
Case No. 25-4068

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

IN RE: THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS TITHING LITIGATION

*Appeal from the United States District Court for the District of Utah (Salt Lake City)
Case No. 2:24-MD-03102-RJS-DAO · The Honorable Robert J. Shelby, Chief U.S. District Judge*

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STATEMENT OF PRIOR AND RELATED APPEALS

There are no prior or related appeals.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because this is a class action where (a) there are at least 100 class members, (b) the amount in controversy exceeds \$5 million, and (c) at least one class member is a citizen of a different state than at least one defendant. The district court entered final judgment on April 17, 2025. (App. Vol. 2 at 422). Appellants filed a notice of appeal on May 19, 2025. (App. Vol. 2 at 423-24). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STANDARD OF REVIEW

Review of the district court's order dismissing complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure is *de novo*. *McNellis v. Douglas Cnty. Sch. Dist.*, 116 F.4th 1122, 1130 (10th Cir. 2024). In this review, the Court must take as true "[a]ll well-pleaded facts, as distinguished from conclusory allegations, view all reasonable inferences in favor of the nonmoving party, and liberally construe the pleadings." *Id.* at 1330-31. (quotations omitted). The same *de novo* review applies to orders dismissing complaint under Rule 12(b)(6) based on

statute of limitations, *see Brady v. UBS Fin. Servs., Inc.*, 538 F.3d 1319, 1323 (10th Cir. 2008), and dismissal without leave to amend as was ordered below, *Seale v. Peacock*, 32 F.4th 1011, 1027 (10th Cir. 2022).

Where, as here, the district court's jurisdiction was based on diversity of citizenship, Utah substantive law governs. *See Brady*, 538 F.3d at 1323; *Gokool v. Oklahoma City Univ.*, 716 F. App'x 815, 817 (10th Cir. 2017). "This court must therefore ascertain and apply [Utah] law with the objective that the result obtained in the federal court should be the result that would be reached in [a Utah] court." *Brady*, 538 F.3d at 1323. (quotation omitted).

STATEMENT OF ISSUES PRESENTED

1. Did the district court err when finding, for the purposes of Rule 12(b)(6) and based upon judicial notice of news stories, that Appellants' claims were barred as a matter of law by the statute of limitations?

2. Did the district court err when it held, at variance with Utah Court of Appeals, that the Utah Charitable Solicitations Act, Utah Code Ann. §§ 13-22-1, *et seq.* ("UCSA") did not impose a fiduciary duty on Appellees to Appellants?

3. (a) Did the district court err when it dismissed Appellants' claims pursuant to Rule 12(b)(6) without any opportunity to amend to address its holdings, including the pleading deficiencies it identified?

(b) Did the district court err when it dismissed Appellants' claims of fraudulent concealment, finding that they had not adequately alleged the materiality of Appellees' deceptive acts, when Appellants' complaint included quotes from Appellees' leadership that their concealments were meant to drive donations?

STATEMENT OF THE CASE

On February 21, 2023, The United States Securities and Exchange Commission ("SEC") issued a Cease-And-Desist Order ("SEC Order") against Appellees the Church of Jesus Christ of Latter-day Saints ("the Church") and Ensign Peak Advisors, Inc. ("Ensign") (collectively "Appellees")) based on their violations of the securities laws.¹ (App. Vol. 1 at 64, 90 (¶¶ 13, 99)). With this Order, the SEC put an end to Appellees' deliberate, decades-long, and illegal concealment of "the size of the Church's equity portfolio from the [SEC] and the public" through the:

creat[ion of] thirteen limited liability corporations ('LLCs'), including twelve similar LLCs (the "Clone LLCs") with

¹ The SEC Order, cited by the district court (App. Vol. 2 at 10) and generally in the Complaint, is available at <https://www.sec.gov/files/litigation/admin/2023/34-96951.pdf>.

addresses located throughout the U.S., for the sole purpose of filing Forms 13F and preventing public disclosure by Ensign of the Church's equity securities holdings. The Forms 13F that Ensign Peak filed in the names of these LLCs misstated, among other things, that they had sole investment and voting discretion over the listed securities, when Ensign at all times retained discretion over all investment decisions.

SEC Order, at 2. *Id.*

Ensign developed its approach to filing Forms 13F in the names of these Clone LLCs with the knowledge and approval of the Church, which sought to avoid disclosure of the amount and nature of its assets. Through Appellees' institutionalized use of this shell game for almost twenty years, the Church and Ensign hid Ensign's significant role in the securities markets as an institutional investment manager. SEC Order at 2 ("Summary"). Pursuant to the SEC Order, Appellees collectively paid \$5 million in civil penalties and ceased their use of shell companies to conceal the extent of the Church's holdings, which holdings include the donations at issue in this litigation. (App. Vol. 1 at 64 (¶ 140)).

A. Appellees Purposefully Deceived Donors About the Disposition of Donations to the Church.

The reason for Appellees' illegal deception was simple: "[The Church] was concerned that disclosure of the assets in the name of [Ensign], a known Church affiliate, would lead to negative consequences in light of the

size of the Church’s portfolio.” SEC Order ¶ 8.² The original \$7 billion held by Ensign in 1997 had grown by 2020 to include \$37.8 billion in (undisclosed) publicly traded securities. SEC Order ¶¶ 3, 5. Roger Clarke, the President and Chief Operating Officer of Ensign, admitted that Appellees’ reason for the cover-up of the billions of Church funds was “[s]o they never wanted to be in the position where people felt like, you know, they shouldn’t make a contribution [to the Church].” (App. Vol. 1 at 91 (¶ 1102)). Similarly, Ensign concealed the full extent of its holdings in filings with the IRS by deliberately understating by factors of tens of thousands its book value in its annual 990 reports. (App. Vol. 1 at 85-87 (¶¶ 87-91)).

