

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

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<b>THE FAMILY FEDERATION FOR WORLD</b>	)	
<b>PEACE AND UNIFICATION</b>	)	
<b>INTERNATIONAL, et al.</b>	)	<b>Civil No. 2011 CA 003721 B</b>
	)	
<b>Plaintiffs,</b>	)	<b>Civil 1, Calendar 4</b>
	)	
<b>v.</b>	)	<b>Judge Natalia M. Combs Greene</b>
	)	
<b>HYUN JIN MOON, et al.</b>	)	<b>Next Event: Initial Conference</b>
	)	<b>September 23, 2011 9:30 a.m.</b>
<b>Defendants.</b>	)	
<hr/>	)	

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR JOINT MOTION TO  
DISMISS THE COMPLAINT**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iv

INTRODUCTION ..... 1

ARGUMENT.....2

    I.    COUNT I FOR BREACH OF TRUST MUST BE DISMISSED BOTH  
          BECAUSE PLAINTIFFS LACK STANDING AND FOR FAILURE  
          TO STATE A CLAIM. ....2

        A.    None of the Plaintiffs Has Standing to Assert a Claim Against  
              Preston Moon for Breach of the Alleged Oral Charitable Trust.....2

            1.    The Family Federation and UPF do not have standing as  
                  alleged beneficiaries.....2

            2.    UCJ does not have standing as an alleged settlor. ....3

            3.    Joo and Kim do not have standing as co-trustees. ....5

        B.    Count I Does Not Plead Essential Elements of Trust Formation.....6

            1.    Plaintiffs have failed to plead facts from which the Court  
                  reasonably can infer that Reverend Moon intended to form  
                  a trust.....6

            2.    Plaintiffs fail to allege that Reverend Moon transferred title  
                  to Dr. Pak. ....8

            3.    Plaintiffs have not alleged that Reverend Moon had a  
                  transferrable interest in the bank account funds. ....9

        C.    Plaintiffs Fail to Allege That Preston Moon Is a Trustee. ....10

        D.    The Oral Charitable Trust Terminated Upon Transfer of Property to  
              UCI. ....10

    II.   COUNT II MUST BE DISMISSED BOTH FOR LACK OF STANDING  
          AND FAILURE TO STATE A CLAIM. ....11

        A.    Plaintiffs Lack Standing to Bring Both Derivative and Direct  
              Claims. ....11

1.	Plaintiffs lack standing to bring a derivative suit for breach of fiduciary duty or <i>ultra vires</i> acts.....	11
2.	Plaintiffs do not have standing to bring derivative or direct claims for breach of fiduciary duty or <i>ultra vires</i> acts.....	12
3.	Plaintiffs do not have “special interest” standing. ....	12
(a)	Plaintiffs are not “clearly identified” beneficiaries.....	13
(b)	The category of potential beneficiaries is not “sharply defined” or limited in number; nor do Plaintiffs challenge any extraordinary acts of UCI’s Board.....	13
(c)	Joo, Kim, and UCJ do not have “special interest” standing. ....	16
B.	The Complaint Fails to State a Claim for <i>Ultra Vires</i> Acts.....	17
III.	COUNT III MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM. ....	18
IV.	PLAINTIFFS’ AIDING AND ABETTING CLAIMS AGAINST INDIVIDUAL DEFENDANTS MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM. ....	19
V.	COUNTS IV, V, AND VI MUST BE DISMISSED BOTH FOR LACK OF STANDING AND FOR FAILURE TO STATE A CLAIM. ....	20
A.	UCJ Lacks Standing Because It Did Not Reserve a Right to Sue or to Control Restricted Gifts.....	20
B.	UCJ’s Correspondence and Argument Demonstrate the Lack of a Contract.....	22
C.	Any Equitable Relief Based on UCI’s Use of UCJ’s Donations Would By Law Benefit the Public, Not UCJ.....	22
VI.	THE CLAIMS AGAINST INDIVIDUAL DEFENDANTS MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION. ....	23
A.	The Fiduciary Shield Doctrine Bars Personal Jurisdiction Over All Individual Defendants.....	23
B.	Plaintiffs Fail to Allege Specific Links to the District of Columbia for Each Individual Defendant (Except Preston Moon) and Also Fail to Allege Facts That Support Jurisdiction Over Preston Moon. ....	24

CONCLUSION.....25

## TABLE OF AUTHORITIES

### CASES

<i>Ashcroft v. Iqbal</i> , 129 S.Ct. 1937 (2009) .....	1, 2
<i>Bd. of Directors of the Wash. City Orphan Asylum v. Bd. of Trustees of the Wash City Orphan Asylum</i> , 798 A.2d 1068 (D.C. 2002) .....	14, 16
<i>Bishop and Diocese of Colorado v. Mote</i> , 716 P.2d 85 (Colo. 1986) .....	18
<i>Cabaniss v. Cabaniss</i> , 464 A.2d 87 (D.C. 1983).....	<i>passim</i>
<i>Carl J. Herzog Found., Inc. v. Univ. of Bridgeport</i> , 699 A.2d 995 (Conn. 1997).....	20, 23
<i>Daley v. Alpha Kappa Alpha Sorority, Inc.</i> , __ A.3d __, No. 10-cv-220, 2011 WL 3610718 (D.C. Aug. 18, 2011) .....	24
<i>Dodge v. Trustees of Randolph-Macon Woman's Coll.</i> , 661 S.E.2d 805 (Va. 2008).....	20
<i>Duggan v. Keto</i> , 554 A.2d 1126 (D.C. 1989) .....	8
<i>Fielding v. BT Alex Brown</i> , 116 F. Supp. 2d 59 (D.D.C. 2000) .....	8
<i>Flocco v. State Farm Mut. Auto. Ins. Co.</i> , 752 A.2d 147 (D.D.C. 2000) .....	7, 18, 24
<i>Halberstam v. Welch</i> , 705 F.2d 472 (D.C. Cir. 1983) .....	19
<i>Hardt v. Vitae Found., Inc.</i> , 302 S.W.3d 133 (Mo. App. 2009) .....	20, 21, 23
<i>Hooker v. Edes Home</i> , 579 A.2d 608 (D.C. 1990) .....	12, 13, 14
<i>In re Hoff</i> , 644 F.3d 244 (5th Cir. 2011).....	3, 10
<i>In re Manhattan Eye, Ear &amp; Throat Hosp.</i> , 715 N.Y.S.2d 575 (N.Y. Sup. Ct. 1999) .....	14
<i>Invamed, Inc. v. Barr Labs., Inc.</i> , 22 F. Supp. 2d 210 (S.D.N.Y. 1998) .....	19
<i>Mamo v. Dist. of Columbia</i> , 934 A.2d 376 (D.C. 2007).....	23
<i>Mazza v. Housecraft LLC</i> , 22 A.3d 820 (D.C. 2011) .....	2
<i>Mazza v. Housecraft LLC</i> , 18 A.3d 786 (D.C. 2011) .....	2
<i>Moss v. Stockard</i> , 580 A.2d 1011 (D.C. 1990).....	23
<i>Murphy v. PriceWaterhouseCoopers, LLP</i> , 357 F. Supp. 2d 230 (D.D.C. 2004) .....	25
<i>Nat'l Confederation. of Am. Ethic Grps. v. Genys</i> , 457 A.2d 395 (D.C. 1983).....	17

<i>Nat'l R.R. Passenger Corp. v. Veolia Trans. Servs., Inc.</i> , 592 F. Supp. 2d 86 (D.D.C. 2009) .....	19
<i>NAWA USA, Inc. v. Bottler</i> , 533 F. Supp. 2d 52 (D.D.C. 2008).....	25
<i>Oppenheim v. Sterling</i> , 368 F.2d 516 (10th Cir. 1966).....	7
<i>Ottenberg v. Ottenberg</i> , 194 F. Supp. 98 (D.D.C. 1961).....	8, 9
<i>Overseas Partners, Inc. v. PROGEN</i> , 15 F. Supp. 2d 47 (D.D.C. 1998) .....	25
<i>Pearson v. Garrett-Evangelical Theological Seminary, Inc.</i> , No. 11-cv-0019, 2011 WL 1838881 (N.D. Ill. May13, 2011).....	21
<i>Potomac Dev. Corp. v. Dist. of Columbia</i> , ___ A.3d ___, No. 10-cv-632, 2011 WL 4084516 (D.C. Sept. 15, 2011).....	1, 2
<i>Protestant Episcopal Church v. Barker</i> , 115 Cal. App. 3d 599 (Cal. App. Ct. 1981).....	18
<i>Queen of Angels Hosp. v. Younger</i> , 66 Cal. App. 3d 359 (Cal. App. 2d Dist. 1977) .....	15
<i>Sarkeys v. Indep. Sch. Dist. No. 40</i> , 592 P.2d 529 (Okl. 1979) .....	23
<i>Save Immaculata/Dunblane, Inc. v. Immaculata Prep. Sch. Inc.</i> , 514 A.2d 1152 (D.C. 1986) .....	7, 11, 18
<i>Smithers v. St. Luke's-Roosevelt Hosp. Ctr.</i> , 723 N.Y.S. 2d 426 (N.Y. App. 2001) .....	16, 21
<i>Stern v. J. Nicholas Produce Co.</i> , 486 A.2d 84 (D.C. 1984) .....	8
<i>Stock v. Augsburg College</i> , No. C1-01-1673, 2002 WL 555944 (Minn. Ct. App. Apr. 16, 2002) .....	23
<i>United States v. Moon</i> , 718 F.2d 1210 (2nd Cir. 1983).....	22
<i>Weaver v. Wood</i> , 680 N.E.2d 918 (Mass. 1997).....	3
<i>YMCA v. Covington</i> , 484 A.2d 589 (D.C. 1984) .....	14

