaries for worldwide missionary work and provided worldwide support for missionary grants. For decades, UCJ

donated hundreds of millions of dollars to Unification Church International, before Preston Moon changed it to "UCI," with the understanding and agreement that UCJ's donations would be used in a manner consistent with UCJ's donative intent and UCI's promise to support the Unification Church and its activities. (JA.218-19; JA.305; JA.1157.) Prior to Preston Moon's takeover, UCI had never given money to an organization not founded or supported by Rev. Moon. (JA.2381-82; JA.2414.) While there were no traditional written donation agreements, at summary judgment, the trial court found there were disputed issues of fact concerning whether conditions were placed on UCJ's donations and whether they were enforceable. (JA.1194-95.)

Beginning in the late 1970s and continuing for decades, UCI sent letters to UCJ soliciting donations. (JA.1190-93.) Each letter attached meeting minutes from that year's Annual Conference of the Unification Church Leaders, where these leaders discussed matters including the purposes of UCI's annual budget. (JA.1193.) At these meetings, Unification Church entities, including UCJ, made pledges of financial support for the coming year. (*Id*.) The solicitation letters thanked UCJ for its pledges and requested that UCJ provide the promised funds. (*Id.*)

Starting in the mid-1980s, line items were added to UCI's annual budget for "Related Business Projects" and "public relations and other activities . . . in furtherance of the Corporation's purposes and objectives." (*Id*.) In 1997, after a change in Japanese law, UCJ requested "more specific categorization of UCI's use

of funds." (*Id*.) This prompted a change in the form of the solicitation letters, which thereafter included a category for "Business and other projects, which economically or otherwise, help advance the mission of UCI and the worldwide Unification Church." (*Id*.) That is, UCI was required to use UCJ's donations to promote and enhance the reputation of Rev. and Mrs. Moon, the True Parents of the Church, and to communicate their values, which UCI's use of the donations do not. (*Id*.)

This requirement was understood by both parties. As the trial court initially observed, UCI's former president, Douglas Joo, promised that "everything is for–for missionary activities, missionary purposes." (JA.1192.) UCJ understood UCI's promise that its donated funds "would be used 'to support world mission activities'" and the former chairman of UCI shared this understanding. (*Id*.) UCJ was able to confirm that such donated missionary funds would be used for missionary activities at meetings where church leaders worldwide, including the UCI president, gathered with Rev. and Mrs. Moon. (JA.1193; JA.814-27.) Importantly, the presidents of both UCJ and UCI discussed and confirmed that UCI was to use UCJ's donations "to support activities under the guidance of the True Parents and international headquarters" of the Unification Church. (JA.1192.) "Reverend Moon himself selected what entities should receive funding" and thus, UCI's donations were made and used only for activities and organizations that Rev. Moon supported, founded, or approved. (JA.1181; JA.2381-82; JA.2410; JA.2414.)

SUMMARY OF ARGUMENT

Moon III recognized jurisprudence that "strongly suggested" a limited Exception to religious abstention for fraud, collusion, or corruption exists. The trial court cast this aside, describing the Exception as "immaterial," and did not permit any factual development on the issue. This court should vacate that erroneous ruling and the Orders on appeal, find the Exception exists, and hold that it overcomes the prior religious abstention rulings in this case.

This court should vacate the Standing Order because the trial court erroneously applied discretionary prudential standing considerations to dismiss Preston Moon with prejudice, even though standing dismissals must be without prejudice and with leave to amend. Plaintiffs also satisfy the requirements of special interest standing, which eliminates any prudential standing concerns.

This court should vacate the Director Defendants Order because the Complaint contains sufficient allegations that their diversion of Church assets was self-interested, undisclosed, and substantively unfair to UCI. The trial court erred by excising the KIF and GPF transfers from the self-dealing claims because the trial court previously found the KIF transfer was part of Count II and pleadings are to be construed as conforming to the evidence. At a minimum, Plaintiffs should have been given leave to amend. Moreover, disputed issues of fact concerning the Exception preclude denying consideration of it under a Rule 12(c) motion.

This court should vacate the Summary Judgment Order. *Moon III* did not address the Contract Claims and left them poised for a jury trial to decide fact issues about the existence, scope, and terms of the parties' agreements regarding UCJ's donations. *Moon III* did not bar these claims, which can be resolved on neutral principles of law because a jury could conclude that the relevant contract language differed from the language found in UCI's articles. A jury could also determine that the KIF scheme and Defendants' lack of oversight over KIF in and of itself was a breach of contractual commitments, no matter how UCI's purposes are defined.

Finally, if this court does not find the Exception applies on the record before it, this court should reverse the Discovery Order and remand with instructions for limited discovery concerning Preston Moon's new statements, designation of a fraud and collusion expert, and an evidentiary hearing on the Exception.

ARGUMENT

I. Denial Of Any Remedy Will Violate Plaintiffs' First Amendment Rights.

The Orders below foreclosed any remedy despite Plaintiffs having proven fraud, collusion, and extraordinary harm. No other case has addressed the theft of church assets anywhere near the magnitude at issue in this case. This result creates new conflicts with Supreme Court precedent, which, if not reconciled, will irreparably violate Plaintiffs' First Amendment religious freedom in favor of persons whose conduct the trial court found to be "bad faith" and a pretext to "funnel" UCI's

assets to themselves. The Orders set a dangerous precedent by closing the doors of the courts to religious organizations victimized by a "calculated effort to execute an insidious plan." (JA.2431.)[3] This court should not allow this discriminatory result to stand because the Free Exercise Clause was not meant to establish immunity for otherwise illegal conduct. *See, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 164-67 (1878) (rejecting Mormon beliefs as defense to polygamy).

One hundred and fifty years ago, the Supreme Court recognized that "[r]eligious organizations come before [the courts] in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law . . . ." *Moon I*, 129 A.3d at 248 (quoting *Watson v. Jones*, 80 U.S. 679, 714 (1871)). Thus, denying Plaintiffs a forum in which to pursue a legal remedy conflicts with Supreme Court precedent upholding rights of religious organizations under the Free Exercise Clause to access public benefits. *See, e.g.*, *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1, 16 (1947) (holding a State cannot exclude individual members of any faith "*because of their faith, or lack of it*, from receiving the benefits of public welfare legislation" (emphasis added)); *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988) (holding the Free Exercise Clause protects against laws that "penalize religious activity by denying any person an equal share of the rights, benefits, and

[3] Plaintiffs acknowledge UPF is not a religious organization.

privileges enjoyed by other citizens"); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 450, 462 (2017) (holding that disqualifying otherwise eligible recipients from a public benefit "solely because of their religious character" imposes "a penalty on the free exercise of religion that triggers the most exacting scrutiny").

In *Trinity Lutheran Church*, the Supreme Court reversed dismissal of a lawsuit by a preschool operated by a religious organization against the Missouri Department of Natural Resources arising from denial of the preschool's application to receive reimbursement grants for participating in a recycled tire/playground improvement program, finding that excluding an otherwise eligible applicant from accessing a public benefit on account of its religious status violated the Free Exercise Clause. 582 U.S. at 466-67. The Supreme Court emphasized that Trinity Lutheran was not claiming any entitlement to a subsidy: "It instead asserts a right to participate in a government benefit program without having to disavow its religious character." *Id*. at 463. Thus, the discrimination against religious exercise was not in the denial of a grant under the program, "but rather the refusal to allow the Church – solely because it is a Church – to compete with secular organizations for a grant." *Id*.

Later decisions affirm the Free Exercise Clause prohibits excluding religious organizations from participating in public benefits solely based on religious status. In *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246 (2020), the Supreme Court held a provision of the Montana Constitution barring government aid to any school

"controlled in whole or in part by any church, sect, or denomination" violated the Free Exercise Clause by prohibiting families from using otherwise available scholarship funds at religious schools. *Id.* at 2252; *see also Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 779-80 (2022) (holding "nonsectarian" requirement under tuition assistance program for private secondary schools violated Free Exercise Clause by disqualifying religious private school "solely because they are religious").

Here, like the claimants in *Trinity Lutheran*, *Espinoza*, and *Makin*, the discrimination against Plaintiffs' religious exercise is the refusal of a public benefit – access to the civil courts. If Plaintiffs' property were not tied to religion, there would be no question that Plaintiffs could sue directors who violated corporate governance rules applicable to every nonprofit, religious or not. Plaintiffs' claims would not have been barred but for the application of religious abstention based on a misapprehension that this is a dispute about religious leadership, whereas it is a property dispute over which "'[t]here can be little doubt about the general authority of civil courts to resolve.'" *Moon I*, 129 A.3d at 248 (citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979)).

And, to the extent this court perceives that any abstention issues remain, the Exception overrides them. Thus, it is immaterial to resolution of Plaintiffs' claims relating to the disposition of their property whether Preston Moon is or claims to be the "charismatic" or "messianic" leader of an entirely different movement. As *Moon I* recognized, courts can resolve disputes over church property as "'[t]he State has

an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.'" *Id.* This court should not affirm a discriminatory result by which religious claimants are denied the opportunity in the public courts to recoup losses caused by nonprofit directors' fraud and collusion, but non-religious claimants can readily sue self-dealing nonprofit directors. Finding the Exception exists would resolve this constitutional conflict.

