IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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

ORDER

Before the Court is *Defendant Hyun Jin Moon's Post-Remand Motion to Dismiss for Lack of Standing*, filed on January 25, 2023. Plaintiffs Family Federation for World Peace and Unification International ("Family Federation"), Family Federation for World Peace and Unification Japan ("UCJ," formerly known as the Holy Spirit Association for the Unification of World Christianity (Japan)), and Universal Peace Federation ("UPF") jointly filed an *Opposition* on February 24, 2023. Defendant Hyun Jin Moon ("Dr. Moon" or "Preston") filed a *Reply* on March 1, 2023. Dr. Moon seeks dismissal of Plaintiffs' remaining claims against him on the ground that Plaintiffs no longer have standing to pursue their claims, since the August 25, 2022 decision of the District of Columbia Court of Appeals in the captioned case.

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

I. BACKGROUND

Herein, the Court recites the facts necessary to rule upon the instant *Motion*. *See also Moon v. Fam. Fed'n for World Peace & Unification Int'l* ("*Moon III*"), 281 A.3d 46, 51-60 (D.C. 2022); *Fam. Fed'n for World Peace & Unification Int'l v. Moon* ("*Moon I*"), 129 A.3d 234, 239-42 (D.C. 2015); *see also* June 15, 2023 Order, at 1-7 (summarizing background and procedural history). As the Court and other courts have noted previously, the controversy underlying this case results from a "religious schism" in the "religion known as the Unification Church." *Moon III*, 281 A.3d at 49-50. The schism apparently arose in prominence during the final years of the life of the Unification Church's founder, the late Reverend Sun Myung Moon ("Rev. Moon"). *Id.* The schism precipitated a "struggle for power and money" among Rev. Moon's two sons and widow, implicating Unification Church organizations and followers, assets, and billions of dollars across three continents. *Id.* at 50. The struggle continues through years of litigation, including three appeals to the District of Columbia Court of Appeals. *Id.* at 53-55, 59-60.

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

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

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

See Compl. ¶¶ 99-112, 113-23, 124-30.

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

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

Judge Cordero dismissed the aiding and abetting claims, as no such causes of action exist in the District of Columbia, and dismissed the claims arising from Plaintiffs' second theory—the removal and replacement of UCI's directors. Am. Omnibus Summ. J. Order, at 2-3 (noting

Plaintiffs' withdrawal of their claim related to the removal and replacement of UCI's directors); *id.* at 42 (noting District of Columbia law does not recognize "independent tort for aiding and abetting" the breach of fiduciary duty); *see also Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 711 (D.C. 2013) (declining to recognize "separate tort of aiding-abetting").

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

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

> First, in February 2008, a UCI subsidiary, True World Group, LLC ("True World"), purchased real property from UV Sales, Inc. ("UV Sales"), a corporation owned by Preston Moon. Second, in 2007, UCI loaned $1.5 million to United Vision Group, Inc. ("UVG"), a corporation wholly owned by Preston Moon. The pleadings state that the loan was for $2 million. This loan was paid in full around October 2009. Third, starting in 2006, another UCI subsidiary, One Up Enterprises, Inc. ("One Up"), retained UVG Strategic Consulting, LLC ("UVGSC"), a consulting firm wholly owned by UVG that was created in 2006.

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

Thereafter, the Hon. Jennifer M. Anderson held a four-week hearing in July, August, and October 2019 and, on December 4, 2020, she issued her *Order Granting, in Part, Plaintiffs' Motion for Remedies for the Individual Defendants' Breach of Fiduciary Duty* [hereinafter "Remedies Order"]. Somewhat relevant to this Order, Judge Anderson ordered the rescission of the 2010 amendments to UCI's articles of incorporation; she ordered removal of Dr. Moon and three of the four Director Defendants as directors and officers of UCI; and she imposed two surcharges on Dr. Moon and three of the four Director Defendants amounting to $532,230,986.96—the value of UCI's donations to GPF and KIF during Dr. Moon's control of UCI's board—and pre- and post-judgment interest. Remedies Order, at 93-94.

By *Moon III*, the Court of Appeals reversed and vacated Judge Cordero's *Amended Omnibus Order* and Judge Anderson's subsequent *Remedies Order*. 281 A.3d at 51, 70. In doing so, the Court of Appeals expressly held that Judge Cordero's "ruling on [P]laintiff's

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

fiduciary-duty claims"—specifically, the "two theories of fiduciary breach" upon which she entered summary judgment in favor of Plaintiffs—"violated the First Amendment" because "the grant of summary judgment on either ground would improperly intrude on religious questions." *Id.* at 62. The Court of Appeals went on to explain:

> [Defendants] ask us to not only reverse the entry of summary judgment against them, but to direct the trial court to dismiss the breach of fiduciary claim altogether. One wrinkle precludes us from doing that. While we agree that the two theories of fiduciary breach embraced by the trial court are non-justiciable, there remains a third theory advanced by [Plaintiffs] that the trial court did not address: that the directors engaged in self-dealing . . . . That theory may yet have some legs, provided there is evidence to support it.
>
> While religious abstention is a robust doctrine that provides substantial protections to religious organizations' autonomy within the religious sphere, the Supreme Court has strongly suggested that there is a "fraud or collusion" "exception to the general rule of non-interference," under which a civil court may decide a facially ecclesiastical dispute when religious figures "act in bad faith for secular purposes." Under that potential exception, a civil court may have the authority to exercise "marginal" review, even where a dispute implicates ecclesiastical matters. This "fraud or collusion" exception, "if [it] exists, . . . would apply where a religious entity" or figurehead "engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen." Although it would surely be difficult to disentangle a charge of self-dealing from religious questions when brought against somebody with a claim to messianic status, we need not confront that difficulty today.
>
> The parties have not briefed the legal issue of whether there is a fraud or collusion exception to the religious abstention doctrine, nor have they explained what evidence (or lack thereof) underlies the self-dealing claim, nor have they even discussed whether that claim remains live at this stage of the proceedings in the trial court. Those are all matters we leave the trial court to address in the first instance on remand.

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

Dr. Moon, in reliance upon *Moon III*, now seeks to dismiss Plaintiffs' claims on the ground that Plaintiffs lack standing to pursue them. *See generally* Def. Hyun Jin Moon's Post-

Remand Mot. to Dismiss for Lack of Standing [hereinafter "Def.'s Mem."]; Def. Hyun Jin's [sic] Reply Mem. of Law in Supp. of his Mot. to Dismiss for Lack of Standing [hereinafter "Def.'s Reply"].

