SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, et al.,	
	Case No. 2011 CA 003721B
***Plaintiffs*,**	**Judge Natalia M. Combs Greene**
v.	
HYUN JIN MOON, et al.,	
***Defendants*.**	

ORDER

This matter is before the Court on Defendants' Joint Motion to Dismiss the Complaint (the "Motion to Dismiss"), Plaintiffs' Opposition, Defendants' Reply and Plaintiffs' Surreply thereto.

On May 11, 2011, Plaintiffs The Family Federation for World Peace & Unification International (the "Family Federation"); The Universal Peace Federation (the "UPF"); The Holy Spirit Association for Unification of World Christianity (the "UC Japan"); the Unification Church International (the "UCI"); Douglas D.M. Joo; and Peter H. Kim filed this action seeking, among other relief, control of UCI, a District of Columbia non-profit corporation. The Complaint names as Defendants: Hyun Jin ("Preston") Moon, Michael Sommer, Richard J. Perea, Jinman Kwak, Youngjun Kim (collectively the "Individual Defendants"), and UCI.

In the Motion to Dismiss, Defendants advance three bases upon which the Complaint should be dismissed: (1) pursuant to Super. Ct. Civ. Rule 12(b)(1), Counts I, II, and IV-VI should be dismissed because Plaintiffs lack standing to assert the claims alleged in those Counts; (2) pursuant to Rule 12(b)(2), Counts I-VI should be dismissed as to the Individual Defendants

because Plaintiffs fail to demonstrate that the Court can exercise personal jurisdiction over them; and (3) pursuant to Rule 12(b)(6), Counts I-VI should be dismissed because Plaintiffs fail to state a claim upon which relief can be granted.

BACKGROUND

In the Complaint, Plaintiffs allege that Reverend Sun Myung Moon founded the Unification Church religion in 1954 in Seoul, Korea.[1] In 1957, Dr. Bo Hi Pak joined the Unification Church and began to work with Reverend Moon to expand the religion in Korea and internationally. At some (unspecified) time thereafter, Reverend Moon formed the Family Federation as the "authoritative religious entity that directs Unification Churches worldwide." In 1971, Reverend Moon and Dr. Pak moved to the United States to develop the Unification Church's presence in this country.

Plaintiffs allege that in 1975, Reverend Moon directed Dr. Pak to open a bank account in the name of the "Unification Church International" at Diplomat National Bank in the District of Columbia. Reverend Moon instructed Dr. Pak to hold funds in this bank account in trust for the benefit and support of the Unification Church and its activities. Plaintiffs argue that the directions given by Reverend Moon and implemented by Dr. Pak indicate their intention to create an oral charitable trust to support the Unification Church.[2] Plaintiffs contend Reverend Moon and Plaintiff UC Japan are the settlors of the purported UCI Trust; that Dr. Pak was its first trustee; that Plaintiffs Family Federation and UPF are among its beneficiaries or "potential beneficiaries"; and that Plaintiffs Joo and Kim, as (former) Directors of UCI, are co-trustees.

By 1977, approximately 7 million dollars had been donated and was being held in the Unification Church International bank account. In February 1977, Reverend Moon allegedly

[1] Throughout this Order, the religion founded by Reverend Moon shall be referred to as the "Unification Church."
[2] Throughout this Order, the purported oral charitable trust is referred to as the "UCI Trust" in order to differentiate it from UCI, the non-profit corporation formed in 1977.

directed Dr. Pak to establish a non-profit corporation in the District of Columbia to "implement the purposes of the [purported] trust." Dr. Pak named the new corporation the "Unification Church International," and changed the Diplomat bank account to reflect that the funds would be held by the new non-profit corporation, as opposed to the unincorporated UCI Trust. Plaintiffs allege that Reverend Moon intended for the new corporation (in theory) to assume responsibility to implement the purpose of the UCI Trust; further the Directors of the new corporation were "to serve as trustees to ensure that the corporation and its assets would be administered for the benefit of the Unification Church." Plaintiffs argue that UCI's original Articles of Incorporation reflect this intent.

Plaintiffs allege that between 1977 and 2006, UCI operated in accordance with Reverend Moon's original intent, and the Articles of Incorporation. During that time, Plaintiff UC Japan contributed hundreds of millions of dollars to UCI "to be held in trust" and used for Unification Church endeavors, and UCI in turn contributed significant funds to Plaintiff UPF.

In the spring of 2006, Reverend Moon designated his son, Defendant Preston Moon, as a Director of UCI. The then-President of the Family Federation also designated Preston Moon to serve as the new President of UCI. The designations were approved by a majority vote of the Directors of UCI.

In 2008, Reverend Moon designated his other son, Sean Moon, as the new leader of the Unification Church worldwide and appointed him President of the Family Federation.

Plaintiffs allege, however, that Preston Moon began to divert UCI assets and resources away from the charitable purpose for which it was created and instead used those assets to further his own interests. Plaintiffs allege that Preston Moon, along with the other Individual Defendants, caused the UCI Board to engage in self-dealing and to dissipate UCI assets.

Specifically, that the Individual Defendants caused True World Group, LLC ("TWG"), an indirect subsidiary of UCI, to purchase property at 24 Link Drive, Rockleigh, New Jersey, from UV Sales, Inc., an entity wholly owned by United Vision Group, Inc. ("UVG"), which, in turn, is wholly owned and controlled by Defendant Preston Moon. TWG agreed to pay 5.9 million dollars for the Rockleigh Building. Plaintiffs allege, however, that the fair market value of the Rockleigh Building was less than the 5.9 million dollar purchase price and that the sale served no legitimate business purpose for TWG or UCI. Defendant Preston Moon also caused UCI to lend 2 million dollars to UVG. Finally, Plaintiffs allege that Defendant Preston Moon caused One Up Enterprises, 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 (and has paid) 120,000 dollars per month to UVGSC, even though the consulting agreement serves no legitimate business purpose for One Up or UCI. As a result of these alleged incidents of self-dealing, UCI has ceased making contributions to entities associated with the Unification Church, including Plaintiff UPF.

Plaintiffs also allege that Defendant Preston Moon (disappointed with his father's decision to appoint Sean Moon leader of the Unification Church) began to orchestrate a scheme to take control of UCI and divorce the corporation from the Unification Church and the mission for which it was formed. Plaintiffs claim that Preston Moon improperly ousted members of the UCI Board of Directors, including Plaintiffs Joo and Kim, who were replaced with individuals loyal Preston Moon. The reconstituted Board then amended the UCI Articles of Incorporation to remove all references to the Unification Church and its mission. The Amended Articles changed the corporation's name from "Unification Church International" to "UCI," and deleted all

references to the original purpose of supporting the Unification Church worldwide and advancing the Divine Principle.

Plaintiffs argue these actions constitute: breaches of the duty of loyalty owed by the UCI Board to the Corporation and its intended beneficiaries; breaches of the Board's fiduciary duties as trustees of the UCI Trust; *ultra vires* acts in breach of the Board's duty of obedience and loyalty to UCI; and breaches of their contractual obligations to UC Japan, which contributed funds to UCI based on UCI's promise to use those funds for the benefit of the Unification Church. Plaintiffs have brought this action to prevent any further dissipation and misuse of UCI funds, to recover assets that were improperly used in contravention of the charitable purpose for which UCI was created, to remove the Individual Defendants from UCI's Board, to return Plaintiffs Joo and Kim to the Board, and to restore UCI to its proper mission.

Defendants contend that Plaintiffs have not, and cannot, identify a single document creating a trust. Rather, Defendants argue this case is about control of UCI and is motivated by Plaintiffs' unwillingness to accept necessary changes in UCI and their disapproval of reforms that have been enacted by UCI's duly elected Board of Directors. Further, Defendants argue that Plaintiffs have no standing to challenge how UCI is run or who receives its donations. UCI was established in 1977 under the District of Columbia Nonprofit Corporation Act, D.C. Code § 29-301.01 (2001). As such, UCI's operations are governed by the Act, as well as by UCI's Articles of Incorporation and Bylaws. UCI's original Articles expressly provide that the corporation will have no members, which means that UCI does not have any owners. UCI was thus intentionally established as a self-governing body, free of any ownership interest that could be claimed by UC Japan, the Family Federation or any other person or entity. Moreover, this structure was selected

by Reverend Moon and UCI's incorporators at the time of UCI's formation in 1977 and has never been changed.

On July 8, 2011, Defendants filed the Motion to Dismiss. On August 31, 2011, Plaintiffs filed their Opposition. On September 19, 2011, Defendants filed the Motion for Leave to File Reply, and on September 23, 2011, the Court granted Defendants' Motion and deemed their Reply filed. On October 4, 2011, Plaintiffs filed their Surreply.[3]

DISCUSSION

I. Personal Jurisdiction

This Court finds it has jurisdiction over UCI because it is organized under the laws of the District of Columbia.[4] D.C. Code § 13-422 (2001). None of the Individual Defendants, however, appear to reside within the District of Columbia and therefore can only be subject to the Court's jurisdiction under the District of Columbia long-arm statute. *Id.* at § 13-423(a).

In the Complaint, Plaintiffs allege that this Court has personal jurisdiction over the Individual Defendants pursuant to D.C. Code § 13-423(a)(1), (3) and (4). Specifically, Plaintiffs allege that the lawsuit arises out of Defendants' actions in the transaction business in the District of Columbia, individually and through agents, during the time they served as Directors and Officers of UCI and its subsidiaries. Defendants have participated in business transactions in the District of Columbia that include: selling at least one property, filing the Amended Articles of Incorporation, managing properties, and operating or managing other businesses. In addition, Defendants' tortious conduct (within and outside the District) has caused injury to Plaintiffs and UCI within the District of Columbia.

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[3] This Judge was transferred to a Civil II Docket in January, shortly after the Surreply was filed. The Court regrets the delay in its decision. Given the number of matters pending on a Civil II Docket, and the complex nature of this case, the Court in giving due consideration to the arguments and presentation thereof, found the delay unavoidable.
[4] The parties do not appear to dispute this.