II. This Court Should Find The Fraud Or Collusion Exception Exists And Applies On The Existing Record.

A. The Supreme Court Has Strongly Suggested That The Fraud Or Collusion Exception Exists.

This court's remand was driven by Supreme Court precedent "strongly suggest[ing]" that the Exception exists. *Moon III*, 281 A.3d at 70. Under the Exception, "a civil court may decide a facially ecclesiastical dispute when religious figures 'act in bad faith for secular purposes,'" *id*. (citing *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002) (citing *Serbian E. Orthodox Diocese for the U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976)), or "'attempt to conceal a secular act behind a religious smokescreen," *id*. *See Gonzalez v. Roman Cath. Archbishop of Manila*, 280 U.S. 1, 16 (1929) (stating religious abstention applies "[i]n the absence of fraud, collusion, or arbitrariness"); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 447, 451 (1969)

(explaining courts may review church decisions where fraud or collusion is involved); *Gen. Council on Fin. & Admin. of the United Methodist Church v. Superior Ct. of California, San Diego Cnty.*, 439 U.S. 1355, 1373 (1978) ("the cloak of religion" does not give religious organizations a free pass to "commit frauds upon the public"). Thus, "[w]hile religious abstention is a robust doctrine that provides substantial protections to religious organizations' autonomy," the Exception would apply "even where a dispute implicates ecclesiastical matters." *Moon III*, 281 A.3d at 70 (citing *Heard*, 810 A.2d at 881 (citing *Milivojevich*, 426 U.S. at 713)).

Federal appellate courts have already recognized the Exception. *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, 420 (3d Cir. 2012); *Jeong v. California Pac. Ann. Conf.*, No. 92–55370, 1992 WL 332160, at *1 (9th Cir. Nov. 12, 1992) ("A civil court may, however, interfere in ecclesiastical matters where 'fraud, collusion' . . . are involved."); *Crowder v. S. Baptist Convention*, 828 F.2d 718, 726 (11th Cir. 1987) ("[G]rievants retain a strong interest in obtaining a civil forum where the religious tribunal's decision is tainted by fraud or collusion."); *Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983) (recognizing Exception); *see also Young v. N. Illinois Conf. of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994) (noting existence of Exception is an "open issue"); *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986) (similar).

In *Askew*, the Third Circuit, relying on *Milivojevich*, recognized in a misappropriation of church assets case that a defendant's injection of "[a] doctrinally grounded decision made during litigation," to excommunicate the plaintiff to deprive him of standing and "insulate questionable church actions from civil court review," could "raise an inference of fraud or bad faith" on the "integrity of the judicial system" that "may outweigh First Amendment concerns" and allow civil courts to "inquire into the decision." *Askew*, 684 F.3d at 420. Preston Moon's conduct in lying to the trial court during the remedies hearing about having no association, oversight, or control over KIF *because of this litigation* to avoid appearing on both sides of the KIF transfer is akin to the litigation fraud the *Askew* court noted could fall within the Exception. (*See* SOF § I.A; JA.2162-64; JA.2196; *see also* JA.2589-92.) Plus, here, the fraud directed at the court was preceded by years of extraordinary fraud and collusion by Defendants inextricably intertwined with the merits of the claims.

Significantly, the D.C. federal district court has applied the Exception where parishioners brought, *inter alia*, RICO claims against church leaders, alleging they falsely promised to hold a vote, but instead unilaterally took control of the church and its assets. *See Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71, 79 (D.D.C. 2019). *Ambellu* held the parishioners' claims could be resolved on neutral principles because "they involve the 'narrow rubrics of 'fraud'

or 'collusion' that may permit 'marginal civil court review' when 'church tribunals act in bad faith for secular purposes.'" *Id.* (citing *Milivojevich*, 426 U.S. at 713).[4]

B. The Existing Record Supports Application Of The Exception.

The trial court abdicated its constitutional duty to hear cases by denying Plaintiffs' requests, pursuant to this court's remand, to decide whether the Exception exists and applies to Plaintiffs' claims. "[C]ourts as the ultimate arbiter of disputes short of anarchy and self-help have a constitutional duty to carry out their basic function to the maximum permissible extent[,]" even when such disputes involve religious organizations. *Moon I*, 129 A.3d at 249; *see also Alperin v. Vatican Bank*, 410 F.3d 532, 538, 551, 558 n.16 (9th Cir. 2005) (reversing grant of Vatican Bank's motion to dismiss Holocaust survivors' property claims "simply seek[ing] restitution for looted assets," which did not involve non-justiciable political questions, because "abdicating that role" of adjudicating claims "and reflexively tossing the ball to the political branches' court without the requisite analysis of the individual claims would be tantamount to shirking our 'obligation[ ] to decide cases and controversies properly

[4] The *Ambellu* court did not revisit the First Amendment because it dismissed on other grounds, noting "Plaintiffs raise various apparently weighty concerns about the takeover of their church, but these are best heard in local court." *See Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 406 F. Supp. 3d 72, 83 (D.D.C. 2019), *aff'd sub nom. Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam Ethiopian Orthodox Tewhado Religion Church*, No. 19-7124, 2020 WL 873574, at *1 (D.C. Cir. Feb. 14, 2020). The plaintiffs then filed suit in the local court, but it was administratively dismissed for failure to serve. *See Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 2020 CA 001858 B (D.C. Super. Ct. Mar. 12, 2020).

presented to [us]") (quoting *W.S. Kirkpatrick & Co*., 493 U.S. 400, 409 (1990)). The trial court's refusal to carry out this court's mandate was no mere procedural misstep. The result rewarded Preston Moon's tactical invention of supposed doctrinal disputes with respect to a church that, prior to litigation, he eschewed and definitively left to start a separate movement. (JA.1337; JA.2398-99.) Finding the contrived use of religion to shield fraudulent and collusive conduct from liability, without any exception, sets harmful precedent that will encourage frauds on churches.

The existing record supports finding that the Exception exists and applies in this case. (SOF §§ I.A-C.) After losing all positions within the Church other than UCI, Preston Moon staged a takeover of UCI's board as the first step in executing the "pre-arranged" and "insidious plan" to loot the Church's assets. (SOF § I.A.) He likened his plan to "asymmetrical warfare" like "the terrorists do." (*Id*.) Preston Moon replaced the directors who questioned his self-dealing with close associates who would not stand in his way. (*Id*.) UCI's new board stopped sending money to Family Federation and UPF, and instead colluded to divert over $62 million to GPF, and UCI's most valuable assets to KIF, for the sole purpose of stealing the Church's assets and converting them to their own use. (SOF §§ I.A-C.)

Preston Moon and the Director Defendants shrouded the KIF transfer in secrecy, even from UCI's general counsel, to avoid scrutiny. (SOF § I.C.) They voted to approve the KIF transfer without observing any corporate norms, conducting an

appraisal, or seeking legal advice on whether it was consistent with their fiduciary duties. (*Id.*) They made the transfer to KIF irrevocable, and did nothing to ensure UCI would maintain oversight of KIF's use of the assets or to enforce the terms of the Donation Agreement. (*Id.*) Shortly after the transfer, KIF distributed most of its assets, including the UCI assets, to non-religious subsidiaries and offshore holding companies. (*Id.*) Preston Moon and the Director Defendants proffered pretextual reasons for the KIF transfer that the trial court found were not credible. (*Id.*) Rather, the trial court found the evidence showed the KIF transfer was simply a way to "funnel" Church assets for their personal benefit. (JA.2403.)

As Judge Anderson succinctly put it, "Preston Moon, along with his hand-picked board, loyal only to Preston Moon, proceeded to pillage [UCI's] assets. He did it in a way that was secretive, out of the bounds of any kind of review process, and not in the best interests of the corporation." (JA.2417.) Moreover, the fact that Preston Moon and the Director Defendants "didn't exercise their oversight responsibility [regarding the assets transferred to KIF] speaks most strongly to their bad faith." (JA.2426.) Preston Moon "did not have a good faith basis for believing" that the KIF transfer "was consistent with [his] fiduciary duty," nor did the Director Defendants.[5] (JA.2382; *see also* JA.2598 (proposing expert who would opine

[5] These findings also supported Judge Anderson's conclusion that Preston Moon and the Director Defendants breached their duties of care. (JA.2422-26; *see also*

Defendants' conduct reflects numerous indicia of fraud and collusion common to financial fraud schemes, including seizing corporate assets by wresting control of corporate governance, acting secretly, circumventing normal corporate procedures, making unusual or irregular transfers of assets, using international or offshore intermediaries to transfer assets, and engaging in "corporate layering" of subsidiary and related holding or shell companies and the subsequent movement of funds between and among them).) In sum, sufficient law supports the existence of the Exception, and there is ample evidence to support its application here. *See Askew*, 684 F.3d at 420.

C. The Exception Prevents Establishment Of Absolute Immunity And Allows Resolution Of Plaintiffs' Claims On The Merits.

The result below risks religious abstention establishing an unintended, absolute immunity for fraudulent misconduct, and contradicts established principles that promote resolution of disputes on the evidence and the merits.