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

II. LEGAL STANDARD

"It is an elementary matter of jurisprudence that an individual must have standing in order to maintain an action." *Burleson v. United Title & Escrow Co.*, 484 A.2d 535, 537 (D.C. 1983) (per curiam). "[T]he basic function of the standing inquiry is to serve as a threshold a plaintiff must surmount *before* a court will decide the merits question about the existence of a claimed legal right." *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011) (en banc) (emphasis in original). "When the plaintiff lacks standing, the court lacks jurisdiction." *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 191 (D.C. 2021); *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 43 (D.C. 2015) (finding "[a] 'defect of standing is [likewise]

a defect in subject matter jurisdiction.'" (modifications in original)). "Without jurisdiction the court cannot proceed at all in any cause, and the only function remaining to the court is that of announcing the fact and dismissing the cause." *Hormel Foods Corp.*, 258 A.3d at 191 (internal quotation marks and citations omitted); *see also* Super. Ct. Civ. R. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Therefore, "[s]tanding is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Grayson*, 15 A.3d at 229 (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005)); *see Hormel Foods Corp.*, 258 A.3d at 191 (noting trial court should not have reached merits after finding plaintiff lacked standing).

"Although Congress established the courts of the District of Columbia under Article I of the Constitution," in contrast to the federal courts established under Article III, the Court of Appeals "nonetheless appl[ies] in every case 'the "constitutional" requirement of a "case or controversy" and the "prudential" prerequisites of standing.'" *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206 (D.C. 2002) (quoting *Speyer v. Barry*, 588 A.2d 1147, 1160 (D.C. 1991)). "Constitutional standing under Article III requires the plaintiff to 'allege personal injury fairly traceable to the defendant's unlawful conduct and likely to be redressed by the requested relief.'" *Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 731 (D.C. 2000) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)); *see also Grayson*, 15 A.3d at 234 n.36 (quoting three-element formulation of standing—injury in fact, causal connection to the defendant's conduct, and redressability—set forth in *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Prudential standing requirements, on the other hand, consist of "judicially self-imposed limits on the exercise of . . . jurisdiction," *Exec. Sandwich Shoppe*, 749

A.2d at 731, such as the "limitation on the 'class of persons who may invoke the courts' decisional and remedial powers.'" *Consumer Fed'n of Am. v. Upjohn Co.*, 346 A.2d 725, 727 (D.C. 1975) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)); *Exec. Sandwich Shoppe*, 749 A.2d at 731 (noting "general prohibition on a litigant's raising another person's legal rights" and the "requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked"). As prudential standing is not constitutionally required, a plaintiff may have standing to advance their claim where they satisfy the requirements for constitutional standing and fall within an exception to the judicially created requirements for prudential standing. *See, e.g.*, *Kalorama Citizens Ass'n v. SunTrust Bank Co.*, 286 A.2d 525, 533-35 (D.C. 2022) (discussing requirements for "associational standing"); *Exec. Sandwich Shoppe*, 749 A.2d at 731 (noting courts cannot impose "prudential barriers to standing" where Congress "intends to extend standing to the full limit of Article III"); *Hooker v. Edes Home*, 579 A.2d 608, 611-15 (D.C. 1990) (discussing "special interest" exception to general rule limiting standing for actions seeking to enforce a trust to public officers).

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

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

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

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

To be sure, a motion challenging a plaintiff's constitutional standing is decided under Rule 12(b)(1), while a motion attacking plaintiff's prudential standing is properly granted under Rule 12(b)(6). *See District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412, 418 (D.C. 2017) ("[W]e treat [the] ruling [below] that the District lacks concrete-injury-in fact standing as a ruling under Super. Ct. Civ. R. 12(b)(1) and [the] ruling [below] that only retailer dealers may sue to enforce [parts of a statute] as a ruling under Super. Ct. Civ. R. 12(b)(6)."); *id.* at 418 n.8 (citing *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.24 (5th Cir. 2011)). In either case, however, the trial court "may review any evidence submitted by the parties, including affidavits, without converting the motion into a Rule 56 motion for summary judgment." *Beards*, 680 A.2d at 426 n.7. "If . . . the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." *Grayson*, 15 A.3d at 232 (quoting *Warth*, 422 U.S. at 501-02).

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

To survive a Rule 12(b)(6) motion to dismiss,

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

Moon I, 129 A.3d at 245; *see also Matthews*, 558 A.2d at 1179 n.7 (providing that a court "must consider the allegations in the plaintiff's complaint as true," where Rule 12(b)(1) motion was considered a facial attack). In light of the lengthy procedural history and extensive uncontested factual record as set forth in *Moon III* and prior orders in this case, *see, e.g.*, *Moon III*, 281 A.3d at 51-60, the Court deems unnecessary further submissions by the Parties to supplement the

evidentiary record as it currently stands. *See also UMC Dev.*, 120 A.3d at 43 ("We have never questioned . . . a trial court's consideration of facts outside the pleadings that are undisputed by the plaintiff.").

III. ANALYSIS

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

A. Law of the Case as to Plaintiffs' Standing

"It is well established that, 'once the court has decided a point in a case, that point becomes and remains settled unless or until it is reversed or modified by a higher court.'" *In re Baby Boy C.*, 630 A.2d 670, 678 (D.C. 1993). The Court of Appeals has explained:

> The "law of the case" doctrine bars a trial court from reconsidering the same question of law that was presented to and decided by another court of coordinate jurisdiction when (1) the motion under consideration is substantially similar to the one already raised

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

> before, and considered by the first court; (2) the first court's ruling is sufficiently final; and (3) the prior ruling is not clearly erroneous in light of newly presented facts or a change in substantive law.