**STATUTES**

D.C. Code § 19-1301.03 .....	3, 4
D.C. Code § 19-1302.02 .....	25
D.C. Code § 19-1304.05 .....	5
D.C. Code § 19-1310.01 .....	5
D.C. Code § 29-301.06 .....	11

**RESTATEMENTS**

Restatement (Second) of Trusts § 3 (1959) ..... 3

Restatement (Second) of Trusts § 25 (1959) ..... 6

Restatement (Second) of Trusts § 190 (1959) ..... 10

Restatement (Second) of Trusts § 391 (1959) ..... 4

Restatement (Third) of Trusts § 28 (2007) ..... 20, 22

Restatement (Third) of Trusts § 86 (2007) ..... 10

Restatement (Third) of Trusts § 94 (Tenatative Draft No. 5, 2009) ..... 16

**UNIFORM TRUST CODE**

Uniform Trust Code § 110 (2005) ..... 2

Uniform Trust Code § 405 (2005) ..... 5

Uniform Trust Code § 1001 (2005) ..... 2, 5

**OTHER AUTHORITIES**

Am. Jur. Corp. § 1732 (2011) ..... 17

Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 Univ. Haw. L. Rev. 593 (1999) ..... 12

## INTRODUCTION

UCI's original and amended Articles of Incorporation and its Bylaws are clear: UCI is a self-governing corporation organized pursuant to the District of Columbia Nonprofit Corporation Act. It is expressly not subject to any external control. Further, in accordance with its controlling governance documents, UCI's Directors owe fiduciary duties only to the corporation, and UCI's Chairman and its President report only to the Board of Directors. Of particular import, the Articles describe Reverend Moon as the "inspiration" for UCI's founding, not as the ultimate decision-maker with respect to UCI's use and management of its assets or with respect to the appointment and removal of Directors.

UCI's unambiguous self-governing structure demands dismissal of Plaintiffs' claims. Plaintiffs attempt to overcome this result by asking the Court to disregard UCI's controlling governance documents and instead to adopt tenuous and disfavored legal theories, such as an oral charitable trust, a fiduciary-agent relationship established by conduct, and a donation as an oral contract. But Plaintiffs' Complaint contains no facts that warrant elevating these ambiguous concepts over the clear self-governing principles that are articulated in UCI's Articles and Bylaws. In essence, Plaintiffs maintain that, notwithstanding the gaping holes in their theories, the Court should trust that they will be able to prove their claims if permitted to take discovery.

But such assurances are no longer sufficient to overcome a motion to dismiss. Plausibility is the governing standard. *See Potomac Dev. Corp. v. Dist. of Columbia*, \_\_\_ A.3d \_\_\_, No. 10-cv-632, 2011 WL 4084516, at \*7-8 (D.C. Sept. 15, 2011) ("Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief'." (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937,



1949 (2009)).<sup>1</sup> And before subjecting a party to the kind of burdensome and extraordinarily expensive discovery that UCI will face here,<sup>2</sup> Plaintiffs must convince the Court – based on factual pleadings, not conclusions couched as facts – that it can reasonably infer that Defendants are liable for the misconduct alleged. *See id.* Plaintiffs have failed to satisfy that pleading burden. Plaintiffs have not shown (1) that they have standing to assert any of their claims (except Count III), or (2) that any of their claims are plausible as a matter of law. Their Complaint therefore must be dismissed in its entirety with prejudice.

## ARGUMENT

### **I. COUNT I FOR BREACH OF TRUST MUST BE DISMISSED BOTH BECAUSE PLAINTIFFS LACK STANDING AND FOR FAILURE TO STATE A CLAIM.**

#### **A. None of the Plaintiffs Has Standing to Assert a Claim Against Preston Moon for Breach of the Alleged Oral Charitable Trust.**

##### **1. The Family Federation and UPF do not have standing as alleged beneficiaries.**

The oral charitable trust that Plaintiffs allege has no “designated” or “express” beneficiaries, as required by law to establish beneficiary standing. Unif. Trust Code § 110 cmt. (2005); *see also id.* at § 1001 cmt. (only “a charitable organization expressly designated to receive distributions under the terms of the trust” has standing to sue for breach of trust). The so-called “Unification Church International trust,” Compl. ¶ 2, was created to benefit and support a *religion*, *see* Compl. ¶¶ 27, 100 (alleged trust purpose is to “benefit and support the Unification Church” and its related activities); ¶ 2 (“Unification Church is a religion”), and thus has an

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<sup>1</sup> The Court of Appeals vacated as moot its opinion in *Mazza v. Housecraft LLC*, 18 A.3d 786 (D.C. 2011). *See Mazza v. Housecraft LLC*, 22 A.3d 820, 821 (D.C. 2011). *Potomac Development*, however, makes clear that the “plausibility” standard of *Iqbal* and *Twombly* is now the law in the District of Columbia.

<sup>2</sup> Judge Macaluso previously approved limited discovery on 13 topics concerning UCI’s recent business transactions. That limited discovery required three days of depositions and an enormous amount of time and expense for preparation. (Plaintiffs recently have asked for even more discovery on those 13 topics.) By comparison, merits discovery in this case will involve over 50 years of Unification Church movement history, an untold number of documents (a substantial number of which will be in foreign languages), and dozens of foreign and domestic witnesses. The burdens and costs of that scale of discovery will be extraordinary.

undefined and unlimited number of beneficiaries.<sup>3</sup> Neither The Family Federation nor The Universal Peace Federation (“UPF”) – both of which came into existence *after* the alleged oral trust was created, and for that additional reason could not possibly have been “expressly designated” as beneficiaries – has standing to sue for breach of trust. *See Weaver v. Wood*, 680 N.E.2d 918, 923-24 (Mass. 1997) (holding that members of The First Church of Christ, Scientist, did not have standing to sue as beneficiaries of a charitable trust).

2. UCJ does not have standing as an alleged settlor.

Plaintiffs’ argument that UCJ has standing to sue as a “settlor” under the recently enacted Uniform Trust Code (“UTC”) because it “contribute[d] property” to the alleged oral charitable trust, D.C. Code § 1301-03(16) (2004), *see* Pls.’ Opp. at 9-10, is wrong for a variety of reasons.

First, UCJ was not a settlor in 1975 at the time of the alleged oral charitable trust’s creation, and the UTC cannot retroactively transform it into one now. The trust law in effect in 1975 was embodied in the Restatement (Second) of Trusts (1959). *See Cabaniss v. Cabaniss*, 464 A.2d 87, 91 (D.C. 1983) (stating that, in absence of a definitive case or authority in the District of Columbia, the Restatement (Second) controls); *see also In re Hoff*, 644 F.3d 244, 249 (5th Cir. 2011) (applying Restatement in effect at the time of trust formation, not the UTC, in interpreting a trust instrument’s use of the word “settlor”). Section 3(1) of the Restatement (Second) unequivocally states that only the “person who *creates* a trust is the settlor.” (Emphasis added.) Plaintiffs have made clear that only Reverend Moon created the trust. Pls.’ Opp. at 10.

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<sup>3</sup> UCI’s original Articles, which Plaintiffs argue provides some hint as to the alleged trust’s purposes, *see* Pls.’ Opp. at 12, confirm the absence of any designated trust beneficiaries. The Articles do not identify any specific church organization as beneficiary and broadly state as among UCI’s purposes “the unification of world Christianity and other religions, world peace, harmony of all mankind, interfaith understanding between all races, colors and creeds throughout the world.” *See* Defs.’ Mem., Ex. A Art. Third A(6).

UCJ thus was not a settlor of the alleged oral charitable trust in 1975, and the UTC does not make it one now.<sup>4</sup>

Second, even if the UTC's definition of "settlor" were to apply, Plaintiffs have pled UCJ out of that definition. In a portion of the definition that Plaintiffs did not quote, the UTC provides that, "[i]f more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution *except to the extent another person has the power to revoke or withdraw that portion.*" D.C. Code §19-1301.03(16) (emphasis added). That restriction on the definition of "settlor" makes perfect sense, because without it anyone who contributed even as little as a \$1 to a trust would have standing to sue. Plaintiffs plainly allege that Reverend Moon (and possibly Dr. Pak) could do whatever he wanted with the Unification Church International's bank deposits, such as transferring the money to the newly formed UCI, without UCJ's consent. Compl. ¶ 30. UCJ, therefore, is not a "settlor" even under the UTC's definition of the term.

Finally, the Complaint does not plead that UCJ contributed to an existing trust. The Complaint alleges that: (1) Reverend Moon directed Dr. Pak to open a bank account with the Diplomatic National Bank in the name of Unification Church International; (2) the first \$70,000 placed in the account came from an account held in Reverend Moon's name; (3) other entities, including UCJ, "also deposited money" into the bank account; and *then*, (4) Reverend Moon allegedly directed Dr. Pak "to hold the funds" – including UCJ's – in the bank account in trust. Thus, the Complaint alleges that UCJ deposited money in a bank account in Reverend Moon's name *before* he formed the alleged trust. Compl. ¶ 27. UCJ's contribution, therefore, was not to

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<sup>4</sup> Further undermining UCJ's claim to standing is that, when the alleged trust was formed, a settlor of a charitable trust did not have standing to sue for breach of trust. *See* Restatement (Second) of Trusts § 391 cmt. e ("A suit for enforcement of a charitable trust cannot be maintained by the settlor").

an alleged oral charitable trust, but to whatever corporate form was assumed by Unification Church International.