Rule 12(b)(2) of the Superior Court Rules of Civil Procedure permits a defendant to challenge the Court's assertion of personal jurisdiction. On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of proving that the court may assert personal jurisdiction over the defendant. *See Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001). The plaintiff must allege "specific facts connecting the defendant with the forum," and "bare allegations and conclusory statements are insufficient." *NAWA USA, Inc. v. Bottler*, 533 F. Supp. 2d 52, 55 (D.D.C. 2008). In a case with multiple non-resident defendants, "such a showing must be made with respect to each defendant individually." *Id.*

The District of Columbia's long-arm statute permits the Court to exercise personal jurisdiction over a non-resident defendant if such person has, *inter alia*, "transacted any business in the District of Columbia." D.C. Code § 13-423(a) (2001).[5] Our Court of Appeals has interpreted the "transacting business" provision of § 13-423(a) as consistent with the Due Process Clause of the Fifth Amendment. *Gonzalez v. Internacional De Elevadores, S.A.*, 891 A.2d 227, 234 (D.C. 2006); *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 325-26 (D.C. 2000). A defendant need not transact extensive business in the District of Columbia to be subject to personal jurisdiction here. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558, 563 (D.D.C. 1981); *Environmental Research Int'l, Inc. v. Lockwood Greene Eng'rs, Inc.*, 355 A.2d 808, 811 (D.C. 1976) (en banc). In fact, "a nonresident defendant need not have been physically present in the District" to be subject to personal jurisdiction here. *Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981). The critical inquiry for § 13-423(a)(1) purposes is whether the business transacted within the District of Columbia "can be reached jurisdictionally

[5] Plaintiffs assert that D.C. Code §§ 13-423(a)(3) and (4) also provide a basis for the Court to exercise personal jurisdiction over the Individual Defendants; however, because the Court finds the jurisdictional issue may be resolved under 13-423(a)(1), it need not address Plaintiffs' alternative theories in this Order.

without offending the due process clause." *Id.* at 993; *Dooley v. United Tech. Corp.*, 786 F. Supp. 65, 71 (D.D.C. 1992); *Brown v. Artery Org., Inc.*, 654 F. Supp. 1106, 1110 (D.D.C. 1987).

A plaintiff must show, therefore, that a defendant has sufficient minimum contacts with the forum so that the exercise of personal jurisdiction would not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). A defendant must have "purposely directed" its activities at the forum state's residents, such that it would "reasonably anticipate being hauled into court there." *Gonzales*, 891 A.2d at 234 (citations omitted); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). "[U]nder the due process clause, the minimum contacts principle requires us to examine the quality and nature of the nonresident defendant's contacts with the District and whether those contacts are voluntary and deliberate or only random, fortuitous, tenuous and accidental." *Shoppers Food Warehouse v. Moreno,* 746 A.2d 320, 329 (D.C. 2000) (en banc).

Our Court of Appeals has also held that a court does not automatically have jurisdiction over individual officers, directors, and employees of a corporation by the mere fact that the court has jurisdiction over the corporation. *Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 162-63 (D.C. 2000). "[W]hen there are no allegations [in the complaint] that a nonresident defendant's contacts with a jurisdiction were for the purpose of transacting business as an individual, but rather were only to perpetuate a corporation's business, that defendant cannot be sued individually under the 'transacting business' prong of the long-arm statute." *Id.* at 162 (citations omitted). Rather, "personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity." *Id.* at 163.

This so-called "fiduciary shield doctrine" is, however, not absolute. In *Flocco*, our Court of Appeals specifically declined to read existing law "as articulating a *per se* rule that an employee's acts in his official capacity may *never* give rise to personal jurisdiction over him" because to adopt such an absolute rule would "be difficult to reconcile with Supreme Court precedent and with persuasive case authority from other courts." *Id.* at 163 n.20 (emphasis in original). Rather, as described by the District Court for the District of Columbia, "[i]t is clear from these decisions [as to the fiduciary shield doctrine] that an individual's role as a corporate officer, without more, is not a sufficient basis for exercising personal jurisdiction over the officer in his individual capacity." *Nat'l Cmty. Reinvestment Coalition v. NovaStar Fin., Inc.*, 631 F. Supp. 2d 1, 5 (D.D.C. 2009).

Authority from this jurisdiction also provides that "the fiduciary shield doctrine is inapplicable when the defendant is found to be 'more than an employee' of the corporation." *NovaStar*, 631 F. Supp. 2d at 5. In *Covington & Burling v. Int'l Mktg. & Research, Inc.*, the trial court introduced the so-called "more than an employee" exception to the fiduciary shield doctrine and held that the Superior Court had jurisdiction over two non-resident corporate directors when they were the only corporate officers, set company policies and procedures, were active in day-to-day operations, and maintained active involvement and supervision of all aspects of the company. 2003 D.C. Super. LEXIS 29, at *16-17.

Our Court of Appeals has not explicitly adopted the "more than an employee" exception; however the District Courts for the District of Columbia have repeatedly applied (citing *Covington & Burling* as precedent) the "more than an employee" exception to determine whether the District Court has jurisdiction over individual corporate officers, directors or employees.[6]

[6] *See Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F. Supp. 2d 240, 281-84 (D.D.C. 2011); *Azamar v. Stern*, 662 F. Supp. 2d 166, 174-76 (D.D.C. 2009); *compare NovaStar*, 631 F. Supp. 2d at 8 ("As a result of the significant

Thus, if a court finds the "more than an employee" exception applies, a court can impute the corporation's contacts with the District to the individual defendants who control the corporation: "[A]bsent the fiduciary shield doctrine, the Court can attribute [the corporation's] connections with the District of Columbia to [the individual defendant]" even if the individual defendant "is not transacting any business in his personal capacity that would subject him to subsection (a)(1) of the long-arm statute." *NovaStar*, 631 F. Supp. 2d at 6.

In this case, neither party has provided a case in which our Court of Appeals applied (or declined to apply) the "more than an employee" exception to the fiduciary shield doctrine. In *Daley v. Alpha Kappa Alpha Sorority, Inc.*, the fiduciary shield doctrine was briefly addressed in a footnote. The Court of Appeals did not, however, offer an explanation for its conclusion that the doctrine did not protect the individual defendants. 26 A.3d 723, 728 n.3 (D.C. 2011). The Court concluded only that the individual defendants were subject to the trial court's jurisdiction because "while the individual appellees as officers and directors were members of the Boule [the corporate decision-making body], it appears they were also in part acting in their individual capacities as such members." *Id.* The Court did not define "individual capacity" or enumerate the facts on which it based that conclusion. The Court noted earlier in its opinion, however, that "[t]he allegations [against the individual defendants] in the case before us focus in large part on

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influence that [the individual director Anderson] exerts over the NovaStar defendants' policies, procedures, and operations, and his involvement in the creation, implementation, and maintenance of the three policies at issue, Anderson can be considered 'more than an employee' of the NovaStar entities and therefore may be held liable in his individual capacity for the allegedly discriminatory policies."), *with D'Onofrio v. SFX Sports Group, Inc.*, 534 F. Supp. 2d 86, 92 (D.D.C. 2008) (finding no personal jurisdiction over corporate directors who, unlike in *Covington*, were "member[s] of a far larger corporate structure," did not control all aspects of the relevant corporations, and whose only action of "jurisdictional import" was "discuss[ing]—in Texas—plaintiff's employment situation (and arguably her pregnancy) prior to placing her on the termination list."), *and Wiggins v. Equifax*, 853 F. Supp. 500, 503 (D.D.C. 1994) (concluding it could not exercise personal jurisdiction over two supervisors in the corporate defendant's Virginia office who allegedly directed and supervised subordinates engaged in illegal activities in the District), *and Kopff v. Battaglia*, 425 F. Supp. 2d 76, 85 (D.D.C. 2006) (denying jurisdiction where "Plaintiffs provide a single document indicating that Sadiq [individual defendant] was involved in discussions between [the corporate defendant] and another company regarding a payment plan, but this document, standing alone, is insufficient to support a conclusion that Sadiq was anything more than an employee.").

wrongdoing with respect to the 2008 meeting of the Boule, that is, the failure to obtain the alleged requisite Boule approval for the challenged expenditures and the suppression of any discussion of these expenditures at the Boule meetings." *Id.* at 728. Under those circumstances, the Court held that "[i]t appears that all of the named [individual defendants] voluntarily participated in the Boule sessions or the actions relating thereto," and, therefore "could reasonably anticipate being required to defend their actions in the courts of the District without offending traditional notions of fair play and substantial justice." *Id.*

Despite the lack of explanation regarding the fiduciary shield doctrine in *Daley*, the circumstances surrounding the Court of Appeals' conclusions are instructive to the Court in the instant matter as Plaintiffs' allegations in this case are similar to those asserted in *Daley*. Most significantly, Plaintiffs have alleged that the Individual Defendants "subverted UCI's mission" by voting to amend the Articles of Incorporation, causing those amendments to be effective by filing them with District officials, preventing a quorum at a meeting to elect new Directors chosen by Reverend Moon, voting to remove Plaintiffs Joo and Kim as Directors, voting to elect Defendants Kwak and Youngjun Kim to the Board, and participating in a "scheme" to dissipate UCI's assets. Unlike the circumstances in *Daley*, however, none of the acts (except causing the amended Articles to be filed) occurred in the District of Columbia. *See Daley*, 26 A.3d at 728. *But see Mouzavires v. Baxter*, 434 A.2d 988, 992 (D.C. 1981) (indicating that "a nonresident defendant need not have been physically present in the District" to be subject to personal jurisdiction here).

Notwithstanding this distinction, the Individual Defendants in this case voluntarily became members of a District of Columbia non-profit corporation, and by doing so accepted all rights, obligations, and protections that District of Columbia law provides. The Individual

Defendants voluntarily participated in Board meetings and actions, which Plaintiffs allege constitute a subversion of UCI's mission. *See Daley*, 26 A.3d at 728. In the event Plaintiffs' allegations are true,[7] the Individual Defendants did not act to further UCI's corporate business; rather, they acted in contravention of UCI's prescribed corporate purpose and exclusively for their individual benefit. *Flocco*, 752 A.2d at 162. Under these circumstances and consistent with the Court of Appeals' guidance, this Court must conclude that the fiduciary shield doctrine might not shield the Individual Defendants from this Court's jurisdiction because that jurisdiction would be "based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity." *Id.* at 163. The Individual Defendants, therefore, "could reasonably anticipate being required to defend their actions in the courts of the District without offending traditional notions of fair play and substantial justice." *Id.*; *Daley*, 26 A.3d at 728.

