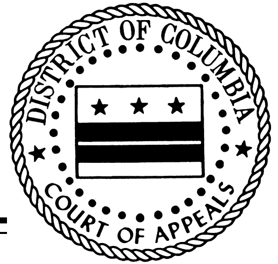

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Nos. 23-CV-0836, 23-CV-0837, 23-CV-0838

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)

CORRECTED REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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SEPTEMBER 13, 2024

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INTRODUCTION

Three issues remained on remand: the self-dealing claims, the Contract Claims, and the fraud or collusion exception to religious abstention ("Exception"). *Moon v. Family Fed'n for World Peace and Unification Int'l*, 281 A.3d 46 (D.C. 2022) ("*Moon III*"). As for the Exception, a colloquy with Defendants' counsel at oral argument revealed concern from the bench about the breadth of Defendants' abstention logic; specifically, it might allow these directors of a D.C. nonprofit corporation (UCI) to misuse their corporate-governance powers to enrich themselves with impunity. Defendants' counsel tried to assuage that concern by acknowledging self-dealing is different and the Exception may exist. (*See infra* § II.A.)

But on remand, Defendants blocked the trial court from resolving any of these issues on the merits. Individual Defendants filed Rule 12 motions. And UCI moved for summary judgment on the Contract Claims, without a statement of undisputed facts, asserting *Moon III* ended these claims. These motions were designed to bury a decade of discovery and the Remedies Order's fact findings. As a result, the trial court erred by: (1) essentially finding *Moon III* shut down the self-dealing and Contract Claims; (2) limiting review of the self-dealing claims to a stale 2011 Complaint filed long before Plaintiffs discovered Defendants' secret KIF scheme or the extent of the GPF transfers; and (3) skirting "the legal issue of whether there is a fraud or corruption exception to the religious abstention doctrine." *Moon III*, 281

A.3d at 70. Despite having filed Rule 12 motions and a fact-less summary judgment motion, Defendants spray a firehose of irrelevant "factual" contentions that are outside the Complaint and the record, even though the only facts properly before this court are those pointing to fraud and collusion.

To make matters worse, their "factual" contentions are largely ***disputed***, and at each turn, they view the record most favorably to ***them***, which is verboten under Rules 12 and 56. Viewing the record most favorably to Plaintiffs means, for example, not turning a blind eye to the egregious conflicts and disregard of corporate norms behind Defendants' massive transfer of Church assets held by UCI to KIF – *e.g.*, Defendants secretly hiding the transfer from Rev. Moon; their concealing it from UCI's general counsel, who was fired for questioning other suspected conflicts of interest; their execution of the KIF "donation" agreement before the board even voted on it; the absence of an appraisal of the assets donated to KIF; and KIF's immediate disposal of the "donated" assets and transfer of the proceeds to offshore holding companies into which Defendants purportedly have no visibility. (Pl. Br. at 16-21; *see also* JA.2605-39 ("Tendick Report") (summarizing same).)

These alarming irregularities for a charitable corporation, and other facts, trigger the Exception. Defendants have erected a religious smokescreen to attempt to hide from these facts and escape liability. And, they perpetuate that *post-hoc* maneuver here by claiming Preston Moon was dubbed "Fourth Adam" and Rev.

Moon's successor, as if that entitles them to absolute immunity. It is an affront to the rule of law for Defendants to contend that courts must abstain from enforcing legal rights and duties (*e.g.*, a corporate director's fiduciary duty to refrain from self-dealing) if a defendant lays claim to "messianic" status. As amici curiae aptly point out, "the First Amendment is not a shield behind which religious adherents can escape liability for social wrongs they committed," and adopting an abstention doctrine without a limiting principle sets a dangerous precedent, sheltering bad actors contrary to the public interest. (Amic. Br. at 3-4.) The court should resist Defendants' attempt to manipulate this appeal into a "Fourth Adam" or succession debate – this narrative is entirely improper and utterly immaterial. (*See infra* § VII.)

Finally, if this court does not reverse, the result will infringe on Plaintiffs' constitutional rights, both to equal access to the courts and hierarchical deference, especially given there is no dispute the KIF and GPF transfers were made during Rev. Moon's lifetime, Preston Moon acknowledged his father as leader at that time, and then repudiated the Family Federation and left. (*See infra* § VII.C.) This constitutional quagmire can only be resolved by recognizing the Exception, and either applying it here or remanding for the trial court to do so.

ARGUMENT

I. *Moon III* Did Not Overturn The Remedies Order's Fact Findings.

The Remedies Order's fact findings and credibility determinations, which

expose the fraud and collusion in the KIF and GPF transfers, stand even after *Moon III*. Fact findings cannot be overturned on appeal absent clear error. *See Mingle v. Oak St. Apartments Ltd.*, 249 A.3d 413, 415 (D.C. 2021); D.C. Super. Ct. Civ. R. 52(a)(6). *Moon III* did not review any fact findings for clear error, much less find clear error. Moreover, courts may rely on findings in a vacated order unless those findings were set aside as erroneous. *See Long v. United States*, 312 A.3d 1247, 1256 (D.C. 2024); *Woodroof v. Cunningham*, 147 A.3d 777, 781 (D.C. 2016); *see also Cobell v. Norton*, 224 F.R.D. 266, 283 (D.D.C. 2004) (treating fact findings from vacated order as established). Thus, the Remedies Order is not a "nullity," (ID Br. at 9, 40), and Plaintiffs may rely on its factual findings relevant to the Exception.

II. The Exception Exists And Applies In This Case.

A. *Moon III* Did Not End The Case.

Defendants claim that *Moon III* "is the beginning and end of this appeal," (ID Br. at 20), but *Moon III* rejected that outcome, and its mandate called for addressing the Exception. *Moon III* speaks for itself:

> [T]he Supreme Court has strongly suggested that there is a fraud or collusion exception to the general rule of non-interference, under which a civil court may decide a facially ecclesiastical dispute when religious figures act in bad faith for secular purposes . . . .
>
> Under that potential exception, a civil court may have the authority to exercise marginal review, even where a dispute implicates ecclesiastical matters . . . .

> This fraud or collusion exception, if [it] exists, . . . would apply where a religious entity or figurehead engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen . . . .
>
> [Plaintiffs] have alleged what amounts to a claim of fraud and/or collusion, which may yet be a justiciable claim . . . .

281 A.3d at 70-71 (citations and quotations omitted). These statements show *Moon III* did not end the case, and the Exception is not a "murky hypothesis." (ID Br. at 20.) *Moon III* examined only whether religious abstention bars adjudicating certain fiduciary breach theories tied to UCI's articles and whether donations were contrary to them. *See* 281 A.3d at 51. This court said yes. *Id*. at 64-67, 70. At the same time, *Moon III* left untouched the self-dealing and Contract Claims, and opened the door on remand to whether the Exception exists and applies. *Id*. at 70-71.

Remand on the Exception is consistent with the court's colloquy with Defendants' counsel at oral argument involving self-dealing:

> Let's say that in 2010, Preston Moon says . . . I am the Fourth Adam. And . . . what the world wants is for me to live as lavishly as possible . . . and so I will funnel the money to my personal bank account and thereby further the purposes of the Unification Movement . . .