First, the First Amendment's protections are not absolute. The Supreme Court has repeatedly recognized that the First Amendment's general prohibition on resolving "controversies over religious doctrine and practice" does not completely bar judicial inquiry. *See Presbyterian Church*, 393 U.S. at 449; *see also Gonzalez*, 280 U.S. at 7-8; *Milivojevich*, 426 U.S. at 713. Religious abstention requires only that

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JA.2607-09 (Tendick Report, describing how circumventing standard corporate procedures is a major indicator of a fraud scheme).)

courts resolve disputes involving religious organizations "without deciding contested matters of church doctrine, polity, or practice." *Moon III*, 281 A.3d at 61 (citing *Moon I*, 129 A.3d at 250, 252); *see also Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005) (recognizing "the church is not above the law," and resolving on neutral principles action to compel arbitration); *Bible Way Church*, 680 A.2d at 427 (barring only disputes that "require extensive inquiry" into religion); *United Methodist Church, Baltimore Ann. Conf. v. White*, 571 A.2d 790, 795 (D.C. 1990) ("[T]he church is not above the law."). Instead of following this precedent, the trial court wrongly construed *Moon III* as a blanket bar to Plaintiffs' claims.

Second, the trial court deviated from the principle that courts disfavor abstention but for in exceptional circumstances, and provided there is an alternative forum. *See, e.g.*, *Atkinson v. Grindstone Cap., LLC*, 12 F. Supp. 3d 156, 161 (D.D.C. 2014) ("Abstention is generally disfavored and '[a]bdication of the obligation to decide cases can be justified . . . only in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest.'"); *Courthouse News Serv. v. Planet*, 750 F.3d 776, 787 (9th Cir. 2014) ("We disfavor abstention in First Amendment cases because of the 'risk . . . that the delay that results from abstention [in favor of state court] will itself chill the exercise of the rights that the plaintiffs seek to protect by suit.'"). Where abstention leaves a plaintiff with no alternative forum to pursue a remedy, "[b]oth as

a matter of constitutional law and sound policy, courts should wade into the waters of disputes turning on religious doctrine or practice so as to afford parties access to an adjudicative forum that can provide redress for legal wrongs" and "resist dismissing." Michael A. Helfand, *Litigating Religion*, 93 B.U. L. Rev. 493, 497 (2013).

Third, with respect to Plaintiffs' self-dealing claims, the trial court departed from the principle that courts must tread carefully before disposing of cases on Rule 12 motions when there are fact disputes. *See, e.g.*, *Pietrangelo v. Refresh Club, Inc.*, No. 18-CV-1943 (DLF), 2019 WL 2357379, at *4 (D.D.C. June 4, 2019) (denying Rule 12(b)(1) motion because "courts must avoid resolving issues contested on the merits under the banner of standing") (citing *Schnitzler v. United States*, 761 F.3d 33, 40 (D.C. Cir. 2014)); *Gumpad v. Comm'r of Soc. Sec. Admin.*, 19 F. Supp. 3d 325, 329 (D.D.C. 2014) ("Because a Rule 12(c) motion would summarily extinguish litigation . . . the court must treat Defendants' motion with the greatest of care" if the claims can be proven on the evidentiary record after discovery (quotations omitted)); *Vereen v. Fife*, No. 5:21-CV-2122-RBH-KDW, 2022 WL 2068783, at *3 (D.S.C. May 6, 2022), *report and recommendation adopted*, No. 5:21-CV-02122-RBH, 2022 WL 2067884 (D.S.C. June 8, 2022) (converting Rule 12(b)(6) motion filed after close of discovery to Rule 56 motion to allow consideration of the evidence).

Finding the Exception exists and remanding for Plaintiffs' claims to be resolved on the merits will cure the trial court's erroneous departure from these principles.

D. The Exception Will Avoid Conflict With The Church's Right To Hierarchical Deference Concerning The Use Of Its Property.

The result below also contravenes courts' obligations to defer to decisions of the highest religious authority. Finding that the Exception exists would allow the trial court to undertake marginal review of the facts to determine whether, at all times relevant to the conduct at issue and under any of the claims, Rev. Moon, acting through Family Federation, was the Church's highest authority and whose decisions concerning the disposition of its property must be respected by the courts as binding.

The Supreme Court has long recognized hierarchical deference, under which courts must defer to the resolution of such issues by the highest ecclesiastical decision-making body. *See, e.g.*, *Watson*, 80 U.S. at 727-29 (recognizing that "a broad and sound view of the relations of church and state under our system of laws requires civil courts to defer to the determinations of a church's highest ecclesiastical authority on questions of discipline, or of faith, or ecclesiastical rule, custom, or law"); *Gonzalez*, 280 U.S. at 16-17 (deferring to church's refusal to appoint plaintiff to a position within the church because, "[i]n the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise"); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115-16 (1952) (recognizing hierarchical deference as "radiat[ing]"

from the First Amendment's free exercise protection); *Milivojevich*, 426 U.S. at 713, 724-25 (affirming hierarchical deference doctrine under which courts accept decisions of the highest religious decision-maker as binding fact).

Preston Moon's pre-litigation words and deeds support that, when he took the actions challenged in this case, he understood and acknowledged the hierarchical structure of the Unification Church with his father as its highest authority. (*See* SOF § I.A.; JA.2361-62 (finding Preston Moon's 2008 Report to Parents "advocated ending the Unification Church as an institution and a religion").) When Preston Moon did not receive Rev. Moon's blessing to take the Unification Church in a "new direction," he left. (JA.2361-63; JA.2398-99; JA.1337 (Preston Moon testifying he was no longer part of Family Federation in 2008).) After Preston Moon was sued, he started contending that Rev. Moon lacked mental acuity, even though he had not raised any such allegations when Rev. Moon asked him to resign all positions, (JA.2371), to repudiate that Rev. Moon was the highest authority of the Unification Church at the time he was looting its assets. By doing so, Preston Moon injected the proverbial "religious smokescreen." His mere contention that this case is about a leadership dispute should not bar examination into whether his conduct was fraudulent, collusive, or corrupt to trigger the Exception and allow Plaintiffs to proceed with their claims. Finding the Exception exists would avoid yet another

constitutional conflict with existing Supreme Court precedent on hierarchical deference.

Accordingly, this court should pick up where the Supreme Court left off, find that the Exception exists, and hold that it overcomes religious abstention in this case.

III. This Court Should Vacate The Standing Order.

In *Moon III*, this court denied the Defendants' request to direct the trial court to dismiss Count II because the self-dealing claim "may yet have some legs, provided there is evidence to support it." *Moon III*, 281 A.3d at 70. This court remanded for the trial court to adjudicate that claim on its evidentiary merits, including whether to find the Exception exists, expressing no reservations about the trial court's ongoing jurisdiction to do so. Given the proactive nature of this court's discussion of the Exception, if this court perceived its abstention rulings would extinguish Plaintiffs' standing on remand, it stands to reason this court would have said so. It did not.

The trial court erred by granting Preston Moon's standing motion in three ways: (1) applying discretionary prudential standing considerations not applicable to the facts here; (2) failing to recognize *Moon III* did not overrule prior standing rulings; and (3) finding the KIF transfer was not part of the self-dealing claims to justify concluding there were no extraordinary measures to support special interest standing. On *de novo* review, the court should reverse for the reasons that follow. *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 42 (D.C. 2015).

A. The Trial Court Erroneously Applied Discretionary Prudential Standing Considerations To Dismiss *With Prejudice*, Whereas Dismissal, If Any, Should Have Been *Without Prejudice*.

The trial court dismissed Preston Moon by invoking discretionary prudential standing considerations that Preston Moon did not assert. Prudential standing ensures that a party is not raising another person's legal rights or attempting to litigate generalized grievances. There are no such concerns here. Plaintiffs were previously found to have special interest standing, which required a determination that they are raising their own particularized interests. *See Hooker v. Edes Home*, 579 A.2d 608, 612-15 (D.C. 1990). The trial court's erroneous reliance on prudential standing allowed it to consider Preston Moon's motion as one brought under Rule 12(b)(6), which permits dismissal with prejudice, whereas the motion was filed under Rule 12(b)(1), which only permits dismissal without prejudice. This error was severe, for if the trial court had applied the correct standard, it could only have dismissed *without prejudice* and Plaintiffs could have easily cured the other erroneous finding that the KIF transfer was not part of the self-dealing claims with a simple amendment.

1. Rule 12(b)(1) Dismissals For Lack Of Standing Must Be Without Prejudice.

A court cannot dismiss a claim with prejudice for lack of standing because that is a merits decision, which, if the court has no jurisdiction, it has no power to make. *See UMC*, 120 A.3d at 48-49. "When the plaintiff lacks standing, the court lacks jurisdiction." (JA.3222 (citing *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258

A.3d 174, 191 (D.C. 2021).) *See UMC*, 120 A.3d at 43 (finding a "'defect of standing is [likewise] a defect in subject matter jurisdiction.'" (brackets in original)). "Without jurisdiction the court cannot proceed at all in any cause . . . . " (JA.3223 (citing *Hormel Foods Corp.*, 258 A.3d at 191 (internal quotation marks and citations omitted)); D.C. 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.")). The result should have been clear: deny the motion and adjudicate the self-dealing claims as this court expected, or dismiss without prejudice and with leave to amend. The trial court did neither.

2. Plaintiffs Do Not Lack Prudential Standing.

Applying the principles above, the trial court should have denied Preston Moon's motion without prejudice as it was based solely on lack of standing under Rule 12(b)(1). Instead, the trial court interpreted his motion as challenging Plaintiffs' special interest standing as "a facial attack upon Plaintiffs' *prudential* standing" because it did not challenge lack of injury-in-fact or redressability, which are requirements for a constitutional standing challenge. (JA.3252-54.) This allowed the trial court to apply the standard for a Rule 12(b)(6) motion for failure to state a claim, which in turn allowed it to dismiss with prejudice. (JA.3224-25; JA.3253-54.)