This conclusion also appears consistent with the line of cases applying the "more than an employee" exception to the fiduciary shield doctrine. UCI is a non-member corporation. The Individual Defendants are the five Directors of UCI, and are collectively vested with the exclusive "right to vote on any and all matters affecting [UCI]" and the responsibility to regulate the internal affairs of UCI. As alleged in the Complaint, each Individual Defendant has significant control over all aspects of UCI's activities. In fact on one occasion, the absence of merely two of the Individual Defendants allegedly prevented the formation of a quorum, thereby inhibiting any corporate action from taking place; specifically the election of two new directors chosen by Reverend Moon. Accordingly, the Court could attribute UCI's connections with the District of Columbia to the Individual Defendants even if each Defendant individually "is not

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[7] *Crane v. New York Zoological Soc'y*, 894 F.2d 454, 458 (D.C. Cir. 1990) (a plaintiff may defeat a motion to dismiss based upon lack of personal jurisdiction, in the absence of discovery, by making factual allegations to establish a *prima facie* showing of jurisdiction); *Charlton v. Mond*, 987 A.2d 436, 438-39 (D.C. 2010).

transacting any business in his personal capacity that would subject him to subsection (a)(1) of the long-arm statute." *NovaStar*, 631 F. Supp. 2d at 6.

For the foregoing reasons, the Court finds that Plaintiffs have alleged sufficient facts to demonstrate that the Individual Defendants have "purposely availed" themselves of the laws of the District of Columbia and should, therefore, be subject to this Court's jurisdiction under D.C. Code § 13-423(a)(1).

II. Standing

In the Motion, Defendants argue that Plaintiffs lack standing to assert each of their claims (excluding Count III). Specifically, Defendants argue that Plaintiffs lack standing to assert a derivative claim on UCI's behalf because they are not "members" as required by the Nonprofit Corporation Act. Defendants argue that Plaintiffs lack statutory or "special interest" standing to assert their claims for breach of trust and breach of fiduciary duty/*ultra vires* acts. Defendants further argue that UC Japan (the sole Plaintiff on Counts IV-VI) lacks standing to assert contract or quasi-contract claims as a former donor to UCI.

A. Special Interest Standing

Plaintiffs claim to have standing to bring Counts I and II[8] as persons or entities with "special interest": the Family Federation and UPF as "beneficiaries and/or potential beneficiaries of UCI"; UC Japan as a "major donor to UCI"; and Plaintiffs Joo and Kim as "wrongfully-terminated Director[s] of UCI."

According to the Restatement (Second) of Trusts, "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 [a charitable] trust." *Hooker v. Edes Home*, 579 A.2d 608, 611-12 (D.C. 1990) (noting that the rules regarding standing to enforce charitable trusts apply to charitable corporations).

[8] Plaintiffs also appear to argue that Plaintiff UC Japan has special interest standing to bring Counts IV-VI.

The traditional rule recognizes that a charitable trust (and likewise a charitable or non-profit corporation) is unique in that it exists "'for some form of public benefit, and persons who receive[] advantages from the administration of the trust do so because they are conduits through whom the social gains flow,' and not necessarily because they have a property interest in the trust assets." *Id.* at 611. The interest, therefore, "in ensuring that charitable trust property is put to proper purposes is properly that of the community at large." *Id.* at 612. By limiting standing to a public officer, the traditional rule acknowledges "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.*

Our Court of Appeals has, however, recognized an exception to that traditional rule "where an individual seeking enforcement of the trust has 'special interest' in continued performance of the trust distinguishable from that of the public at large." *Id.* (citing *YMCA v. Covington*, 484 A.2d 589, 592 (D.C. 1984)). "In these situations, though the private beneficiary is the 'conduit' through which broader community benefits flow, the plaintiff sues to secure an individualized interest in the trust, and the problems presented by suits from a 'practically limitless and wholly indefinite group of persons,' . . . are less pronounced." *Id.*

Although "'special interest' is a term of uncertain scope, it appears that at least a *clearly identified intended beneficiary* has a justiciable interest in enforcement of the trust." *Id.* (emphasis added). The mere fact that a person is a *possible beneficiary*, however, is not sufficient to entitle that person to bring an action to enforce a charitable trust. Rather, the Court of Appeals has articulated the rule that "a particular class of *potential* beneficiaries has a special

interest in enforcing a trust if the class is sharply defined and its members are limited in number." *Id.* at 614 (emphasis added). Further, the Court of Appeals has indicated that "[e]ven when a class of potential beneficiaries is small and distinct enough that members appear to have an interest distinguishable from the public's . . . in addition to the nature of the class, we think it necessary—in the case of potential beneficiaries—also to consider the nature of the challenge to the trustees' acts in deciding whether to apply the special interest exception." *Id.*

In *Hooker v. Edes Home*, the Board of Trustees of a charitable corporation established for the purpose of maintaining a "free Home for aged and indigent Widows, residing, or to reside" in the Georgetown neighborhood of the District of Columbia, sought to close, sell, and relocate the Home. 579 A.2d 608, 608-09 (D.C. 1990). Four elderly widows appealed the trial court's ruling that they lacked standing to maintain a class action to challenge the Board's actions, and the Court of Appeals reversed on that issue. The Court held that the widows did not qualify as "clearly identified intended beneficiaries," but "[b]ecause the will, charter, and by-laws of the corporation establish a set of criteria identifying a limited class of potential beneficiaries of the charitable trust, we conclude that members of that class have a 'special interest' in the trust distinct from that of members of the public at large . . . ." *Id.* at 609. Specifically, the Court found that the class of beneficiaries was sufficiently narrow because the charter and bylaws required a potential beneficiary to be female, indigent, aged, widowed, in good health, and a resident of Georgetown for at least five years immediately preceding the date of application. *Id.* at 615. Further, the Court held that because at least one of the women qualified as a representative member of that class and "[b]ecause she challenges a fundamental change in the nature of the institution that may substantially affect the interests of all potential beneficiaries, we conclude that the policy goals of the traditional rule limiting standing to enforce a charitable

trust to a public officer would not be served by denying standing to her, and reverse the judgment." *Id.* at 609. In reaching that conclusion, the Court distinguished challenges to "an extraordinary measure threatening the existence of the trust" from challenges to "an ordinary exercise of discretion on a matter expressly committed to the trustees," and concluded that this case was an example of the former:

> When . . . 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 decision-making 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.

Id. at 617.

In this case, the Court finds that Plaintiffs are not clearly identified intended beneficiaries. This is not the situation in which a "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)." *Hooker*, 579 A.2d at 612 (citing Restatement (Second) of Trusts § 391 cmt. C). Rather, as the Court of Appeals concluded in *Hooker*, the individuals for whose benefit UCI was created "are not identified with that degree of particularity, but instead categorically." *Id.* The Articles do not mention any of the Plaintiffs by name. UCI's beneficiaries are identified only categorically—those persons and entities that support the Unification Church and its endeavors.

This does not, however, mean that Plaintiffs cannot possess special interest standing, as Plaintiffs also contend they are potential or possible beneficiaries. Under that theory, Plaintiffs, as a particular class of potential beneficiaries, must demonstrate that the class is sharply defined and its members are limited in number," and that they are challenging "an extraordinary measure

threatening the existence of the trust." *Id.* at 614-15. Accordingly, Plaintiffs argue that collectively they represent a sufficiently narrow and limited class of beneficiaries of UCI: Family Federation as "the authoritative religious entity that directs Unification churches worldwide"; UPF as it "exists to advance the principles of the Unification Church through charitable, educational and other means"; Plaintiffs Joo and Kim as directors "entrusted with safeguarding UCI's corporate mission"; and UC Japan as the "primary funding instrument for UCI."

Upon consideration of the relevant case law, the Court does not agree with Plaintiffs' argument that they are members of a class of potential beneficiaries that is sharply defined and limited in number. In *Hooker*, the charitable corporation's articles and bylaws provided that applications for admission (*i.e.*, eligible beneficiaries) were limited to "aged and indigent widows who must be in good health and who have been for at least five years immediately preceding the date of application residents of Georgetown." *Id.* at 609; *see also YMCA v. Covington*, 484 A.2d 589, 592 (D.C. 1984) (beneficiaries limited to "persons [who] submit an application, have it approved, and pay dues"). UCI's Articles of Incorporation do not specifically define its possible beneficiaries, but instead indicate that UCI is to: "serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches . . . throughout the world"; "promote the worship of God, and to study, understand and teach the Divine Principle, . . . and, through the practical application of the Divine Principle to achieve the . . . unification of world Christianity and all other religions"; "establish, support and maintain . . . places for the worship of God and for the study, understanding and teaching of the Divine Principle . . . to further the theology of the Unification Church"; "publish and disseminate . . . 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"; "sponsor and conduct cultural, educational, religious, and evangelical programs for the purpose of furthering the understanding of the Divine Principle"; "organize, build, own, rent, lease, maintain and otherwise operate churches, schools, hospitals, missions, cultural institutions, homes for the aged and infirm, rest homes, orphanages and other benevolent enterprises."