Defendants' counsel conceded self-dealing is "an entirely different category," and Preston Moon cannot misuse assets to enrich himself or his reputation.[1] Defendants' counsel then said *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l*

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[1] Oral Argument in *Moon v. Family Fed'n for World Peace and Unification, Int'l*, 20-CV-0714 & 0715 (D.C. June 17, 2021) at 2:39:30-40:12, available at https://www.youtube.com/watch?v=ow8xszCKMAw ("June 17, 2021 Tr.").

Presbyterian Church, 393 U.S. 440 (1969), made "clear" that fraud or collusion could be "an entirely different exception to the normal [abstention] rule." (June 17, 2021 Tr. at 2:40:20-28.) Defendants' counsel tried to distinguish "the self-dealing context" from the claims on review. (*Id*. at 2:40:44-41:00.) But the panel interjected that the Remedies Order's findings on "the disposition of assets to KIF and beyond" contain "hints" of "more evidence of self-dealing," and the trial court thought "none of this has anything to do with religion." (*Id*. at 2:42:02-34.) This colloquy elucidates *Moon III*'s remand: it shows judicial recognition of evidence of self-dealing and a limiting principle in the Exception based on Defendants' egregious acts. It is remarkable they pretend that this colloquy never happened.

B. Plaintiffs Did Not Waive Litigation Of The Exception.

Plaintiffs could not have waived the Exception as to the self-dealing claims based on the GPF and KIF transfers because no Defendant moved for summary judgment.[2] According to Defendants, summary judgment is "the time" to raise the Exception. (ID Br. at 29.) The waiver arguments also fail if, as Defendants contend,

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[2] Plaintiffs are not judicially estopped from litigating the Exception based on the defense of a separate suit contesting leadership of Family Federation. (*See* ID Br. at 30; UCI Br. at 44.) The trial court previously rejected a similar argument, finding Plaintiffs could "employ[] different legal arguments or adopt[] different legal theories in litigating distinct claims and issues." (JA.2486.) Judicial estoppel does not bar the Contract Claims because UCJ was not party to the other suit. *See Encyclopaedia Britannica, Inc. v. Dickstein Shapiro, LLP*, 905 F. Supp. 2d 150, 154-55 (D.D.C. 2012). The trial court was correct to not embrace UCI's judicial estoppel argument. (JA.3141; Feb. 17, 2023 UCJ's Opp. to UCI's MSJ at 16-18).)

religious abstention concerns subject matter jurisdiction, (ID Br. at 28-29; UCI Br. at 46), because then it "can never be waived or forfeited." *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012); *see Chase v. Pub. Def. Serv.*, 956 A.2d 67, 75 (D.C. 2008). If religious abstention is jurisdictional and cannot be waived, then any doctrinal exception cannot be waived either, since that goes directly to the scope of the jurisdictional bar.[3] *NetworkIP, LLC v. FCC*, 548 F.3d 116 (D.C. Cir. 2008), which Defendants cite, did not find a party waived subject matter jurisdiction "by inattention." (ID Br. at 28; *see also* UCI Br. at 46.) The court examined its jurisdiction and made no waiver findings. *See NetworkIP*, 548 F.3d at 120.

Plaintiffs also did not "change theories in mid-stream." (ID Br. at 29; *see also* UCI Br. at 46.) Facts supporting the Exception were developed in prior proceedings. (*See* Pl. Br. 13-21.) The self-dealing theory was always part of the Complaint, and that theory conformed to later-discovered evidence of the GPF and KIF transfers. (*Id*. at 49-50.) *Donald v. Wilson*, 847 F.2d 1191, 1198 (6th Cir. 1998), cited by

[3] As *Moon I* noted, the Supreme Court held that a "defense rooted in the religious clause of the First Amendment was an affirmative defense, rather than a jurisdictional bar," but "[n]o party has raised this issue before us." *Family Fed'n for World Peace and Unification Int'l v. Moon*, 129 A.3d 234, 249 n.22 (D.C. 2015) ("*Moon I*") (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194 (2012)). The court need not consider if the Exception is jurisdictional to dispense with the waiver arguments because it remanded on the Exception. A "court does not remand issues . . . when those issues have been waived" and this inquiry "of whether an issue was waived on the first appeal is an integral and included element in determining the scope of remand." *United States v. Husband*, 312 F.3d 247, 250 (7th Cir. 2002) (internal quotation marks omitted).

Defendants, is inapposite because there, the court rejected amending the complaint during trial to add a new theory with a lesser burden of proof. Here, the remaining claims have not yet been tried, and the burden of proof is unchanged.

Other cases Defendants cite do not support finding waiver. *Parker v. United States*, 254 A.3d 1138 (D.C. 2021), *Goldfish Shipping, S.A. v. HSH Nordbank AG*, 623 F. Supp. 2d 635 (E.D. Pa. 2009), and *Boyel v. Pell*, 866 F.3d 1280 (11th Cir. 2017), differ greatly from the circumstances here because this court remanded on the Exception and Plaintiffs immediately sought to litigate it. *Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co*., 510 F.3d 474 (4th Cir. 2007), does not deal with abstention, the Exception, or subject matter jurisdiction. *Volvo*'s holding that remand is not the time to raise new arguments does not apply because this court invited new proceedings on the Exception when it issued a new abstention ruling.

C. The Supreme Court "Strongly Suggested" The Exception Exists.

The Exception exists. *Gonzalez v. Roman Cath. Archbishop of Manila* made a foundational observation that courts cannot interfere with church tribunals' decisions on religious matters "[i]n the absence of fraud, collusion . . . ." 280 U.S. 7-8 (1929). Defendants' dismissal of this limiting principle as an "obsolete" or "offhand" comment, (ID Br. at 30), is not surprising.[4] They seek absolute immunity.

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[4] Even if *Gonzalez*'s observation is dicta, inferior courts are "obligated to follow Supreme Court dicta absent substantial reason for disregarding it." *Weinstein v. Islamic Rep. of Iran*, 831 F.3d 470, 479 (D.C. Cir. 2016) (internal citations and

Despite their counsel's recognition that *Presbyterian Church* is "clear" that there "could" be an Exception, Defendants now say that it stands for the "settled" proposition that no exception exists if it "inject[s] the civil courts into substantive ecclesiastical matters." (ID Br. at 31-32.) Defendants misread *Presbyterian Church. Presbyterian Church* acknowledged that whether a "specific church decision" is one that "resulted from fraud [or] collusion" is the "narrowest kind of review" that does not run afoul of the First Amendment ***because*** "[s]uch review ***does not*** inject the civil courts into substantive ecclesiastical matters." 393 U.S. at 440 (emphasis added). In other words, a facially religious matter or decision does not deserve the protection of abstention if it is the result of fraud or collusion, *i.e.,* the "smokescreen" the Court articulated when it clarified that the Exception arises "when church tribunals act in bad faith for secular purposes." *Serbian E. Orthodox Diocese for the U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976).