Preston Moon's motion, however, did not invoke prudential standing considerations. (JA.2554-69.) It argued that *Moon III*'s religious abstention rulings prevent Plaintiffs from relying on the KIF transfer to support the "extraordinary

measures" requirement for special interest standing under the test set forth in *Hooker*. (*See generally id*.) *Hooker* established special interest standing as an exception to the traditional rule that only a public officer has standing to bring an action to enforce the terms of a public charitable trust. *Hooker*, 579 A.2d at 612-15. The *Hooker* court said nothing of the special interest standing exception being limited by prudential standing considerations. A party who satisfies the *Hooker* test, as Plaintiffs already did here, necessarily eliminates prudential standing concerns, for the special interest standing exception is only available to "a particular class of potential beneficiaries," "if the class is sharply defined and its members are limited in number." *Id.* at 614.

By contrast, prudential standing involves "judicially self-imposed limits on the exercise . . . of jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights." *District of Columbia v. ExxonMobile Oil Corp.*, 172 A.3d 412, 419 (D.C. 2017). Under prudential principles of standing, "a plaintiff may only assert its legal right, [and] may not attempt to litigate generalized grievances." *Padou v. D.C. Alcoholic Beverage Control Bd*., 70 A.3d 208, 211 (D.C. 2013). It is redundant to add a prudential hurdle to the standing analysis for plaintiffs who satisfy both Article III standing requirements and the *Hooker* test.

The trial court's ruling is incompatible with *Hooker* and suffers from deeply flawed logic because it found "Plaintiffs satisfy the first requirement for special interest standing," which turns on whether "Plaintiffs share some criteria beyond

being potential beneficiaries that set them apart . . . from the general public." (JA.3238-41.) If a plaintiff is part of a "sharply defined" class set apart from the "general public," it is not "raising another person's legal rights." (*See id*.)

The Supreme Court has also questioned prudential standing considerations as contrary to the principle that a court's obligation to hear and decide cases within its jurisdiction is "virtually unflagging." *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (discussing this obligation in the context of Article III federal courts); *see also Fed. Election Comm'n v. Akins*, 524 U.S. 11, 20 (1998) (holding that a statute's explicit grant of authority to bring suit "'eliminates any prudential standing limitations and significantly lessens the risk of unwanted conflict with the Legislative Branch'").[6] In doing so, the Supreme Court has articulated prudential limitations on the exercise of jurisdiction as "'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" *Lexmark*, 572 U.S. at 126 (citing *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 12 (2004) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984))); *see also Warth v. Seldin*, 422 U.S. 490, 499

[6] District of Columbia courts look to federal standing jurisprudence. *UMC*, 120 A.3d at 42. *See also ExxonMobil Oil*, 172 A.3d at 419.

(1975). Thus, the trial court's prudential standing findings are also incompatible with the Supreme Court's framing of prudential standing.

B. *Moon III* Did Not Overrule The Prior Standing Rulings.

Prior rulings finding that Family Federation and UPF have standing because of their historical status as major beneficiaries of UCI remain law of the case. (*See* JA.1171-73 (citing *Moon I*, 129 A.3d at 244-45); JA.2406-11 (same).) These prior rulings (1) do not conflict with *Moon III*'s limited holding that whether transfers of assets were contrary to the purposes in UCI's original articles of incorporation is a question barred by religious abstention, (2) were based on neutral principles of law that do not implicate any First Amendment concerns, and (3) were not appealed. (Feb. 24, 2023 Pls.' Opp'n to Mot. to Dismiss at 9-10, 16-18.) Nor did *Moon III* question Plaintiffs' ongoing standing, which it could have if it perceived Plaintiffs' standing was extinguished by its religious abstention rulings. *See, e.g.*, *Riverside Hosp. v. D.C. Dep't of Health*, 944 A.2d 1098, 1103 (D.C. 2008). Indeed, the primary purpose of *Moon III*'s remand was to allow Plaintiffs to present evidence supporting the remaining claims and application of the Exception – a pointless exercise if this court thought its limited non-justiciability holding barred standing.[7]

[7] UCJ also has standing to assert the Contract Claims. (JA.3250.) Only one plaintiff needs standing for all plaintiffs to pursue any claims. *See J.D. v. Azar*, 925 F.3d 1291, 1324 (D.C. Cir. 2019).

Courts may not revisit issues already decided explicitly or by necessary implication in the same case. *De Csepel v. Republic of Hungary*, 27 F.4th 736, 746 (D.C. Cir. 2022). To circumvent this constraint, the trial court interpreted *Moon III* as a substantive change in the law that made the prior standing rulings erroneous. (JA.3236.) Yet, in the same breath, the trial court refused to consider whether the Exception exists and applies. (JA.3248.) The trial court's conflicting application of *Moon III*'s abstention rulings, while at the same time avoiding the mandate to consider the Exception, which could upend abstention, are irreconcilable and should be reversed.

C. Plaintiffs Have Special Interest Standing Under *Hooker* Even After *Moon III* Without The Need To Amend The Complaint.

This court should decide *de novo* that, even after *Moon III*, Plaintiffs continue to satisfy special interest standing under the *Hooker* test as to the self-dealing claims.[8] Under this test, Plaintiffs are members of a sharply defined class of beneficiaries limited in number, and the KIF and GPF transfers threatened UCI's existence. *Moon III*'s abstention rulings did not nullify these prior findings. The only real issue is whether Count II's self-dealing claims include the KIF transfer. This court should

[8] Rules relating to charitable trusts apply to charitable corporations. *See Moon I*, 129 A.3d at 244 n.15 (citing *Owen v. Bd. of Dirs. of the Wash. City Orphan Asylum*, 888 A.2d 255, 260 (D.C. 2005)).

reverse the trial court's erroneous conclusion that it does not, which removes the only impediment to finding Plaintiffs satisfy *Hooker*'s second requirement.

1. Plaintiffs Satisfy Special Interest Standing Under *Hooker* As To The Self-Dealing Claims.

To have special interest standing under *Hooker*, a plaintiff must be part of a "particular class of potential beneficiaries" that "is sharply defined and its members are limited in number," and act plaintiff challenges must be "an extraordinary measure threatening the existence of the trust." *Hooker*, 579 A.2d at 614-15. The trial court correctly held that Plaintiffs satisfy *Hooker*'s first requirement. (JA.3239.)

The KIF transfer was an extraordinary measure that threatened UCI's existence. (Feb. 24, 2023 Pls.' Opp'n to Mot. to Dismiss at 11-15) (detailing numerous fact findings as to the extraordinary nature of the KIF transfer in the Remedies Order).) The scale of the transfer was extraordinary, likely worth $3 billion in current market value, representing UCI's most valuable, income-generating assets, positioning UCI toward potential dissolution. (*See supra* note 1; *see also* JA.2608 (describing "classic way" to carry out a corporate fraud scheme for the benefit of "self-dealing corporate officers" is "to move [company assets] to one or more non-affiliated international (i.e. Swiss) or offshore (i.e. Caribbean Island jurisdictions) entities, via entity-to-entity asset transfers or sales agreements,"

especially "when such transfers are made by the victim corporation, but make no sense for the financial success or normal business operations of the company").)

The KIF transfer threatened UCI's very existence. Given that the KIF transfer alienated UCI's most-valuable, income-generating assets, the assets remaining after the KIF transfer had little economic value or insufficient income-generating potential to sustain UCI's legacy. Thus, the KIF transfer appears to have been a first step towards dissolving UCI. (SOF § I.C (discussing amendment of dissolution provision in UCI's articles to remove prohibition on directors receiving UCI assets).)

Preston Moon and the Director Defendants structured the transfer to deprive UCI of control and oversight of the assets or how KIF used (or disposed) of them. (*Id.*) The rubber-stamped approval after two short board meetings without any due diligence or property valuations grossly deviated from all corporate norms. (*Id.*) The deal was shrouded in secrecy for no legitimate reason, and was even concealed from Rev. Moon and UCI's general counsel and corporate secretary. (*Id.*) Preston Moon and the Director Defendants proffered pretextual reasons for the transfer's scale, structure, and secrecy that were "not credible." (*Id.*)

Despite this evidence, the trial court found *Hooker*'s extraordinary measures requirement was not satisfied because "the scope of the Complaint . . . does not extend to UCI's donations to KIF," and the Complaint's other self-dealing transactions were not sufficiently extraordinary to threaten UCI's existence.

(JA.3242-45.) But it was wrong for the trial court to excise the KIF and GPF transfers from the self-dealing claims for the reasons that follow.

2. The KIF And GPF Transfers Became Part Of Self-Dealing.

Early in the case, Hon. John M. Mott correctly followed the established principle that the pleadings conform to the evidence when he construed Paragraph 117 of the Complaint, which pleads all of Count II's breach of fiduciary duty theories, including the theory that Preston Moon "engag[ed] in a scheme of self-dealing designed to divert [UCI's] corporate assets," as including the KIF transfer. (JA.503-04.) Indeed, Judge Mott expressly rejected Defendants' arguments to the contrary. (*Id*.) This court has similarly recognized that the KIF transfer is part of Count II. *See generally Moon III*, 281 A.3d at 58-59, 67-70. And, Plaintiffs clearly identified in discovery the KIF and GPF transfers as part of all Count II theories. (JA.1217-19; JA.1224-25; JA.2835-38.)