3. Joo and Kim do not have standing as co-trustees.

Plaintiffs' reliance on the Comment to UTC § 1001 (adopted in the District of Columbia as D.C. Code § 19-1310.01) that "cotrustees have standing to bring a petition to remedy a breach of trust" misconstrues that Comment and is misleading. The quoted text pertains only to co-trustees of *private* trusts. Three sentences later, the same Comment specifically addresses *charitable* trusts and provides: "In the case of charitable trusts, those with standing include the state attorney general, a charitable organization designated entitled to receive distributions under the terms of the trust, and other persons with a special interest." *Id.* That commentary is consistent with UTC § 405(c) (codified as D.C. Code § 19-1304.05(c)), which provides that a settlor, "among others," has standing to sue to enforce a charitable trust, and the Comment thereto, which clarifies that the "grant of standing to the settlor does not negate the right of the state attorney general or persons with special interests to enforce either the trust or their interests." Unif. Trust Code § 405 and cmt. Thus, when read as a whole, the UTC permits co-trustees to have standing only when they can establish "special interest" standing. For the reasons explained in our opening brief, *see* Defs.' Mem. at 8-13, and below, *see* Section II.A.3.(c), *infra*, Joo and Kim do not have "special interest" standing.

Further, Plaintiffs' contention that Joo and Kim are trustees is entirely conclusory, and should not be accepted by the Court. Plaintiffs merely aver that Joo and Kim "understood and accepted [] responsibility" as trustees upon becoming Directors of UCI. Compl. ¶ 30. That is not an allegation of fact, but a conclusion of law based on the assumption that the alleged trust exists. Since there are no plausible well-pleaded facts to support that allegation, there is no basis

for Joo's and Kim's standing. *See* Section I.B, *infra*. Moreover, nowhere do Plaintiffs specify Joo's or Kim's actual words or conduct to allow the Court to evaluate the plausibility of their claim. Standing to sue UCI cannot rest on such thin allegations.

**B. Count I Does Not Plead Essential Elements of Trust Formation.**

1. Plaintiffs have failed to plead facts from which the Court reasonably can infer that Reverend Moon intended to form a trust.

Plaintiffs claim to have adequately pled that Reverend Moon intended to establish a trust because (a) he “directed” Dr. Pak to “hold” certain funds “in trust solely for the benefit and support of the Unification Church and its related activities,” Compl. ¶ 27; (b) he and Dr. Pak worked together in Korea for 14 years and together moved to the United States to expand the Unification Church religion, *id.* ¶¶ 23, 27; and (c) Dr. Pak ran UCI in accordance with its mission to promote the Unification Church religion and its activities worldwide, *id.* ¶¶ 32, 36, 37-39. None of these allegations permits the reasonable inference that Reverend Moon intended to establish a trust.

First, Plaintiffs wrongly discount the significance of their failure to plead the actual words spoken by Reverend Moon to Dr. Pak. Though no particular words are required to establish a trust, this Court can hardly determine whether Reverend Moon manifested the requisite trust intent to establish an *oral* charitable trust without knowing what he said. *See Cabaniss*, 464 A.2d at 92 (stating that “the imperative, as distinguished from precatory, nature of the words used by the settlor to create a trust” are critical to determining the settlor’s intent; finding an oral trust where decedent in his statements and writings “imperatively and unambiguously designated his daughter Carla as beneficiary”); Restatement (Second) of Trusts § 25 cmt. b (“No trust is created if the settlor manifests an intention to impose merely a moral obligation.”). The fact that Plaintiffs have direct access to Reverend Moon and Dr. Pak, yet all

they have been able to aver is the conclusory statement that Reverend Moon “directed” Dr. Pak to hold funds in trust, Compl. ¶ 27, demonstrates the implausibility of their trust allegation.

Second, Reverend Moon and Dr. Pak’s long and close relationship only adds force to the implausibility of the oral charitable trust claim. It is simply implausible that, even though Reverend Moon and Dr. Pak had been working together since 1957, they waited 20 years after they began their work, and four years after they arrived in the United States, to establish a trust to benefit the religion and its worldwide activities. Furthermore, the only alleged post-establishment conduct that Plaintiffs offer to establish Reverend Moon’s intent is Dr. Pak’s operation of UCI in accordance with its Articles – the very Articles that say nothing about an oral charitable trust or any trust obligations.

Third, to find Plaintiffs’ trust theory plausible, the Court would have to disregard the governance structure that UCI’s incorporators chose 35 years ago. *Cf. Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 160 (D.D.C. 2000) (citing *Oppenheim v. Sterling*, 368 F.2d 516, 519 (10th Cir. 1966) (“unsupported conclusions of the pleader may be disregarded, especially when limited or negated by the substance of facts pleaded”)). UCI’s Articles, which are incorporated in the Complaint, clearly state that “[t]he right to vote on any and all matters affecting the Corporation shall be vested *exclusively* in the Board of Directors of the Corporation” and that “[t]he internal affairs of the Corporation shall be regulated by the Board of Directors.” Ex. A at Art. Fifth, Seventh (emphasis added).<sup>5</sup> The Articles say nothing about UCI or its Directors being subject to external control by a trust. The Court of Appeals consistently has refused to recognize a trust when applicable legal instruments and writings are silent about trust formation. For instance, in a case that closely parallels this one, *Save*

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<sup>5</sup> Unless otherwise noted, the exhibit references herein are to those exhibits attached to Defendants’ Memorandum In Support of their Joint Motion to Dismiss.

*Immaculata/Dunblane, Inc. v. Immaculata Prep. Sch. Inc.*, 514 A.2d 1152, 1157 (D.C. 1986), the plaintiffs argued that a religious Order’s creation and operation of schools established a trust in favor of its students, such that when the religious Order proposed to sell the school properties, it could not sell them, even though the Order had title to the properties. The Court of Appeals rejected the trust theory, stating that “to hold that such a trust was intended would belie the Order’s expressed desire, seen in the school corporations’ articles, to have the corporate assets revert to it upon dissolution.” *Id.* Likewise, here, to allow Plaintiffs to pursue their oral charitable trust theory would belie UCI’s Articles, which unconditionally vest absolute governing authority in the Board of Directors. *See also S.A. Stern v. J. Nicholas Produce Co.*, 486 A.2d 84, 88 (D.C. 1984) (refusing to find the creation of a trust where the pertinent instrument, a sub-lease, contained “no language [in a particular clause] – or anywhere else in the sublease – purporting to create a trust in appellant’s favor.”); *Duggan v. Keto*, 554 A.2d 1126, 1137 (D.C. 1989) (rejecting the creation of a trust where the alleged formation document, a letter, was “extremely vague” as to the alleged settlor’s instructions). This Court should not break new ground by embracing Plaintiffs’ novel and unprecedented oral charitable trust theory.

2. Plaintiffs fail to allege that Reverend Moon transferred title to Dr. Pak.

Equally fatal to Plaintiffs’ trust theory is their half-hearted attempt to establish that Reverend Moon transferred title of the trust *res* to Dr. Pak. *See* Pls.’ Opp. at 19. *See Fielding v. BT Alex Brown*, 116 F. Supp. 2d 59, 63 (D.D.C. 2000) (“[T]he law of the District of Columbia does require that the trustee take title to the trust assets . . . in order to create a trust.”). Indeed, Plaintiffs’ core theory – that Reverend Moon’s wishes and dictates continue to control UCI and that Preston Moon has failed to abide by them – belies the fundamental requirement that the settlor transfer dominion and control of the trust *res* to the trustee. *See Ottenberg v. Ottenberg*,

194 F. Supp. 98, 102 (D.D.C. 1961). The Complaint alleges that, after transferring the initial \$70,000 to Dr. Pak, Reverend Moon directed Dr. Pak how to use the funds. Compl. ¶ 30 (Reverend Moon “direct[ed]” Dr. Pak to create UCI and transfer funds to UCI). Furthermore, even after UCI’s incorporation, the Complaint alleges that Reverend Moon continued to control the trust funds by controlling UCI’s President, Compl. ¶ 39 (“Under the direction of Reverend Sun Myung Moon, the President of UCI managed assets held by the Corporation.”), and by the alleged “binding convention” that Reverend Moon hand-selects UCI’s Directors. Compl. ¶ 37. Reverend Moon’s uninterrupted control over the trust *res*, as alleged by Plaintiffs, demonstrates that Reverend Moon did not cause a “complete transfer” of his legal interest in the trust property, as required by law, to establish a trust.<sup>6</sup> *See Ottenberg*, 194 F. Supp. at 102.

3. Plaintiffs have not alleged that Reverend Moon had a transferrable interest in the bank account funds.

Based on Reverend Moon’s defense in his 1982 tax case, which was that he did not have to pay tax on the money at issue because he held it as a trustee for the church, *see* Defs’ Mem. at 22-23, Plaintiffs argue that Reverend Moon was a trustee with respect to the \$70,000 that he purportedly used to form the oral charitable trust. *See* Pls.’ Opp. at 19-20. But that is not what the Complaint says. The Complaint merely states that the \$70,000 used to form the trust “came from an account held in Reverend Moon’s name.” Compl. ¶ 27. It does not aver that Reverend Moon held those funds as a trustee, or in any other capacity for that matter. The mere allegation that the trust *res* came from a bank account “held” in the alleged settlor’s name does not

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<sup>6</sup> The decision in *Cabaniss*, on which Plaintiffs rely, is readily distinguishable. There, not only did the settlor deliver checks to the trustee, he also surrendered a key to the trustee’s house where he had left the checks, which the Court viewed as a relinquishment of “all control of the trust property.” 464 A.2d at 92. Also, the settlor in *Cabaniss* died shortly after transferring the checks, thereby never exercising the kind of continuous control over the trust *res* that the Complaint alleges has been exhibited by Reverend Moon over the course of 35 years.



establish that Reverend Moon had a transferrable legal interest in the alleged trust property, as is required to support Plaintiffs' trust theory.