Defendants are wrong that *Presbyterian Church* "settled that the 'exception' does not cover 'substantive ecclesiastical matters.'" (*See* ID Br. at 32.) *Moon III*, which discussed *Presbyterian Church*, did not think so. *See* 281 A.3d at 60-61, 70-71. Nor did the trial court, which said the Exception "remains" an "open question." (JA.3138.) Thus, Defendants' argument that an exception that "operates only when

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quotation marks omitted), *abrogated on other grounds by Rubin v. Islamic Rep. of Iran*, 583 U.S. 202, 211-15 (2018).

the general rule is not in play is not an exception at all," (ID Br. at 32), is circular, hinges on their erroneous interpretation of *Presbyterian Church*, and ignores the obvious point that the Exception allows for marginal review to ferret out whether a smokescreen ought to vitiate the religious abstention defense.

Milivojevich does not support Defendants' assertion that the Exception could not exist. (*See* ID Br. at 31.) *Milivojevich* did not examine the fraud or collusion grounds for the Exception because "[n]o issue of 'fraud' or 'collusion' [was] involved in this case." *Milivojevich*, 426 U.S. at 713 n.7. Plaintiffs are not arguing that the Exception applies on the grounds of arbitrariness.[5]

Nor does *Hosanna-Tabor* repudiate the Exception. That case involved the "ministerial exception" to statutory liability for discrimination, not the fraud or collusion Exception. 565 U.S. at 194. *Hosanna-Tabor* is off-point because Defendants are not ministers, UCI is not a church, and Plaintiffs' claims do not involve who can be a minister. *See id.* at 196 (cautioning *Hosanna-Tabor* was limited only to employment discrimination suits brought by ministers). *Hosanna-Tabor* in no way "confirms that no 'fraud' exception can exist." (ID Br. at 32.)

[5] The article Plaintiffs cited arguing that there must be a forum for egregious cases does not "lament that binding Supreme Court precedent precludes the very exception Plaintiffs seek." (ID Br. at 26.) It discusses *Milivojevich*, which rejected only *Gonzalez*'s arbitrariness ground. *See* Michael A. Helfand, *Litigating Religion*, 93 B.U. L. Rev. 493, 512 (2013).

Finally, Defendants' dismissal of the Exception based on dicta in *Heard v. Johnson*, 810 A.2d 871 (D.C. 2002), is unavailing given that *Moon III* cited it as supporting that the Exception exists. *See* 281 A.3d at 70 (citing *Heard*, 810 A.2d at 881; *Milivojevich*, 426 U.S. at 713). That this court declined to "tread" into the Exception under *Heard*'s facts does not mean it should not do so here. *Heard* was a garden-variety defamation case by a pastor against church leadership arising out of his termination, which bore no resemblance to the fraudulent and collusive transfer of assets worth $3 billion at the center of this case. *See Heard*, 810 A.2d at 874-75. It is understandable, then, given the absence of a fraud or collusion issue, that *Heard* did not wade into the Exception. Here, abundant evidence exists that Defendants acted fraudulently and collusively and have reimagined the "facts" to erect a religious smokescreen to avoid liability for purely secular wrongdoing.

D. The Exception Properly Applies In This Case.

Defendants are wrong to contend that the Exception does not apply. First, application of the Exception does not require pleading a cause of action for fraud. (ID Br. at 32.) No court has recognized such a requirement, and it would not make sense because the Exception is not an element of Plaintiffs' claims, but a rebuttal to Defendants' religious abstention defense. A complaint "need not anticipate [a defense] or 'plead around' it." *Council on Am. Islamic Rels. Action Network, Inc. v. Gaubatz*, 891 F. Supp. 2d 13, 25 (D.D.C. 2012) (citation omitted).

Defendants misread *Jeong v. Calif. Pac. Ann. Conf.*, No. 92-55370, 1992 WL 332160 (9th Cir. Nov. 12, 1992), and *Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71 (D.D.C. 2019), to require pleading a fraud claim to raise the Exception. *Jeong* dismissed for failure to allege sufficient facts to meet the elements of the claims for misrepresentation and intentional infliction of emotional distress. *See* 1992 WL 332160 at *2-3. Similarly, the *Ambellu* court dismissed civil RICO claims based on conspiracy to commit fraud for failure to allege sufficient facts with particularity. *See* 387 F. Supp. 3d at 81-85. And *Moon III* dispensed with the assertion that Plaintiffs must plead a fraud claim to assert the Exception: "Appellees have alleged what amounts to a claim of fraud and/or collusion, which may yet be a justiciable claim that does not require delving into religious questions." 281 A.3d at 71. In other words, *Moon III* deemed the allegations sounding in fraud or collusion sufficient, even without a fraud claim pleaded in the Complaint.

Second, Defendants' claimed belief that Preston Moon is the "Fourth Adam" does not immunize them. It cannot be the law that absolute immunity attaches simply because the corporate insider and mastermind who orchestrated the fraud claims to have messianic status. As the Supreme Court has said, "[o]ne can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause . . . ." *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 715 (1981). Secretly diverting $3

billion worth of assets held by a D.C. nonprofit corporation to a non-religious Swiss foundation, which then dispersed proceeds from the sale of the assets to opaque, offshore entities, using the highly irregular and fraudulent means described in Plaintiffs' Opening Brief, as further illustrated in the Tendick Report, is the type of "bizarre" claim to a sincere religious belief the Supreme Court anticipated may not be entitled to First Amendment protection. (*See* Pl. Br. at 13-21.)

Even if religious beliefs were material to evaluating a director's fiduciary breaches, the ***sincerity*** of those beliefs is fit for adjudication. *See Gillette v. United States*, 401 U.S. 437, 457 (1971) ("'[T]he "truth" of a belief is not open to question'; rather, the question is whether the objector's beliefs are 'truly held.'") (citation omitted); *Cutter v. Wilkinson*, 544 U.S. 709, 725 (2005); *Priests for Life v. U.S. Dep't of Health & Hum. Servs.*, 808 F.3d 1, 18 n.4 (D.C. Cir. 2015) (Kavanaugh, J., dissenting) (observing that, under Religious Freedom Restoration Act ("RFRA"), "courts must police sincerity" and have "'the ability . . . to weed out insincere claims'" because RFRA does not protect "beliefs that are not truly held – such as when someone asserts a personal objection dressed up as a religious objection") (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718 (2014)).

So, if Defendants' claimed "Fourth Adam" belief were material (it is not), the trial court should have assessed their motives for the KIF and GPF transfers in an evidentiary hearing on fraud and collusion, in which the court could have rendered

a finding about the sincerity of this claimed belief to decide whether Defendants were raising a religious smokescreen. Religious sincerity is a fact question that depends on credibility determinations and is not appropriate for resolution under Rule 12. *See Cutter*, 544 U.S. at 725 n.13 (noting that parties' conflicting assertions on alleged religious sincerity cannot be decided on a motion to dismiss); *Davis v. Fort Bend Cnty.*, 765 F.3d 480, 486 (5th Cir. 2014) ("[T]he plaintiff's 'sincerity' in espousing that practice is largely a matter of individual credibility.") (citation omitted); *see also United States v. Quaintance*, 608 F.3d 717, 722 (10th Cir. 2010) (affirming conviction because evidence showed "marijuana dealings were motivated by commercial or secular motives rather than sincere religious conviction").