Only after the SEC pulled back the curtain on Appellees’ deceit did Appellants—a mixture of current and former Church members—learn of Appellees’ deception of donors like themselves. On October 31, 2023, Appellants filed the first of their several actions that were transferred to and consolidated before the United States District Court for the District of Utah by the Judicial Panel of Multidistrict Litigation under 28 U.S.C. § 1407. (App. Vol. 1 at 56-59). In their Consolidated Class Action Complaint (“Complaint”), Appellants outline and detail the omissions, concealments,

² This paragraph continues by making clear that “[Ensign] did not have the authority to implement this approach without the approval of the Church’s First Presidency.”

half-truths, and denials undertaken by Appellees to drive charitable donations to the Church.

Appellees repeatedly represented that the solicitation and disposition of donations “compl[y] with all applicable law governing our donations, investments, taxes and reserves,” that audits by the Church Auditing Department confirmed “in all material respects, contributions received, expenditures made, and assets of the Church . . . have been recorded and administered in accordance with approved Church budgets, policies, and accounting practices,” and that Ensign’s holdings are “irrevocably dedicated to religious, educational and charitable purposes.” (App. Vol. 1 at 64, 83, 90 (¶¶ 12, 81, 101)). Not only are such representations belied by the SEC Order and the millions in civil penalties paid by Appellees, they are at odds with representations the Church made when it solicited donations. (App. Vol. 1 at 71-79 (¶¶ 53-78)).

Appellees’ inducements to donors were false. During the relevant time period, once the Church received any donated funds, an untoward amount was never put to any promised good. (*See, e.g.*, App. Vol. 1 at 63 (¶ 8)) (“some, if not all, of these donations . . . are permanently invested in accounts [the Church] never uses for any charitable work”).

Rather, the funds were transferred through a web of entities (much like Ensign used its shell companies) to Ensign, where they were comingled and remain alongside monies from the Church's complex network of secular businesses and other operations. (*See, e.g.*, App. Vol. 1 at 82 (¶ 79) (presenting a graph demonstrating cash flows between and through no less than 20 entities, including for-profit, taxable entities; App. Vol. 1 at 68 (¶ 40) (listing various entities through which the Church does business))).

And, once donated monies reached Ensign, they were never used to fund religious, educational, or other charitable efforts; when the funds have been used at all, it has been for unrelated business ventures. *See, e.g.*, (App. Vol. 1 at 83, 84, 91-95 (¶ 80, 83, 105-115)). Any question about the propriety of the use of donated funds held by Ensign for these for-profit undertakings is answered by the fact that Appellees distributed the Ensign funds indirectly through other Church entities. (App. Vol. 1 at 93 (¶ 111)). Mr. Clarke, Ensign's President and CEO, emphasized Appellees' motivation: Appellees concealed the payments so that "people would not know [Ensign] was the source of this funding" and "it was important that people should not know [Ensign]'s role as the source of the funds." (App. Vol. 1 at 94 (¶ 112)). Of course, the millions in civil penalties Appellees later paid pursuant to the SEC Order likely added another inappropriate use of

donated funds, and Appellants expect more would be found in discovery. (App. Vol. 1 at 95 (¶¶ 115)).

B. Appellants Stated Claims Against Appellees Based Upon Their Deceptive Conduct in Soliciting and Misdirecting Donations.

Appellants asserted five claims for relief under Utah law: breach of fiduciary duty (with the duty established through the USCA), fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, and unjust enrichment.

One of the sources of the allegations in Appellants' Complaint was a 2019 "Letter to an IRS Director" which had been sent by a purported whistleblower to the Internal Revenue Service and was published via YouTube ("Whistleblower Report.")³ Following the letter's release, Appellees redoubled their efforts to conceal their practices, and issued denials of any illegal practice, stating that the Church "complies with all applicable law governing our donations, investments, taxes and reserves." (App. Vol. 1 at 64 (¶ 12)). There is no public record of the IRS taking any

³ The YouTube site is cited in the Complaint (*see, e.g.*, App. Vol. 1 at 85, 86 (¶¶ 87, 89) along with a link to that site - <https://www.youtube.com/watch?v=KDI FZF3RyhE> (last visited July 21, 2025)).

action, and the first evident governmental response to the Whistleblower report was the SEC's 2023 Order.

C. Despite Appellants' Factual Allegations Detailing Appellees' Misconduct, the District Court Dismissed the Complaint.

On April 17, 2025, the district court dismissed Appellants' Complaint. (App. Vol. 2 at 421). Although a matter of significant briefing and argument below, based on "the judicial canon of constitutional avoidance" the district court expressly did not reach any matters pertaining to the Church Autonomy Doctrine, and "focus[ed] instead on nonconstitutional failures." (App. Vol. 2 at 391-393).

The district court dismissed Appellants' claims on three nonconstitutional grounds. First, at variance with clear allegations of Appellees' active concealment and deceptions, and Appellants' ignorance of Appellees deceptive practices, the district court took judicial notice of a series of news stories about the Whistleblower Report and a handful of earlier lawsuits by disaffected former members to find Appellants' claims time-barred. (App. Vol. 2 at 393-407). In so doing, the district court noted—but neglected to heed—that an affirmative defense like statute of limitations was not one Appellants needed to address at the pleading stage. (App. Vol. 2 at 396-397).

Second, despite the plain language of the UCSA, the district court held that Appellees owed no fiduciary duty to Appellants as donors. (App. Vol. 2 at 408-411). Finally, the district court also found that Appellants had not alleged with sufficient specificity their personal experiences of Appellees' deception—*e.g.*, what had they relied on and what donations had they made—but dismissed their claims with prejudice, instead of providing them an opportunity to cure. Appellants were provided no opportunity to amend the Complaint to allege when they learned about Appellees' deceptions, or to bolster any of the allegations the district court found to be deficient. (App. Vol. 2 at 411-419).