The trial court went to great lengths to justify deviating from Judge Mott's ruling under the law of the case doctrine (JA.3154-55; JA.3244), but its narrow view of the Complaint contravened Rule 8's liberal pleading standard, instructing that "courts are charged with construing the complaint so as to do substantial justice." *Stokes v. Cross*, 327 F.3d 1210, 1215 (D.C. Cir. 2003) (internal quotations omitted); *see also Colorado Wild Pub. Lands v. U.S. Forest Serv.*, No. 21-CV-2802 (CRC), 2023 WL 5846678, at *12 (D.D.C. Sept. 11, 2023) ("Rule 8 was meant to move us

beyond the rigidity of the common-law pleading system by enacting a notice standard under which 'pleadings are to be construed liberally so as to do justice.'") (quoting 5 Fed. Prac. & Proc. Civ. § 1202 (4th ed.)). Thus, the trial court's dismissal Orders must be vacated because the KIF and GPF transfers became part of the self-dealing claims as pleadings are deemed to conform to the evidence developed in the case law. Furthermore, in rejecting Judge Mott's ruling as "clearly erroneous" under *Moon III*, (JA.3155), the trial court wrongly assumed that *any* consideration of the KIF and GPF transfers implicates religious questions, even though the self-dealing and Contract Claims can be resolved without resolving any religious questions.

3. If Amendment Were Required, Plaintiffs Could Have Amended The Complaint To Plead The KIF And GPF Transfers As Part Of The Self-Dealing Claims.

Courts routinely permit amendment under Superior Court Rule 15(b) for the purpose of conforming pleadings to the evidence. *See Williams v. Bd. of Trs. Of Mount Jezreel Baptish Church*, 589 A.2d 901, 904 n.1 (D.C. 1991); *G&E Real Est., Inc. v. Avison Young-Washington, D.C., LLC*, No. CV 14-418 (CKK), 2018 WL 4680199, at *2 (D.D.C. Sept. 28, 2018) (recognizing that a basis for amending is "to conform the operative complaint to the evidence produced during discovery"); *Mwani v. Al Qaeda*, 600 F. Supp. 3d 36, 52-53 (D.D.C. 2022) (same); *see also* 6A Fed. Prac. & Proc. Civ. § 1494 (3d ed.) ("an amendment to conform the pleadings to the evidence

actually presented at trial may be made upon the motion of any party at any time, [including] . . . on remand following an appeal").

This case is similar to the situation in *Miller-McGee v. Washington Hospital Center*, where the plaintiff did not plead a claim of lack of informed consent, but defendants were nevertheless "put on notice of the claim . . . during the discovery period[,]" such that the court could "discern no reason why it would not have been appropriate . . . to amend her pleadings to conform them to the theory of liability that had emerged during discovery." 920 A.2d 430, 436 (D.C. 2007); *see also Moore v. Moore*, 391 A.2d 762, 768 (D.C. 1978) (the rules governing amendment are designed "to avoid the tyranny of formalism" such that if the parties have fair notice of an issue not raised in the pleadings and implicitly consent to trial of the unpleaded issue, then the court is "mandated to resolve those issues even if the pleadings are not amended"); *N. L. R. B. v. Merrill*, 388 F.2d 514, 519 (10th Cir. 1968) ("pleadings can always be amended to conform to the evidence when justice so requires").

In addition, courts can grant leave to amend after an appellate court remands for further proceedings. *See Farouki v. Petra Int'l Banking Corp.*, No. CV 08-2137 (RCL), 2013 WL 12309520, at *3 (D.D.C. June 12, 2013) ("'An amendment can be proper after remand to the district court even if . . . the claim was presented for the first time on appeal or had not been presented to the district court in a timely fashion.'" (quoting *City of Columbia, Mo. v. Paul N. Howard Co.*, 707 F.2d 338,

341 (8th Cir. 1983))); *Johnson v. Fairfax Vill. Condo. IV Unit Owners Ass'n*, 641 A.2d 495, 502 (D.C. 1994) (finding no abuse of discretion in granting leave to amend to substitute claim after prior appeal confirmed availability of such a claim).

The trial court's denial of leave to amend presupposed that Plaintiffs would not be able to prevail on the merits of their self-dealing claims, even if they explicitly pled the KIF transfers, which is a merits finding a court cannot make when resolving a standing challenge. *See UMC*, 120 A.3d at 43. "Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." (JA.3223 (citing *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011) (en banc)).) The trial court had to accept that Plaintiffs would succeed on the merits of their self-dealing claims. *See City of Waukesha v. E.P.A.*, 320 F.3d 228, 235 (D.C. Cir. 2003). That procedural requirement necessarily meant the trial court could not conclude that any pleading deficiency in the self-dealing claims was not curable.

4. The Trial Court Abused Its Discretion By Not Following The Policy Favoring Liberal Amendment.

None of the trial court's other reasons for denying amendment comport with the overriding principle that leave to amend is to be liberally granted. *See U.S. Bank Tr., N.A. v. Omid Land Grp., LLC*, 279 A.3d 374, 380-81 (D.C. 2022) (applying principle that a court's discretion in deciding whether to amend must be exercised consistent with the policy favoring liberal amendment "when justice so requires" to "ensure that cases are decided upon the merits rather than upon technical pleading

rules"); *Eagle Wine & Liquor Co. v. Silverberg Elec. Co.*, 402 A.2d 31, 34 (D.C. 1979) (same). Plaintiffs reasonably relied on the trial court's prior reading of the KIF transfer into the Count II theories, and *UMC*'s requirement that Preston Moon's Rule 12(b)(1) motion be dismissed, if at all, without prejudice. (*See* Feb. 24, 2023 Pls.' Opp'n to Mot. to Dismiss at 6, n.1.)

The trial court's conclusion that amending to include the KIF transfer would be untimely, (JA.155-56), was also contrary to the law. Mere length of time a case has been pending is not a valid reason to deny leave to amend. *See Eagle Wine*, 402 A.2d at 35 ("Refusals to grant amendments on the grounds of 'lateness' or 'delay' alone properly may be reversed."); *Barkley v. U.S. Marshals Serv. ex rel. Hylton*, 766 F.3d 25, 39 (D.C. Cir. 2014) (finding district court abused its discretion by denying leave to amend in a case pending over a decade); *Caribbean Broad. Sys., Ltd. v. Cable & Wireless P.L.C.*, 148 F.3d 1080, 1084 (D.C. Cir. 1998) (reversing denial of leave to amend, noting, "[i]n most cases delay alone is not a sufficient reason for denying leave," if no prejudice to the non-moving party is found, and stating, "the prolonged nature of a case does not itself affect whether the plaintiff may amend its complaint" (quoting 6 Fed. Prac. & Proc. Civ. § 1488 (3d ed.))). Finally, for the reasons stated above, there is no prejudice to Preston Moon in allowing amendment because, as Judge Mott found, the KIF transfer became a "central issue" in the case in October 2012 and "since that time" the parties engaged

in "significant discovery" on it. (JA.503-04; *see also* JA.1217-19, JA.1224-25, & JA.2835-38 (identifying KIF and GPF transfers as part of self-dealing claims).)

IV. This Court Should Vacate The Director Defendants Order.

This court should vacate the trial court's dismissal of the Director Defendants with prejudice, and remand with instructions to adjudicate, on the merits, Plaintiffs' self-dealing claims against them based on their part in the scheme to divert corporate assets to KIF and GPF for personal gains. This court reviews a grant of a Rule 12(c) motion *de novo*. *Archie v. U.S. Bank, N.A.*, 255 A.3d 1005, 1011 (D.C. 2021).

A. Prior Rulings Established That Plaintiffs Stated A Claim.

Moon I found the Count II breach of fiduciary duty claims against the Director Defendants could proceed. 129 A.3d at 241-42, 252-53 ("[F]actual inquiry . . . into the nature of UCI's use of assets . . . would not appear to violate the First Amendment" and allegations that corporate funds were used to benefit a director personally "would appear readily subject to court review" under neutral principles).

Moon III reaffirmed *Moon I*'s pleading conclusion, expressly recognizing that self-dealing claims against the Director Defendants, arising out of the KIF and GPF transfers,[9] remained to be addressed on remand. As this court explained in denying

[9] Prior to *Moon III*, the trial court granted the Director Defendants' motion for summary judgment only on three other self-dealing transactions described in the Complaint because they occurred before they were on the UCI board. (JA.1189-99.) Therefore, the *Moon III* Court must have construed the remaining self-dealing claims against the Director Defendants as including the KIF and GPF transfers.

the Director Defendants' request for dismissal of all claims against them:

> [T]here 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."