**C. Plaintiffs Fail to Allege That Preston Moon Is a Trustee.**

Plaintiffs' contention that Preston Moon is a trustee of the oral charitable trust is as implausible as the trust claim itself. UCI's Bylaws state that its Chairman shall perform the duties "designated by the Board of Directors," Ex. C at Art. III, § 8, and that the President shall be "subject to the control of the Board of Directors," *id.* at § 9. No concomitant position of "trustee" is mentioned. To conclude that Preston Moon unknowingly became a trustee of an alleged oral charitable trust would require the Court to reject the plain terms of UCI's Bylaws.

**D. The Oral Charitable Trust Terminated Upon Transfer of Property to UCI.**

Plaintiffs respond to the argument that UCI's incorporation terminated the oral charitable trust, if there ever was one, by citing to Restatement (Third) of Trusts § 86 cmt. e (2007), which provides generally that trustees have the power to form a corporation to carry on the business or investment activities of the trust. *See* Pls.' Opp. at 18. But that was not the law in 1977 when UCI was formed. *See In re Hoff*, 644 F.3d at 249 (applying Restatement in effect at the time of trust formation). The law applicable at the time was set forth in the Restatement (Second), *see Cabaniss*, 464 A.2d at 91, which provided: "*By the terms of the trust* the trustee may be permitted or directed to form a corporation and to transfer the trust property to it *in exchange for its shares*. In the absence of such a provision the court may authorize the formation of such a corporation." Restatement (Second) of Trusts § 190 cmt. m (emphasis added). Dr. Pak's transfer of the alleged oral charitable trust's assets to UCI failed to comply with then-applicable law in three respects: (1) the terms of the alleged oral charitable trust, as alleged by Plaintiffs, did not authorize such transfer; (2) in the absence of such authorization, Dr. Pak did not obtain

permission from a court to effectuate the transfer; and (3) Dr. Pak, as trustee, did not exchange the trust property for membership status in UCI.<sup>7</sup> Having failed to conform to then-applicable law, Plaintiffs cannot now contend that Dr. Pak's transfer of the entirety of the alleged trust assets to UCI had any effect other than to extinguish the alleged oral trust.

**II. COUNT II MUST BE DISMISSED BOTH FOR LACK OF STANDING AND FAILURE TO STATE A CLAIM.**

**A. Plaintiffs Lack Standing to Bring Both Derivative and Direct Claims.**

1. Plaintiffs lack standing to bring a derivative suit for breach of fiduciary duty or *ultra vires* acts.

Plaintiffs' contention that they have standing to bring a derivative claim "on behalf of UCI" is mystifying. Pls.' Opp. at 33. Plaintiffs concededly do not hold any current position with UCI. Yet, they claim without explanation that under D.C. Code § 29-301.06(2) they have standing to sue on behalf of UCI as a "legal representative" of the company. Pls.' Opp. at 34-35, 38. Plaintiffs suggest that a "director" would fit the definition of "legal representative," *see id.* at 35, but, even if that is the case (which Defendants do not concede), no Plaintiffs are current Directors of UCI. Thus, whatever the term "legal representative" means under § 29-301.06(2), Plaintiffs do not satisfy it. *Cf. Save Immaculata*, 514 A.2d at 1158 n. 5 (doubting whether school student plaintiffs had standing "to challenge the Order's decision on the basis of it being an *ultra vires* corporate act" under D.C. Code § 29-301.06).

Plaintiffs also mischaracterize the claims in the related *Steinbronn* matter to avoid the precedential force of the Court of Appeals' judgment that Judge Burgess properly dismissed that case on standing grounds. Pls.' Opp. at 35. Steinbronn's First Amended Complaint makes clear in its caption that he sought to bring suit "on behalf of Nominal Defendants," including "UCI."

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<sup>7</sup> As a District of Columbia non-profit corporation, UCI did not issue shares, but could have named members, which UCI's incorporators, including Dr. Pak, elected not to do.

See Ex. N at 1, attached hereto. The Court of Appeals ruled that Steinbronn did not have standing to bring a claim on behalf of UCI; otherwise the court would have had no reason to cite to § 29-301.06(2) in its Judgment. See Ex. G.

2. Plaintiffs do not have standing to bring derivative or direct claims for breach of fiduciary duty or *ultra vires* acts.

Plaintiffs sound a false alarm by arguing that, unless they have standing, “no one, other than the Attorney General, has standing to challenge” the actions of UCI’s Board. Pls.’ Opp. at 21 (emphasis in original). Drawing that conclusion – which is correct as a matter of law – simply would require this Court to follow precedent. As the Court of Appeals explained in *Hooker v. Edes Home*, 579 A.2d 608 (D.C. 1990), limiting standing to the Attorney General to sue a non-profit corporation is the law in the District of Columbia, as it is in almost all states:

Principally, the rationale for vesting exclusive power in a public officer stems from the inherent impossibility of establishing a distinct justiciable interest on the part of a member of a large and constantly shifting benefited class, and the recurring burdens on the trust res and trustee 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.

*Id.* at 612; see also Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 Univ. Haw. L. Rev. 593, 624 (1999) (“For the most part, states continue to restrict standing to sue a nonprofit to the state attorney general.”) (citing cases).<sup>8</sup>

3. Plaintiffs do not have “special interest” standing.

Plaintiffs concede that to qualify for standing as to Count II, they must meet the “special interest” exception set forth in *Hooker*. See Pls.’ Opp. at 22-23. None of the Plaintiffs, however, satisfies the requirements of that narrow exception.

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<sup>8</sup> Plaintiffs gave notice of this action to the Attorney General almost five months ago, and the Attorney General, who has shown himself to be a serious-minded representative of the public, has not acted as of this date.

(a) Plaintiffs are not “clearly identified” beneficiaries.

In *Hooker*, the Court of Appeals stated that the first-level inquiry of “special interest” standing is to determine whether a party is “at least a clearly identified intended beneficiary,” as distinct from a beneficiary that is identified “categorically.” 579 A.2d at 612. To fit themselves into the “clearly identified” box, Plaintiffs cite to the *Hooker* court’s observation that such standing is found in “situations where the trust was created to benefit *identified* persons (*e.g.*, the current minister of a specific church) or entities (*e.g.*, a specific church or charitable organization).” Pls.’ Opp. at 25 (quoting *Hooker*, 579 A.2d at 612 (emphasis in opinion)). But that passage offers Plaintiffs no help, because UCI’s Articles do not name *any* “clearly identified” beneficiaries, let alone any one of the Plaintiffs. The original Articles state that UCI’s broad purposes include assisting “Unification Churches organized and operated throughout the world,” Ex. A at Art. Third (A)(2) – not any specific church or charitable organization – and promoting “harmony of all mankind,” *id.* at Art. Third (A)(6) – not any specific person. The amended Articles reiterate UCI’s purposes of promoting “harmony of all humankind,” “interfaith understanding among all races, colors and creeds throughout the world,” and “the understanding and teaching of the theology and principles of the Unification Movement.” Ex. B at Art. Third (a) & (c). “Special interest” standing, therefore, is not available to any Plaintiff on the ground that it is a “clearly identified intended beneficiary.”

(b) The category of potential beneficiaries is not “sharply defined” or limited in number; nor do Plaintiffs challenge any extraordinary acts of UCI’s Board.

Plaintiffs similarly cannot satisfy the alternative test for “special interest” standing, which requires a plaintiff claiming to be within a potential class of beneficiaries identified “categorically” to demonstrate: (1) “the class is sharply defined and its members are limited in

number,” *Hooker*, 579 A.2d at 614; and (2) the challenge to the trustees’ action involves “an extraordinary measure threatening the existence of the trust,” as distinct from an “ordinary exercise of discretion.” *Id.* at 615. Plaintiffs do not come close to satisfying these criteria.

First, as with a non-profit corporation established to promote Judaism, Islam or some other world religion, UCI’s Articles do not set forth any criteria for its beneficiaries, except to state broadly that its operations must promote and benefit the Unification Church religion. *See* Ex. A at Art. III. UCI’s potential beneficiaries, therefore, are undefined and limitless. *Compare Hooker*, 579 A.2d at 615 (applicable governing instruments limited beneficiaries to those who were: “(1) female, (2) indigent, (3) aged, and (4) widowed . . . (5) . . . in good health (certifiably) and (6) . . . for at least five years immediately preceding the date of application. . . resident[s] of Georgetown”); *YMCA v. Covington*, 484 A.2d 589, 592 (D.C. 1984) (beneficiaries were limited to members of a YMCA branch who “submit an application, have it approved, and pay dues”); *Bd. of Directors of the Wash. City Orphan Asylum v. Bd. of Trustees of the Wash. City Orphan Asylum*, 798 A.2d 1068, 1074 (D.C. 2002) (corporation’s charter expressly “confer[red] authority on two female directresses and fifteen female managers”).