SUMMARY OF THE ARGUMENTS

This court should reverse the lower court's statute of limitations holding because it improperly considered facts outside the pleadings and applied an overly broad standard for inquiry notice. The district court did not construe all allegations and facts in favor of Appellants, as it must when deciding a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rather, in deciding that Appellants' claims were time-barred, the district court ignored Appellants' specific allegations of ignorance of Appellees' deceptions, and instead took judicial notice of news reports of the Whistleblower Report (mostly local to Salt Lake City) and

later litigations that predated Appellants' first complaint by over three years with no allegations in the complaint (and certainly no evidentiary record) that the Appellants had ever seen them.

Moreover, the district court followed cases involving sophisticated investors who are responsible to track financial news of their investments, including most extensively a case applying Colorado law which imputes such knowledge as a matter of law to investors. Under Utah law, however, the question of a party's discovery of the facts of their case is a question of fact for the jury in all but the clearest of cases, and Appellants did not have the burden to make allegations related to this affirmative defense. If permitted to amend, Appellants would have alleged facts to establish that their claims were timely.

The lower court's alternative basis for dismissal of Appellants' claims are equally erroneous. Even though the minor pleading deficiencies the court identified surrounding reliance could be readily cured by amendment, the court denied Appellants any opportunity to do so. As for the purported deficiency of Appellants' allegations about the materiality of Appellees' deceptions, Appellants based such allegations on Appellees' own statements about their intent to drive donations.

ARGUMENTS

I. The District Court Improperly Determined that Appellants' Claims Were Time-Barred.

Because Appellants' claims are made against a backdrop of Appellees' active concealment of the disposition of donated funds to encourage further donations, the relevant statute to examine for statute of limitations purposes is Utah Code Ann. § 78B-2-305. That section provides a three-year statute of limitations period for, among other things:

relief on the grounds of fraud or mistake; except that the cause of action in such case does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

Thus, a cause of action does not accrue until discovery of the pertinent facts. *See Hill v. Allred*, 28 P.3d 1271, 1276 (Utah 2001). The district court took the initial 2019 date of the release of the Whistleblower Report on a YouTube video (and related, largely local news stories about it) to estimate a date when Appellants should have discovered all the "facts constituting the fraud." According to the Court, the clock began ticking "no later than early 2020," (App. Vol. 2 at 407), even though Appellants had no knowledge of Appellees' deception and concealment until years later. (*See, e.g.*, App. Vol. 1 at 69-70, 98 (¶¶ 46-49, 132-133)).

In doing so, the district court improperly decided a factual question that should have been developed in discovery and left for the jury to decide.

“The fraud statute of limitations involved here almost always presents a question of fact as to when plaintiff did discover or should have discovered the defendant’s wrongdoing.” *Bistline v. Parker*, 918 F.3d 849, 881 (10th Cir. 2019). Even where there is strong evidence “reflecting ‘clear suspicions of wrongdoing [which] give rise to a legal duty to make further inquiry,’” courts should not weigh that evidence when determining whether to dismiss a claim as a matter of law. *Id.* (discussing and quoting *Berenda v. Langford*, 914 P.2d 45, 50 (Utah 1996)). Particularly in the context of fraud, “the reasonableness of the plaintiff’s conduct in light of the defendant’s steps to conceal the cause of action necessitates the type of factual findings which preclude summary [disposition] in all but the clearest of cases ‘Such close calls are for juries, not judges, to make.’” *Berenda*, 914 P.2d at 54 (quoting *Chapman v. Primary Children’s Hosp.*, 784 P.2d 1181, 1186 (Utah 1989)); *see also Shiozawa v. Duke*, 344 P.3d 1174, 1180 (Utah App. 2018) (“at what point a party should have reasonably discovered a claim is a fact-intensive inquiry that ‘preclude[s] [judgment as a matter of law] in all but the clearest cases’”) (quoting *In re: Hoopiiana Tr.*, 144 P.3d 1129, 1141 (Utah 2006)).

A. The District Court Erred In Basing Its Decision On Colorado Law Related to “Sophisticated Investors.”

The district court turned the rule announced by the Supreme Court of Utah and refined by *Bistline*—accrual is a question of fact for the jury—into the exception. The district court based its decision on *Grynberg v. Total S.A.*, 538 F.3d 1336 (10th Cir.), where this Court applied Colorado’s statute of limitations in a case involving a sophisticated investor in oil fields. (App. Vol. 2 at 394-397, 406). There, several “prominent newspapers” published articles—years before the plaintiff filed suit—announcing that exploration and development of the fields had been awarded to oil companies other than the plaintiff’s. *Grynberg*, 538 F.3d 1342-43. As noted in *Grynberg*, “Colorado case law supports the view that sophisticated business people can be expected to check public information” about their investments. *Id.* at 1349. Indeed, the *Grynberg* plaintiff admitted in deposition that he had read a related *Wall Street Journal* article at the time. *Id.* at 1343. Thus, this Court found that “it strains credulity that a person of Mr. Grynberg’s self-described experience, expertise, and worldliness, with a financial interest worth millions of dollars, or even tens or hundreds of millions of dollars, could not, with reasonable diligence, learn of matters reported in the leading business newspapers circulated in this country.” *Id.* Here, in marked contrast, Appellants are not sophisticated investors; they are small

donors to a charity who, as far as they knew, had no reason to rigorously evaluate the Church's statements as to where their donations would end up. (*See, e.g.*, App. Vol. 1 at 96-98 (¶¶ 116-133)).