Moon III, 281 A.3d at 70 (emphasis added). Remanding the self-dealing theories made sense because diverting corporate assets for personal gain is categorically never the purpose of a nonprofit corporation. Thus, this court recognized that the self-dealing claims fall outside *Moon III*'s limited abstention rulings or may be subject to the Exception. *See id*. at 64-67, 70-71. Preston Moon and the Director Defendants previously agreed, conceding at oral argument that the religious abstention doctrine does not reach self-dealing, which is "an entirely different category," and fraud or collusion could be an exception as made "clear" in the Supreme Court's 1969 decision in *Presbyterian Church*, 393 U.S. at 451.[10]

B. Plaintiffs Have Stated A Breach Of Fiduciary Duty Claim For The Director Defendants' Part In The Self-Dealing Scheme.

To survive a Rule 12(c) motion, the complaint need only contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Archie*, 255 A.3d at 1011. While Rule 12(c)'s standard mirrors Rule 12(b)'s

[10] *See* Oral Argument in *Hyun Jin Moon, et al. v. Family Fed'n for World Peace and Unification, Int'l, et al*., 20-CV-0714, 20-CV-0715 (D.C. June 17, 2021) at 2:39:25-2:41:00, *available at* https://www.youtube.com/watch?v=ow8xszCKMAw, last visited Apr. 23, 2024.

standard, it is not identical. As then-Judge Ketanji Brown-Jackson explained, a motion for judgment on the pleadings:

> is directed towards a determination of the substantive merits . . . thus, federal courts are unwilling to grant a judgment under Rule 12(c) unless it is clear that the merits of the controversy can be fairly and fully decided in this summary manner.

Tapp v. Washington Metro. Area Transit Auth., 306 F. Supp. 3d 383, 391-92 (D.D.C. 2016) (quoting 5C Fed. Prac. & Proc. Civ. § 1369 (3d ed.)). A Rule 12(c) movant's burden is "substantial" and requires the movant to show "*both* that there is no material dispute of fact" and "entitle[ment] to judgment as a matter of law." *Ronaldson v. Nat'l Ass'n of Home Builders*, No. CV 19-1034 (CKK), 2022 WL 798383, at *2 (D.D.C. Mar. 16, 2022) (emphasis in original).

Self-dealing breaches the duty of loyalty and "may be found where there is both a motive and an outcome that could sufficiently evidence bad faith or actions motivated by self-interest." *Evans v. First Mount Vernon, ILA*, 786 F. Supp. 2d 347, 358 n.10 (D.D.C. 2011). Directors owe "an undivided and unselfish loyalty to the corporation such that there shall be no conflict between duty and self-interest." *Furash & Co. v. McClave*, 130 F. Supp. 2d 48, 53 (D.D.C. 2001) (quotations omitted). "[D]irectors cannot, either directly or indirectly . . . make any profit, or acquire any other personal benefit or advantage, not also enjoyed by the other shareholders" or that is substantively unfair to the corporation or its members. *Willens v. 2720 Wisconsin Ave. Co-op. Ass'n, Inc.*, 844 A.2d 1126, 1136 & n.13

(D.C. 2004). Nor can they "appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing." *Id.* at 1137 (quotations omitted). This duty applies to D.C. nonprofits, where directors "must not engage in self-interested transactions and must disclose potential conflicts of interest . . . ." *Armenian Genocide Museum & Mem'l, Inc. v. Cafesjian Fam. Found., Inc.*, 691 F. Supp. 2d 132, 151 (D.D.C. 2010).

Here, the Complaint adequately pleads that the Director Defendants' diversion of assets was self-interested, undisclosed, and substantively unfair to UCI. Plaintiffs allege that the Director Defendants "engag[ed] in a scheme of self-dealing designed to divert corporate assets to the personal pursuits of Preston Moon" for their own "personal gain." (JA.213; *see* JA.186 (alleging they "diverted funds" donated to UCI "away from their intended charitable use" and "caused donated funds to be used to support Preston Moon's personal . . . projects").) The Complaint also details the steps Preston Moon took to further the scheme and how the Director Defendants benefitted personally for their part: "Preston Moon undertook to gain control of UCI's Board of Directors [so] he could further divert assets from [UCI] to his personal activities." (JA.200.) Preston Moon removed all directors he perceived to be disloyal, including two directors who tried to exercise their fiduciary duties by questioning several self-dealing transactions between UCI and companies Preston Moon directly or indirectly owned, and replaced them with his brothers-in-

law and others who would unquestioningly follow him. (JA.200-04; *see* JA.2400.) Preston Moon hand-picked the Director Defendants precisely because he expected them not to question his plan to pillage UCI's assets for personal gain. (JA.200-04.) The Director Defendants, thus, owed their positions on UCI's board, their livelihoods, and the financial and personal benefits from those positions to their willingness to carry out Preston Moon's personal agenda. (JA.199-203.)

Once elected to UCI's board, "[Director Defendants] joined in Preston Moon's scheme to take control of [UCI] and divert its assets." (JA.203.) Plaintiffs allege they did so in breach of their own "fiduciary duties of loyalty and care, which include the duty not to divert corporate assets . . . for [their] *personal gain*." (JA.213 (emphasis added); *see also* JA.187 (alleging "Moon and the UCI Board of Directors that he controls are actively diverting and dissipating the assets of UCI for unauthorized purposes in violation of their duties as Directors").) This included diversion of UCI assets to GPF, which Preston Moon created "for his own purposes" to fund his personal projects with total control and no oversight by the Church. (JA.205-07.) The Director Defendants' approval of these transfers furthered their self-interests to the detriment of the nonprofit to which they owed fiduciary duties. Discovery revealed that Preston Moon, Kwak, Sommer, and Kim held director or officer positions in GPF, placing them on both sides of the UCI-GPF transfers. (JA.2397.) GPF then became a vehicle for publicity and influence, giving Preston

Moon and his loyalists a platform from which to replicate the peace conferences UCI had funded for UPF, recruit followers, and build his new brand. (*See* SOF § I.B.)

Thus, the trial court's citation to *Behradrezaee v. Dashtara*, 910 A.2d 349, 363 (D.C. 2006) for the proposition that self-dealing cannot exist unless directors appear on both sides of the transaction or receive only benefits which "devolve[] upon the corporation or all stockholders generally" (JA.3243) is inapposite because, here, the Director Defendants did appear on both sides of transfers that had no benefit to UCI. *Id.* at 365. This case is akin to *Silberberg v. Becker*, 191 A.3d 324 (D.C. 2018), in which the complaint alleged defendants took over the board and then sold certain of the corporation's properties contrary to the corporation's best interests. *Id.* at 328, 337-38. In *Silberberg*, this court reversed dismissal of the complaint, rejecting the argument that the allegations were not specific enough to withstand dismissal. *Id.* Here, in addition to pleading the Director Defendants were on both sides of the GPF transfers, the Complaint also pleads they failed to disclose their self-interest in the transfers, there was no mechanism for them to disclose conflicts of interest to anyone who could protect UCI's interests, and Preston Moon strategically packed UCI's board with loyalist directors who accepted their positions knowing that they entailed participating in the self-dealing scheme. (JA.199-203; *see also* SOF § I.A-B.)

These self-dealing allegations about the GPF transfers also support the same claim against the Director Defendants regarding the KIF transfer which, in a prior order, Judge Mott determined became part of the Complaint. (*See supra* § III.C.2) Judge Anderson made findings consistent with the conclusion that the KIF transfer was self-dealing: "In short, it appears that the money 'donated' to KIF is simply being funneled to the defendants and *their own projects*"; and the KIF and GPF transfers were not in the best interest of UCI, but rather "serve[d] the personal agenda set by Preston Moon." (JA.2403 (emphasis added); JA.2419; JA.2422.)

Discovery revealed many more facts showing the unprecedented transfer of assets to KIF grossly deviated from corporate norms and established further self-dealing acts. (SOF § I.C; *see also* JA.2605-39 (Tendick Report discussing facts relevant to self-dealing, fraud, or collusion).) There is ample evidence the Director Defendants were, for years, heavily, if not entirely, dependent on Preston Moon for their livelihoods due to their positions on UCI's board, and employment with UCI subsidiaries, GPF, KIF, and other entities owned or controlled by Preston Moon. These additional personal benefits overlapped with the Director Defendants' service on UCI's board when they were approving the GPF and KIF transfers. (*See* Feb. 24, 2023 Pls.' Opp'n to Mot. for J. on Pleadings at 11 (citing the Director Defendants' testimonial evidence at deposition and remedies hearing).) Plaintiffs, however, were deprived of adjudicating self-dealing on the merits because the trial court acquiesced

in the Director Defendants' tactical decision to seek judgment on the pleadings late in the case. Given that it is anything but "clear that the merits of the controversy can be fairly and fully decided in this summary manner" under Rule 12(c), *Tapp*, 306 F. Supp. 3d at 392, the trial court should have denied the Director Defendants' motion.

C. The Exception Cannot Be Rejected Under Rule 12(c) Because It Involves Disputed Issues Of Fact.

As set forth in Section II, *supra*, this is the ideal case for finding that the Exception exists, but the trial court summarily dismissed it as "immaterial." (JA.3150.) However, a court may not grant judgment on the pleadings unless there are no disputed issues of fact. *See Ronaldson*, 2022 WL 798383, at *2. The trial court could not conclude that the Director Defendants met their burden of showing that no disputed issues of fact exist with respect to the Exception – an inherently factual inquiry – without first rendering a decision on its existence, and then upon doing so, allowing Plaintiffs to present evidence supporting its application in this case. Any evidence concerning the Director Defendants' engagement in fraud or collusion with Preston Moon would no doubt involve hotly disputed facts precluding judgment as a matter of law. *See Tapp*, 306 F. Supp. 3d at 391.

D. The Trial Court Abused Its Discretion By Dismissing The Director Defendants With Prejudice And Without Leave To Amend.