Second, Plaintiffs’ insistence that UCI’s amendment of its Articles in April 2010 constituted “an extraordinary measure threatening [its] existence,” *Hooker*, 579 A.2d at 615, does not make it so. The specific words “Divine Principle” and “Unification Churches” may no longer appear in the Articles, Compl. ¶ 83, but “promot[ing] and support[ing] the understanding and teaching of the theology and principles of the Unification Movement” remain among UCI’s central purposes. Ex. B at Art. Third (c).<sup>9</sup> Also, notably, the amended Articles preserved the

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<sup>9</sup> Nor, for that matter, has UCI sought, as in the cases cited by Plaintiffs, to cease performing its core operations. *Compare In re Manhattan Eye, Ear & Throat Hosp.*, 715 N.Y.S.2d 575 (N.Y. Sup. Ct. 1999) (non-profit corporation sought to close hospital and school to operate a chain of medical diagnostic and treatment

recognition that Reverend Moon “provided the inspiration and spiritual leadership for the founding of [UCI],” as well as his status as “the spiritual leader of the international Unification Church movement.” Ex. A at Art. Ninth. As the chart below shows, the Amended Articles reflect UCI’s original purposes, albeit in fewer words.

<u>Original Articles</u> <sup>10</sup>	<u>Amended Articles</u>
<p>“To establish, support and maintain, anywhere in the world, such place or places for the worship of God and for the study, understanding and teaching of the Divine Principle as may be necessary or desirable, to further the theology of the Unification Church.” (Ex. A. at Art. Third (A)(4).)</p> <p>“To serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world.” (Ex. A. at Art. Third (A)(2).)</p>	<p>“To promote and support the understanding and teaching of the theology and principles of the Unification Movement.” (Ex. B. at Art. Third (c).)</p>
<p>“To promote the worship of God, and to study, understand and teach the Divine Principle, the new revelation of God, and, through the practical application of the Divine Principle, to achieve the interdenominational, interreligious, and international unification of world Christianity and all other religions.” (Ex. A at Art. Third (A)(3).)</p>	<p>“To promote interdenominational, interreligious, and international unification of world Christianity and all other religions.” (Ex. B. at Art. Third (b).)</p>
<p>“To publish and disseminate throughout the world, newspapers, books, tracts and other publications in order to carry forward the dissemination and understanding of the Divine Principle, the unification of world Christianity and all other religions, or otherwise to further the purposes of the Corporation.” (Ex. A at Art. Third (A)(5).)</p>	<p>“To publish and disseminate throughout the world, newspapers, books, tracts, other publications and forms of media in order to further the purposes of the Corporation.” (Ex. B. at Art. Third (d).)</p>

centers); *Queen of Angels Hosp. v. Younger*, 66 Cal. App. 3d 359 (Cal. App. 2d Dist. 1977) (non-profit corporation sought to cease operation as a hospital and to operate as a chain of medical outpatient clinics).

<sup>10</sup> The corporate purpose originally embodied in Article Third (A)(7) – the building and operation of churches, schools, and other institutions, *see* Ex. A at Art. Third (A)(7) – was eliminated from the Articles by amendment in 1980. *See* Ex. O, attached.

<p>“To sponsor and conduct cultural, educational, religious, and evangelical programs for the purpose of furthering the understanding of the Divine Principle, the unification of world Christianity and other religions, world peace, harmony of all mankind, interfaith understanding between all races, colors and creeds throughout the world, and for such other purposes consistent with the Divine Principle and the purposes of the Corporation.” (Ex. A at Art. Third (A)(6).)</p>	<p>“To promote and conduct educational, cultural, and religious programs for the purpose of furthering world peace, harmony of all humankind, interfaith understanding among all races, colors and creeds throughout the world.” (Ex. B at Art. Third (a).)</p>
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(c) Joo, Kim, and UCJ do not have “special interest” standing.

Plaintiffs’ argument that former Directors Joo and Kim have “special interest” standing misconstrues the Court of Appeals’ decision in *Orphan Asylum*, 798 A.2d at 1068. Pls.’ Opp. at 26. There, the court recognized “special interest” standing for directors in the unique circumstance, where the directors’ positions, which had been established by an act of Congress, had been proposed for elimination in their entirety. *See Orphan Asylum*, 798 A.2d at 1075-76 (“The Directors are not asserting merely a generalized grievance, because their role, as prescribed in the Congressional charter, will be terminated through the actions of the Trustees.”). The court did not hold, as Plaintiffs contend, that any removed individual director has “special interest” standing to sue.

As for UCJ, the only case that Plaintiffs cite to support “special interest” donor standing, *Smithers v. St. Luke’s-Roosevelt Hosp. Ctr.*, 723 N.Y.S. 2d 426, 435-36 (N.Y. App. 2001), is inapposite. In *Smithers*, unlike here, the gift was restricted to a specific purpose, the establishment and operation of an alcohol treatment facility, with which the hospital had failed to comply. Furthermore, the tentative draft of the Restatement, on which Plaintiffs also rely, actually contradicts their argument, because it limits donor standing to circumstances where “a nonprofit organization receives a *restricted gift or devise* that is treated as a *charitable trust*.” Restatement (Third) of Trusts § 94 cmt. g(3) (Tentative Draft No. 5, 2009) (emphasis added).

Plaintiffs merely allege that UCJ's donations were to be used consistent with the general purposes set forth in UCI's Articles, not restricted as to be the equivalent of a charitable trust. Compl. ¶¶ 13, 133; *see* Section V.A, *supra*.

**B. The Complaint Fails to State a Claim for *Ultra Vires* Acts.**

On the merits, Plaintiffs have failed to plead any act by UCI's Board that was "beyond the powers expressly or impliedly conferred upon [the] corporation . . . as defined by its charter and the law." Am. Jur. Corp. § 1732 (2011). As already explained, the amendment of the Articles in 2010 did not affect a fundamental change to the purposes of UCI. *See* Section II.A.3.(b), *supra*. And Plaintiffs cite no authority to support their argument that an alleged loan or consulting contract with an entity controlled and owned by a Director is *per se* an *ultra vires* act.

Furthermore, Plaintiffs' contention that the Board's removal and appointment of Directors without the consent of Reverend Moon was an *ultra vires* act is yet another example of Plaintiffs asking the Court to ignore the self-governing principles chosen by UCI's incorporators. The Articles provide that the "internal affairs of the Corporation shall be regulated by the Board of Directors." Ex. A at Art. Seventh. The Bylaws explicitly place the power to appoint and remove Directors with the Board itself. *See* Ex. C at Art. II, §§ 1-2. The Articles expressly mention Reverend Moon in only one capacity, and that is as the "inspiration" for UCI, not as a decision-maker. *See* Ex. A at Art. Ninth. If the incorporators had intended to vest any power in Reverend Moon, they could have done so in the Articles, but they did not. Because UCI's governing documents speak to the very issue of appointment and removal of Directors, it would be inappropriate to override those provisions with allegations of custom and convention. *Compare Nat'l Confederation of Am. Ethic Grps. v. Genys*, 457 A.2d 395, 399 (D.C. 1983)



(court acknowledged that “longstanding and continuous usage” of proxy voting by organization whose constitution was silent on the issue could have the force and effect of a bylaw).

### **III. COUNT III MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.**

The Court should not accept Plaintiffs’ unsupported assertion that UCI is a “providential organization,” when UCI’s controlling governance documents expressly provide otherwise. *See Flocco*, 752 A.2d at 160. UCI’s Articles state that the “internal affairs of the Corporation shall be regulated by the Board of Directors,” Ex. A at Art. Seventh, and that the “right to vote on any and all matters affecting the Corporation shall be vested *exclusively* in the Board of Directors,” *id.* at Art. Fifth (emphasis added). Having failed to allege any document that contradicts these clear self-governance principles, Plaintiffs’ contention that UCI is part of and subject to the control of a separate hierarchical church structure is completely unsupported and implausible. *Compare Save Immaculata*, 514 A.2d at 1156-57 (corporation’s articles expressly provided that corporate assets would revert to religious Order upon dissolution); *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85, 104 (Colo. 1986) (local church articles “strongly indicate that the local church property was to be held for the benefit of the general church, and they show the extensive nature of the policy direction and property control to be exercised by the general church”); *Protestant Episcopal Church v. Barker*, 115 Cal. App. 3d 599, 623 (Cal. App. Ct. 1981) (church articles established local church as “subordinate body” of national church).

The Court also should reject the equally conclusory and unsupported allegation that Preston Moon became aware that he was an agent of The Family Federation simply by accepting appointment to be the head of UCI. Pls.’ Opp. at 41-42. That allegation is contradicted by UCI’s Bylaws, which provide that the Chairman and President of UCI are subject to control only by the Board of Directors. *See* Ex. C at Art. III, §§ 8, 9.

**IV. PLAINTIFFS' AIDING AND ABETTING CLAIMS AGAINST INDIVIDUAL DEFENDANTS MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.**

Plaintiffs have not alleged, as required, any facts that demonstrate that the Individual Defendants had any awareness, general or otherwise, of any wrongdoing on the part of Preston Moon. Plaintiffs respond that “knowledge” can be inferred based on two allegations: (1) that the Individual Defendants knew that they owed fiduciary duties to UCI, and (2) that the Individual Defendants themselves undertook actions that breached their own duties to UCI. Pls.’ Opp. at 45. Even assuming the truth of these premises, it is not pleaded and the Court cannot logically infer that the Individual Defendants knew about Preston Moon’s alleged misconduct based on these allegations, which concern only the duties of the Individual Defendants. *Compare Halberstam v. Welch*, 705 F.2d 472, 474-76, 486-87 (D.C. Cir. 1983) (inferring that wife knew of husband’s burglaries because she handled all financial transactions, proceeds were stored in the house, and husband smelted stolen gold and silver in house); *Nat’l R.R. Passenger Corp. v. Veolia Trans. Servs., Inc.*, 592 F. Supp. 2d 86, 96 (D.D.C. 2009) (inferring that company knowingly encouraged employees of competitor to breach duties to competitor that were similar to duties stated in company’s own policy).