Under these circumstances, UCI's possible beneficiaries are extremely broad. UCI was created, in its purported trust form and then as a non-profit corporation, to benefit and support a *religion*. The Court does not agree with Defendants' contention that UCI is intended to benefit "all mankind". It appears however that any individual or organization that promotes the Unification Church and the dissemination of the Divine Principle could qualify as a beneficiary. The Court cannot find that this is what our Court of Appeals intended when it said potential beneficiaries must be sharply defined and limited in number.[9]

Notwithstanding, the Court finds that Plaintiffs in this case, individually and collectively, are exactly the type of parties for which "special interest" standing is reserved. Our Court of Appeals has specifically held that "special interest" is a term of "uncertain scope," a holding which appears to acknowledge that the doctrine may encompass a class of plaintiffs beyond mere

[9] The Court notes that (although it need not resolve the issue at this time) it is a very close call as to whether the challenged actions in this matter constitute "an extraordinary measure threatening the existence of the trust" or "an ordinary exercise of discretion on a matter expressly committed to the trustees." *Hooker*, 579 A.2d at 615. The Court of Appeals has held that "in addition to the nature of the class, we think it necessary -- in the case of potential beneficiaries -- also to consider the nature of the challenge to the trustees' acts in deciding whether to apply the special interest exception." *Id.* at 614. Certainly, UCI's original Articles grant the Board the authority to take each and every action—amending the Articles, removing and replacing Directors, selling properties, and engaging in commercial transactions—which Plaintiffs argue was in contravention of the original purpose. Taken together, however, these actions could amount to a complete overhaul of UCI. Further, removing all specific mention of the "Unification Church" and the "Divine Principle" from the Articles could open the door for the new-UCI to completely subvert all of its originally intended purposes. Defendants argue this is merely a "rewording," but it begs the question: if the change was as minor and "discretionary" as they claim, why did they do it? Presumably, if the purposes of UCI are to promote "world Christianity" and the "Unification Movement," rather than the "Unification Church" and the "Divine Principle," the Board should have more leeway to allocate UCI's resources. Under the new Articles, any corporate action could be categorized as promoting world Christianity. Although the original Articles gave the Board extremely broad discretion to act, it is curious that the new Board felt the need to broaden that discretion.

beneficiaries. *Hooker*, 579 A.2d at 612. Although the Court has indicated that "it appears that at least a clearly identified intended beneficiary has a justiciable interest in enforcement of the trust," as well as a possible beneficiary in limited circumstances, the Court has also extended special interest standing to plaintiffs who are not beneficiaries in the usual sense of the term.[10] *Id.* In *Bd. of Dirs. Of the Washington City orphan Asylum v. Bd. of Trustees of the Washington City Orphan Asylum* (*Orphan Asylum I*), the Court of Appeals found that the plaintiffs, the trustees of the charitable corporation at issue, had special interest standing to sue. 798 A.2d 1068, 1074 (D.C. 2002). These plaintiffs were not "beneficiaries" of the charitable corporation; the beneficiaries would have been the orphans that were slated to receive the benefits and support for which the corporation was formed. Nonetheless, the Court held that the plaintiff-trustees "have standing to bring suit and be heard with respect to the matters alleged in the several counts of their amended complaint," as the statute that created the corporation "constitutes . . . the directresses and managers [plaintiffs] as a board, 'a majority of whom shall be necessary to do business,' assigns them specific authority over orphans, and arguably assigns them general management responsibilities." *Id.* at 1077. The Court found that this was a sufficient "'special interest' in continued performance of the [corporation] distinguishable from that of the public at large." *Hooker*, 579 A.2d at 612.

In a case (cited by Defendants) related to the instant matter, *Steinbronn v. Times Aerospace USA, LLC*, 2009 CA 9127, the presiding judge held that the plaintiff, UCI's former

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[10] The D.C. Uniform Trust Code defines "beneficiary" as a person or entity with "a present or future beneficial interest in a trust, vested or contingent." D.C. Code § 19-1301.03(2)(A). With the exception of UPF, none of the Plaintiffs appear to have any right to receive distributions or other benefits from UCI. Rather, they are entities associated with UCI in some manner. Plaintiffs claim that the Family Federation has the right to control UCI's decisions; that UC Japan contributed funds to UCI; and that Plaintiffs Joo and Kim are former directors. These allegations do not mean, as the Court understands the term "beneficiary," that Plaintiffs have "a present or future beneficial interest in [UCI], vested or contingent." UPF, on the other hand, has the best argument that it is a beneficiary because it has received, and claims to still have the right to receive, donations from UCI. This right can only be inferred from past conduct, however, because UPF is not mentioned anywhere in the original or amended Articles, or in the Bylaws.

in-house counsel, did not have "special interest" standing because he was merely a former employee and member of the Unification Church. (*See* Order dated July 7, 2010.). The presiding judge found that to afford Mr. Steinbronn standing would be to adopt an untenable case-by-case analysis: what our Court of Appeals has described as "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 . . . 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." *Hooker*, 579 A.2d at 612. Plaintiffs in this case, however, are not merely members of the Unification Church; they are entities and individuals that have (or had) a significant interest in UCI's dealings. As described in the Complaint, Plaintiffs "include the corporate embodiment of the Unification Church and the primary donor, principal intended beneficiaries, and wrongfully ousted former directors of UCI." Family Federation allegedly exerts great influence on the religion and (at least formerly) over UCI. UC Japan has allegedly donated millions of dollars to UCI, and UPF has allegedly received millions of dollars from UCI over multiple decades. Plaintiffs Joo and Kim represented forty percent of the decision-making body of UCI before being removed from the Board. Plaintiffs have, therefore, sued "to secure an individualized interest in [UCI], and the problems presented by suits from a 'practically limitless and wholly indefinite group of persons,' . . . are less pronounced." *Id.* Accordingly, the Court finds that Plaintiffs possess a "'special interest' in continued performance of the [UCI] distinguishable from that of the public at large," and therefore have standing to bring Count I for breach of trust and the direct claim of Count II of the Complaint. *Id.*

B. Standing to Assert the Derivative Claim in Count II

In the Motion, Defendants argue that Plaintiffs' derivative claim must be dismissed because Plaintiffs lack standing to sue on UCI's behalf. Defendants assert that the Nonprofit Corporation Act[11] provides that only "members" of a nonprofit corporation have standing to bring a derivative suit, and because UCI was formed as a non-member corporation, only the Attorney General may bring a derivate suit. *See* D.C. Code § 29-301.06(2) (2001). Further, that Rule 23.1 requires that a plaintiff seeking derivative standing must allege in his complaint that he "was a shareholder or member at the time of the transaction of which [he] complains or that [his] share or membership thereafter devolved on [him] by operation of law." None of the Plaintiffs allege that they were shareholders or members of UCI as required by Rule 23.1.

In Opposition, Plaintiffs argue that the duty of obedience and loyalty claims in Count II are not traditional derivative claims, but rather quasi-derivative as described by the New York Court of Appeals in *Consumers Union of U.S., Inc. v. New York*, 840 N.E.2d 68, 81 (N.Y. 2005). All that matters for such a claim is that Plaintiffs have "special interest" in the governance of the corporation. Notwithstanding, Plaintiffs also argue that Count II is pled as a formal derivative claim and that they have standing to bring such a claim in accordance with D.C. Code § 29-301.06(2) as the "legal representatives" of UCI. Further, that Rule 23.1—entitled "Derivative actions by shareholders"—does not apply. That Rule requires that plaintiffs in such actions allege that they were "a shareholder or member at the time of the transaction of which [they] complain." Because UCI has no members or shareholders, Rule 23.1 is inapplicable.

The District of Columbia Nonprofit Corporation Act (2001 version) does not specifically identify those individuals and entities with standing to bring a derivative claim, and neither party

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[11] The Court declines to address the applicability (or lack thereof) of the newly-enacted Nonprofit Corporation Act of 2010 (the "New Act"), which took effect on January 1, 2012. *See* D.C. Code § 29-401.01 (2012).

in this matter has pointed to a Court of Appeals case on point.[12] The provision cited by Defendants, D.C. Code § 29-301.06(2) (2001), is entitled "Defense of *ultra vires*" and does not specifically address the power of a plaintiff to bring an action on a corporation's behalf. Rather, Section 29-301.06(2) provides that a challenge to a corporation's capacity or power to act *may* be brought "in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation." The term "legal representative" is not defined in the Nonprofit Corporations Act, but Plaintiffs contend that the Court of Appeals, in interpreting the term's meaning elsewhere in the Code, has held "a broad definition of the term should be applied." *In re Estate of Wilson*, 416 A.2d 228, 231-32 (D.C. 1980); *see also Consumers Union*, 840 N.E.2d at 80 n.20 (N.Y. 2005) (noting that New York Non-Profit-Law allows officers and directors to bring a derivative action). Even if the Court assumes that "legal representative" means officer or director, none of the Plaintiffs are currently officers or directors, or, for that matter, members. To conclude that these Plaintiffs have standing to bring a true derivative action would belie the purpose of such an action. "In a derivative action, the shareholder seeks to assert, on behalf of the corporation, a claim belonging not to him but to the corporation." *Flocco v. State Farm. Mut. Auto Ins. Co.*, 752 A.2d 147, 151 (D.C. 2000). A person with special interest standing, however, "sues to secure an individualized interest." *Hooker v. Edes Home*, 579 A.2d 608, 612-13 (D.C. 1990). These two basic principles appear to contradict each other. In addition, it does not appear that Plaintiffs have complied with the

[12] The Court notes that the Nonprofit Corporation Act of 2010 contains a subchapter dedicated to derivative proceedings. Under the New Act, "[a] derivative proceeding may be brought in the Superior Court by: (1) A member or members having 5% or more of the voting power, or by 50 members, whichever is less; or (2) Any director or member of a designated body." D.C. Code § 29-411.02(a) (2012). The New Act provides a further qualification that "the plaintiff in a derivative proceeding shall be a member, director, or member of a designated body at the time of bringing the proceeding. A plaintiff that is a member shall also have been a member at the time of any action complained of in the derivative proceeding. *Id.* § 29-411.02(b). It does not appear that these Plaintiffs would meet the requirements for derivative standing under the New Act.

procedural requirements to assert a derivative claim. Accordingly, the Court does not find that a true derivative action is appropriate in this instance.

Notwithstanding, Plaintiffs argue their claim is really a quasi-derivative action, for which they need only demonstrate special interest. *See Consumers Union*, 840 N.E.2d at 81 (N.Y. 2005) (clarifying that "what plaintiffs actually seek here is quasi-derivative standing to vindicate" the corporation's interests). Plaintiffs do not, however provide any case law from this jurisdiction in which our Court of Appeals has recognized the validity of a quasi-derivative action. In fact, each of the cases relied upon by Plaintiffs (and this Court) for special interest standing was brought as a direct claim. *See, e.g.*, *Hooker v. Edes Home*, 579 A.2d 608; *Orphan Asylum I*, 798 A.2d 1068. The Court finds, therefore, that Plaintiffs lack standing to bring a derivative action on UCI's behalf, and UCI must be dismissed as a Plaintiff.