Kumar v. D.C. Water & Sewer Auth., 25 A.3d 9, 13 (D.C. 2011) (quoting *Tompkins v. Wash. Hosp. Ctr.*, 433 A.2d 1093, 1098 (D.C. 1981)). Where the question was previously "resolved by an earlier appeal in the same case[,] . . . [t]he general rule is that 'if the issues were decided, either expressly or by necessary implication, those determinations will be binding on remand and on a subsequent appeal.'"[3] *Lynn v. Lynn*, 617 A.2d 963, 969 (D.C. 1992) (citations omitted). "Application of this general rule is limited 'only where (1) the first ruling has little or no finality, or (2) the first ruling is clearly erroneous in light of newly presented facts or a change in substantive law." *In re Baby Boy C.*, 630 A.2d at 678 (quoting *Minick v. United States*, 506 A.2d 1115, 1117 (D.C. 1986), *cert. denied*, 479 U.S. 836 (1986)). "The doctrine serves the judicial system's need to dispose of cases efficiently by discouraging . . . multiple attempts to prevail on a single question." *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980) (per curiam); *see also P.P.P. Prods., Inc. v. W&L, Inc.*, 418 A.2d 151, 153 (D.C. 1980) ("Except in a truly unique situation, no benefit flows from having one trial judge entertain what is essentially a repetitious motion and take action which has as its purpose the overruling of prior action by another trial judge." (quoting *United States v. Davis*, 330 A.2d 751, 755 (D.C. 1975)).

Plaintiffs contend that "*Moon III*'s limited non-justiciability holdings concerning whether transactions violated the purposes of UCI's original articles [of incorporation] have nothing to do

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

with the grounds upon which this Court found special interest standing, which remains as the law of the case." Pls.' Opp'n 11. Plaintiffs rely upon three previous rulings concerning their standing: (1) *Moon I*, in which the Court of Appeals concluded that "each of the plaintiffs has the requisite 'special interest' to provide it with standing to contest the complained-of actions by the defendants under both the trust and corporate wrong-doing theories," 129 A.3d at 244; (2) Judge Cordero's *Amended Omnibus Order*, in which she held that (a) Family Federation and UPF had special interest standing, (b) the two former UCI directors lacked standing after Plaintiffs abandoned their claim challenging the former directors' removal, and (c) UCJ had standing because its contract-based claims remained live, Am. Omnibus Summ. J. Order, at 15-21; and (3) Judge Anderson's *Remedies Order*, in which she agreed with and adopted Judge Cordero's conclusions regarding standing and further held that Plaintiffs had standing to seek judicial removal of members of UCI's board of directors, Remedies Order, at 53-58, 58-62. *See* Pls.' Opp'n 8-11.

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

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

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

earlier order[5] declining to dismiss the *Complaint* "on the asserted grounds of lack of personal jurisdiction, lack of standing, and failure to state a cause of action." *Moon I,* 129 A.3d at 239. The Court of Appeals examined each Plaintiff's standing within the context of all six counts of the *Complaint* and all of Plaintiffs' asserted theories of liability:

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

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

[5] *See* June 19, 2012 Order (Combs Greene, J.) (order dismissing Plaintiffs' derivative claim on UCI's behalf under Count II of the *Complaint*, dismissing UCI as Plaintiff, but otherwise denying Defendants' joint motion to dismiss). Judge Combs Greene denied Defendants' motion to certify her order for interlocutory appeal. *See* Sept. 11, 2012 Order (Combs Greene, J.) (order denying Defendants' joint motion to amend to certify the June 19, 2012 Order for interlocutory appeal).

conclusion that the trial court must engage in inquiry banned by the First Amendment . . . ." (emphasis added)).

In sum, *Moon I* did not decide and settle the issue of Plaintiffs' standing throughout the entirety of "further proceedings consistent with [its] opinion." *Id.* at 253. Instead, the Court of Appeals expressly grounded its standing determination on the constellation of Plaintiffs' counts and theories *active in the case at time of their appeal*, with the expressed appreciation that subsequent developments on remand may alter the viability of Plaintiffs' counts and theories, *see id.* at 253 n.26 (noting summary judgment may be proper "going forward" where the trial court finds that the dispute "does in fact turn on matters of doctrinal interpretation or church governance")—and the corresponding implicit understanding that subsequent developments may also alter the bases for Plaintiffs' standing. *See Kamit Inst. for Magnificent Achievers v. D.C. Pub. Charter Sch. Bd.*, 81 A.3d 1282, 1287 (D.C. 2013) ("The requisites of standing must continue to be met as long as the appeals continue."); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980) ("The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).").[6]

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

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

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

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

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

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

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

As to Judge Cordero's *Amended Omnibus Order*, Plaintiffs are correct that it "[was] certainly not preliminary" for the purposes of establishing the law of the case. Pl.'s Opp'n 10; *cf. Kritsidimas*, 411 A.2d at 373 (noting orders on pretrial motions that "demand detailed judicial consideration of specific facts" and "often require hearings and findings of fact" are sufficiently final because such "judicial exercises" are "exactly the kinds . . . the 'law of the case' doctrine is designed to prevent being repeated"). But, Dr. Moon's *Motion* instead challenges the surviving Plaintiffs' standing on grounds that were not "already raised before, and considered by," Judge Cordero in her *Amended Omnibus Order*. *Kumar*, 25 A.3d at 13. Dr. Moon specifically contests whether the three allegedly self-dealing transactions enumerated in the *Complaint* rise to the level of "extraordinary measure[s]" necessary to establish special interest standing under *Hooker*. *See* Def.'s Mem. 7-9 (characterizing the transactions as "routine," "relatively insignificant," and "everyday," in contrast to "the fundamental changes and existential reforms" in cases where plaintiffs were found to have had special interest standing). Judge Cordero neither considered nor premised her standing determinations as to any remaining Plaintiff on such an argument. *See* Am. Omnibus Summ. J. Order, at 15-18 (rejecting contention that Family Federation was not legally cognizable entity); *id.* at 18-19 (finding Family Federation had special interest standing "on the basis of its special interest as a 'benefitting entity' from UCI's fidelity to its original purposes"); *id.* at 20-21 (holding former directors lacked standing to challenge corporate acts other than their removal); *id.* at 21 (finding UPF had special interest standing because it "was an actual beneficiary of UCI and received substantial funding as a result of this

relationship"); *id.* at 21-22 (rejecting contention that UCJ lacked standing because of its donations being absolute gifts because genuine issue of material fact existed as to whether UCJ's donations were unconditional or restricted).