The logic of *Grynberg* was rooted in the particular duty of a sophisticated investor to stay abreast of news regarding his investments. Nevertheless, the lower court, without holding that a similar duty existed here or making any attempt to evaluate the Appellant's own sophistication, mechanically applied *Grynberg* as a blanket allowance for courts to "impute constructive knowledge based on existence of news articles about facts forming the basis of a plaintiff's claims." (App. Vol. 2 at 394). The cases it cited supporting its decision similarly involved securities litigation cases in which "sophisticated investors" ignored financial news about their investments. (App. Vol. 2 at 394 (citing *Sterlin v. Biomune Sys.*, 154 F.3d 1191 (10th Cir. 1998) (noting a "news article in widely-read investor publication") and *Stichting Pensionenfonds ABP v. Countrywide Fin. Corp.*, 802 F.Supp.2d 1125 (C.D.Cal. 2011) (noting "press reports and earlier-filed lawsuits"))); and (App. Vol. 2 at 399 (noting the "sophisticated investors" and "extensive media coverage they received" in *In re Zyprexa Prods. Liab. Litig.*, 549 F.Supp.2d 496 (E.D.N.Y. 2008))).

B. The District Court’s Neglect of Utah Law and Cases Involving Ordinary People Warrants Reversal.

In its focus on out-of-state and “sophisticated investor” cases, the district court did not confront the extensive body of Utah case law in which Utah courts have properly declined to impute knowledge of facts to ordinary people to time-bar their claims as a matter of law. As this Court noted in *Bistline*, “Utah courts consistently acknowledge that, at root, the application of the discovery rule is a factual matter.” *Id.* at 880 (citing *Colosimo v. Roman Catholic Bishop of Salt Lake City*, 156 P.3d 806, 817 (Utah 2007); *Arnold v. Grigsby*, 417 P.3d 606, 616 (Utah 2018)). Thus, “despite allegations here that *could* be interpreted to indicate plaintiffs’ duty to inquire further, we cannot say as a matter of law that plaintiffs should have suspected defendants of wrongdoing prior to the [SEC order].” *Bistline*, 918 F.3d at 881. The District Court, however, held that *Bistline* did not apply because of its “incredibly unique” fact pattern, instead of recognizing the broader rule articulated in *Bistline* that courts should not weigh competing factual inferences in applying the statute of limitations. (App. Vol. 2 at 404).

Even in cases without *Bistline*’s unique facts (which are irrelevant for the purposes of this appeal), courts have declined to impute publicly available information to plaintiffs for statute of limitations purposes. In

Thompson v. 1-800 Contacts, Inc., 2018 WL 2271024 (D. Utah May 17, 2018), which the district court below cited in passing among the “sophisticated investor” cases, consumers asserted antitrust claims against a leading online marketer of disposable contact lenses based on a series of settlement agreements entered into between 2004 and 2009 to resolve the defendant’s trademark infringement claims against competitors. *Id.* at *1-2. Prior to the plaintiff’s suit, but years after these settlement agreements, the Federal Trade Commission (“FTC”) investigated the defendant’s use of these settlement agreements to restrict trade, ultimately issuing its finding in October 2017 that the defendant had engaged in anticompetitive conduct. *Id.* There, as here, the underlying conduct had occurred outside of the limitations period and was publicly available, but was not apparent to the individual plaintiffs until the results of a regulatory investigation were announced.

The *Thompson* defendant argued that the plaintiffs’ claims were time-barred because the publicly known settlements would “have been adequate to raise [the plaintiffs’] suspicions about their injuries and prompt a duty to exercise reasonable diligence to uncover their claims.” *Id.* at *12. But the *Thompson* court succinctly noted that the case before it differed from “cases alleging securities fraud [where] investors had reason to track the

companies in which they invested”; rather, the court appreciated that the plaintiffs “are individual consumers.”⁴ *Id.* at *13.

Here, Appellants are even further from “sophisticated investors” who are expected to track investments in reliable news sources than the “individual consumers” in *Thompson*. Appellants are or had been members of the Church, and were “entitled to rely on” Appellees’ assurances, including their later, exculpatory statements. *Berenda*, 914 P.2d at 54; (App. Vol. 1 at 65-67, 96-98 (¶¶ 18-34, 116-133)).

C. The District Court Improperly Elided the Questions of Fact About Appellants Based on Misused, Judicially Noticed “Facts.”

Without the judicially-noticed facts, the court had no basis for its decision that Appellants’ claims were time-barred as a matter of law. (*Cf.* App. Vol. 2 at 394-401). However, by using judicial notice of news stories to establish accrual of Appellants’ claims, the district court improperly conflated any attention the Whistleblower Report may have received (which is not established or alleged as to Appellants) with the veracity of its opinions and assertions. *See Estate of Lockett v. Fallin*, 841 F.3d 1098, 111 (10th Cir. 2016) (“Judicial notice is proper when a fact is beyond debate, for

⁴ Appropriately, the *Thompson* Court cited (and distinguished) two of the same “sophisticated investor” cases cited by the district court below, *Sterlin* and *Sitchting*.

instance, what time the sun sets on a given day. When the courts have taken judicial notice of contents of news articles, they have done so for proof that something is publicly known, not for the truth of the articles' assertions.”)

The Federal Rules of Evidence only permit judicial notice of facts of an article that are either “(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy and veracity cannot reasonably be questioned.” Fed. R. Evid. 201(b). Indeed, the district court referred to such stories as “evidence” it used in deciding a motion on the pleadings, while construing both the articles and their content against Appellants.

Even if notice was proper, the stories cannot that trigger “inquiry notice” or mandate the decision of the district court. The stories were largely local, Salt Lake news sources⁵ (App. Vol. 2 at 398-399)) – many of which were behind paywalls and not available except to subscribers – reporting that a purported whistleblower sent a letter to the IRS (which

⁵ With the exception of Appellant Oaks, each of the Appellants are not residents of Utah. (App. Vol. 1 at 66 (¶¶ 23, 25, 27, 29, 31, 33)). Plaintiff Christensen is a resident of Utah, but is not an Appellant. Under the district court’s reasoning, persons in Alaska could find their claims time-barred based on stories from a far-flung, local news market.

never acted on the letter). These stories typically did not independently substantiate any of the whistleblower’s assertions. Indeed, some of these sources even attack the credibility of the whistleblower while defending the Appellees.⁶ As for less parochial news sources, given the rule that the district court should defer to the jury to assess the facts, it “strains credulity” that ordinary donors to a charity are legally obliged to read the *Wall Street Journal* or *Washington Post* to ensure that their donations are being honestly and legally used.