C. Standing to Assert Contract-Based Claims: Counts IV-VI

In the Motion, Defendants argue that UC Japan's contract-based claims must be dismissed because it is well-settled that a donor to a charitable corporation lacks standing to sue to challenge the corporation's use of donated funds. Citing *Carl J. Herzog Found. v. Univ. of Bridgeport*, 699 A.2d 995, 997 (Conn. 1997) and *Hooker v. Edes Home*, 579 A.2d 608 (D.C. 1990), Defendants claim that the Attorney General is the only appropriate party to bring such an action.

In opposition, Plaintiffs contend that Defendants' reliance on the Connecticut Supreme Court's decision in *Herzog* is misplaced because *Herzog* dealt with "statutory standing," while standing in this case is based upon a contract between UC Japan and UCI. *See Pearson v. Garrett-Evangelical Theological Seminary, Inc.*, 2011 U.S. Dist. LEXIS 51342, at *13 (N.D. Ill. May 13, 2011). Plaintiffs argue that the holding in *Herzog* that only the Attorney General has

standing to enforce the conditions placed on a charitable donation, is belied by the D.C. Code's provisions, that grant a settlor standing to sue for breach of trust. *See* D.C. Code §19-1304.05(c); *Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426, 435-36 (1st Dep't 2001); *Herzog*, 699 A.2d at 1002 (McDonald, J., dissenting); *Banner Health Sys. v. Long*, 663 N.W.2d 242, 250 (S.D. 2003).

In reply, Defendants argue that the D.C. Code provisions as to settlor standing to enforce a breach of trust have no bearing on UC Japan's standing (or lack thereof) as a donor to a charitable corporation. *See Hardt v. Vitae Found., Inc.*, 302 S.W.3d 133, 137, 139-40 (Mo. Ct. App. 2009); *Dodge v. Trs. of Randolph-Macon Woman's Coll.*, 661 S.E.2d 805, 808-10 (Va. 2008). Defendants further argue that this Court follow the well-settled common law rule that donors, with limited exceptions, do not have standing in situations such as these; Plaintiffs do not satisfy the exceptions because there is no evidence that UC Japan reserved the right to sue or made a "restricted gift." *Herzog*, 699 A.2d at 997-99. Further, that UC Japan cannot escape this common law rule simply by claiming the right to sue as a party to a contract.

In the Surreply, Plaintiffs argue that Defendants' reliance on the holdings of *Hardt* and *Dodge* that trust principles should have no bearing on a donor's standing to sue a charitable corporation are misplaced, as the law in the District of Columbia is the exact opposite. *See Hooker*, 579 A.2d at 611 n.8 ("Although the Edes Home is technically a charitable corporation . . . rules applying to charitable trusts govern the standing issue."). Notwithstanding, UC Japan's contributions to UCI were specifically restricted to particular activities, which supports the applicability of the restricted gift exception to the rule of *Herzog*, as misplaced as Plaintiffs' claim that rule is in this case. Finally, Plaintiffs contend that the question as to whether the

contributions (and accompanying restrictions) and the available documents evince a contractual relationship is a factual issue that should only be resolved at trial.

The Connecticut Supreme Court's decision in *Herzog* is at the heart of the parties' dispute as to the issue of UC Japan's standing to bring Counts IV-VI. In that case, the "sole issue" before the court was whether the plaintiff had standing to bring an action to enforce conditions accompanying a gift made by it to the defendant. *Herzog*, 699 A.2d at 996. The court first concluded that plaintiffs would not have standing at common law, as "the general rule . . . was that a donor had no standing to enforce the terms of a completed charitable gift unless the donor had expressly reserved a property interest in the gift." *Id.* at 999. The court then turned to the plaintiff's argument that Connecticut's Uniform Management of Institutional Funds Act (the "CUMIFA") altered the common law rule so as to provide plaintiffs with statutory standing; specifically, the statute's language that "with the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund." *Id.* The lower court had concluded that, "[o]n the basis of this language . . . 'it would be anomalous for a statute to provide for written consent by a donor to change a restriction and then deny that donor access to the courts to complain of a change without such consent,'" and therefore that "the statute, although silent on the matter, *implicitly* confers donor standing on the plaintiff." *Id.* at 997, 999-1000 (emphasis in original). The Connecticut Supreme Court held, however, that "[o]n the basis of our careful review of the statute itself, its legislative history, the circumstances surrounding its enactment, the policy it was intended to implement, and similar common law principles governing the same subject matter, . . . [the] CUMIFA does not establish a new class of litigants, namely donors, who can enforce an unreserved restriction in a completed charitable gift." *Id.* at 1002.

Despite the Connecticut Supreme Court's ruling in *Herzog*, this Court finds that case is not on point with the facts presented, and is not controlling, in this case. The court undoubtedly affirmed the common law rules "that a donor who has made a completed charitable contribution, whether as an absolute gift or in trust, had no standing to bring an action to enforce the terms of his or her gift or trust unless he or she had expressly reserved the right to do so" and that "the donor's right . . . is enforceable only at the instance of the attorney general." *Id.* at 997-98. The court also specifically noted, however, that "it is well established in the context of charitable trusts that there are others, in addition to the attorney general, who may enforce the terms of a trust." *Id.* at 999 n.4. The *Herzog* decision acknowledges, therefore, that "others" may have standing to enforce the purposes of a charitable trust depending on the law of the relevant jurisdiction. Accordingly, the decision in *Herzog* does not preclude standing in this case. Plaintiffs allege that Reverend Moon created a charitable trust, and (unlike Connecticut's statute in *Herzog*) the D.C. Code *explicitly* provides settlors and persons with special interest standing to enforce the purpose of a charitable trust.

A recent decision from the U.S. District Court for the Northern District of Illinois supports this interpretation. In *Pearson v. Garrett-Evangelical Theological Seminary, Inc.*, the District Court cited two reasons why *Herzog* did not control its case. 2011 U.S. Dist. LEXIS 51342, at *11-*13 (N.D. Ill. May 13, 2011). First, the District Court noted that "the *Herzog* plaintiff's sole basis for standing was the CUMIFA, and the *Herzog* court's holding was expressly limited to determining whether that particular statute conferred standing on a donor." *Id.* at *12-*13. In *Pearson*, however, the plaintiff (similar to Plaintiffs in this case) asserted claims for breach of contract and other common law causes of action. Second, the District Court indicated that *Herzog* is not binding authority in Illinois, and the defendant had "not identified

any Illinois authority that would suggest that the Supreme Court of Illinois would apply the reasoning in *Herzog* to the facts of this case." *Id.* at *12. Further, the District Court noted that two of the five judges in *Herzog* dissented from the majority's decision, and that the decision contradicts a body of case law which clearly recognizes donor standing. *Id.* at *12 (citing *Smithers v. St. Luke's-Roosevelt Hosp. Ctr.*, 723 N.Y.S.2d 426, 427, 434-35 (1st Dep't 2001), that "held that the estate of a donor of a charitable gift had standing to sue the donee to enforce the terms of a gift that had been donated with restrictions" because "there is no substitute for a donor, who has a special, personal interest in the enforcement of the gift restriction"). The District Court stated that "[a]lthough the *Herzog* court's detailed analysis of the common law regarding donor standing is persuasive, the parties in the instant case have not made it clear that *Herzog*'s reasoning should apply in a case such as this, where the donor alleges that he provided funds to a charitable institution pursuant to a contract, which was later breached." *Id.* at *13.

As the District Court concluded in *Pearson*, *Herzog* is not binding in the District of Columbia, and Defendants have not pointed to any authority in this jurisdiction that would indicate that this Court should apply *Herzog*. And, as in *Pearson*, UC Japan does "not merely allege that [it] made a donation; [it] alleges that [it] donated money pursuant to a specific agreement that was later breached." *Id.* at *8. In addition, the D.C. Code explicitly provides settlors and persons with special interest standing to enforce the purpose of a charitable trust. Under these circumstances and in light of the Court's conclusion regarding special interest standing discussed *supra*, at this time[13] the Court finds the contract-based claims as set out in Counts IV-VI should not be dismissed on the ground that UC Japan lacks standing to bring such claims.

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[13] The Court notes that Defendants are free to re-raise the issue of standing once the factual record in the case has been more fully developed. *Speyer v. Barry*, 588 A.2d 1147, 1159 n.24 (D.C. 1991) (noting that lack of standing is a jurisdictional issue which may be raised at any time).

III. Failure to State a Claim for Relief Under Rule 12(b)(6)

A. Standard of Review

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a complaint. *Luna v. A.E. Eng'g Servs., LLC*, 938 A.2d 744, 748 (D.C. 2007). "Because '[o]ur rules reject the approach that pleading is a game of skill in which one misstep . . . may be decisive to the outcome' and 'manifest a preference for resolution of disputes on the merits, not on technicalities of pleading,' we construe pleadings 'as to do substantial justice.'" *Clampitt v. Am. Univ.*, 957 A.2d 23, 29 (D.C. 2008) (quoting *Carter-Obayuwana v. Howard Univ.,* 764 A.2d 779, 787 (D.C. 2001)). A complaint should not "be dismissed because a court does not believe that a plaintiff will prevail on [his] claim"; rather, "a complaint must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist." *Grayson v. AT&T Corp.*, 15 A.3d 219, 229 (D.C. 2011); *Williams v. District of Columbia*, 9 A.3d 484, 488 (D.C. 2010).

Specifically, a complaint must satisfy the pleading standard in Rule 8(a). Under that standard, a court "accept[s] the allegations of the complaint as true, and construe[s] all facts and inferences in favor of the plaintiff." *Solers, Inc. v. Doe*, 977 A.2d 941, 947 (D.C. 2009); *In re Estate of Curseen*, 890 A.2d 191, 193 (D.C. 2006). A complaint need not contain detailed factual allegations, but it must include "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543-44 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). Naked assertions devoid of further factual enhancement will not suffice,

and a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009). The factual allegations must raise a right to relief above a speculative level. *Clampitt*, 957 A.2d at 29. To survive a motion to dismiss, therefore, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Potomac Dev. Corp.*, 28 A.3d at 543-44. A claim has facial plausibility "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Dismissal for failure to state a claim is warranted only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of their claim. *Murray v. Wells Fargo Home Mortgage*, 953 A.2d 308, 316 (D.C. 2008).