The error of Plaintiffs’ logic is most clearly demonstrated in the cases of Kim and Kwak, with regard to whom Plaintiffs have not made any individualized allegation of wrongdoing. Plaintiffs misread the case law to permit the Court to hold Kim and Kwak, or any individual, liable based solely on conduct that is attributed to “Individual Defendants” as a group, but the law is to the contrary. *See Invamed, Inc. v. Barr Labs., Inc.*, 22 F. Supp. 2d 210, 218, 219, 221 (S.D.N.Y. 1998) (repeatedly explaining that particular defendant could not be held liable based on allegations against “Defendants” as a group or against other particular defendants). The

Court cannot infer simply from the fact that Kim and Kwak were on UCI's Board that they participated in, or even knew about, any alleged wrongdoing.

**V. COUNTS IV, V, AND VI MUST BE DISMISSED BOTH FOR LACK OF STANDING AND FOR FAILURE TO STATE A CLAIM.**

**A. UCJ Lacks Standing Because It Did Not Reserve a Right to Sue or to Control Restricted Gifts.**

UCJ argues that because the UTC allows standing to settlors, this Court should reject the well-settled common law that, with rare and inapplicable exceptions, denies standing to charitable donors. *See* Restatement (Third) of Trusts § 28 cmt. c (enforcement of charitable donations is by Attorney General, absent “special interest” standing); *Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133, 137, 139-140 (Mo. App. 2009) (only Attorney General, not donor, has standing at common law). But settlor standing, which Defendants have addressed above, *see* Section I.A.2, *supra*, is a separate legal issue and has no bearing on UCJ's lack of standing as a donor. Indeed, courts have considered and rejected arguments similar to UCJ's – refusing to apply the UTC, either directly or by analogy, to structures other than trusts. *See id.* at 138-39 (UTC's grant of standing to trust settlors did not confer standing on donor to charitable corporation); *see also Dodge v. Trustees of Randolph-Macon Woman's Coll.*, 661 S.E.2d 805, 808-10 (Va. 2008) (refusing to apply UTC to find that non-stock charitable corporation owed duties to charitable donors).

UCJ has not alleged either of the rare exceptions to the rule that donors do not have standing. First, UCJ has not alleged that it reserved the right to sue. *See Hardt*, 302 S.W.3d at 137; *Carl J. Herzog Found., Inc. v. Univ. of Bridgeport*, 699 A.2d 995, 997-99 (Conn. 1997).<sup>11</sup>

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<sup>11</sup> Plaintiffs' dismissal of the *Herzog* opinion is unfounded. The *Herzog* court conducted an extensive review of the common law, citing cases from nine widespread jurisdictions that hold that donors lack standing absent the reservation of a right to sue. *See* 699 A.2d at 997-99. Moreover, the *Herzog* court's determination of the common law was not *dicta* but rather was necessary to the court's analysis of the statute that had been placed at issue. *See id.*

Second, UCJ has not alleged that it made a “restricted gift,” *i.e.*, a gift to establish or support a specific project, or expressly reserved a right to supervise such a project. *See Hardt*, 302 S.W.3d at 137; *compare Smithers*, 723 N.Y.S. 2d at 427; *Pearson v. Garrett-Evangelical Theological Seminary, Inc.*, No. 11-cv-0019, 2011 WL 1838881, at \*1, 3 (N.D. Ill. May13, 2011) (donation to create scholarship; donations without specific restrictions do not confer standing). All that UCJ alleges is that it contributed funds to support UCI’s general mission, which is insufficient to confer donor standing. Compl. ¶ 133 (contributions “would be used in a manner consistent with the purposes for which the Unification Church was established.”); ¶ 13 (contributions to support “purposes of the trust and UCI’s corporate mission and purpose”); ¶ 44 (contributions to fund “Unification Church-related activities”).<sup>12</sup>

UCJ also cannot escape the law of donor standing (or lack thereof) by claiming standing as a party to a contract. Rather, the law’s denial of standing to donors who contribute to an organization’s general mission, such as that set forth in its articles of incorporation, underscores the fact that courts do not deem such donations to be made pursuant to a contract. *Compare Pearson*, 2011 WL 1838881, at \*4 (standing granted because contract provided for restricted gift and ongoing oversight of scholarship). That is because a donation that is intended to support the general mission of a charitable organization does not impose any new obligation on the

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at 997 (applying principle of statutory construction that requires court not to alter common law beyond words of statute).

<sup>12</sup> The letters that are attached to the Opposition and referred to in the Complaint as specifying the purpose of UCJ’s donations further confirm the donations’ general nature. The formulaic letters refer to nothing more than UCJ’s support for *all* of the broad categories of activities by which UCI intended to carry out its general mission. *See, e.g.*, Pls.’ Opp. Ex. B (Letter from D.M. Joo to M. Fujii, Feb. 3, 1994) (confirming UCJ’s pledge to contribute “to the projects and activities in the 1994 annual budget” and listing examples); *id.* (Letter from D.M. Joo to M. Itshii, Feb. 3, 1997) (thanking UCJ for contribution “in support of all of the projects of [UCI], which are illustrated as follows”); Pls. Opp. Ex. A (Letter from D.M. Joo to H. Oyamada, Apr. 14, 2004) (listing broad “areas” towards which “UCI plans to provide guidance and support in the 2004/2005 fiscal year” – e.g. “conferences,” “educational programs,” “publications” and “business and other projects” – and requesting contribution from UCJ to “UCI’s projects and activities planned for the coming fiscal year”).

organization in return for the financial support – and therefore there is no consideration to support a contract. *See* Defs.’ Mem. at 33-34.

**B. UCJ’s Correspondence and Argument Demonstrate the Lack of a Contract.**

UCJ’s effort to bolster its allegations of a contract between itself and UCI only confirms the flaws of its contract theory.<sup>13</sup> UCJ relies primarily on the letters between itself and UCI, which UCJ says support the allegation that UCI promised to use the funds for UCJ’s intended purpose. But even accepting that fact as true, the purpose to which UCJ points is just the furtherance of UCI’s general mission – a purpose that UCI was already obligated to fulfill. *See* Pls.’ Opp. 51-53 and Section V.A, *supra* (quoting from form-like solicitation and thank you letters from UCI to UCJ listing broad categories of activities to further UCI’s general mission). A promise by UCI to perform a pre-existing legal duty cannot be the basis of a contract between UCI and UCJ. *See* Defs.’ Mem. 33-34.

**C. Any Equitable Relief Based on UCI’s Use of UCJ’s Donations Would By Law Benefit the Public, Not UCJ.**

UCJ’s arguments regarding promissory estoppel and unjust enrichment ignore the fundamental principle that prevents UCJ from obtaining equitable relief based on its donations – that as soon as UCJ made each donation, it relinquished any legal interest in how the funds were spent. *See* Restatement (Third) of Trusts § 28, cmt. c (right to enforce charitable donation’s

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<sup>13</sup> UCJ’s attempt to paint itself and UCI as naïve foreigners, who could not have been expected to put into writing an agreement concerning millions of dollars, is laughable (in addition to being irrelevant to UCJ’s failure to allege the elements of any contract). *See* Pls.’ Opp. at 50. Indeed, the Second Circuit in Reverend Moon’s criminal tax case, *United States v. Moon*, 718 F.2d 1210 (2nd Cir. 1983), rejected that very argument and observed with respect to the period as early as 1973:

We are unable to accept defendants’ argument that as new residents of the United States they were unfamiliar with tax law. Not only are both defendants sophisticated businessmen, but they had at their disposal a small army of tax attorneys and accountants whose advice, unfortunately, was not sufficiently heeded.

*Id.* at 1223. In addition, UCJ alleges that the “contract” continued until 2009, by which time UCI had long been the direct or indirect parent company of more than 100 subsidiaries, most of which were for-profit commercial corporations. These were not naïve and inexperienced parties.

purpose vested in Attorney General as the “representative of the community”); *Hardt*, 302 S.W.3d at 137 (donors denied standing because they retained no interest in gift); *Herzog*, 699 A.2d at 997 (citing *Sarkeys v. Indep. Sch. Dist. No. 40*, 592 P.2d 529, 533 (Okla. 1979) (law is well-settled that Attorney General represents “public interest in securing the enforcement of charitable trusts”)).<sup>14</sup> UCJ has alleged that the series of donations that it made to UCI were intended to fund UCI’s general mission, *see* Section V.A, *supra*, and complains that UCI did not apply the funds properly to advance that mission. Even if that were the case, and the attorney general brought a successful action against UCI, the funds would not be returned to UCJ; rather, UCI would be ordered to use the funds to benefit the public.<sup>15</sup>

## **VI. THE CLAIMS AGAINST INDIVIDUAL DEFENDANTS MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION.**

### **A. The Fiduciary Shield Doctrine Bars Personal Jurisdiction Over All Individual Defendants.**

Plaintiffs’ interpretation of the fiduciary shield doctrine is simplistic and overbroad. In short, Plaintiffs contend that just by virtue of their being directors and officers of a District of Columbia-based corporation, the Individual Defendants are subject to the personal jurisdiction of this Court. *See* Pls.’ Opp. at 56-57. That is not the law. The underpinning of the fiduciary shield doctrine is not, as Plaintiffs argue, simply whether a corporate officer as a general matter can expect to be haled into court by virtue of his corporate contacts with the District of Columbia, *see id.*, but rather whether the officer’s “*personal contacts* with the forum,” as distinct

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<sup>14</sup> In *Stock v. Augsburg College*, No. C1-01-1673, 2002 WL 555944 (Minn. Ct. App. Apr. 16, 2002), which Plaintiffs cite in support of their unjust enrichment claim, the defendant reneged on its promise to name a wing of a building after the plaintiff but kept the \$500,000 that he had donated specifically for the construction of the building. The court highlighted that the donation was not, as here, a donation to the defendant’s general fund. *Id.* at \* 6.