Further, the district court ignored Appellants’ allegations that Appellees’ responded to these stories with “continued and expanded efforts to conceal [their] practices, including issuing . . . statement[s] that [they] ‘compl[y] with all applicable law governing our donations, investments, taxes and reserves.” (App. Vol. 1 at 64 (¶ 12)).⁷ Such public denials “give rise to competing inferences,” and Appellees’ denials are among the facts to be considered by the jury in deciding when a claim accrues. *In re Wells*

⁶ See, e.g., App. Vol. 2 at 398 (citing Tad Walch, *Church Responds to Allegations Made by Former Employee in IRS Complaint*, Deseret News (Dec. 17, 2019, 12:43 PM), <https://perma.cc/4GP6-<+MJES>).

⁷ See also (App. Vol. 1 at 65 (¶ 15)) (“[Appellees] continued to misrepresent their use of funds, including concealing their illegal scheme to hide their assets using shell companies, even after the whistleblower first came forward in 2019”), (App. Vol. 1 at 69) (“[Appellees] . . . affirmatively misrepresented . . . that they were obeying all applicable laws and that donor funds were not being misdirected”).

Fargo Mortgage-Backed Certificates Litig., 712 F.Supp.2d 958, 967-68 (N.D. Cal. 2010); *see also Bodell Constr. Co. v. First Interstate Fin. LLC*, 427 P.3d 483, 491-92 (Utah App. 2018) (“[t]he facts of this case were susceptible to different interpretations that precluded judgment as a matter of law.”); *CounselNow LLC v. Deluxe Small Bus. Sales, Inc.*, 430 F.Supp.2d 1247, 1258 (D. Utah 2019) (the defendant “reassured [the plaintiff] that [it] used only acceptable SEO strategies and that [it] had proper procedures to ensure . . . compliance.”)

The district court also neglected that the Whistleblower Report was not written by the person with any first-hand knowledge of the facts; instead, it relayed someone else’s unverified accusations, and may have been a crackpot. (*See App. Vol. 1 at 67-68 (¶ 39 n. 6)* (“its author was not the actual whistleblower”); *App. Vol. 2 at 526, 531 (Tr. 101:4-10, 106:13-19)*). Although the Report may have suggested there may be cracks in Appellees’ public representations, it was unreliable and did not trigger “inquiry notice,” particularly as Appellees actively sought to cover the cracks. *Cf Shiozawa v. Duke*, 344 P.3d 1174, 1180, 1183 (Utah App. 2015).

The district court also noted that earlier claims against the Church established that Appellants were on notice of the Whistleblower Report. Even assuming that Appellants, as donors and former members, have some

duty to monitor case dockets for relevant filings alongside Church news (which they do not), those earlier cases do not involve the same allegations and are not reliable fonts of facts that are relevant to “inquiry notice.” Both *Cooke* and *Gaddy* are broadsides on the truthfulness of the Book of Mormon, the history of the Church, and other matters pertaining to alleged breaches of faith.⁸ The *Huntsman* complaint, while more narrowly tailored, made reference only to the Church’s use of donated funds for two business ventures (which is not central to Appellants’ claims based on the Clone LLC shell game). In any event, Mr. Huntsman’s complaint was filed on March 22, 2021, and the Appellants’ actions were filed *less than* three

⁸ For example, the *Cook* complaint asserts a RICO claim against the Church for “introducing the *Book of Mormon* (hereinafter ‘BOM’) as the ‘keystone’ of the Church’s religion, without abiding by any of the BOM’s doctrines, precepts, and teachings. . . . This lawsuit is not about money” *Complaint for Damages and Injunctive Relief for Violations of the Federal Racketeering Influenced Corrupt Organization Act* ¶ 4, 21 (ECF 1, Case No. 2:20-cv-80-TS (D. Utah), cited at App. Vol. 2 at 399)). Similarly, the amended *Gaddy* complaint which first made reference to the Whistleblower Report recited at the outset: “This case is brought by a former Mormon on behalf of many others, against the Corporation of the President of the Church of Jesus Christ of Latter-day Saints™ (‘COP’), who manages the Mormon *aka* LDS Church and who created, directs and manages a correlation committee . . . to deceive lay members about material facts of Mormon history which had been known to COP for over a half century, but until recently concealed from lay members.” [*Proposed*] *Amended Class Action Complaint* ¶ 1 (ECF 32-1, Case No. 2:19-cv-00554-RJS-DBP (D. Utah) cited at App. Vol. 2 at 400)).

years later, between October 2023 and January 2024. (App. Vol. 2 at 388, 401)

Finally, given Appellees recurring public denials of illegality and wrongdoing, including in the news stories, all the “facts constituting the fraud” were not available to Appellants, including Appellees’ knowledge and intent. *See, e.g., Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, (2010) (“[s]cienter is assuredly a ‘fact’”)⁹; *Krstevski v. Welsh*, 2016 WL 4532095 at * 3-4 (D. Utah Aug. 29, 2016) (prior complaint did “not include facts showing that Defendants made misrepresentations with an intent to deceive.”) Years after the IRS evidently found nothing of interest in the Whistleblower Report, the SEC found Appellees violated the law.

D. Appellants Sufficiently Allege They had No Earlier Knowledge of Appellees’ Wrongful Conduct.

That Appellants’ claims are timely is plainly alleged on the face of their Complaint. Appellants allege that they “did not discover and could not discover through the exercise of reasonable diligence that [Appellees] had been engaged in a scheme to defraud” (App. Vol. 1 at 69 (¶ 46)), and given Appellees’ “fiduciary duty to disclose to [Appellants] . . . [Appellants] . . .