B. Count I: Breach of Trust

In the Complaint, Plaintiffs allege that in 1975, Reverend Moon created an "oral charitable trust for the benefit of the Unification Church and entities affiliated with the Church." Plaintiffs argue that Reverend Moon's directions to Dr. Pak to open and place funds in the Unification Church International bank account evince Reverend Moon's intent to create the trust to support the mission and activities of the Unification Church. By contributing funds to this trust bank account, UC Japan became a settlor of the trust, and by way of his actions, Dr. Pak became the first trustee.

In the Motion, Defendants argue that the Complaint fails to set out sufficient facts to demonstrate that a trust had been formed. Specifically, that Plaintiffs fail to allege facts to establish that Reverend Moon intended to form a trust, transferred title to the bank funds to Dr. Pak, and possessed a transferrable interest in the bank funds. Defendants also argue that

Plaintiffs have failed to allege well-pleaded facts to prove that Preston Moon was a co-trustee of the oral charitable trust.

According to the Restatement (Second) of Trusts (and reiterated by our Court of Appeals), a trust is a "fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it." *Cabaniss v. Cabaniss*, 464 A.2d 87, 91 (D.C. 1983). In the District of Columbia, a trust is created *only if*: "(1) [t]he settlor has capacity to create a trust; (2) [t]he settlor indicates an intention to create the trust; (3) [t]he trust has a definite beneficiary or is: (A) [a] charitable trust; . . . (4) [t]he trustee has duties to perform; and (5) [t]he same person is not the sole trustee and sole beneficiary." D.C. Code § 19-1304.02(a)(1)-(5) (2001). In order to constitute a validly created trust, the trust need not be evidenced by a written trust instrument, "but the creation of an oral trust and its terms may be established only by clear and convincing evidence." *Id.* at § 19-1304.07.

Of the five statutory requirements for creation of a trust, Defendants appear to contest only that Reverend Moon intended to create a trust. Defendants argue that Plaintiffs have failed to offer a single document or other tangible expression to evince Reverend Moon's intention to form a trust. The only evidence as to Reverend Moon's intent is Plaintiffs' statement in the Complaint that "Reverend Moon directed Dr. Pak to hold the funds in the Unification Church International bank account in trust solely for the benefit and support of the Unification Church and its related activities." Defendants contend that this statement is wholly inadequate because it is a "threadbare . . . self-serving, conclusory assertion that is not entitled to a presumption of

truth" and is contradicted by UCI's original Articles and its bylaws. *See Mazza v. Housecraft LLC*, 18 A.3d 786, 790-91 (D.C. 2011).

Defendants accurately note that the only *written or spoken* statement Plaintiffs have offered as to Reverend Moon's intent is their own assertion in the Complaint that Reverend Moon directed Dr. Pak to hold funds (in the bank account) in trust for the benefit of the Unification Church. The Court does not, however, agree with the significance Defendants place on Plaintiffs' failure to plead the actual words spoken by Reverend Moon to Dr. Pak[14] or Defendants' characterization of this statement as a legal conclusion. Rather, it is a factual allegation which is being offered to prove the legal conclusions that Reverend Moon intended to create a trust and that a valid trust was formed. This so-called "threadbare statement" of instruction to Dr. Pak is also not the only evidence as to Reverend Moon's intent (as Defendants argue), and the Court may look to a number of other factors. Although our Court of Appeals has stated that "the settlor's manifestation or external expression of his intention to create a trust" is

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[14] Defendants repeatedly argue that although "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." In support of that argument, Defendants cite to the Court of Appeals' decision in *Cabaniss v. Cabaniss*. 464 A.2d 87, 92 (D.C. 1983). In *Cabaniss*, the Court held that "[i]n [decedent's] oral declarations to Stephanie [the purported trustee] and in his letters executed in [her] presence, decedent imperatively and unambiguously" evidenced his intention to create a trust for his incompetent daughter. *Id.* at 92. Defendants interpret this holding to mean that the "the imperative, as distinguished from precatory, nature of the words used by the settler to create a trust" are critical to determining the settlor's intent. *Id.*

Although "the imperative, as distinguished from precatory, nature of the words used by the settlor to create a trust" is undoubtedly an important consideration for this inquiry, our Court of Appeals has noted that it is only one of six "extrinsic circumstances and evidentiary factors pertinent to a determination of a settlor's intention to create a trust." *Id.* at 91-92. Our Court of Appeals did not indicate that the settlor's words are the "critical" factor; that a settlor's words will always be dispositive of the issue; or that this single factor is to be given greater weight than any other. In *Cabaniss*, the oral and written statements were explicit and unambiguous, and the strength of that factor appears to have motivated the Court's case-specific holding. In this case, the words are not as definitive, but the Court of Appeals' ruling in *Cabaniss* does not doom Plaintiffs' case here; rather, this Court should look at the alleged statements, in conjunction with the other factors provided, in reaching its decision as to whether Reverend Moon intended to form a trust. Moreover, although the Court in *Cabaniss* stressed the importance of the decedent's words, it also indicated that the surrounding circumstances were supportive.

Moreover, at this time, Plaintiffs need not have presented clear and convincing evidence that an oral charitable trust was created. Rather, the Complaint must "contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). At this stage, therefore, the facts alleged must allow the Court "to draw the reasonable inference" that Defendants are liable for breach of trust.

"essential" to the inquiry as to whether a trust was in fact formed, the settlor's intention to create a trust can be evidenced "by written or spoken language *or by conduct, in light of all surrounding circumstances*." *Cabaniss*, 464 A.2d at 91 (emphasis added). "No particular form of words or conduct is necessary to manifest an intention to create a trust," and a number of evidentiary factors are relevant:

> Among the extrinsic circumstances and evidentiary factors pertinent to a determination of a settlor's intention to create a trust are (1) the imperative, as distinguished from precatory, nature of the words used by the settlor to create a trust; (2) the definiteness of the trust property; (3) the certainty of the identity of the trust beneficiaries; (4) the relationship between and financial positions of the parties; (5) the motives which may reasonably be supposed to have influenced the settlor in making the disposition, and (6) whether the result reached in construing the transaction as a trust would be such as a person in the situation of the settlor would naturally desire to produce.

Id.

In the Complaint, Plaintiffs allege that Revered Moon and Dr. Pak had worked together to advance the Unification Church religion since 1956 and had relocated to the United States together to further their religious goals. Dr. Pak opened a bank account in the name "Unification Church International," not in Reverend Moon's or Dr. Pak's names personally. Reverend Moon did not give Dr. Pak the first 70,000 dollars to deposit the money in an account in the name of the Unification Church for Dr. Pak's own personal use. The reasonable inference is that he did so with the intent to create "fiduciary relationship with respect to property" for the benefit of the Unification Church activities. That first 70,000 dollars and all money deposited in the account thereafter was allegedly used over the next decades exclusively to benefit the Unification Church. Under these surrounding circumstances, and accepting Plaintiffs' statement that Reverend Moon directed Dr. Pak to hold funds (in the bank account) in trust for the benefit of the Unification Church as true, the Court finds that Plaintiffs have pled sufficient facts from

which the Court may reasonably infer that Reverend Moon intended to form a trust.[15] While this may not be sufficient to satisfy the Code's clear and convincing standard at another stage in the case or at trial, but at this stage, a facial plausibility is all that is required. *Grayson v. AT&T Corp.*, 15 A.3d 219, 228 (D.C. 2011) (noting a complaint should not "be dismissed because a court does not believe that a plaintiff will prevail on [his] claim").

This Court also finds that Plaintiffs have pled sufficient facts to indicate that Reverend Moon (as alleged settlor) effectuated a complete transfer of title to the bank funds to Dr. Pak (as alleged trustee)[16] and that Preston Moon was a co-trustee of the purported charitable trust.[17]

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[15] Defendants argue that to accept Plaintiffs' oral trust theory would contradict the governance structure expressed in UCI's Articles of Incorporation. Defendants argue that the Court of Appeals "has refused to recognize a trust when applicable legal instruments and writings are silent about trust formation." *See Save Immaculata/Dunblane, Inc. v. Immaculata Prep. Sch. Inc.*, 514 A.2d 1152 (D.C. 1986). In *Immaculata*, the plaintiffs, students and alumni at two private schools in the District of Columbia, filed an action against a religious order (the "Order") after the Order decided to close the two schools and sell the school properties to pay the Order's debts and fund its retirement program. The plaintiffs argued that the Order's creation and operation of the schools evidenced the formation of a trust in favor of the schools' students: "[t]he crux of appellants' argument is that although the Order had legal title to the school properties, the beneficial or equitable interest was vested in students and benefactors through the school corporations, which is consistent with the corporations' charitable status." *Id.* at 1157. In pertinent part, the Court of Appeals held 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.* Defendants argue, therefore, that this Court is bound by the precedent of *Immaculata* to find that a trust was not formed because UCI's Articles of Incorporation make no mention of a trust.

This Court finds, however, that the Court of Appeals' decision in *Immaculata* is distinguishable from this case. First, in *Immaculata*, the plaintiffs sought the imposition of an implied or constructive trust, or a resulting trust as seen in *Edwards v. Woods*, 385 A.2d 783 (D.C. 1978) ("A resulting trust is a property relationship designed to effectuate the parties' intent when one party takes title to property for which another has furnished the consideration."). Under those circumstances, the Court of Appeals first concluded that the plaintiffs "have pointed to no express trust created to divest the Order of either beneficial or legal interest in the properties." *Immaculata*, 514 A.2d at 1157. The Court also held that the plaintiffs had offered no authority to support their implied or constructive trust theory, adding (in this limited context) that such a ruling would "belie the Order's expressed desire, seen in the school corporations' articles." *Id.* In this case, however, Plaintiffs argue that an express trust was created, and Plaintiffs cite Reverend Moon's instruction to Dr. Pak to open a bank account for the benefit of the Unification Church as evidence of this express trust.

[16] Plaintiffs' repeated assertion that Reverend Moon maintained significant control over administration of the bank account funds and UCI's endeavors support the finding that Reverend Moon failed to completely transfer title to the funds; however, so too does Defendants' repeated assertion that UCI's Articles vest complete control in the Board of Directors belie the argument that Reverend Moon retained control over the funds and their disposition.