Third, while Defendants' attempt to explain away the contradictions between (i) Preston Moon's denial under oath of an association with KIF and (ii) his recent statements taking credit for developing Parc1 (which Defendants had UCI give away to KIF) and saying that he could build another Parc1 (despite claiming he has no control over KIF), these contradictions reinforce the need to remand to the trial court to sort through the actual evidence. (*See supra* § II.C; *infra* § VI.) Courts have the ability to "weed out insincere claims" of religious protection. *Hobby Lobby*, 573 U.S. at 718 (discussing RFRA). And the trial court should have done so here given the abundant record of evidence of a bad faith attempt to conceal secular acts behind a religious smokescreen.

III. This Court Should Vacate The Standing Order.

Plaintiffs' Opening Brief shows the trial court's error in dismissing Preston Moon based on prudential standing. (*See* Pl. Br. at 41-45.) By not defending the prudential standing rulings, Preston Moon has abandoned a contest on that point. He also ignores the trial court's holdings that the "First Amendment does not preclude a determination of UCI's potential beneficiaries," (JA.3241), and at least one Plaintiff falls within a sharply defined and limited beneficiary class, (JA.3240). His "extraordinary measures" argument rises and falls on the erroneous contentions that the KIF and GPF claims are "gone." (ID Br. at 44, 46.) And, even if these transfers are deemed not part of the Complaint, dismissal must be without prejudice, and Plaintiffs could amend to address any "extraordinary measures" concerns.[6]

A. Plaintiffs Satisfy *Hooker*'s Requirement Of A Sharply-Defined Class Limited In Number.

To satisfy *Hooker*'s "special relationship" requirement, Plaintiffs must "share some criteria beyond being potential beneficiaries that set them apart, in number and interest, from the general public." (JA.3240-41 (citing *Hooker v. Edes Homes*, 579 A.2d 608, 614 (D.C. 1990).) The trial court correctly held it could find Plaintiffs have the requisite "special relationship" without violating the First Amendment.

[6] Director Defendants did not move to dismiss on standing, but, on appeal, appear to join in Preston Moon's standing arguments. (*See* ID Br. at 42.) To be clear, Plaintiffs have standing to pursue their claims against all Defendants.

This was based on criteria "tied expressly to undisputed facts concerning the legal formation and historical legal leadership of Plaintiffs and UCI alongside the longstanding monetary relationship between Plaintiffs and UCI": Plaintiffs fall within "the class consist[ing] of entities (1) established by Rev. Moon; (2) previously headed or directed by Dr. Moon through an executive or leadership role at the entity; and (3) that have received significant contributions from UCI over an extended period of time." (JA.3239-40 (citing *Moon III*, 281 A.3d 51-56).) Preston Moon does not challenge these findings. Instead, he asserts these criteria do not align with UCI's mission, or that they "rehash impermissible religious premises." (ID Br. at 45.) He ignores his testimony that, as UCI's chairman, he would "absolutely" "vote in favor of any requests for ***any movement-related entity, including Family Fed,*** that . . . ***supported [his] father's teachings and mission***." (JA.2857 (emphasis added).) Whether Rev. Moon's vision is labeled a Church or a Movement does not matter, when Preston Moon admitted both that any "movement-related entity" is eligible for a donation, and defined Family Federation as movement-related. (*See id.*) In light of that testimony, his argument that past beneficiary status does not confer a cognizable interest in future support, (ID Br. at 46), rings hollow.

None of Preston Moon's remaining arguments has merit. His reliance on *Moon III*'s statement that there were many diverse beneficiaries during Rev. Moon's lifetime, (ID Br. at 44), does not "foreclose" a finding that Plaintiffs have special

interest standing in this case because *Hooker* requires a comparison between Plaintiffs and the general public, ***not*** Plaintiffs and UCI's other past beneficiaries. *See Moon I*, 129 A.3d at 244 (quoting *Hooker*, 579 A.2d at 612).

Preston Moon's inapt comparison with past beneficiaries also turns standing requirements on their head. If *Hooker* required comparing a plaintiff ***not*** to the general public, but to everyone who ever received a donation, one might say there is no class of beneficiaries. But that would swallow the special interest exception. Standing is decided based on a litigant's own circumstances. (*See* JA.3236 (recognizing a plaintiff "generally must assert his own legal rights and interests").) Preston Moon cites no authority holding that a beneficiary can be denied standing simply because other beneficiaries had relationships with a charitable corporation.

Lastly, the trial court's conclusion that Plaintiffs are among a sharply-defined and limited class of beneficiaries is consistent with prior rulings by the trial court, (*see* JA.1171-72; JA.1174), and this court, *see Moon I*, 129 A.3d at 245. While no Defendant challenged standing in *Moon III*, this court expressed no reservations about Plaintiffs' ongoing standing when it remanded. *See* 281 A.3d at 70-71.

B. Plaintiffs Satisfy *Hooker*'s Extraordinary Measure Requirement.

In their Opening Brief, Plaintiffs showed they satisfy *Hooker*'s second requirement because the KIF transfer was an extraordinary measure that threatened UCI's existence. (*See* Pl. Br. at 47-49.) Preston Moon does not challenge any of the

facts about the scale of the KIF transfer, the indicia of fraud and collusion surrounding the approval of that transfer, or its severe consequences on UCI's ability to continue. He argues only that, after *Moon III*, "Plaintiffs no longer have any live challenge to the KIF donation." (ID Br. at 43.) That is, he contends *Moon III* eliminated the KIF and GPF transfers from any aspect of the case. That is wrong.

Moon III's holding about KIF was limited. This court addressed only Count II's ***donation*** theory, holding that a court could not adjudicate under neutral principles whether the KIF transfer "ran afoul of UCI's corporate purposes." 281 A.3d at 70. That holding is neither relevant nor necessary to the self-dealing theory, which is based not on compliance with articles, but on external constraints imposed by corporate law on fiduciaries.[7] And, *Moon III* did not hold that the KIF transfer was off-limits as to any other theory under Count II. *See id.* at 67-70. Lastly, Preston Moon's assertion that no self-dealing claim based on the KIF transfer could ever be brought consistent with the First Amendment, (*see* ID Br. at 43), fails because it rests on his incorrect assertion that the Exception does not exist. (*See supra* § II.C.)

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[7] For example, in *Bethesda Univ. v. Cho*, No. G062514, 2024 WL 1328330, at *5 (Cal. Ct. App. Mar. 28, 2024), *reh'g denied* (Apr. 18, 2024), *review denied* (July 10, 2024), argued by UCI's counsel, the court held that religious abstention did not bar resolution of a dispute between two factions claiming to be the legitimate board of directors of a private Christian university on neutral principles of corporate law.

C. The Trial Court Erred In Dismissing Preston Moon With Prejudice Instead Of Granting Plaintiffs Leave To Amend.

Preston Moon gives short shrift to the requirement in *UMC Dev., LLC v. Dist. of Colum.*, 120 A.3d 37 (D.C. 2015), that Rule 12(b)(1) dismissals based on lack of standing must be without prejudice and with leave to amend. (*See* ID Br. at 50.) Thus, it is Preston Moon, not Plaintiffs, who has "misapprehended the consequences of a Rule 12(b)(1)" dismissal. (*See id.*) Under *UMC*, the trial court had two options: deny Preston Moon's motion and adjudicate the self-dealing claims as Plaintiffs developed them throughout this litigation to include the KIF and GPF transfers; or dismiss without prejudice and with leave to amend. *UMC*, 120 A.3d at 43, 48-49. In dismissing with prejudice, the trial court presumed Plaintiffs could not amend to plead the KIF and GPF transfers were acts of self-dealing that could be decided under neutral principles or the Exception. (*See* JA.3256.) That was a merits determination the trial court could not make on a Rule 12(b)(1) standing motion. *See UMC*, 120 A.3d at 43. None of Defendants' arguments against amendment, (ID Br. at 48-50), undercuts that the trial court erred when it identified a pleading defect for the first time in over a decade of litigation yet denied leave to amend to cure it.