The trial court also abused its discretion by dismissing the claims against the Director Defendants without leave to amend under Rule 8. (JA.3154-55.) That is a

harsh remedy reserved for instances where the complaint lacks any factual matter or cannot be cured, which is not the case here. *See Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996). The trial court should have granted Plaintiffs leave to amend. *See* D.C. Super. Ct. Rule 15(a)(3). The trial court must exercise its discretion to grant or deny leave to amend consistent with the policy favoring resolution on the "merits rather than upon technical pleading rules.'" *Omid Land Grp., LLC*, 279 A.3d at 381. The trial court sua sponte found that amendment "would be untimely," (JA.3154-55), but, as shown above, "delay even lengthy delay by itself will not usually provide sufficient ground for refusal to allow an amendment." *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 965 (D.C. 2008).

V. UCJ's Contract Claims Can Be Decided Based On Neutral Principles Or The Exception.

On *de novo* review, this court should vacate the trial court's dismissal of the Contract Claims because they can be decided based on neutral principles of law. *See Radbod*, 269 A.3d at 1041. At a minimum, this court should determine whether the Exception exists and applies to these claims.

A. UCJ's Contract Claims Are Not Barred By *Moon III.*

Moon III could bar the Contract Claims, if at all, only to the extent they are based on interpretation of UCI's mission and purpose under its articles. However, *Moon III* did not disturb the portion of the Omnibus Order denying UCI summary judgment on UCJ's Contract Claims because disputed issues of fact remain regarding

the existence[11] and scope of contractual limitations on UCJ's donations. The Omnibus Order left these claims poised for a jury to decide whether there was a meeting of the minds and UCJ's donative intent. (JA.1190-96.)

The Contract Claims were not premised solely on UCI's donations violating its original articles. (*See* JA.1191-95.) Rather discovery developed an array of evidence supporting contractual obligations owed by UCI to UCJ, including oral communications, actions, and decades of written materials, namely solicitation letters and budgets, i.e., materials that existed independent and apart from the articles. From this evidence, a jury could conclude that UCJ restricted its donations based on contract terms that differed from the language of the articles. (*See* JA.1192-93.) As this court previously observed, "it may be that the contract terms limited the permissible use of corporate funds more sharply than the articles themselves." *Moon I*, 129 A.2d at 253 n.25. Accordingly, the trial court erred when it held the "decisive basis precluding its claims" was the language in UCI's articles. (JA.3140.) The trial court's restrictive view of the Contract Claims contradicted the Omnibus Order's prior ruling that genuine issues of material fact remain regarding whether there were restrictions (including restrictions outside of UCI's articles) on how UCI could use UCJ's donations and what those restrictions were. (JA.1194.) This violates the law of the

[11] UCI acknowledged it was "not disputing" "the Court's prior determination that a factfinder could find the existence of a contract[.]" (Feb. 24, 2023 UCI's Reply Mot. for Sum. J. at 3-4.)

case. *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 law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time."); *see also Bentt v. D.C. Dep't of Emp. Servs.*, 979 A.2d 1226, 1232 (D.C. 2009).

Indeed, although the trial court summarily acknowledged these disputed issues, it nevertheless improperly decided as a factual issue that any iteration of the contract terms a jury may find would necessarily require UCJ to establish that UCI's use of funds was "wrongful or unjust" by being "contrary to the 'mission and purpose'" of the Unification Church, even though the UCI articles were not the only evidence of the potential contract terms. Thus, a jury could have concluded that the parties had agreed to terms different from those the trial court presumed. (*See* JA.3129-30.) That is, the trial court improperly and prematurely resolved disputed issues of fact by concluding that the language of the agreement required UCJ to show that UCI acted contrary to the "mission and purpose" of the Church, (*id.*; JA.3136), to succeed on its Contract Claims. *See Fludd v. U.S. Secret Serv.*, 771 F.2d 549, 554 (D.C. Cir. 1985) (court must use summary judgment to determine whether disputed issues of fact exist, not to resolve disputed issues of fact); *see also Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 621 (Ky. 2014) ("summary judgment [wa]s

inappropriate" in a professor's breach of contract case against a seminary, where "there remain questions of material fact regarding the contractual relationship between [the professor] and the Seminary and whether that relationship was breached.").

The Contract Claims could have been set for trial without the court having to interpret UCI's articles or decide any questions of religious doctrine or governance. (*See* JA.1168.) Determining what the contract terms were and whether they were breached merely requires the jury to assess the actual intentions of the parties and is a different exercise from a court construing religious terminology in charter documents. *Cf. Steiner v. Am. Friends of Lubavitch (Chabad)*, 177 A.3d 1246, 1254-55 (D.C. 2018) (noting parties "well understood the meaning of" religious terms in rabbi's contract; thus, the court could resolve the contract dispute based on neutral principles).

Here, UCJ's funds ultimately came from individual Church members, often at great personal sacrifice, specifically to support the Church; it is a veritable certainty that these members never would have made these donations if they had known their monies would be siphoned off to a secret Swiss corporation.

Moreover, *Moon III* does not bar claims that can be decided based on neutral principles of law. While courts may not answer "questions of religious doctrine, polity, and practice," courts are free to hear and decide church-related disputes, so long as they rely upon "neutral principles of law" and "take special care to scrutinize the document[s] in purely secular terms . . . ." *Wolf*, 443 U.S. at 603-04; *see also*

Minker v. Baltimore Ann. Conf. of United Methodist Church, 894 F.2d 1354, 1358 (D.C. Cir. 1990) (characterizing the "neutral principles test" as "permit[ing] a court to interpret provisions of religious documents involving property rights and other nondoctrinal matters as long as the analysis can be done in purely secular terms."). As this court has explained, the "rules that govern the formation, interpretation, and enforcement of contracts are . . . objective, well-established, [and] neutral" and thus are "'neutral principles of law' that may be employed by civil courts charged with the resolution of disputes involving religious organizations." *Meshel*, 869 A.2d at 355 (holding a religious congregation's bylaws contained an enforceable arbitration agreement and the parties' dispute fell within the scope of the arbitration agreement); *see also Second Episcopal Dist. Afr. Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 817 (D.C. 2012) (allowing pastor's action alleging church breached employment contract to proceed past motion to dismiss because claim could be resolved on neutral principles).

Here, "[n]o question of theology need be addressed in order to determine whether an enforceable contract or promise was made, and the court need not interpret dogma in order to determine whether the elements of these common law claims have been established." (JA.1168.) It was premature for the trial court to presume the jury would not identify contract terms that would permit adjudication of a breach on neutral principles of law. As the Omnibus Order rightfully concluded, it is for a jury

to decide whether there was a promise or agreement, or whether there were conditions or restrictions placed on this promise or agreement, such as whether using donated funds in ways not approved by Rev. Moon would violate UCJ's donative restrictions. In erroneously presuming the First Amendment would bar any contract terms the jury might decide existed, the trial court improperly denied UCJ's right to have a jury decide the disputed issues of fact the Omnibus Order identified were to be the province of a jury. *See Parker v. U.S. Tr. Co.*, 30 A.3d 147, 150 (D.C. 2011) ("a genuine dispute of material fact as to the meaning of the contractual terms will preclude summary judgment."); *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979) ("The court's role" on summary judgment "is not to resolve any fact issues" (internal quotations omitted)).

Another court recently found that the question of whether a religious organization's use of funds violates donative intent may be justiciable. *See Carrier v. Ravi Zacharias Int'l Ministries, Inc.*, No. 1:21-CV-3161-TWT, 2022 WL 1540206, at *6 (N.D. Ga. May 13, 2022). In *Carrier*, a Christian minister and his related ministry, a nonprofit corporation known as RZIM, represented that funds donated to RZIM would be used "to support [RZIM's] purported mission of Christian evangelism . . . when such funds were in fact used to support and hide [the minister's] sexual abuse." *Id.* The court concluded that these "misuse-of-fund" allegations did not present First Amendment concerns because the allegations "raise what amounts

to a secular factual question: whether the Defendants solicited funds for one purpose (i.e., Christian evangelism) but instead used those funds for another purpose (i.e., to perpetrate and cover up sexual abuse)." *Id.* That same simple question is presented here. UCJ's donations and the KIF transfer (discussed further below), like the situation in *Carrier,* "concern [D]efendants' actions, not their beliefs," and thus "can be decided according to . . . common law principles." *Id.* (quoting *Puri v. Khalsa*, 844 F.3d 1152, 1167 (9th Cir. 2017)). That is, in violation of the parties' promises and agreement, UCI took UCJ's donations and used these donations for Defendants' own enrichment. And, the question of who currently owns, uses, or controls the assets transferred to KIF and later diverted to other entities remains a disputed issue for trial.

B. UCJ's Contract Claims Based On The KIF Transfer Can Be Resolved On Neutral Principles Of Law.

The trial court further erred in granting UCI summary judgment because the contract theory based on the KIF transfer is fundamentally different from the donations theory and can be decided on neutral principles of law. It is undisputed that UCI's directors did not monitor or assure that the assets UCI transferred to KIF were used consistent with UCI's purposes, no matter how defined. (JA.2395; JA.2420; JA.2425-26 (finding that Preston Moon "drove the decision" to transfer UCI's "most valuable assets" to KIF, but "couldn't be bothered to learn the details of the deal," did not ask "a single question as to whether there was a different way to accomplish his alleged goals," and "did not consider creating a company that was not bound by

Swiss secrecy laws to ensure that he could monitor the fate of his donation").) UCI's directors, including Preston Moon, did not seek legal advice with respect to the KIF transactions and acknowledged that they "had no visibility into how KIF [wa]s using the donated assets" and "made no effort" to learn about, or obtain financial reporting under the Donation Agreement regarding, how KIF was using the assets. (JA.2388; JA.2395; JA.2402.)[12] Thus, a jury could determine on neutral principles 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.