Therefore, Dr. Moon's *Motion* is not "substantially similar" to the prior motions that challenged Plaintiffs' standing. Thus, Judge Cordero's standing determinations cannot establish the law of the case.[8] *Kumar*, 25 A.3d at 13; *compare Tompkins*, 433 A.2d at 1098 (holding two summary judgment motions were not "substantially similar" where the first asserted the non-movant was unable to establish the standard of care and the second asserted the non-movant could not establish proximate cause and "took advantage of a significant, intervening change in substantive law on an important preliminary issue"), *with Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1196-97 (D.C. 1984) (holding motion for summary judgment and prior motion to dismiss were substantially similar because, *inter alia*, the summary judgment motion "renewed" the movant's prior statute of limitations arguments and therefore "was essentially identical" to the motion to dismiss).

[8] As the Court of Appeals clarified in *Moon* III, several factual findings underlying Judge Cordero's standing determination as to Family Federation represent impermissible forays into areas protected by the First Amendment's abstention doctrine. *Compare* Am. Omnibus Summ. J. Order, at 16 (concluding that Family Federation is "an authoritative religious entity at the head of the Unification Church religious denomination that directs other entities that are members of the denomination"), *and id.* at 18-19 (quoting Plaintiffs' exhibits, opining that "Family Federation is the Unification Church, this whole umbrella[,]" in concluding that Family Federation had a special interest as a "benefiting entity" from UCI's adherence to UCI's original purposes), *with Moon III*, 281 A.3d at 51 (finding "[i]t is not for the courts to pronounce, as the trial court did, that the Family Federation is the 'authoritative religious entity' that ordains what does and does not benefit the Unification Church."); *id.* (explaining "it is not for us to pass judgment on whose vision of the Unification Church, or Unification Movement, is more faithful to the purposes UCI was established to advance."); *id.* at 69-70 (rejecting trial court's analysis of UCI's corporate purposes).

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

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

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

mission); *id.* at 67-69 (rejecting differentiating propriety of donations by Rev. Moon's prior conduct).

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

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

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

B. Plaintiffs' Special Interest Standing

"[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Consumer Fed'n*, 346 A.2d at 727 (quoting *Warth*, 422 U.S. at 499). In the context of charitable corporations, with principles derived from those applicable to charitable trusts, *see Moon I*, 129 A.3d at 244 n.15 (noting

recognition of "applicability of the rules relating to charitable trusts to [charitable] corporations" and citing *Owen v. Bd. of Dirs. of the Wash. City Orphan Asylum*, 888 A.2d 255, 260 (D.C. 2005)), although "specific individuals or members of a class of individuals may receive a benefit [from the trust] from time to time," the "traditional rule has been that only a public officer, usually the state Attorney General, has standing to bring an action to enforce the terms of the trust" because "the interest in ensuring that charitable trust property is put to proper purposes is properly that of the community at large[.]" *Hooker*, 579 A.2d at 611-12. This traditional rule, a prudential standing requirement, is premised on the "impossibility of establishing a distinct justiciable interest on the part of a member of a large and constantly shifting benefited class" and the recurring threat and burden of "vexatious litigation that would result from recognition of a cause of action by any and all of a large number of individuals who might benefit incidentally from the trust." *Moon I*, 129 A.3d at 244 (quoting *Hooker*, 579 A.2d at 612).

In an "important exception" to the traditional rule, a private individual may have standing "in situations where [the] individual seeking enforcement of the trust has a 'special interest' in continued performance of the trust distinguishable from that of the public at large." *Id.* (quoting *Hooker*, 579 A.2d at 612). Although the Court of Appeals has declined to define with precision the term "special interest," *see Hooker*, 579 A.2d at 612 (defining "'special interest' [as] a term of uncertain scope . . . ."), the Court of Appeals has instructed that the "key consideration . . . is whether finding a justiciable interest in a given plaintiff would contravene the considerations underlying the traditional rule." *Moon I*, 129 A.3d at 244. Accordingly, for a plaintiff to have special interest standing, the plaintiff must satisfy two requirements: (1) the plaintiff must be part of a "particular class of potential beneficiaries" that "is sharply defined and its members are limited in number"; and (2) the act the plaintiff challenges must be "an extraordinary measure

threatening the existence of the trust," as opposed to an act arising from the "ordinary exercise of discretion on a matter expressly committed to the trustees." *Hooker*, 579 A.2d at 615 (noting that "[a] suit by a representative of a class of potential beneficiaries should aim to vindicate the interests of the entire class and should be addressed to trustee action that impairs those interests . . . .").

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

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

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

In *Hooker*, the "leading District of Columbia case on 'special interest' standing," *He Depu v. Yahoo! Inc.*, 950 F.3d 897, 905 (D.C. Cir. 2020), the Court of Appeals concluded that a

class of potential beneficiaries was "sufficiently narrow" to qualify for special interest standing to enforce a trust chartered for the purpose of maintaining a home for elderly and indigent widows residing in Georgetown. *Hooker*, 579 A.2d at 609, 615. There, the Court of Appeals looked to the will and charter establishing the trust, along with subsequently adopted trust bylaws, to identify a limited class of beneficiaries consisting of individuals who are "(1) female, (2) indigent, (3) aged, and (4) widowed[,]" (5) in good health, and (6) residents of Georgetown for the five years immediately prior to their application to live in the home. *Id.* at 615. The Court of Appeals found instructive the decision in *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752 (N.Y. 1985) which found a more expansive class than that in *Hooker* possessed standing. The *Alco Gravure* court defined the pool of parties with standing to be "the employees of corporations in which [the settlor] was involved *and* the employees of successors of such corporations." *Hooker*, 579 A.2d at 615 (quoting *Alco Gravure*, 479 N.E.2d at 756). The Court of Appeals expressly noted that the "definite criteria [in *Hooker*] narrow the instant class and identify its present members with at least as much particularity as the limitation in *Alco Gravure*." *Id.*

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

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

Dr. Moon is correct that *Moon III* rejected attempts to distinguish the propriety of UCI's donations based on the receiving entity's affiliation (or lack thereof) with the Unification Church, *see* Def.'s Mem. 9 (citing *Moon III*, 281 A.3d at 68-70 (noting UCI's history of donating to unaffiliated, nonsectarian entities and Plaintiffs' concession that such donations were consistent with UCI's broad corporate purposes)). The standing inquiry, however, turns not on the nonjusticiable issues arising out of whether donations to nonaffiliated entities not approved by Rev. Moon were proper. *See Moon III*, 281 A.3d at 67-70. Rather, here, the standing question turns simply upon whether Plaintiffs share some criteria beyond being potential beneficiaries that set them apart, in number and interest, from the general public. *Hooker*, 579

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

A.3d at 614. The First Amendment does not preclude a determination of UCI's potential beneficiaries for purposes of the standing inquiry because none of the criteria Plaintiffs identify require the Court to "decree that the Unification Church is a hierarchical organization," or to "resolv[e] a dispute as to the identity" of the leader of the Unification Church (presuming the Unification Church is so organized), or to rely upon findings "as to which party had 'spiritual and charismatic authority' over the Church and its affiliates at the time the relevant [donations] were approved." *Moon III*, 281 A.3d at 69.