⁹ *Merck* examined a statute of limitations that allowed two years after the plaintiffs “discover[ed] the facts constituting the violation” of the securities laws. *Id.* at 637 (quoting 28 U.S.C. § 1958(b)(1)).

reasonably relied on [Appellees'] affirmative representations regarding their use of donated funds, and their concealment of the truth.” (App. Vol. 1 at 70 (¶ 48)). Part of these deceptions were Appellees’ responses to the Whistleblower Report. (App. Vol. 1 at 64 (¶ 12)). While tacitly acknowledging that “[Appellants] ‘did not have the burden to plead this issue’” of when they first learned about the Whistleblower Report (App. Vol. 2 at 402) (quoting *Bistline*, 918 F.3d at 866 n. 12)), the district court improperly placed this burden squarely on Appellants’ shoulders: “[Appellants] *do not expressly deny* they were aware of the Whistleblower Report and related media coverage” (App. Vol. 2 at 402) (emphasis added)). Appellants would have alleged their ignorance if it had been their burden.

Yet, in its dismissal, the district court refused Appellants the opportunity to amend their complaint so that they could more clearly allege some of the indisputable questions of fact that preclude finding constructive notice as a matter of law. If permitted to amend, Appellants would allege that they had not seen or heard of the 2019 Whistleblower Report or the news articles gathered by Appellees and considered by the Court at the time of their publication. Rather, as several Appellants alleged in their original complaints, it was only after the SEC issued its Order—and

the subsequent national coverage of that Order on 60 Minutes—that they first learned about the “facts constituting the fraud.”¹⁰ Appellants could also add what their reading habits are, if they are still in touch with members of the Church, if they even follow news local to Salt Lake City, but such other matters are more properly the subject of discovery—not pleading.

Even if “in hindsight” the Whistleblower report turned out to be correct, and further inquiry had been required to verify its hearsay allegations, “it is not clear whether [Appellants] would have revealed” anything further or made accrual into anything more than a “close call” for the jury to decide. *Berenda*, 914 P.3d at 55; (App. Vol. 1 at 98 (¶ 132)) (“even if [Appellants] had any suspicions that the [Church] was engaging in any such practice, they never could have discovered it” because the withholding of such facts was the purpose of their concealment); *see also* (App. Vol. 1 at 70 (¶ 49)). Even with hindsight, however, there is no clear answer from the face of the complaint – the district court did not find a date when notice was triggered, leaving a period of weeks or months

¹⁰ *See* App. Vol 2 at 312 (referring to Judson Complaint, ¶¶ 94-95 (ECF 1, No. 2:24-cv-00796 (C.D. Cal)); Long Complaint, ¶¶ 98-99 (ECF 1, 3:23-cv- 03950 (S.D.Ill)); Risdon Complaint, ¶¶ 94-95 (ECF 1, 2:23-cv-00372 (E.D.Wash.)); and Brawner Complaint, ¶¶ 96-98 (ECF 1, 3:23-cv-01361 (M.D. Tenn.)).

between 2019 and 2020 of possible notice.¹¹ Given the evident uncertainty, under Utah law the question was to be left for the jury.

II. The District Court Erred When Finding that Appellees Had No Fiduciary Duty to Appellants Under the Utah Charitable Solicitation Act.

Utah law imposes fiduciary duties on anyone who solicits charitable donations for any purpose. The UCSA states: “Every person soliciting, collecting, or expending contributions for charitable purposes, and every officer, director, trustee, or employee of any person concerned with the solicitation, collection, or expenditure of those contributions, shall be considered to be a fiduciary and acting in a fiduciary capacity.” Utah Code Ann. 1953 § 13-22-23. The purpose of the amendments of the UCSA that introduced this section was to, *inter alia*, “[i]mpose fiduciary duties upon solicitors.” Charitable Solicitations Act Amendments, ch. 210, 2001 Utah Laws 210 (H.B. 259).

¹¹ “Because the complaint does not contain the date upon which [Appellants] discovered [their] . . . injuries were caused by [Appellees’ deceptions], this is not a situation where the dates given in the complaint *make clear* that the right sued upon has been extinguished.” *Cosgrove v. Kansas Dept. of Soc. and Rehab. Services*, 332 Fed. Appx. 463, 467 (10th Cir. 2009) (unpublished) (quotations and citations omitted).

Rather than apply the plain statutory language,¹² the district court dismissed Appellants' claims for Appellees' breach of this statutory duty because of a "prevailing understanding that a charity does not owe a fiduciary duty to its donors." (App. Vol. 2 at 409). The district court held that the UCSA only created a fiduciary duty to the charity itself. (App. Vol. 2 at 410) ("on whose behalf they solicit, collect, and spend those contributions.") However, as the district court recognized, such obligations are already in place (*see* App. Vol. 2 at 411, discussing Restatement of Charitable Nonprofit Organizations), so the UCSA is pointless.¹³ Indeed, the district court effectively nullified the provision in the UCSA generally allowing civil suits for "damages or injunctive relief" by "any person damaged as a result of a charitable solicitation." Utah Code Ann. § 13-22-4; *Navajo Nation v. Dailey*, 896 F.3d 1196, 1215 (10th Cir. 2018) (avoid surplusage in statutory interpretation).

¹² *See Calvary Albuquerque, Inc. v. Rubio*, 236 F.4th 1217, 1229 (10th Cir. 2025)

¹³ The parade of horrible absurdities that drove the district court to turn away from Appellees' statutory duty to Appellants under the USCA (App. Vol. 2 at 411) has not precluded other states from successfully enacting similar statutes which impose a fiduciary duty on charitable solicitors to donors. *See, e.g.*, Cal. Bus. & Prof. Code § 17510.8 ("there exists a fiduciary relationship between a charity or any person soliciting on behalf of a charity, and the person from whom a charitable contribution is being made"); Il. Stat. Ch. 225 § 450/16(b)(6) ("any person . . . conducting a fundraising campaign . . . owe[s] a fiduciary duty to the public.")