[17] The Restatement (Third) of Trusts §35 cmt.b, indicates that "no particular formality is necessary" to constitute an acceptance or rejection of the fiduciary office. Rather, "an acceptance can be expressed orally or inferred from conduct." *Id.* In fact, D.C. Code § 19-1307.01(a)(2) provides that "a person designated as trustee accepts the trusteeship . . . [i]f the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship."

Under the circumstances, accepting all allegations in the Complaint as true and construing all facts and inferences in favor of the Plaintiffs, the Court finds that Plaintiffs should be allowed to proceed on their claims for breach of an oral charitable trust.

C. Count II: Breach of Fiduciary Duties, *Ultra Vires* Acts

In the Complaint, Plaintiffs allege that the Individual Defendants, as members of UCI's Board of Directors, owe duties of obedience, loyalty, and care. These duties imply that Defendants shall not take any action in contravention of UCI's established mission and purpose and to exercise good business judgment and ordinary care in operation of the business. Plaintiffs allege that the Individual Defendants breached their fiduciary duties and engaged in *ultra vires* acts by: (1) amending UCI's Articles of Incorporation; (2) violating UCI's long-standing custom and practice as to the appointment and removal of Directors; (3) engaging in self-dealing by diverting assets away from UCI's established purpose and to Preston's personal pursuits; and (4) ceasing to use UCI's assets to support the mission and activities of the Unification Church.

In the Motion, Defendants argue that Count II must be dismissed because Plaintiffs have failed to "allege facts sufficient to establish . . . [D]efendant[s] owed *Plaintiff[s]* a fiduciary duty." *Paul v. Judicial Watch, Inc.*, 543 F. Supp.2d 1, 5 (D.D.C. 2008) (emphasis added). The only duties that Plaintiffs claim were breached are duties Defendants owed to UCI. In addition, Defendants argue that the challenged actions are not *ultra vires* because, by definition, *ultra vires* acts are those which the corporation was "without capacity or authority to do." D.C. Code § 29-301.06. In this case, Defendants were authorized to take each of the alleged *ultra vires* acts in accordance with D.C. Code provisions and UCI's original Articles of Incorporation. *See* D.C.

Code §§ 29-301.34, 29-301.35(4) (amending Articles); §§ 29-301.19(b), (d) (electing and removing Directors); § 29-301.05(5) (using and selling corporate assets).

In Opposition, Plaintiffs argue that each has been injured by breaches of duties owed to Plaintiffs personally, not just duties owed to UCI. *See Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 729 (D.C. 2011) (noting, in its discussion as to the issue of standing, that "the individual rights of the plaintiffs were affected by the alleged failure to follow the dictates of the constitution and by-laws and they thus had a 'direct, personal interest' in the cause of action, even if 'the corporation's rights are also implicated.'"). In addition, Plaintiffs argue that because our Court of Appeals has held that the rules governing charitable trusts may be applied to charitable corporations, the Individual Defendants (as trustees) have breached their duty of loyalty to "administer the trust solely in the interests of the beneficiaries." D.C. Code §§ 19-1308.02(a), 19-1308.01; *see Orphan Asylum*, 798 A.2d 1068, 1074 (D.C. 2002) (finding that wrongfully ousted board members were "asserting their own interest in serving in the capacity accorded them by the statute").

Upon consideration of the parties' arguments and the relevant case law and statutory provisions, the Court finds that Plaintiffs have pled sufficient facts to proceed on their claims for breach of fiduciary duties and *ultra vires* acts. *See Hooker*, 579 A.2d at 610 (noting that plaintiffs brought claims for breach of fiduciary duty, *ultra vires* acts by the Trustees, and failure to act in the best interests of the trust beneficiaries); *Orphan Asylum*, 798 A.2d at 1073 (involving claims for breaches of fiduciary duty, arbitrary and capricious action, diversion of funds, conversion of funds, and *ultra vires* acts). The Complaint contains sufficient factual matter, which accepted as true, plausibly gives rise to the conclusion that "(1) defendant owed plaintiff a fiduciary duty; (2) defendant breached that duty; and (3) . . . the breach proximately

caused an injury." *Paul v. Judicial Watch, Inc.*, 543 F. Supp. 2d 1, 5-6 (D.D.C. 2008); *see also 3M Co. v. Boulter*, 2012 U.S. Dist. Lexis 12860, *94 (D.D.C. 2012) (citing *Paul*). `

The Court finds that Plaintiffs have also sufficiently pled at least one transaction that could constitute an *ultra vires* act. Under D.C. Code § 29-301.28, "[n]o loans shall be made by a corporation to its directors or officers," and those "directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof." Therefore, although Defendants claim that UCI's Articles authorized them to take each of the alleged *ultra vires* acts, the D.C. Code expressly prohibits loans to officers or directors as beyond the power of a board.

D. Count III: Breach of Fiduciary Duty as Agent

In the Complaint, Plaintiffs allege that UCI is one of many "providential organizations" within the Unification Church. The Family Federation, as the authoritative religious entity that directs Unification Churches worldwide, delivers edicts and instructions that "must be followed by Church regional presidents and national leaders." The International President of the Family Federation, with the approval of Reverend Moon, appoints and removes the leaders of these providential organizations, including UCI. UCI is, therefore, an agent of the Family Federation, and Preston Moon, as the head of a providential organization within the Church, is also an agent of the Family Federation. By acting in contravention of the purposes for which UCI was formed and in violation of the Family Federation's directions, Preston Moon has breached his fiduciary duties as an agent of the Family Federation.

In the Motion, Defendants argue that Count III must be dismissed because Plaintiffs have not offered sufficient facts to demonstrate that Preston Moon is an agent of the Family

Federation under District of Columbia law. Specifically, Plaintiffs have not demonstrated that Preston Moon consented to an agency relationship or that the Family Federation had the right to control Preston Moon's conduct as President and Chairman of the Board of UCI.

In Opposition, Plaintiffs contend that the allegation in the Complaint that Preston Moon "agreed to act on behalf of the Family Federation and subject to the Family Federation's control and direction" is sufficient to defeat the motion to dismiss on Count III. Moreover, Plaintiffs argue that the law does not require that Preston Moon affirmatively consent to the agency relationship; rather, his consent may be established by way of his conduct and the surrounding circumstances. Further, that the Family Federation's control over Preston Moon and UCI is evident from years of conduct and dealing between the Family Federation and UCI and other providential organizations.

In Reply, Defendants argue that Plaintiffs' characterization of UCI as a providential organization and argument that Preston Moon consented to the agency relationship merely by accepting his positions within UCI are factually unsupported and contradicted by UCI's governance documents. UCI's bylaws and Articles of Incorporation make clear that UCI is a self-governing body whose affairs are dictated exclusively by the Board of Directors; further, that Preston Moon, as Chairman and President, is subject to control only by the Board of Directors.

Under District of Columbia case law, there is a twofold test for determining whether an agency relationship exists: "First, the court must look for evidence of the parties' *consent* to establish a principal-agent relationship. Second, the court must look for evidence that the activities of the agent are subject to the principal's *control.*" *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 1097 (D.C. 2008) (emphasis in original) (quoting *Henderson v. Charles E.*

Smith Mgmt., Inc., 567 A.2d 59, 62 (D.C. 1989). There are a number of factors that are relevant to this two-part inquiry: "(1) the selection and engagement of the servant, (2) the payment of wages, (3) the power to discharge, (4) the power to control the servant's conduct, (5) and whether the work is part of the regular business of the employer." *Id.* (quoting *Judah v. Reiner,* 744 A.2d 1037, 1040 (D.C. 2000)). "Of these factors, the determinative one is usually 'whether the employer has the right to control and direct the servant in the performance of his work and the manner in which the work is to be done.'" *Judah*, 744 A.2d at 1040. "The cases emphasize that the right to control, rather than its actual exercise, is usually dispositive of whether there is an agency relationship." *Id.* (citing *Safeway Stores, Inc. v. Kelly*, 448 A.2d 856, 860 (D.C. 1982)).

Case law also indicates that "courts will look both to the terms of any contract that may exist and to the actual course of dealings between the parties." *Id.* The Court of Appeals has held in at least one case that "[c]onduct or words by a person which cause the other reasonably to believe that that person desires him to act on his account and subject to his control are sufficient to establish such authority." *Id.* (citing *Smith v. Jenkins*, 452 A.2d 333, 335 (D.C. 1982)).

In this case, there is no contract to which this Court may look for guidance. Plaintiffs do not offer any written or oral statement to support their contention that Preston Moon consented to a principal-agent relationship. Plaintiffs claim, however, that both of the necessary elements—consent and control—can be established from UCI's course of dealings prior to the time in which Preston Moon acquired control and his actions thereafter. Specifically, Plaintiffs point to the structure of the Unification Church, which made the heads of its providential organizations subject to the appointment and removal of the leader of the Family Federation. Further, that UCI was established with Reverend Moon retaining some degree of control over its management and

dealings. This hierarchical structure was in place for decades, and, according to Plaintiffs, is exemplified by the fact that, in 2006, Reverend Moon designated Preston to be a Director of UCI and the then-President of the Family Federation designated Preston as President and Chairman of the Board of UCI. Having been quite familiar with, and appointed to UCI pursuant to, this organizational power structure, Preston Moon was well aware that he served the Family Federation in an agency capacity.

UCI's governing documents appear to contradict Plaintiffs' theory. UCI's Articles state that the "internal affairs of the Corporation shall be regulated by the Board of Directors" and "the right to vote on any and all matters affecting the Corporation shall be vested exclusively in the Board of Directors." The Articles make no mention of the authority Plaintiffs' claim Reverend Moon and the Family Federation had over UCI's corporate decisions. The Board, however, consistently (over three decades) exercised its powers in accordance with Reverend Moon's and the Family Federation's wishes. On the one hand, this could indicate that the Board has always understood its powers to be subordinate to the wishes of Reverend Moon and the Family Federation. On the other hand, this could also indicate that the Board's power was always absolute and its actions were consistently in line with Reverend Moon's wishes simply because he had hand-picked a Board that he knew would always agree with him on matters. Regardless, the language of UCI's Articles, taken alone, indicate that power over UCI's endeavors was vested *exclusively* in the Board, and that had they wanted, at any point, to act in contravention of Reverend Moon's or the Family Federation's wishes, the Articles would have allowed them to do so.