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

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

Dr. Moon contends that Plaintiffs no longer have special interest standing because Plaintiffs' surviving self-dealing claim "only . . . relate[s] to two routine and relatively insignificant transactions undertaken by certain UCI subsidiaries." Def.'s Mem. 8. Dr. Moon cites the absence of any factual allegations in the *Complaint*, along with the lack of any facts in the record, "that purport to substantiate how these two transactions could be 'extraordinary' within the meaning of *Hooker*." *Id.* at 9.

In opposition, Plaintiffs contend that Dr. Moon "mischaracterizes" the scope of the remaining claims by excluding transactions that fall within the *Complaint*'s allegation of "a scheme of self-dealing designed to divert corporate assets to [Dr. Moon's] personal pursuits." Pls.' Opp'n 5-6 (citing Compl. ¶¶ 4-5, 82, 115, 117). Plaintiffs specifically identify UCI's donations to KIF as "an extraordinary measure that fundamentally changed UCI," thereby giving rise to special interest standing under *Hooker*. *Id.* at 11-16 (contending KIF transaction was extraordinary because of (1) the scale of transaction, (2) the creation and use of entities that

"intentionally deprived UCI of any oversight or control over" the transferred assets, (3) the corporate decision-making's inconsistency with "all corporate norms," (4) the concealment of transactions, (5) the pretextual reasons for transfer, and (6) Dr. Moon's new statements "taking credit for the post-transfer development" of real estate project).

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

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

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

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

First, the *Complaint* does not name KIF. *See* July 6, 2023 Order, at 12-14 (noting *Complaint* did not explicitly name KIF, in contrast to naming and describing of "other entities and assets involved in the 'alleged scheme of self-dealing'"). Nor does the *Complaint* adequately plead facts permitting the Court to draw the inference that Dr. Moon was on "both sides of the transaction[s]" between UCI and KIF or otherwise "expect[ed] to derive personal financial benefit" therefrom, necessary to plausibly allege that the transactions were self-dealing. *See Behradrezaee v. Dashtara*, 910 A.2d 349, 363 (D.C. 2006) (citing *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)); July 6, 2023 Order, at 14-16 (noting lack of factual matter demonstrating individual directors were on both sides of transactions between UCI and KIF or expected to derive personal financial benefit from transactions). Indeed, as the Court explained in its July 6, 2023 Order:

> Plaintiffs . . . fail to specify the particular transactions giving rise to the self-dealing claim. Instead, they opt for a boilerplate sentence reincorporating all allegations set forth in the *Complaint*. [Compl. ¶ 113.] Among the factual allegations preceding the *Complaint*'s statement of claims, Plaintiffs identify three transactions as "improper self-dealing designed to enrich [Dr. Moon]," *id.* at ¶ 48:
>
> > 49. Specifically, Preston Moon, using his powers as President and Chairman of UCI, caused True World Group, LLC ("TWG"), an indirect subsidiary of UCI, to purchase property located at 24 Link Drive, Rockleigh, New Jersey (hereinafter "the Rockleigh Building") from UV Sales, Inc. ("UV Sales"), an entity wholly owned by United Vision Group, Inc. ("UVG"), which in turn is wholly owned and controlled by Preston Moon himself. Under the terms of the sale, TWG agreed to pay $5.9 million to UV Sales for the Rockleigh Building. The fair market value of the Rockleigh Building at the time of the sale was less than the $5.9 million purchase price, and the sale served no legitimate business purpose for TWG or UCI.
> >
> > 50. Preston Moon, using his powers as President and Chairman of UCI, also caused UCI to lend two million dollars to UVG.

> 51. Preston Moon, using his powers as President and Chairman of UCI, also caused One Up Enterprises ("One Up"), a direct subsidiary of UCI, to enter into a consulting agreement with UVG Strategic Consulting LLC ("UVGSC"), an entity wholly owned by UVG. One Up agreed to pay $120,000 per month to UVGSC. One Up made these payments to UVGSC despite the fact that the consulting agreement served no legitimate business purpose for One Up or UCI.

July 6, 2023 Order, at 18-19 (quoting Compl. ¶¶ 49-51). And last, Plaintiffs' reliance upon the Hon. John M. Mott's reading of paragraph 117, as set forth in the July 22, 2016 *Memorandum Opinion* memorializing the issuance of a preliminary injunction, *see* Pls.' Opp'n 6 n.1, is misplaced. *See* July 6, 2023 Order, at 12-13 n.3 (rejecting Plaintiffs' reliance on footnote in the July 22, 2016 *Memorandum Opinion*, construing *Complaint* in setting forth preliminary injunction to extend self-dealing claim to include KIF transactions, because (1) *Moon III* vitiated basis for factual inquiries underlying determination; (2) scope of injunction was not premised on self-dealing; (3) preliminary injunction was not law of the case; and (4) claim of breach of fiduciary duty premised on diversion of assets to impermissible purpose is "substantively different" from claim based on alleged self-interest in KIF or transactions with KIF).