While the mountain of evidence Plaintiffs presented shows they could have amended to plead the KIF and GPF transfers as self-dealing, that should not have been necessary. Just as Judge Mott and Judge Cordero did below, *Moon III* accepted that these transfers had become central to the case. *See generally Moon III*. And

this court's explanation of its remand did not exclude them from consideration under a self-dealing theory or as part of the Exception inquiry. *See id.* at 70-71. Despite *Moon III*'s clear guidance, Preston Moon contested standing only under Rule 12(b)(1), knowing this could deliver, at most, a dismissal without prejudice, opening the door to leave to amend. (Pl. Br. at 51-53.) Given these rulings, which show Plaintiffs "would be able to proceed on" the KIF and GPF transfers, it was "fundamentally unfair and unreasonable" for the trial court to dismiss with prejudice. *Freyberg v. DCO 2400 14th St., LLC*, 304 A.3d 971, 981 (D.C. 2023). Defendants' argument that Plaintiffs should have moved for leave to amend to add claims that two trial court judges and this court ruled were already part of the Complaint fails.

IV. This Court Should Vacate The Director Defendants Order.

The KIF and GPF transfers became part of the self-dealing claims against all Director Defendants. (*See* Pl. Br. at 49-50.) Their assertion that "no one noticed" these claims remained is wrong. (ID Br. at 37.) In July 2016, Judge Mott recognized that the pleadings conform to the evidence,[8] concluding that the GPF transfers fall within Count II, and paragraph 117 of the Complaint, which alleges that the "Individual Defendants" "engage[d] in a scheme of self-dealing," encompasses the

[8] *Dartmouth Review v. Dartmouth Coll.*, 889 F.2d 13 (1st Cir. 1989), does not support the assertion that pleadings do not conform to the evidence (ID Br. at 39), and instead discusses Rule 12(b)(6) under 1989 pleading standards. *Id.* at 16. It holds leave to amend should be granted where, as here, "justice requires further proceedings." *Id.* at 23.

later-discovered KIF transfer.[9] (JA.503-04.) In March 2019, Judge Cordero's Amended Omnibus Summary Judgment Order also "noticed" Count II's claims include the KIF transfer; and even though KIF was not in the Complaint, that Order specified that the only self-dealing claims dismissed against Director Defendants were non-KIF and non-GPF self-dealing transactions. (*See* JA.1188-89; JA.1196-97.) Director Defendants' assertion that Judge Cordero "declared" that the only self-dealing claims left were against Preston Moon misreads her Omnibus Order. (ID Br. at 37.) And, *Moon III* recognized that what remained of the self-dealing claims was alleged against "Preston *and the directors*." 281 A.3d at 70 (emphasis added).[10]

Director Defendants' suggestion that they are exempt from liability for self-dealing because they were "dual fiduciar[ies]" to UCI and GPF makes no sense. (ID Br. at 40.) The case Director Defendants cited, *In re Trados Inc. S'holder Litig.*, states there is "no dilution of the duty of loyalty when a director holds dual or multiple fiduciary obligations." 73 A.3d 17, 46-47 (Del. Ch. 2013) (internal quotation marks omitted). The record contains ample evidence supporting the Complaint's allegations that Director Defendants' diversion of assets to GPF and

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[9] Judge Irving erred in setting aside Judge Mott's ruling. (*See* Pl. Br. at 49-50.)

[10] The reference to Preston Moon in a heading discussing self-dealing did not limit that claim to him only. (ID Br. at 37.) "[I]t is not the label on a pleading which is crucial" to determining the nature of a claim, "but what it actually says." *See, e.g.*, *Green v. Louis Fireison & Assocs.*, 618 A.2d 185, 189-90 (D.C. 1992). Count II incorporates acts of self-dealing by "Individual Defendants." (JA.185-86; JA.213.)

KIF was inherently conflicted, and thus, the trial court erred in finding there were no disputed issues of fact. (*See* Pl. Br. at 13-21, 57-60.) Director Defendants' citation to *In re Trados* also undermines their cause, for it illustrates the precise types of "close business relationship[s]" that Director Defendants have with Preston Moon may result "in a sense of 'owingness' that compromise[s] their independence . . . ." *In re Trados*, 73 A.3d at 54-55. Director Defendants knew that "[c]ooperative" directors could expect to be rewarded by Preston Moon, and therefore, had a "natural inclination to side with" him, resulting in an inherent conflict of interest. *Id.* at 54. (JA.2400 (finding Director Defendants "unquestioningly follow Preston Moon," and noting Preston Moon helped Sommer with his MBA tuition and Preston Moon is related to Defendants Kwak and Kim).)

In sum, none of Director Defendants' arguments undercuts Plaintiffs' showing that the trial court erred in ruling, on a Rule 12(c) motion, that there were no material fact disputes as to the self-dealing claims against Director Defendants premised on the GPF and KIF transfers. This court should reverse and remand for a trial of these claims under neutral principles or pursuant to the Exception.

V. This Court Should Vacate The Contract Claims Order.

A. *Moon III* Does Not Bar The Contract Claims.

Religious institutions have a right of contract protected by law, which is not waived or eroded simply because one of the contracting parties is religious. *See*

Moon I, 129 A.3d at 248. The trial court denied UCI's first summary judgment motion because "a genuine issue of material fact" existed regarding "whether conditions were placed on [UCJ's] donations and whether they were enforceable." (JA.1194.) *Moon III* did not review this ruling, and in fact, observed that the Contract Claims "remain live." 281 A.3d at 60 n.15. The disputed issues can be tried without violating *Moon III*'s limited non-justiciability rulings because Judge Cordero's Omnibus Order found that the evidence of the contract terms was not limited to use of the donations in conformity with UCI's articles. (JA.1991-94.)

B. The Contract Claims Can Be Adjudicated Solely Based On Neutral Principles Of Law, And The Exception Should Apply.

"[R]ules that govern the formation, interpretation, and enforcement of contracts are . . . objective, [and] well-established . . . 'neutral principles of law' that may be employed by civil courts charged with the resolution of disputes involving religious organizations." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 355 (D.C. 2005). Courts routinely resolve contract claims involving religious institutions without entanglement in religious matters. *See, e.g.*, *Steiner v. Am. Friends of Lubavitch (Chabad)*, 177 A.3d 1246, 1251, 1254 (D.C. 2018); *Second Episcopal Dist. Afr. Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 817 (D.C. 2012); *Meshel*, 869 A.2d at 354. "Enforcement of a promise . . . in no way constitutes a state-imposed limit upon a church's free exercise rights." *Petruska v. Gannon Univ.*, 462 F.3d 294, 310 (3d Cir. 2006).