The circumstances here are akin to those in *Steiner*. There, a religious institution alleged that a terminated Rabbi breached his noncompete agreement, which provided that the Rabbi could "not enter into employment or arrangement . . . with any Chabad–Lubavitch entity or any other institution, performing similar work" in the District. 177 A.3d at 1251, 1254, 1259. The Rabbi's "responsibilities under the contract included organizing Friday night Shabbos dinners, classes, social events, and annual trips to Israel" for Jewish students. *Id.* at 1249. In concluding that jurisdiction existed, this court noted that the "parties do not ask the court to determine the

[12] The trial court repeatedly found Defendants were not credible. (*See, e.g.*, JA.2394-95; JA.2425.) Preston Moon received an Ivy League education, including an MBA from Harvard, making it hard to fathom that he would not understand or educate himself about the KIF transaction. (JA.2425-26.) Rather, it is likely that Defendants lied under oath to hide the self-dealing nature of KIF. (*See* JA.2401-03.)

boundaries of Chabad, or to look to internal policies or principles of religious law to resolve this dispute." *Id.* at 1254. While a determination of whether the Rabbi breached his agreement might turn on whether the Rabbi was engaging in certain religious traditions or activities, the court concluded that "[y]ears of performance on the contract demonstrate that the parties well understood the meaning of organizing 'Shabbos' dinner and 'shiurim' for students" and to the extent there was any ambiguity regarding the rabbi's responsibilities, the court could look to the parties' "performance for guidance[.]" *Id.* at 1254-55. Accordingly, as is the case here, the First Amendment did not prevent the court from exercising its jurisdiction.

Exercising jurisdiction is even more appropriate here than in *Steiner* because UCI, under the amended articles, is not a religious organization and as a Swiss entity, KIF could not have a religious purpose. (JA.661-62; JA.2185; JA.2373-75; JA.2382-83; JA.2418.) Defendants also transferred significant assets to other, offshore Caribbean entities, with no religious purpose. (JA.1300-02; JA.1308; JA.2622-63.) Thus, a jury could take Preston Moon at his word, that he had no control over KIF and determine that the donations were restricted to the Unification Church, but still conclude on neutral principles that the KIF transfer breached this restriction given the fact that KIF could not have a religious purpose and UCI's directors admitted they did nothing to oversee KIF's use of the assets. *See In Ohr Somayach/Joseph Tanenbaum Educ. Ctr. v. Farleigh Int'l Ltd.*, 483 F. Supp. 3d 195, 201-02, 205 (S.D.N.Y. 2020)

(on motion to dismiss, concluding contract claim based on donation to a religious nonprofit could be resolved on neutral principles where donation was "for the purpose of building a Jewish education center," but instead, the building "ha[d] been left vacant or rented out for commercial use"). The jury also could conclude KIF was a scheme Defendants concocted that breached UCI's promises to UCJ.

C. The Trial Court Erred By Granting UCI Summary Judgment Without First Determining Whether The Exception Applies.

If the court determines the Contract Claims cannot be resolved based on neutral principles, then these claims should be analyzed pursuant to the Exception. For the same reasons set forth in Section II, the trial court abused its discretion by refusing to decide whether the Exception exists. UCI's summary judgment motion was based solely on abstention under the rulings of *Moon III*. (*See generally* Jan. 20, 2023 UCI's Mot. for Summ. J.) Therefore, if the Exception exists and applies, the trial court's ruling must be reversed.

Moon III tasked the trial court with a two-step inquiry on remand: (1) deciding "whether there is a fraud or corruption exception," and (2) if so, applying the Exception to the facts in light of the court's finding that Plaintiffs "have alleged what amounts to a claim of fraud and/or collusion." *Moon III*, 281 A.3d at 70-71. This analysis should apply equally to the Contract Claims – the court spoke of the Exception generally and said nothing of it being limited to breach of fiduciary duty claims. *See id.*; *see also SBRMCOA, LLC v. Bayside Resort, Inc.*, 596 F. App'x 83,

87-88 (3d Cir. 2014) (vacating district court's order on remand because it "failed to address a crucial question" and was "at least incongruous with the 'spirit' of [the appellate court's] mandate" and ordering the district court to conduct a two-step determination on remand); *D.C. Dep't of Mental Health v. D.C. Dep't of Emp. Servs.*, 15 A.3d 692, 697 (D.C. 2011) (reversing and remanding agency decision where agency failed to first determine material issue of law).

After skirting step one in this court's expected Exception analysis, the trial court nonetheless proceeded to opine on the second issue regarding the Exception's applicability, concluding "'[UCJ] has made no showing that the [Exception] should be applied here.'" (JA.3140 (quoting *Heard*, 810 A.2d at 881).) Notably, the trial court's only support for this conclusion is a one-line quote from *Heard*, a decision on a Rule 12 motion to dismiss where evidence is not to be considered, whereas UCI's motion for summary judgment requires analysis of the facts. (*Id*.) The trial court's determination that UCJ made no showing that the Exception should apply is erroneous – the trial court never allowed UCJ an opportunity to make an evidentiary showing, despite UCJ asking for an evidentiary hearing to do so. (*See* Feb. 24, 2024 Pls.' Opp'n to Mot. for J. on Pleadings at 14-15.) By not deciding whether the Exception exists, taking the analytical steps out of order, and applying religious abstention without taking evidence on the Exception, the trial court engaged in intellectual gymnastics to

avoid "rush[ing] in where the Supreme Court has refused to tread . . . . " (JA.3140.) As discussed in Section II above, it is now ripe for this court to do so.

VI. The Trial Court Abused Its Discretion In Denying Plaintiffs' Motion To Reopen.

Should this court remand for factual adjudication of the Exception or any claim the trial court dismissed, it should also reverse the Discovery Order to the extent it: (1) denied reopening of fact discovery to explore Preston Moon's post-discovery statements showing his testimony denying association with or control over KIF was false; and (2) denied an evidentiary hearing on the Exception. Discovery rulings are generally discretionary, but trial courts abuse discretion by resting conclusions on incorrect legal principles or errors of law. *Allen v. Yates*, 870 A.2d 39, 50 (D.C. 2005) (reversing denial of motion to reopen where trial court's exercise of discretion was based on incorrect legal standard). As discussed above, (*see supra* § II.B), the trial court erred by failing to decide whether the Exception exists and applies in this case, and its denial of an evidentiary hearing was an extension of that error. *See Texas Oil & Gas Corp. v. Hodel*, 654 F. Supp. 319, 323 (D.D.C. 1987) (stating a district court must "adhere to a mandate issued by" the appellate court and, "may not 'ignore' any part of an appellate order on remand"). The trial court assumed, without assessing, that there were no facts to support the Exception. But the purpose of the Exception is to allow marginal review to expose those instances where religious abstention does not apply and should not hamstring a plaintiff

victimized by one who has "engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen," *Moon III*, 281 A.3d at 70 (quotations omitted), or has committed perjury under the guise of "[a] doctrinally grounded decision made during litigation to insulate questionable church actions from civil court review," *Askew*, 684 F.3d at 418, 420. One cannot expose the smokescreen if one does not look at what facts support the cover-up. Here, for example, the facts suggest that Preston Moon and the Director Defendants either lied to Swiss authorities when they created KIF and misrepresented that it had no affiliation with any religious entities, including UCI, or lied to U.S. authorities, including this court, by claiming UCI is a religious charitable corporation established to support the Unification Church to manufacture a religious dispute to escape liability. *See Askew*, 684 F.3d at 418, 420. On the face of such a duplicitous record, the trial court's refusal to allow Plaintiffs to collect new evidence showing not only that Preston Moon lied in court about his role in this scheme, but that the KIF transfer involved self-dealing, was an extraordinary error. Plaintiffs ought to be entitled to introduce this apparent perjury and new facts probative of self-dealing in an evidentiary hearing on the Exception or trial on self-dealing. Instead, the Discovery Order was a rebuke of the strong judicial preference for adjudications on the merits. (*See supra* §§ II.C, III.C.4.)

The trial court's finding that Plaintiffs failed to show "excusable neglect" imposed an inequitable burden on Plaintiffs that must be deemed erroneous – it was

impossible to take discovery on Preston Moon's *post-discovery* statements reflecting his affiliations with KIF. *See Yates*, 870 A.2d at 50. Finally, since the Exception only became ripe after *Moon III*, Plaintiffs' motion for limited expert discovery on fraud and collusion was not untimely.

CONCLUSION

WHEREFORE, for the foregoing reasons, this court should vacate each of the trial court's Orders, find the Exception exists, hold that it applies on the existing record before the trial court, and that it applies in scope to all theories under Counts II, IV, V, or VI. Alternatively, this court should remand with instructions for the trial court to permit summary judgment briefing or schedule a trial on Count II's self-dealing claims, and schedule a trial on the Contract Claims, or remand for an evidentiary hearing on application of the Exception to the facts of the case.

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REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
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   - Birth date
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   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
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     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

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Nos. 23-CV-0836, 23-CV-0837, 23-CV-838
Case Number(s)

April 23, 2024
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2024, I caused the foregoing to be served via the Appellate E-Filing system upon:

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