Rather, the district court turned to inapposite common law applying to escrow agreements to find, under common law, that donors are owed no duty by solicitors. (App. Vol. 2 at 410) (citing *Orlando LC v. United Title Svcs of Utah, Inc.*, 355 P.3d 965, 971 (Utah 2015) (quoting *Fiduciary*, Blacks Law Dictionary (9th Ed. 2009)).¹⁴ But the Utah Court of Appeals noted that the UCSA reformed any limitations on such a common law duty: “the Charitable Solicitations Act anticipates donors personally seeking damages when their donations are procured by fraud.” *Siebach v. Brigham Young Univ.*, 361 P.3d 130, 139-40 (Utah App. 2015).¹⁵ This is just what Appellants allege – “their donations [were] procured by fraud.” The district court erred by failing to faithfully apply this state court decision. (App. Vol. 2 at 409-411).

¹⁴ The district court similarly turned to the Restatement of Charitable Nonprofit Organizations to find agreement that “a fiduciary owes duties of care and loyalty to the charity itself,” and then noted that the Restatement is silent as to duties to donors. (App. Vol. 2 at 411). The USCA provides this duty.

¹⁵ Pennsylvania also adopted the same provision in its Charitable Solicitation Act (*compare* Pa. Stat. 10 P.S. § 162.21 *with* Utah Stat. § 13-22-23), and its courts reached the same conclusion as the Utah Court of Appeals. *See Com. By Preate v. Cancer Fund of Am., Inc.*, 153 Pa. Cmwlth. 124, 135–36 (1993) (holding that the fiduciary duty in the statute extends “to potential donors and recipients.”)

III. The District Court Improperly Found that Appellants Failed to Plausibly Allege Their Claim of Fraudulent Concealment, And Improperly Denied Them the Opportunity to Amend their Wider Claims.

For Appellants' remaining causes of action, the district court found that Appellants neglected to allege certain elements of their claims for fraudulent inducement, fraudulent misrepresentation, and fraudulent concealment.¹⁶ (App. Vol. 2 at 411-419).

Initially, the Court's dismissal with prejudice, and without leave to amend, was based on its finding that Appellants' claims are time-barred. However, as argued above, Appellants' claims are not time-barred, and they should be given leave to amend to address any deficiencies. *See Brever v. Rockwell Intern. Corp.*, 40 F.3d 1119, 1131 (10th Cir. 1994) ("Ideally, if it is at all possible that the party against whom the dismissal is directed can correct the defect in the pleading or state a claim for relief, the court should dismiss with leave to amend"); *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 972 (9th Cir. 2009) ("Dismissal without leave to amend is improper unless it is clear, upon *de novo* review, that the complaint could not be saved by any amendment."). The Supreme Court has stated that

¹⁶ The district court applied its findings that Appellants failed to allege their fraud claims to dismiss, without further examination, their claim of unjust enrichment.

district courts should deny leave to amend only for reasons such as “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of [the] amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Thus, Appellants should be afforded the opportunity to amend to provide more specific allegations about, for example, the specific representations made by Appellants that each relied on and the nature of donations they made. (App. Vol. 2 at 413-416).

As for the claim for fraudulent concealment, the district court found that the “Consolidated Complaint is devoid of any allegations identifying how [Appellants’ concealment] would be material to an objectively reasonable donor.” (App. Vol. 2 at 417-418). While Appellants also should be afforded leave to amend to address any deficiencies¹⁷ in these allegations

¹⁷ The district court did not review the adequacy of the allegations unique to Appellants’ claim of unjust enrichment, instead holding that “Plaintiffs have not properly stated fraud claims under Rule 12 or Rule 9. Accordingly, Plaintiffs also fail to state a claim for unjust enrichment.” (App. Vol. 2 at 420). Appellants do not raise on this appeal whether the district court erred in neglecting review of the allegations supporting unjust enrichment, but they reserve their rights to raise any related arguments with the district court if they are permitted to amend their pleadings below.

as well, the district court erred in finding that materiality was not adequately alleged. Appellants allege that “[Appellees] knew that [Appellants] would not have donated money, or would have donated less, had they known that the funds would be used for these purposes.” (App. Vol. 1 at 106, 107 (¶¶ 175, 180)). This allegation is based on, *inter alia*, a statement by Ensign’s president, Roger Clarke: “[s]o they [the Church] never wanted to be in a position where people felt like, you know, they shouldn’t make a contribution.” (App. Vol. 1 at 91 (¶ 102)); *see also* (App. Vol. 1 at 96 (¶ 112)) (Mr. Clark explained the reason Appellees decided to route funds indirectly was so that “people would not know [Ensign] was the source of this funding” and “that it was important that people should not know [Ensign]’s role as the source of the funds.”)

Given the fact-intensive nature of materiality, particularly at the pleadings stage, such allegations more than plausibly establish materiality. *See, e.g., Yazd v. Woodside Homes Corp.*, 143 P.3d 283, 289 (Utah 2006) (defining materiality as “important” information that “could be expected to influence the judgment of a person[.]”).

CONCLUSION

For all of the foregoing reasons, the judgment of the district court should be reversed.

Dated: July 22, 2025

Respectfully submitted,

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STATEMENT OF COUNSEL AS TO ORAL ARGUMENT

Because the Court reviews the decision of the district court *de novo*, and the district court heard extensive oral argument on the issues raised on appeal, counsel believes oral argument may be helpful to the Court.

Dated: July 22, 2025

/s/ SCOTT A. GEORGE

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of F.R.A.P. 32(a)(7) because, according to the word count feature of Microsoft Word 365, the brief contains a total of 6,958 words, excluding the sections listed in F.R.A.P. 32(f).

This brief complies with the typeface requirements of F.R.A.P. 32(a)(5) and the typestyle requirements of F.R.A.P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point, Georgia font.

Dated: July 22, 2025

/s/ SCOTT A. GEORGE

SCOTT A. GEORGE

ADDENDUM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN RE: THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS TITHING
LITIGATION

This document relates to all actions.