In short, Plaintiffs' self-dealing claim extends only to the three transactions specifically pleaded in paragraphs 49 to 51 of the *Complaint*. If Plaintiffs intended the GPF and KIF transactions to fall within the category of self-dealing transactions, Plaintiffs certainly knew how to do so with the same specificity as the three detailed in paragraphs 49 to 51. Absent particularized pleading concerning other transactions, including the GPF and KIF donations, that satisfies the requirements of Rules 8 and 12 of the Superior Court Rules of Civil Procedure, the Court "must decline to construe the *Complaint* to extend beyond its plain text, factual content, and reasonable inferences drawn therefrom and must reject Plaintiffs' contention that the GPF and KIF transactions fall within Count II's self-dealing claim" against Dr. Moon. July 6, 2023

Order, at 16; *see also id.* at 12-13 n.3 (noting Plaintiffs "learned about the KIF transactions after filing their *Complaint* . . . and thereafter engaged in substantial discovery concerning KIF" but "never sought leave to amend the *Complaint* to include the KIF (or GPF) transactions among the alleged self-dealing transactions enumerated therein"); *cf. United States ex rel. Spay v. CVS Caremark Corp.*, Civil No. 09-4672, 2013 U.S. Dist. LEXIS 121554, at *17-23 (E.D. Pa. Aug. 27, 2013) (restricting discovery, in False Claims Act suit alleging nationwide claims, to three of six practices where plaintiff expressly pleaded specific fraudulent practices occurred nationwide and rejecting nationwide discovery as to remaining three practices because plaintiff did not plead that latter practices were committed on a nationwide basis and such was consistent with understanding of defendants and court at earlier stages of litigation).

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

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

[10] The Court of Appeals previously observed that "[a]ll plaintiffs are challenging an extraordinary measure—fundamentally changing the purpose of UCI and taking steps to divest itself from the Unification Church." *Moon I*, 129 A.3d at 245 n.18. As explained *supra*, *Moon I* expressly relied on all of Plaintiffs' claims *active at the time of the appeal*—namely, all claims alleged in the *Complaint*, *see supra* Part III-A-1—and evaluated the nature of the alleged acts in

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

In *Hooker*, the Court of Appeals distinguished "extraordinary measures" from acts arising from the "ordinary exercise of discretion on a matter expressly committed" to trustees of a charitable trust consistent with the rationale underlying the traditional rule: limiting recurring litigation to avoid "clog[ging] court dockets and dissipat[ing] trust assets with attacks on ordinary exercises of trustees' judgment." *Id.* In that case, where the trust at issue was chartered for operating a home for elderly indigent widows, the challenged acts consisted of a proposal to shutter and sell the home and transfer trust assets and operations to a nearby charitable residential care facility for purposes of consolidation. *Id.* at 610. The Court of Appeals held that the challenged acts were extraordinary and gave rise to special interest standing because the acts "represent[ed] a major change from the manner in which the trust has been administered in the past": (1) the trustees' intent to sell the home and consolidate its operations with another entity "raise[d] substantial questions about the compatibility of [the acts] with the settlor's intent" and "portend[ed] the loss of [the trust's] independent identity, which may adversely affect the interests of all beneficiaries as a class"; (2) consolidation would divest the trustees of any discernable duties; and (3) merger of the home with a residential care facility would diverge from the trustees' longstanding practice. *Id.* at 616-17. The Court of Appeals further opined:

> It is not an exaggeration, in other words, to say that the Trustees, and all present and future residents of the [home], stand at a crossroads they are unlikely to face again. It may in fact be that the

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

> merger the Trustees propose is, as they contend, essential to preserving the trust in changed times—again, an issue not for us presently to decide. What is clear is that the outcome of this action will determine whether the institution undergoes the fundamental change the Trustees propose. When, as in *Kania* [*v. Chatham*, 254 S.E.2d 528 (N.C. 1979)], the injury flows from an ordinary exercise of discretion by the trustees in the course of administering the trust—such as the selection among eligible recipients of a benefit—the need to prevent costly and recurring judicial intervention in decisionmaking justifies denial of standing to individual potential beneficiaries. But when, as here, the Trustees decide upon a basic change affecting the interests of the entire class of intended beneficiaries—and one alleged to be inconsistent with the settlor's will—the value of denying representatives of the class access to judicial process to challenge that decision is greatly diminished.

Hooker, 579 A.2d at 617.

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

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

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

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

C. Other Bases for Standing

Dr. Moon contends that each Plaintiff lacks any other basis for standing. *See* Def.'s Mem. 10-12. Plaintiffs do not directly address Dr. Moon's arguments on this issue. *See* Pls.' Opp'n 18-19 (contending proper standard requires presuming Plaintiffs prevail on the merits on all claims and theories, including Plaintiffs' invocation of the "fraud or collusion exception" to First Amendment's religious abstention doctrine); *id.* at 19-20 (contending Dr. Moon's standing challenge fails if the "fraud or collusion exception" applies); *id.* at 20 (contending that, should Plaintiffs lack standing, dismissal without prejudice is proper disposition).

The Court observes that Plaintiffs' derivative claim on behalf of UCI was dismissed prior to *Moon I*. *See* June 19, 2012 Order, at 20-23, 45 (Combs Greene, J.) (finding Plaintiffs lacked

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

The remaining Plaintiffs do not have any other basis for standing. As to Family Federation, the Court previously identified another basis for Family Federation's standing premised on "its special interest as a 'benefiting entity' from UCI's fidelity to its original purposes," namely, "to further the mission of the Family Federation and the Unification Church." *See* Am. Omnibus Summ. J. Order, at 18-19 (citing *Moon I*, 129 A.3d at 245, and referencing exhibits providing that "Family Federation is Unification Church, this whole umbrella"). Dr. Moon is correct that *Moon III* plainly forecloses any pronouncement that Family Federation is the "authoritative religious entity" of the Unification Church, or that Family Federation and Unification Church are one and the same. *See Moon III*, 281 A.3d at 51, 62 n.17, 65 n.23 (rejecting determination that Family Federation headed the Unification Church); *id.* at 64-66 (holding question of effect of amending UCI's articles to replace "Unification Church" with "Unification Movement" was nonjusticiable); *cf.* Def.'s Mem. 11. Family Federation's alleged role as a superior or benefiting entity of the Unification Church, or an all-encompassing entity coterminous with the "Unification Church," therefore cannot serve as a basis for standing. *See Moon III*, 281 A.3d at 61 ("[A] civil court may not ordain matters of 'church polity or administration,' by, for instance, 'determin[ing] the religious leader of a religious institution.'" (citations omitted)); *Askew v. Trs. of the Gen. Assembly of the Church of the Lord Jesus Christ of*

the Apostolic Faith, Inc., 776 F. Supp. 2d 25, 30 (E.D. Pa. 2011) ("[A] dispute over membership in a church constitutes a core ecclesiastical matter."), *aff'd*, 684 F.3d 413 (3d Cir. 2012), *cert. denied*, 568 U.S. 1125 (2013); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."). Accordingly, Family Federation lacks standing to pursue its remaining self-dealing claim against Dr. Moon.