<sup>15</sup> Furthermore, UCJ is incorrect that under District of Columbia law the above equitable doctrines would entitle it to receive damages from UCI, as opposed to requiring UCI to apply UCJ’s donations to advance UCI’s mission. *See Mamo v. Dist. of Columbia*, 934 A.2d 376, 386 (D.C. 2007) (promissory estoppel plaintiff must show “that enforcement of the promise” would prevent injustice); *Moss v. Stockard*, 580 A.2d 1011, 1035 (D.C. 1990) (equitable doctrine of promissory estoppel “allows the court to enforce a promise absent a binding contract” to prevent injustice).

from his “acts and contacts carried out solely in a corporate capacity,” are sufficient to confer jurisdiction over the officer. *Flocco*, 752 A.2d at 163 (citation omitted) (emphasis added). The alleged acts by the Individual Defendants are quintessential corporate functions that are firmly within the scope of their authority as officers and directors of UCI. Indeed, Plaintiffs acknowledge that “each individual defendant” acted “in his capacity as a director of UCI.” Pls.’ Opp. at 60 n. 12. And, all except two acts – Preston Moon’s alleged causing of the filing of the amended Articles and the sale of a single property – occurred outside of the District of Columbia. Plaintiffs’ failure to allege any contacts by the Individual Defendants with the District of Columbia outside of their corporate capacities ends the jurisdictional analysis.

Plaintiffs’ reliance on the Court of Appeals’ recent decision in *Daley v. Alpha Kappa Alpha Sorority, Inc.*, \_\_\_ A.3d \_\_\_, No. 10-cv-220, 2011 WL 3610718 (D.C. Aug. 18, 2011), is misplaced. There, the Court of Appeals agreed with the trial court that the fiduciary shield doctrine did not apply because the individual defendants, though they were corporate officers, were acting in their individual capacities with respect to the alleged wrongful conduct. *Id.* at \*5, n. 3 (noting “[h]ere, among other things, while the individual [defendants] as officers and directors were members of [the corporate legislative body], it appears they were also in part acting in their individual capacities as such members.”). In sharp contrast, Plaintiffs here have not alleged that the Individual Defendants acted in an individual capacity.

**B. Plaintiffs Fail to Allege Specific Links to the District of Columbia for Each Individual Defendant (Except Preston Moon) and Also Fail to Allege Facts That Support Jurisdiction Over Preston Moon.**

Plaintiffs’ summary allegations with respect to the Individual Defendants (except Preston Moon) are insufficient, not because their Complaint fails to “plead the allegations in separate paragraphs for each individual,” Pls.’ Opp. at 59, but because they do not, as required, plead

each Individual Defendant's connection to the District of Columbia in a separate and individualized manner. *See NAWA USA, Inc. v. Bottler*, 533 F. Supp. 2d 52, 55 (D.D.C. 2008) (citing *Overseas Partners, Inc. v. PROGEN*, 15 F. Supp. 2d 47, 50 (D.D.C. 1998) (“[A] showing [of the basis for personal jurisdiction] must, however, be met with respect to each defendant individually.”)). Plaintiffs do little more than allege that all Individual Defendants are members of UCI's Board. But “just because Defendants . . . [are] members of the board of directors of[] a company which does business in the District, [that] is not by itself sufficient to establish minimum contacts.” *Id.* 57; *see also Murphy v. PriceWaterhouseCoopers, LLP*, 357 F. Supp. 2d 230, 243 (D.D.C. 2004). As a result, Plaintiffs cannot through their collective, undifferentiated pleading establish personal jurisdiction over Individual Defendants Sommer, Perea, Kwak, and Kim.

Plaintiffs argue that personal jurisdiction is available over Preston Moon under D.C. Code § 19-1302.02(a), as a trustee of a trust “having its principal place of administration in the District of Columbia.” Pls.' Opp. at 60. Plaintiffs, however, nowhere aver that the alleged oral charitable trust's “principal place of administration” is the District of Columbia. That argument therefore cannot support jurisdiction over Preston Moon.

### **CONCLUSION**

For the foregoing reasons, as well as those that stated in Defendants' opening memorandum, Defendants respectfully request that the Court dismiss the Complaint in its entirety with prejudice.



DATED: September 19, 2011

Respectfully submitted,

/s/  
\_\_\_\_\_  
Peter Romatowski  
Adrian Wager-Zito  
Sean Thomas Boyce  
JONES DAY  
51 Louisiana Avenue, NW  
Washington, DC 20001  
Tel: (202) 879-7625  
Fax: (202) 626-1700

*Counsel to Defendant Hyun Jin Moon*

/s/  
\_\_\_\_\_  
Steven M. Salky, D.C. No. 360175  
Blair G. Brown, D.C. No. 372609  
Amit P. Mehta, D.C. No. 467231  
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*Counsel for Defendants UCI, Michael Sommer  
Richard Perea, Jinman Kwak, and Youngjun  
Kim*

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2011, I caused a copy of the foregoing  
DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR JOINT MOTION TO DISMISS  
THE COMPLAINT to be served by CaseFileXpress, U.S. Mail, and electronic mail on:

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Emmit B. Lewis (elewis@milchev.com)  
Brian A. Hill (bhill@milchev.com)  
John C. Eustice (jeustice@milchev.com)  
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*Counsel for Defendant Hyun Jin Moon*

And to be served by electronic mail and U.S. mail on:

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/s/ Amit P. Mehta

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*Counsel for Defendants UCI, Michael Sommer, Richard J. Perea, Jinman Kwak, and Youngjun Kim*

# **EXHIBIT N**

Superior Court of the District of Columbia  
Civil Division

Richard A. Steinbronn )  
13404 Hamer Court )  
Herndon, VA 20170, )  
Plaintiff, Individually )  
And on Behalf of )  
Nominal Defendants )

Case No. 0009127-09  
Judge Odessa Vincent

v. )  
Times Aerospace USA LLC, et al. )  
3600 New York Ave, NE )  
Washington, DC 20002-1947, )  
Nominal Defendant )  
And Actual Defendant for )  
Individual Action )

Next Scheduled Event:  
Scheduling Conference April 15, 2010

**REDACTED PUBLIC VERSION**

 = REDACTED

Unification Church International )  
One Up Enterprises, Inc. )  
USP Development LLC )  
Route 7 Realty, Inc., )  
Which are at: )  
7777 Leesburg Pike )  
Falls Church, VA 22043 )

News World Communications, Inc. )  
News World Communications LLC )  
QIC, LLC )  
The Washington Times LLC )  
Times Aerospace International LLC, )  
Times Aerospace USA LLC )  
Washington Times Aviation USA LLC )  
Washington Times Aviation LLC )  
All of which are at: )  
3600 New York Ave, NE )  
Washington, DC 20002-1947 )

Washington Television Center LLC )  
650 Massachusetts Ave, NE )  
Washington, DC 20002-6575 )

Times Aerospace Korea LLC )  
Saebuyuk-Ri, Daegot-Myun )  
Gimpo-Si, Gyconggi-Do )  
Republic of Korea 415-850 )

National Hospitality Corporation )  
900 South Orme St. )  
Arlington, VA 22204 )

True World Holdings LLC )  
True World Group LLC )  
24 Link Drive )  
Rockleigh, NJ 07647 )

Lafayette Realty, Inc. )  
1510 H Street, NW )  
Washington, DC 20005 )

New Hope Farm, Inc. )  
187 Brucetown Road )  
Kearneysville, WV 25430, )

Ginseng Up Corporation )  
390 Fifth Ave )  
New York, NY 10018 )

Nominal Defendants )

And )

Hyun Jin Moon (a/k/a Preston Moon) )  
402 S. Boulder Rd. )  
Cordwell, MI 59721 )

Richard J. Perea )  
957 N.W. 132 Court )  
Miami, FL 33182 )

Michael Sommer )  
860 Pleasantville Road )  
Briarcliff, NY 10510 )

Daniel F. Gray )  
2 North Broadway, Apt. 6A )  
White Plains, NY 10601, )

Individual Defendants )

FIRST AMENDED COMPLAINT

(Action Involving, Inter Alia, Real Property)

I. Introduction

1. This action has two elements. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The second aspect is an individual action by the Plaintiff against TA USA and the individual Defendants for wrongful termination, invasion of privacy, conversion of personal property, and tortious interference.

2. UCI [REDACTED]

[REDACTED] were formed and have their express purposes to operate various businesses and conduct activities to carry out the religious, charitable and educational purposes of the world wide Unification Church and its Founder and ecclesiastical leader, Reverend Sun Myung Moon (the "Founder"). The gravamen of the actions involving the nominal Defendants is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

0

**II. Jurisdiction**

4. This Court has subject matter jurisdiction over this matter pursuant to D.C. Code §11-921. This Court has personal jurisdiction of the entity defendants because UCI is incorporated in the District of Columbia, TA USA conducts business in the District of Columbia, and the other nominal Defendants [REDACTED] The Court has



personal jurisdiction over the individual Defendants because said Defendants constitute the management of UCI and consequently have authority over the other nominal Defendants.

### **III. Parties**

5. Richard Steinbronn is an attorney who resides in Virginia. He is a long time member of the Unification Church and a disciple of the church and its Founder. He served as in-house counsel for UCI until he was removed from that position in September 2008 without the approval of the Board of Directors in derogation of the requirements of the By-laws.