Given Judge Cordero's lengthy discussion of the disputed contract evidence, (JA.1191-94), a jury could conclude the contract terms involve no questions of theology or leadership. For example, a jury could find UCJ limited UCI's use of donations to "organizations founded or supported by Reverend Moon" or "activities under the guidance of the True Parents[.]" (JA.1192; *see* JA.2381.) A jury could identify who founded the organizations, and whether Rev. Moon or True Parents supported them or guided their activities, without wading into religious doctrine. Much like the definitions of "'Shabbos' dinner and 'shiurim' for students" in *Steiner*, where the court determined it could look to the parties' performance as guidance to enforce an injunction, 177 A.3d at 1254-55, whether organizations were founded, supported, or guided by Rev. Moon or True Parents are knowable, historical facts that can be shown through documents, testimony, and the parties' past performance. A jury could also find, neutrally, that KIF and GPF were not entities Rev. Moon founded, supported, or guided. (JA.2418; JA.599 ("True Parents strongly disapprove of . . . GPF" and church members "should not take part in or be involved in its activities.").) For example, since Preston Moon concealed KIF from True Parents, (JA.2396), a jury could find, without considering religious matters, that True Parents could not have founded, supported, or guided KIF, (Pl. Br. at 16).

Defendants revive their argument that the KIF transfer is indistinguishable from UCI's other donations, citing *Moon III*. (UCI Br. 39-41.) But *Moon III*

considered the KIF and GPF transfers only in connection with the donation theory. *See* 281 A.3d at 69 n.28. For the Contract Claims, Plaintiffs can show these transfers are fundamentally different, without running afoul of the First Amendment. For example, historically, UCI rarely made multi-year donations to third parties and would analyze the value and success of its initiatives and organizations on an annual basis – those are neutral facts. (JA.1193; JA.2369; JA.2382.) The KIF transfer, on the other hand, was an irrevocable transfer with no such review, oversight, or approval – also neutral facts. (JA.2384; JA.2430-32.) KIF is not a religious organization or a religious support organization – another undisputed neutral fact. (JA.2374-75; JA.2418-19.) *Moon III*, 281 A.3d at 67. KIF is secular with nothing in its charter restricting it from donating to any cause (or no cause) or preventing a change in its charter to benefit its directors. (JA.439-59.) Donating the vast majority of UCI's revenue-generating assets, instead of cash, was also unprecedented. (JA.2382.) Moreover, KIF immediately sold off these assets, sending the cash to opaque offshore jurisdictions. (JA.1300-02; JA.1308; JA.2622-63.) Based on such neutral facts, a jury could find the KIF transfer violated the contract without regard to whether it also contravened UCI's articles. A jury can ignore the articles and still find the KIF (and GPF) transfers breached contractual restrictions on donations.

Separately, a jury could determine UCI's admitted lack of oversight over KIF breached UCI's promise, for how could UCI comply with donative restrictions, no

matter what those were, if UCI gave away its assets with no visibility into what was done with them? *Cf. Allworth v. Howard Univ.*, 890 A.2d 194, 202 (D.C. 2006) (breach of covenant of good faith may involve "evasion of the spirit of the bargain, lack of diligence" or "abuse of a power to specify terms" (quoting RESTATEMENT (SECOND) OF CONTRACTS § 205 (1981)). UCI's lack of control and oversight over non-religious KIF is sufficient, by itself, to bring the Contract Claims before a jury.

UCI's attempt to interpose a succession dispute misses the mark, as well. The jury could find that UCI agreed to limit donations to organizations Rev. Moon founded or supported even after his death. UCI has not pointed to any language that the parties agreed the list of organizations to which UCI could donate assets would change upon Rev. Moon's death. Those are issues to be resolved at trial. Indeed, a contracting party, such as UCJ, presumably would not donate significant funds to UCI, if those funds could be donated to a hypothetical future foundation whose identity was unknown to UCJ at the time of the donation and did not yet exist.

Rather than permitting a trial, the trial court was lulled into UCI's false successorship narrative – part of Defendants' smokescreen – and reverted to the pleadings to conclude the Contract Claims required analysis of the "mission and purpose" in UCI's articles. (JA.3129-30.) This was contrary to Judge Cordero's Omnibus Order, which recognized the Contract Claims had an evidentiary foundation independent of UCI's articles. (JA.1190-94.) The trial court erred in

presuming that a jury would find the contract terms were solely tied to the purposes under UCI's articles based on the Complaint's allegations. The Contract Claims are not premised on a singular written agreement, but on an extensive course of conduct, including written and verbal statements that a jury must assess. (JA.1192-93.)

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

Defendants' argument that Plaintiffs had to challenge each ground of the trial court's denial of their Motion to Reopen is wrong. (ID Br. at 47 (citing *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678 (11th Cir. 2014).) *Sapuppo* involved a Rule 12(b)(6) dismissal on "several alternative grounds," and because the plaintiff failed to address each "independent ground" in his appeal, he conceded them. *Id*. at 680-81. *Sapuppo* is not applicable to the subject Motion to Reopen. D.C. courts evaluate whether to reopen discovery under a "totality of the circumstances" test that evaluates multiple factors, none of which is independently dispositive. (*See* JA.3184-86; JA.3206-12 (applying *Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d 904, 910 (D.C. 1998).) Defendants cite no cases showing Plaintiffs' proposed discovery plan was not sufficient, or that an insufficient discovery plan under Rule 16(b)(7)(A) was grounds, by itself, to deny the Motion. (ID Br. at 47.) The trial court's conclusion that Plaintiffs' proposed expert opinion would be "unhelpful to the trier of fact," (JA.3208), was also an abuse of discretion if this court recognizes the Exception and remands on its application here. (*See* Pl. Br. at 74.) Finally, it

defies common sense to interpret Preston Moon's statements claiming full responsibility for Parc1 as consistent with his testimony denying any association with KIF or its assets, including Parc1. (*Id.*) The trial court abused its discretion in not permitting limited discovery on this additional evidence of the smokescreen.

VII. Defendants' Detour Into Religious Disputes Is Improper, But Shows That There Should Have Been An Evidentiary Hearing On The Exception.

On appeal, Defendants push religious narratives that were not the subject of their motions in the trial court or the Orders on appeal. Most notably, Defendants argue they are untouchable because they "sincerely believe [Preston Moon] is the Fourth Adam" and the "successor" to Rev. Moon. (*See* ID Br. at 12; UCI Br. at 38-39.) Aside from being false, neither assertion has anything to do with whether, during Rev. Moon's lifetime, the chair of a D.C. charitable corporation governed by D.C. corporate law engaged in self-dealing through fraud and collusion with other directors. There is no messianic exception to the D.C. Nonprofit Corporation Act's prohibition on self-dealing. D.C. Code § 29-410.03(b). The court should not be lulled into Defendants' religious detour for it is procedurally improper and irrelevant. Plaintiffs respond only to show that Defendants' distortions of the record illustrate the trial court's error in denying an evidentiary hearing on the Exception.