As to UCJ, the Court previously identified a basis for standing grounded in UCJ's contract and quasi-contract claims against UCI and the factual dispute concerning whether its gifts to UCI were conditional or absolute. *See* Am. Omnibus Summ. J. Order, at 21; *Moon I*, 129 A.3d at 246-47. The Court observes that in *Moon I*, the Court of Appeals cited the RESTATEMENT (THIRD) OF TRUSTS for the principle that, where a donor makes a conditional gift to a charitable trust, the donor enjoys special interest standing "'to maintain a suit against the trustee-organization,' although 'only to enforce the restriction.'" *Moon I*, 129 A.3d at 247 n.20 (quoting RESTATEMENT (THIRD) OF TRUSTS § 94, cmt. g(3) (AM. L. INST. 2012)). Plaintiffs' self-dealing claim goes beyond "only . . . enforc[ing] the restriction[s]" UCJ allegedly placed on its contributions to UCI. *Moon I*, 129 A.3d at 247 n.20. UCJ's alternative basis for special interest standing does not remedy its lack of special interest standing, under *Hooker*, to challenge acts committed to the sound and sole discretion of UCI's board of directors. *See supra* Part III-B-2-b. Thus, Dr. Moon is correct that UCJ's alternative basis for special interest standing "goes only to [its] contract claims, Counts IV-VI; it cannot support standing to pursue 'self-dealing' claims against Dr. Moon." Def.'s Mem. 12.

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

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

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

D. Appropriate Disposition

Plaintiffs contend that the Court cannot dismiss their claims with prejudice "solely for lack of standing." Pls.' Opp'n 20 (citing *UMC Dev.*, 120 A.3d at 48-49). Highlighting that "the 2011 Complaint has not been amended," Plaintiffs further contend that the Court "should not grant [Dr. Moon's] Motion without first granting Plaintiffs leave to amend, holding an evidentiary hearing, or both." *Id.* Dr. Moon opposes any amendment considering the "over 12 years of litigation" and the futility of any amendment "in light of *Moon III*." Def.'s Reply 18.

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

Plaintiffs are correct that, ordinarily, the "appropriate remedy" for lack of standing is "dismissal without prejudice" because "a defect of standing is . . . a defect in subject matter jurisdiction." *UMC Dev.*, 120 A.3d at 43-44. Absent jurisdiction, a court cannot adjudicate the merits of the underlying matter. *See Hormel Foods Corp.*, 258 A.3d at 191. Because a dismissal with prejudice operates as "a determination of the merits of the underlying claim," a court generally cannot dismiss a matter with prejudice for want of standing. *See, e.g.*, *Jibril v. Mayorkas*, 20 F.4th 804, 813 (D.C. Cir. 2021) ("[D]ismissal of these claims should have been without prejudice, as dismissal of the claims for lack of standing is not an adjudication on the merits."); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1217 (10th Cir. 2006) (identifying "two important analytical reasons for requiring that a dismissal on jurisdictional grounds be without prejudice": (1) dismissal with prejudice "may improperly prevent a litigant from refiling his complaint in another court that does have jurisdiction"; and (2) a court without jurisdiction over a claim "perforce lacks jurisdiction to make any determination of the merits of the underlying claim"). Plaintiffs' reliance on this general rule governing dismissals for lack of

standing, however, ignores the specific procedural posture of, and related nuances in standing jurisprudence implicated by, Dr. Moon's instant *Motion*.

As discussed *supra*, Dr. Moon mounts a *facial* attack upon Plaintiffs' *prudential* standing. *See supra* Part II. "When a party makes a facial attack under Rule 12(b)(1), *the court treats the motion as one filed under Rule 12(b)(6)* . . . ." *Matthews*, 558 A.2d at 1179 n.7 (emphasis added). Similarly, and most significant here, a challenge to a party's prudential standing is properly decided under Rule 12(b)(6), as opposed to a challenge to a party's constitutional standing, which is decided under Rule 12(b)(1). *See ExxonMobil Oil*, 172 A.3d at 418. The difference in the applicable rule arises from the difference in origin of each type of standing, as highlighted by Dr. Moon's standing challenge. Dr. Moon does not contend that Plaintiffs have failed to allege an injury-in-fact fairly traceable to Defendants' conduct that is likely to be redressed by Plaintiffs' requested relief—*i.e.*, a live "case or controversy" as required for constitutional standing. *Exec. Sandwich Shoppe*, 749 A.2d at 731; *Grayson*, 15 A.3d at 234 n.36 (quoting *Lujan*, 504 U.S. at 560-61). Rather, Dr. Moon contends that Plaintiffs have not articulated a basis to overcome the "judicially self-imposed limits on the exercise of . . . jurisdiction." *Exec. Sandwich Shoppe*, 749 A.2d at 731. In other words, *given that the dispute lies within the Court's subject matter jurisdiction*, Plaintiffs have not demonstrated that they are the proper parties to "invoke the [Court's] decisional and remedial power" to adjudicate the underlying live dispute. *Consumer Fed'n*, 346 A.2d at 727 (quoting *Warth*, 422 U.S. at 499); *see Hooker*, 579 A.2d at 614-15 (citing "policy reasons for limiting standing" as rationale for limiting special interest standing exception to small, sharply defined class of potential beneficiaries challenging extraordinary acts of trust administration). Accordingly, "the problem is one of prudential rather than constitutional standing, so it [does] not actually affect subject

matter jurisdiction." *Doermer v. Callen*, 847 F.3d 522, 526 n.1 (7th Cir. 2017); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014) ("[T]he absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional *power* to adjudicate the case."); *cf. Wilderness Soc'y v. Kane Cnty.*, 632 F.3d 1162, 1168 n.1 (10th Cir. 2011) ("[P]rudential standing is not a jurisdictional limitation and may be waived . . . ."). The language of *UMC Development*, requiring dismissal without prejudice where a plaintiff lacks standing, *see UMC Dev.*, 120 A.3d at 39, 48-50, is not applicable here. In *UMC Development*, the Court of Appeals addressed a successful challenge to *constitutional* standing and held that the trial court lacked subject matter jurisdiction over the claims at issue—and, thus, the power to dismiss with prejudice. *See id.* at 45-46 (finding plaintiffs failed to "satisfy the traceability element of standing"); *id.* at 46-47 (finding plaintiffs failed to substantiate actual injury).