The Court finds that whether an agency relationship existed is an extremely close call. Certainly the parties disagree as to whether, how, and to what degree Reverend Moon and the

Family Federation controlled the actions of UCI and its directors. Although UCI's governing documents are silent on the issue, it is undeniable that Plaintiffs have pled facts to indicate that for decades UCI and its Directors operated in accordance with Reverend Moon's and the Family Federation's directives. Our Court of Appeals has indicated that the elements of an agency relationship—consent and control—can be implied from the parties' conduct and the surrounding circumstances. This will be a fact-intensive inquiry. At this time, therefore, the Court finds that Plaintiffs have set forth sufficient factual material for the court to reasonable infer that an agency relationship existed and that Defendants breached their fiduciary duties as agents of the Family Federation. *Potomac Dev. Corp.*, 28 A.3d at 543-44.

E. Count IV-VI: Breach of Contract; Promissory Estoppel; Unjust Enrichment

In the Complaint, Plaintiffs claim that UC Japan has contributed millions of dollars to UCI over the years, upon the condition and mutual understanding that those funds would be used in a manner consistent with the purposes for which UCI was established. Plaintiffs argue that UCI's Articles reflect this promise, as UCI is "[t]o serve as an international organization assisting, advising, coordinating, and guiding the activities of Unification Churches organized and operated throughout the world," and the promise is reinforced in correspondences between UC Japan and UCI. Plaintiffs argue that during Preston Moon's tenure, however, he has caused UCI to divert from those stated purposes in violation of the long-standing agreement between UC Japan and UCI. Counts IV-VI are predicated upon the existence and validity of this agreement and UCI's recent departure therefrom.

i. Breach of Contract

On a motion to dismiss a claim for breach of contract, the complaint must allege four necessary elements in order to satisfy the minimum pleading requirements: "(1) a valid contract

between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach." *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009). The essential elements of a valid contract are "competent parties, lawful subject matter, legal consideration, mutuality of assent and mutuality of obligation." *Ponder v. Chase Home Fin., LLC*, 666 F. Supp. 2d 45, 48 (D.D.C. 2009) (applying D.C. law). Under District of Columbia law, in order to form an enforceable oral contract, there must be an agreement as to all material terms and the parties must intend to be bound. *Kramer Assocs. v. Ikam, Ltd.*, 888 A.2d 247, 251-52 (D.C. 2005); *Jack Baker, Inc. v. Office Space Dev. Corp.*, 664 A.2d 1236, 1238 (D.C. 1995).

It is not entirely clear from the Complaint or Plaintiffs' pleadings under which contract theory it is proceeding: an express, oral, or implied-in-fact contract. Plaintiffs simply refer to a "contract," "agreement," and "promise" whereby UC Japan agreed to make contributions to UCI and UCI. In return, UCI agreed to use such funds in accordance with the purpose for which the UCI Trust was formed and as expressed in UCI's original Articles of Incorporation. Plaintiffs do not identify a formal written contract or specific oral exchange that memorializes this alleged agreement. Rather, Plaintiffs appear to allege that the parties' contractual understanding is reflected by their long-standing dealings and memorialized in various correspondences between their representatives. Under these circumstances, Plaintiffs' theory of Count IV is probably best described as an implied-in-fact contract. *See Vereen v. Clayborne*, 623 A.2d 1190, 1193 (D.C. 1993) ("[A]n implied-in-fact contract is a true contract, containing all necessary elements of a binding agreement; it differs from other contracts only in that it has not been committed to writing or stated orally in express terms, but rather is inferred from the conduct of the parties in the milieu in which they dealt.").

At this stage, however, the theory is not necessarily important, as "the elements of an express and an implied contract are the same." *Great Socialist People's Libyan Arab Jamahiriya v. Ahmad Miski*, 683 F. Supp. 2d 1, 6 n.4 (D.D.C. 2010). The Court finds that Plaintiffs' Complaint alleges sufficient facts to outline each element of a viable claim for breach of contract. Plaintiffs allege that UCI and UC Japan entered into an agreement with specific and simple terms: UC Japan would contribute money to UCI and UCI would use that money solely to further Unification Church activities. This agreement is supported by, and the parties' intent can be inferred from, three decades of dealings between the parties in which they complied with those alleged promises. Based on the facts provided in the Complaint, the Court can reasonably infer that UCI had an obligation to use UC Japan's funds for an express purpose, and it breached that obligation by allegedly diverting funds away from the specified purposes for which they were contributed. Finally, Plaintiffs allege that they have suffered monetary damage from UCI's breach. Taking Plaintiffs' factual allegations as true, the Complaint is sufficient to plausibly give rise to an entitlement for relief. At this stage, Plaintiffs have met their burden and adequately alleged the elements, which if proven, to state a claim for breach of contract.

ii. Promissory Estoppel

In the Motion, Defendants argue that UC Japan has failed to allege sufficient facts to plausibly establish any of the elements of a claim for promissory estoppel: (1) that UC Japan suffered injury, (2) in reliance on a promise by UCI, and (3) enforcement of the promise is necessary to prevent injustice. *Simard v. Resolution Trust Corp.*, 639 A.2d 540, 552 (D.C. 1994). Defendants reiterate that UC Japan experienced no injury because once it had made donations to UCI it relinquished all interest and control over such funds, and, as such, any injury suffered would have been to the public. *Hooker,* 579 A.2d at 611-12. Defendants contend that

UC Japan could not have relied on an alleged promise to use the contributed funds for a specified purpose because UC Japan gave up its interest in the alleged funds upon their contribution. *Herzog,* 699 A.2d at 997. Finally, that there is no threat of injustice here, as the Attorney General has the authority to bring an action to prevent the misuse of charitable funds.

In Opposition, Plaintiffs contend that they have alleged sufficient facts as to each element of the promissory estoppel claim: UCI promised to use UC Japan's contributions for Unification Church-related activities; UC Japan reasonably relied on that promise in deciding to (and continuing to) contribute to UCI; and UC Japan experienced injustice when UCI decided to divert funds to other uses.

Upon consideration, the Court is in agreement with the arguments advanced by Plaintiffs. For the reasons stated *supra*, Defendants' argument that the Attorney General possesses the exclusive right to sue and their reliance on *Herzog* are misplaced. Defendants' contention that damages are not available under a theory of promissory estoppel is also misplaced. *See Tauber v. Jacobson*, 293 A.2d 861, 867 (D.C. 1972); *see also Knight v. Georgetown Univ.*, 725 A.2d 472, 484-85 (D.C. 1999) (refusing to disturb a jury award of 90,000 dollars on a promissory estoppel theory in light of appellants' claim that such an award was excessive).

Our Court of Appeals has held that "[t]o hold a party liable under the doctrine of promissory estoppel 'there must be a promise which reasonably leads the promisee to rely on it to his detriment, with injustice otherwise not being avoidable.'" *Moss v. Stockard*, 580 A.2d 1011, 1034 (D.C. 1990) (citations omitted). At this stage of the proceedings, the Court finds that Plaintiffs have set forth facts by which the Court can infer each element of such a claim for promissory estoppel.

iii. Unjust Enrichment

In the Motion, Defendants argue that Count VI must also fail because UC Japan has not alleged facts that UCI "retains a benefit (usually money) which in justice and equity belongs to another." *Harrington v. Trotman,* 983 A.2d 342, 346 (D.C. 2009). In support of this argument, Defendants reiterate the argument that once UC Japan contributed funds to UCI, UC Japan relinquished all interest and control over such funds and therefore, UCI could not retain any monetary benefit that rightfully belongs to UC Japan. Moreover, Defendants argue that any injustice that resulted from a misuse of those funds would be borne by the public and may be remedied only in a suit by the Attorney General.

In Opposition, Plaintiffs argue that the Complaint sufficiently alleges a claim for unjust enrichment (as an alternative to the breach of contract and promissory estoppel theories) because UCI misappropriated the funds contributed by UC Japan in violation of the parties' agreement. Plaintiffs again refute Defendants' contention that UC Japan relinquished its interest in such funds. *See Stock v. Augsburg College*, No. C1-01-1673, 2002 Minn. App. LEXIS 421, at *14 (Minn. Ct. App. Apr. 16, 2002) ("A conditional gift is one that is conditioned on a donee's performance of an act; and if the condition is not fulfilled then the donor may recover the gift. . . . The condition may be imposed by law or implied in fact in order to prevent unjust enrichment.").

Under District of Columbia law, "[u]njust enrichment occurs when: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant retains the benefit; and (3) under the circumstances, the defendant's retention of the benefit is unjust." *Pearline Peart v. Dist. of Columbia Hous. Auth.*, 972 A.2d 810, 813 (D.C. 2009). In this case, the Complaint alleges that UC Japan contributed substantial funds to UCI over multiple decades; that UCI has used the money to fund its endeavors; that UCI has benefitted from the use of the funds; and that the

alleged misuse of those funds harms Plaintiffs. The Court finds, therefore, that Plaintiffs' factual allegations plausibly give rise to an entitlement for relief on a claim for unjust enrichment. In light of this Court's holding as to special interest standing,[18] and absent any authority from this jurisdiction that would bar Plaintiffs' unjust enrichment claim, the Court finds that at this time dismissal is not appropriate.

Accordingly, it is this 19th day of June 2012, herby:

ORDERED that Defendants' Joint Motion to Dismiss the Complaint is **GRANTED IN PART** as to the derivative claim of Count II and **DENIED IN PART** as to the remainder of the Complaint. It is further

ORDERED that the derivative claim of Count II is **DISMISSED** and UCI is **DISMISSED** as a Plaintiff in this action.

SO ORDERED.

Natalia M. Combs Greene
(Signed in Chambers)

[18] Much of Defendants' argument that the claim for unjust enrichment should be dismissed pertains to Plaintiffs' standing to bring such a claim. Defendants mainly argue that such a suit is reserved for the Attorney General. The Court addressed this point in its discussion of special interest standing and concluded that these Plaintiffs have an interest in the performance of UCI that is distinguishable from the public at large.

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