A. This Court Cannot Resolve Disputed Facts In Defendants' Favor For The First Time On Appeal.

Defendants rely heavily on disputed facts, yet they moved below under Rules

12 and 56, which require viewing the facts in the light most favorable to Plaintiffs. *See Dist. of Columb. v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 639 (D.C. 2005); *Hamilton v. Howard Univ.*, 960 A.2d 308, 313 (D.C. 2008). This court cannot resolve fact disputes in favor of Defendants in the context of Rules 12 and 56, much less for the first time on appeal. *See Maine v. Taylor*, 477 U.S. 131, 144-45 (1986) (factfinding "is the basic responsibility of district courts, rather than appellate courts . . . [and] appellate courts are not to decide factual questions *de novo*"); *see also United Vending Serv., Inc. v. Everglaze, Inc.*, 222 A.2d 852, 853 (D.C. 1966) ("It is fundamental that an appellate court will not retry issues of fact.").

UCI did not include a statement of undisputed material facts in its Rule 56 motion, so there are not even any supposed undisputed facts before this court for review. D.C. Super. Ct. Civ. R. 56(b)(2)(A). With respect to the Individual Defendants' Rule 12 motions, they argued below that the only matters outside the Complaint's four corners that could be used were facts consistent with the Complaint or "subject to proper judicial notice." (*See, e.g.*, Dir. Defs. Reply re Mot. for Judg. Pldgs. at 2.) Preston Moon's purported messianic status or claim of succession to Rev. Moon are not judicially noticeable facts, nor are such contentions consistent with Plaintiffs' pleading. It is simply impermissible for Defendants to incorporate the Fourth Adam successorship narrative into appellate review of motions they brought under Rule 12. *See Equal Rts. Ctr. v. Props. Int'l*, 110 A.3d 599, 603 (D.C.

2015); *Tapp v. Washington Metro. Area Transit Auth.*, 306 F. Supp. 3d 383, 399 (D.D.C. 2016). Just as it did in *Moon II*, this court should reject Defendants' attempt to delve into disputes outside the record. (JA.568 (stating "the lion's share of the documents with which the UCI defendants seek to substantiate the alleged factual disputes are outside the relevant record," and "[r]efocusing on the pleadings . . .").)

B. Defendants' Successorship Narrative Is Irrelevant.

The court should disregard the Fourth Adam successorship narrative for the additional reason that it is wholly irrelevant to the issues on this appeal: the Exception; special interest standing; self-dealing; and the Contract Claims.

First, whether the Exception exists is a matter of law. If it does, the fact inquiry on whether it applies will focus on Defendants' acts of fraud and collusion. (*See* Pl. Br. at 32-35.) If the trial court were to find the fraud and collusion facts support application of the Exception, Preston Moon's claimed messianic status and successorship are immaterial because, under the Exception, a court may decide "a facially ecclesiastical dispute." *Moon III*, 281 A.3d at 70. (*See supra* §§ II.C-D.)

Plaintiffs' standing involves: (1) whether the trial court's prudential standing rulings were error; (2) whether UCI's beneficiaries are sharply defined, limited in number, and include Plaintiffs; and (3) whether the KIF and GPF transfers support *Hooker*'s extraordinary measures requirement. (*See supra* §§ III.A-B.) Preston Moon's specious claim of messianic status has nothing to do with these questions.

The Director Defendants' Rule 12(c) motion is premised on whether the KIF and GPF transfers fall within the self-dealing theory that was to be adjudicated on remand. This is a pleading dispute, and since the Complaint contains no allegations about Preston Moon's messianic status or successorship, such issues are also irrelevant to review of the Director Defendants Order. (*See supra* § IV.)

The Contract Claims involve a property dispute contesting contractual obligations having nothing to do with Preston Moon's status. (*See supra* § V.)

C. Defendants' Successorship Narrative Distorts The Record.

Should the court be tempted to look behind Defendants' unadjudicated version of the facts, they are inaccurate, distort the record, contradict the Remedies Order's findings, and defy common sense. Courts may consider whether conjuring religious disputes may "raise an inference of fraud or bad faith" on the "integrity of the judicial system" that "may outweigh First Amendment concerns." *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). Reviewing Defendants' distortions exposes that such issues are present here.

First, for example, Defendants' "Fourth Adam" successorship narrative is a gross exaggeration of comments made by Rev. Moon in his 1998 address when Preston Moon was inaugurated as the ***vice*** president (not the president or overall leader) of Family Federation. (ID Br. at 1, 12.) Defendants' briefs omit that Rev.

Moon also stated during that same address that Preston Moon "still has a course to go" to "establish the completed foundation of the fourth Adam and the realm of the fourth Adam."[11] (JA.2361.) This is hardly, as Defendants assert, a definitive or irrevocable recognition of "Adamic authority." (ID Br. at 12.)

Preston Moon never disputed that Rev. Moon was leader of the Church while he was alive, including in 2010 when Preston Moon orchestrated the KIF and GPF transfers, and in 2011 when Plaintiffs initiated this lawsuit at Rev. Moon's direction. (JA.1166; JA.2357-58; UCI Br. at 16 (Rev. Moon was the "leader who held together the Movement's disparate parts").) Preston Moon's contrary claims are not credible because, for ten years after he purportedly became "Fourth Adam," he acknowledged in writing that the Church is a hierarchical institution and that Rev. Moon had sole authority to change its direction, leadership, and theology. (JA.850-51; JA.2361-62.) For example, in his 2008 Report to Parents, which he does not dispute are his words, Preston Moon asked Rev. Moon to grant him absolute power over Family Federation (which Preston Moon recognized as a "church"), and all "providential organizations," and to "subordinate" all for-profit businesses under

[11] Though not necessary to resolve the issues on appeal, Rev. Moon's inauguration address upon which Defendants rely also demonstrates that "Fourth Adam" is not a person, but an "era" or "realm," (JA.2361), and that every family must aspire to be "Fourth Adam." Preston Moon admitted as much in his own 2011 writings. (*See* Aug. 20, 2018 Pl. Reply re MSJ on Count II at Ex. 151 (defining "Fourth Adam" not as a single person, let alone himself, but as "*those* who are to inherit and complete the role of Adam after the completion of the providence of restoration").)

Preston Moon's leadership of UPF. (*Id.*) Common sense dictates he would not have asked for such authority – or recognized Rev. Moon's superior authority to grant it to him – if he became "Fourth Adam" in 1998 and was leading the Church.

The record also shows Preston Moon did not question Rev. Moon's leadership of the Church or invoke "Adamic authority" when Rev. Moon rejected this request, removed Preston Moon from his leadership positions, and "made it clear that he want[ed] Preston Moon [to] resign[] from all posts and hand[] over all assets." (JA.2371.) Rather, Preston Moon again acknowledged Rev. Moon's "position or authority" in a letter asking Rev. Moon to change his mind about removing Preston Moon from his leadership position at UPF. (*Id.*) When Rev. Moon declined, Preston Moon left "everything that the Church represents," stating he "will have nothing to do with it." (JA.2398-99.) Since then, Preston Moon and his entities, including GPF, have not been involved with Family Federation. (JA.637; JA.639.)[12]

Thus, Defendants' reimagining of Preston Moon's departure from Rev. Moon's side as a leadership dispute is pure fiction, for no matter how one characterizes what Rev. Moon did at the time, Preston Moon "broke" from it to "go his own way." (JA.839; JA.2398.) *See Moon III*, 281 A.3d at 53-54. Defendants'

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[12] *Moon III* recognized the same, noting the 2008 Report to Parents reflects ***Preston Moon's*** "wishe[s]," "vision," and "views" that the Church should be a "decentralized" "inter-faith" movement, and describing his departure as a "break" from Family Federation. 281 A.3d at 53-54.

reference to Martin Luther is apropos. Just as Preston Moon acknowledged Rev. Moon in his 2008 Report, Luther acknowledged the Pope as the head of the Catholic Church with the power over its institutions. When the Pope demanded that Luther recant, Luther broke with the church. Unlike Preston Moon, however, Luther did not embark on a plan of, in his words, "asymmetrical warfare" like "the terrorists do," to make off with billions of dollars of Church assets. (JA.2419.)