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

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

2. Plaintiffs' requests are without merit.

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

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

> Leave to amend a complaint after the filing of responsive pleadings (as in this case) is a matter within the discretion of the trial court. *See Crowley v. North American Telecommunications Ass'n*, 691 A.2d 1169. 1174 (D.C. 1997); *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A.2d 495, 501 (D.C. 1994); Super. Ct. Civil Rule 15(a). However, the policy that favors resolution of disputes on the merits creates a "virtual presumption" that leave to amend should be granted unless there are sound reasons for denying it. *See Johnson*, 641 A.2d at 501. Factors affecting the court's discretion include: "(1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party." *Crowley*, 691 A.2d at 1174. The lateness of a motion for leave to amend, however, may justify its denial if the moving party fails to state satisfactory reasons for the tardy filing and if the granting of the motion would require new or additional discovery. *Eagle Wine & Liquor Co. v. Silverberg Electric Co.*, 402 A.2d 31, 35 (D.C. 1979).

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

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

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

[13] Plaintiffs suggest that, at the very least, they would amend the *Complaint* to include UCI's donations to GPF and KIF alongside "additional self-dealing" transactions. *See* Pls.' Opp'n 5-7. Notwithstanding the expansion of the scope of the self-dealing claim such an amendment would effect, Plaintiffs' contention that they "could not have alleged the secretive KIF transactions in their Complaint because Plaintiffs only learned of these transactions in the context of sanctions discovery," *id.* at 6 n.1, does not justify granting leave to amend. Plaintiffs discovered transactions beyond the three specifically identified in the *Complaint* by 2013 at the earliest and 2017 at the latest—well in advance of the close of discovery and the deadline for filing dispositive motions. *See, e.g.*, *id.* (citing Plaintiffs' own discovery filings); *see also* July 6, 2023 Order, at 12-13 n.3 ("[T]he Court finds it curious that Plaintiffs never sought leave to amend the *Complaint* to include the KIF (or GPF) transactions among the alleged self-dealing transactions enumerated therein."). As one federal district court explained:

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

prejudice Defendants. *See* Aug. 11, 2023 Omnibus Order, at 30-37 (finding Plaintiffs' did not demonstrate excusable neglect in making belated discovery requests because (1) granting requests would plainly prejudice Defendants; (2) delay was significant and granting request would almost certainly extend delay; (3) Plaintiffs' premise for delay was unsatisfactory and legally unsound; and (4) Plaintiffs' request came after this Court's oral reminder that discovery was closed); *id.* at 37-43 (concluding Plaintiffs did not demonstrate good cause for similar reasons and failure to comply with procedural requirement to proffer proposal with timetable and specifics); *see, e.g.*, *Parish v. Frazier*, 195 F.3d 761, 763-64 (5th Cir. 1999) (affirming denial of leave to amend where motion was made seven months after filing of complaint, delay "could have been avoided by due diligence," and proposed amendment would increase delay and expand "the allegations beyond the scope of the initial complaint"). As to the third factor, "the record does not clearly indicate that Plaintiffs acted in bad faith in making their request." Aug. 11, 2023 Omnibus Order, at 36; *see also* June 15, 2023 Order, at 21 n.9 (declining to sanction Plaintiffs over "bad faith in continuing to pursue doomed claims against" Defendants); *but see, e.g.*, *United States ex rel. Nicholson v. Medcom Carolinas, Inc.*, 42 F.4th 185, 197 (4th Cir. 2022) ("Delay . . . is often evidence that goes to prove bad faith and prejudice."); *Williams v. Savage*, 569 F. Supp. 2d 99, 107-08 (D.D.C. 2008) (noting dilatory motive "exists where a party has ample time to amend a pleading before a court takes dispositive action and fails to do so").

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

Accordingly, in addition to Plaintiffs' amendments likely "requir[ing] new or additional discovery," *Pannell*, 829 A.2d at 477; *see* Aug. 11, 2023 Omnibus Order, at 39-41 (discussing Plaintiffs' fatally vague and procedurally noncompliant proposal for reopening discovery), "sound reasons" exist to deny Plaintiffs' request. *See, e.g.*, *Edwards v. Safeway, Inc.*, 216 A.3d 17, 19-20 (D.C. 2019) (affirming denial of leave to amend complaint where case had been pending for eighteen months, delay was not explained, and additional discovery would be required on proposed amendments); *Va. Acad. of Clinical Psychs. v. Grp. Hospitalization & Med. Servs., Inc.*, 878 A.2d 1226, 1239-41 (D.C. 2005) (affirming denial of leave to amend complaint to add new legal theory where motion to amend was made seven months after close of discovery, more than two years after filing of initial complaint, and after conclusion of summary judgment briefing and movant did not offer satisfactory explanation for delay); *Hoffman v. United States*, 266 F. Supp. 2d 27, 32-35 (D.D.C. 2003) (denying leave to amend because of (1) undue delay stemming from litigation "for nearly twenty years" across "two different district courts, three appellate proceedings, two appellate rehearings, two unsuccessful certiorari petitions," and latest remand; (2) undue prejudice to defendants through expansion of issues on remand; and (3) likely bad faith inferred from lack of any explanation for delay and limited scope of permissible arguments as ordered on remand), *aff'd*, 96 F. App'x 717 (Fed. Cir. 2004), *cert. denied*, 543 U.S. 1002 (2004); *Doe v. McMillan*, 566 F.2d 713, 720 (D.C. Cir. 1977) (affirming denial of leave to amend where "appellants' complaint had been before the district court, [the federal court of appeals], and the Supreme Court for over thirty-eight months before appellants filed the first of their motions for leave to file an amended complaint" and "no sound reason" existed for "failure to seek amendment earlier").

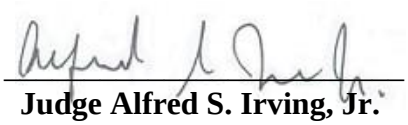
Therefore, in view of the extensive and protracted proceedings in this case, Plaintiffs' lack of prudential standing to advance their remaining claims on remand, and the lack of merit in Plaintiffs' requests, the Court will dismiss the *Complaint* with prejudice under Rule 12(b)(6) of the Superior Court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

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

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

ORDERED that the *Complaint* in the above-captioned matter, filed on May 11, 2011, is **DISMISSED WITH PREJUDICE**; and it is further

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



Judge Alfred S. Irving, Jr.

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