6. Steinbronn served at various times as in-house counsel, officer and director at TA USA and/or Times Aerospace International, LLC, Washington Times Aviation USA, LLC and Times Aerospace Korea (“TAI Group”) until he was wrongfully removed, on information and belief, because [REDACTED]

[REDACTED]

7. Based on his longtime membership in the Unification Church and his professional obligations and duties to UCI and/or TA USA, the TAI Group and other affiliated entities, as an attorney, employee, officer and director, Steinbronn had and has a position of special interest regarding the nominal Defendants.

8. Nominal Defendant UCI was incorporated in the District of Columbia in 1977 and has remained in continuous existence since. It is a non-profit, non-member entity.

9. Nominal Defendant TA USA is a Delaware limited liability company with offices and operations in the District of Columbia. [REDACTED]

[REDACTED]

10. The other nominal Defendants are identified and described in the chart contained in Paragraph 3.

11. Preston Moon is currently President, CEO and Chairman of the Board of Directors of UCI and, at all times pertinent hereto, [REDACTED]

12. Richard J. Perea is, on information and belief a resident of Florida, a current director of UCI and an officer and manager of TA USA. [REDACTED]

13. Michael Sommer, a resident of New York, is, on information and belief, at times pertinent hereto, a director of UCI. [REDACTED]

14. Daniel F. Gray is a resident of New York. He is an attorney licensed to practice in New Jersey. Since around 2006 he has served as General Counsel to UCI, and since September 2008 has served as Secretary to UCI.

#### IV. Facts

##### A. Preston Moon Assumes Control of UCI and Its Subsidiaries

15. In around April 2006, Preston Moon became Chairman of the Board of Directors, President and ultimately CEO of UCI. [REDACTED]

16. [REDACTED]

17. Thereafter, the UCI Board of Directors consisted of Preston Moon, Perea and Sommer as well as Douglas D.M. Joo and Peter H. Kim [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

**D. The Wrongful Termination of Plaintiff and the Theft of His Client Files.**

37. In September 2008, Plaintiff was terminated as in-house counsel to UCI without the required approval of the Board of Directors. On information and belief, the purpose of the

termination was to insulate from UCI's business machinations a lawyer not considered primarily loyal to Preston Moon.

38. Plaintiff was assigned to work as full time in-house counsel for TA USA, a wholly owned subsidiary of UCI and part of the TAI Group.

39. On or about August 19, 2009, after the wrongful removal from the UCI Board of Directors of Joo and Kim, Daniel Gray summoned Plaintiff to New York City for a meeting. At the meeting Gray did not inform Plaintiff that, while the meeting transpired, Gray had caused the locks to be changed on the Virginia office where Plaintiff practiced law.

40. In addition to files pertaining to his former client, UCI, and his then current client and employer, TA USA, there were client files pertaining to legal work done for other organizations and individuals. These files were confidential as to those clients and neither Dan Gray, UCI or any UCI subsidiary or their counsel was entitled to possess or even look at those files or their contents. In addition Plaintiff had personal files, including personal financial records in the office he was locked out of.

41. On information and belief, the decision to lock Plaintiff out of his office was punitive and not based on any legitimate business purpose, but was an attempt to rummage through all Plaintiff's client files.

42. Gray refused to grant Plaintiff access, even supervised access, to Plaintiff's client files, but insisted that either Gray or his designee go through all the files to determine unilaterally what, if anything, Plaintiff was entitled to have returned to him. This, of course, necessitated the rummaging through client files and personal files of Plaintiff's that neither Gray nor any designee had any right to look at. Some of the files were returned to Plaintiff in several tranches, but some have never been returned. Upon information and belief, UCI, through Gray and others,

has retained copies of Plaintiff's client and personal files and provided certain of them or information contained therein to its counsel in this case.

[REDACTED]

On or about November 8, 2009, Defendant Perea abruptly terminated Plaintiff's employment at TA USA and also removed Plaintiff from various director and officer positions in the TAI Group. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]



[Redacted text block]



[REDACTED]

COUNT I

[REDACTED]

[REDACTED]

h. [REDACTED]

COUNT II

(Theft; Conversion and Invasion of Privacy; Tortious Interference)

67. The preceding paragraphs are incorporated herein.

68. When Plaintiff was locked out of his office, he had a right of possession of the client files and his own personal items contained therein.

69. TA USA and Gray wrongfully deprived Plaintiff of this right to possession.

70. As to client files not belonging to UCI, TA USA or their affiliates, by taking possession and examining those files and their contents, TA USA and Gray invaded Plaintiff's privacy and the privacy of Plaintiff's clients.

71. TA USA and Gray tortiously interfered with Plaintiff's contractual obligations to his clients.

**V. Relief Requested**

WHEREFOR, for the foregoing reasons, Plaintiff on behalf of himself and the nominal Defendants named herein, requests that the Court enter judgment against Defendants providing for the following relief:

A. Removal of all current directors of UCI.

B. Reinstatement of Joo and Kim as Directors of UCI.

C. Appointment of a Receiver to manage the affairs of UCI and/or the entities UCI owns or controls.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. [REDACTED]

[REDACTED]

[REDACTED]

G. Monetary damages in an amount to be determined after completion of discovery.

H. The return to Plaintiff of the originals and all copies of his clients' legal files, his personal files, copies of all files seized from Plaintiff's office on August 19, 2009, pertaining to UCI and/or entities UCI owns or controls, including work papers and computer stored files.

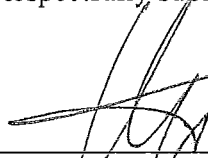
I. Prevention of the sale or disposition of the real property identified in paragraphs 56-63 without the consent of the Founder, pending resolution of this action.

J. Compensatory and punitive damages in amounts to be determined after completion of discovery for the claims by Plaintiff for theft, conversion, invasion of privacy and tortious interference with business relations.

K. Interest, costs and attorneys' fees.

L. Such additional relief to which the Court deems Plaintiff to be entitled.

Respectfully submitted,



---

Robert A.W. Boraks  
D.C. Bar No. 72132  
Garvey Schubert Barer  
1000 Potomac Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20007  
(202) 298-1796  
(202) 965-1729 (Fax)

Certificate of Service

I hereby certify that on February 23<sup>rd</sup>, 2010, a copy of the foregoing First Amended Complaint was served electronically and by first class mail on:

Steven M. Salky, Esq.  
Blair G. Brown, Esq.  
Zuckerman Spaeder LLP  
1800 M Street, NW, Ste. 1000  
Washington, DC 20036



---

Robert A. W. Boraks

# **EXHIBIT O**

OFFICE OF RECORDER OF DEEDS, D. C.

Corporation Division  
Sixth and D Streets, N. W.  
Washington, D. C. 20001

CERTIFICATE

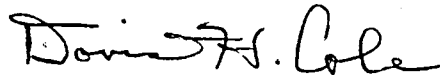
*THIS IS TO CERTIFY* that all provisions of the District of Columbia  
Non-profit Corporation Act have been complied with and ACCORD-  
INGLY this Certificate of \_\_\_\_\_ Amendment

is hereby issued to the UNIFICATION CHURCH INTERNATIONAL

as of the date hereinafter mentioned.

Date February 5, 1980

PETER S. RIDLEY,  
Recorder of Deeds, D. C.



David H. Cole  
Superintendent of Corporations





ARTICLES OF AMENDMENT ( ) FILING FEE  
INDEXING FEE

2.00  
7.00

to the

ARTICLES OF INCORPORATION

OF

UNIFICATION CHURCH INTERNATIONAL

To: The Recorder of Deeds, D.C.  
Washington, D.C.

Pursuant to the provisions of the District of Columbia Non-profit Corporation Act, the undersigned adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is Unification Church International.

SECOND: The following amendment of the Articles of Incorporation was adopted by the Corporation in the manner prescribed by the District of Columbia Non-profit Corporation Act:

THIRD: A. Organizational and Operational Purposes:

This Corporation is organized exclusively for charitable, religious and/or educational purposes. Although this Corporation has not sought to qualify for tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, it may choose to do so at some point in the future. Unification Church International, both in the past and in the future, has and will dedicate itself to the following activities:

1. To serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world.

FILED  
FEB 5 1980

BY: DH

2. To promote the worship of God, and to study, understand and teach the Divine Principle, the new revelation of God, and, through the practical application of the Divine Principle, to achieve the interdenominational, interreligious, and international unification of world Christianity and all other religions.

3. To establish, support and maintain, anywhere in the world, such place or places for the worship of God and for the study, understanding and teaching of the Divine Principle as may be necessary or desirable, to further the theology of the Unification Church.

4. To publish and disseminate throughout the world, newspapers, books, tracts and other publications in order to carry forward the dissemination and understanding of the Divine Principle, the unification of world Christianity and all other religions, or otherwise to further the purposes of the Corporation.

5. To sponsor and conduct cultural, educational, religious, and evangelical programs for the purpose of furthering the understanding of the Divine Principle, the unification of world Christianity and other religions, world peace, harmony of all mankind, interfaith understanding between all races, colors and creeds throughout the world, and for such other

purposes consistent with the Divine Principle and the purposes of the Corporation.

B. Business Powers: In furtherance of the Corporation's purposes set forth above, the Corporation shall have all those powers accruing to not for profit corporations organized in the District of Columbia and currently set forth in Section 29-1005 of the District of Columbia Code.

THIRD: The amendment was adopted at a meeting of the Board of Directors held on December 16, 1979, at 723 South Broadway, Tarrytown, New York, and received the vote of a majority of the Directors in office, there being no members having voting rights in respect thereof.

Date: 1/28/80


Corporate Seal

UNIFICATION CHURCH INTERNATIONAL

By: 

BO HI PAK, PRESIDENT

Attest:

  
Secretary