Preston Moon's 2008 Report also undercuts the contention that Rev. Moon's "dream" was to create a non-sectarian, ecumenical movement, (UCI Br. at 2, 14), an excuse proffered to justify taking UCI's assets. *See Moon III*, 281 A.3d at 54 (recognizing the 2008 Report as showing this non-sectarian, ecumenical view of the movement was Preston Moon's). The 2008 Report belies this *post-hoc* fabrication of Rev. Moon's "dream," as Preston Moon chides his father in that Report for taking no steps to implement an ecumenical movement since 1994. (JA.851-52.) And history speaks for itself because, despite serving in various positions within the Church for ten years before being fired in 2009, Preston Moon failed to convince his father to restructure the Church in accordance with this supposed "dream." (*See id.*)

As a second example of Defendants' distortion of the record, their contention that Preston Moon had leadership over any and all aspects of the "Movement" is contradicted by Rev. Moon's complete denunciation of him, first in 2009 when he twice directed Preston Moon to resign from all of his positions (JA.2367; JA.2371),

and then again in 2011 when he denounced Preston Moon and the Director Defendants' "capricious[]" use of UCI's assets "against the will and direction of the True Parents," (Nov. 7, 2017 Defs.' Mot. to Clarify at Ex. 4).

As a third example of Defendants' distortion of the facts, Preston Moon claimed these denunciations were only because Rev. Moon was in a state of "physical and mental decline," but in support Preston Moon cites to nothing more than: (1) his own self-serving testimony during the Remedies Hearing, which was unsupported by any medical or expert evidence; and (2) a third-party, incoherent, and expletive-laden 2009 email that Preston Moon did not recall or endorse during his Remedies Hearing testimony. (ID Br. at 14 (citing JA.2829-30; JA.1978-79; JA.2075-76); Oct. 16, 2019 Tr. at 70:3-22.) Preston Moon's attacks on his deceased father's mental acuity are also contradicted by his testimony that he "just thought [Rev. Moon] was tired" when Rev. Moon denounced him in 2009. (JA.2092-93.) Judge Anderson found this same "mental acuity" narrative not credible. (JA.2371.)[13]

The court should also view the "Fourth Adam" successorship narrative with great skepticism because Preston Moon did not advance this defense until after he lost religious abstention arguments in *Moon I* and *Moon II*. There is no mention of Preston Moon's messianic status (1) in his November 2009 letter to Rev. Moon

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[13] This court previously refused to assess the accuracy of Preston Moon's attack on Rev. Moon's mental acuity, including Defendants' video "evidence." *See Moon III*, 281 A.3d at 55 n.9. It should reject the point for the same reasons. *Id*.

asking him to rethink his decision to fire him from UPF; (2) in his letter the same day, announcing his departure from Family Federation and his creation of GPF; (3) in his 2011 "Letter to the Worldwide Unification Community," recognizing Rev. Moon's ongoing leadership of the Church; or (4) in his 2017 address on the founding of another organization that he named Family Peace Association. (JA.2093-2100; JA.2206-07; JA.2371-72; JA.2398; Pl. Rem. Exs. 102, 107; May 31, 2018 Pl. Statement of Facts at Exs. 50, 54.) Defendants' successorship narrative is a *post-hoc* tactical invention, further suggestive of the religious smokescreen that opens the door to the Exception and illustrates why the trial court erred by denying an evidentiary hearing on the Exception. *See Askew*, 684 F.3d at 420.

To perpetuate the smokescreen, Defendants also revive their debunked excuses for the scale, structure, and secrecy of the KIF transfer. (ID Br. at 18-19.) Yet, they cite testimony Judge Anderson found "not credible." (JA.2390-95.) Defendants specifically repeat that the KIF transfer had tax benefits and was done to hide UCI's association with the Church from banks – astonishingly admitting their intent to fraudulently induce banks to lend funds they would not otherwise. (ID Br. at 18-19; UCI Br. at 22.) Judge Anderson also found these excuses "not credible." (JA.2391-94; JA.2421; JA.2426.)

Indeed, ***all*** of Defendants' citations attempting to justify the KIF transfer and Preston Moon's contradictory statements about his control over KIF and Parc1 are to their own documents or testimony that Judge Anderson assessed and rejected. (*See* ID Br. at 18-19; *see also* JA.2402-03 (observing Preston Moon's ties to KIF's directors and KIF donates to entities affiliated with his "close associates," *e.g.*, $40 million to Swiss entity run by in-law of Preston Moon and relative of two Director Defendants).) For example, UCI claims that KIF is a "Movement" entity that had articles "almost identical" to UCI's "overtly religious" articles, (UCI Br. at 21), despite Defendants' previous testimony that KIF could not have a religious purpose under Swiss law, (JA.661-62; JA.2185; JA.2373-75; JA.2382-83), and Judge Anderson's finding that KIF is not affiliated with any religion, (JA.2418).[14]

* * *

As a final distraction, Defendants' briefs are laden with extraneous, inflammatory rhetoric, and spiteful ad hominem attacks on Church leaders, including Preston Moon's own mother and father. These attacks lack cites in the record, and

[14] Defendants either lied to the Swiss government when they stated KIF had no religious affiliation, or are lying to this court now by claiming KIF is religious. (*Compare* JA.661-62, JA.2185, JA.2373-75 & JA.2382-83 *with* UCI Br. at 21).

have never been proven. Plaintiffs would welcome the chance to respond by, for example, putting on evidence showing the court: the sound mind and vigorous leadership of Rev. Moon up until his passing; the role of Dr. Hak Ja Han Moon as co-equal to Rev. Moon as the True Parents since their marriage, the central event in their theology; the sacred beauty of the spiritual seat being built by the Church in Korea; the global revulsion towards the Japanese government's attacks on the Church after the assassination of a prime minister by a mentally ill, non-Church member long after the events at issue; how the Church has used the donations of faithful Church members to develop income-producing assets that it expected to support its mission for years to come before they were stripped away by Defendants. However, none of this has anything to do with Plaintiffs' claims that Defendants engaged in egregious self-dealing, breached contractual duties, or the Exception or the acts of fraud and collusion that warrant its application. In the end, Rev. and Dr. Hak Ja Han Moon, and the members of the Unification Church, have been deprived of the fruits of their sacrificial service and of a trial that the course of justice warrants.

The court should reverse and remand. The trial court can assess the truth and credibility of Preston Moon's words and actions at the relevant time – not Defendants' *post-hoc* maneuvers designed to insulate their actions under the First Amendment – applying neutral principles, ordinary common sense, or the Exception to the "smokescreen" of Defendants' fraudulent and collusive actions.

Respectfully submitted,

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