**MEMORANDUM DECISION AND
ORDER**

(MDL Pretrial Order No. 5)

Case No. 2:24-md-03102-RJS-DAO

Chief Judge Robert J. Shelby

Magistrate Judge Daphne A. Oberg

Plaintiffs in this consolidated Multidistrict Litigation allege that over decades they have collectively donated hundreds of thousands of dollars to the Church of Jesus Christ of Latter-Day Saints. Plaintiffs allege that beginning in about 1997 the Church established Ensign Peak Advisors, Inc. to act as a “slush fund” for charitable donations, including tithing from Church members. Plaintiffs contend the Church did this to conceal its accounts, to prevent donors from learning about the scale of its financial holdings, and to obfuscate the Church’s use of its funds. Based largely on a 2019 whistleblower report, Plaintiffs maintain the Church accumulated well over one hundred billion dollars in accounts while making no contributions to support the charitable purposes it identified when soliciting donations. Instead, Plaintiffs claim the Church spent about two billion dollars on for-profit Church-owned enterprises, lied to the Internal Revenue Service about the extent of its assets and holdings, and utilized a complex series of shell companies as part of its scheme to secret the true value of its holdings.

Seeking to represent a nationwide class of all individuals who donated funds to the Church since 1998, Plaintiffs ask the court to enjoin the Church’s “unlawful and deceptive practices”; order regular public accounting by the Church concerning the collection, use, and

disposition of donated funds; appoint a Special Master to monitor the Church's collection and use of donated funds; and to enter a judgment requiring the Church to pay damages, including return of monies donated (including tithing paid by Church members), restitution, disgorgement, and attorneys' fees.

The Church denies Plaintiffs' allegations. It maintains it manages its finances in compliance with the laws and regulations that govern churches and other charities. Beyond that, the Church argues claims like those brought by Plaintiffs in this case cannot be adjudicated in secular courts because they necessarily implicate matters of religious belief and autonomy. But even if the court considers Plaintiff's claims on their merits, the Church argues the claims are time-barred by the controlling statutes of limitation and are otherwise legally defective under the Federal Rules of Civil Procedure.

For the reasons explained below, the court agrees with the Church that Plaintiffs' claims are barred by the statute of limitations and are not adequately pled. Because the statute of limitations bar prevents any attempt to amend, Plaintiffs' Consolidated Class Action Complaint is dismissed with prejudice.

PRELIMINARY STATEMENT

Now before the court are three motions in this consolidated, proposed class action brought by Daniel Chappell, Masen Christensen, John Oaks, Mark Wilson, Joel Long, Brandall Brawner, Kevin Risdon, Gene Judson, and Michelle Judson (collectively, Plaintiffs) against The Church of Jesus Christ of Latter-day Saints and its subsidiary, Ensign Peak Advisors, Inc. (collectively, Defendants). The Church and Ensign both filed separate motions to dismiss

Plaintiffs' Consolidated Class Action Complaint.¹ The Church and Ensign also jointly filed a motion to strike the class allegations in Plaintiffs' Consolidated Complaint.²

For the following reasons, the court (1) GRANTS the Church's Motion to Dismiss, (2) GRANTS Ensign's Motion to Dismiss, and (3) DENIES as moot Defendants' Motion to Strike.

FACTUAL BACKGROUND

The following facts are principally drawn from Plaintiffs' Consolidated Class Action Complaint.³ As required on a motion to dismiss, the court accepts all well-pleaded allegations in the Consolidated Complaint as true.⁴ The court also draws from documents referenced in the Consolidated Complaint.⁵

¹ See ECF 79, *Motion to Dismiss of the Church of Latter-Day Saints, a Utah Corporation Sole and Memorandum in Support* (Church Motion to Dismiss); ECF 80, *Motion to Dismiss of Ensign Peak Advisors, Inc. and Memorandum in Support* (Ensign Motion to Dismiss). Unless otherwise referenced, the docket citations contained herein refer to the master docket listed in the caption.

² See ECF 81, *Defendants' Motion to Strike Class Allegations and Memorandum in Support* (Motion to Strike).

³ ECF 63, *Consolidated Class Action Complaint* (CCAC).

⁴ *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1228 (10th Cir. 2012) ("We accept all facts pleaded by the non-moving party as true and grant all reasonable inferences from the pleadings in favor of the same.") (alteration and citation omitted).

⁵ See ECF 143-1, *Exhibit A: Letter to an IRS Director (Whistleblower Report)*; *First Presidency Statement on Church Finances*, The Church of Jesus Christ of Latter-day Saints Newsroom (Dec. 17, 2019), <https://perma.cc/YQE4-LRST> (*First Presidency Statement*); *Ensign Peak Advisors, Inc. & The Church of Jesus Christ of Latter-day Saints*, Exchange Act Release No. 96951, 2023 WL 2160756 (Feb. 21, 2023) (*SEC Order*). The court may consider these documents in evaluating Defendants' Motions to Dismiss because the documents are central to Plaintiffs' claims, and Plaintiffs do not dispute their authenticity. See *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1103 (10th Cir. 2017) (quoting *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir. 2002)); see also ECF 113, *Plaintiffs' Consolidated Memorandum in Opposition to Defendants' Motions to Dismiss* (*Consolidated Opposition*) at 1 n.2 (stating that "the SEC Order, the 'Letter to an IRS Director' (also referred to as the 'Whistleblower report'), and a declaration from the Huntsman action" are "properly before the [c]ourt at this juncture"). Plaintiffs appear to protest the court's consideration of the First Presidency Statement on the grounds that it does not appear in the CCAC. *Id.* ("[M]atters like . . . public statements do not appear in Plaintiffs' [C]omplaint."). However, the CCAC expressly cites the First Presidency Statement at paragraph 12 n.4 and appears to cite the First Presidency Statement at paragraphs 133 and 158.

I. The Church of Jesus Christ of Latter-day Saints

The Church is “a worldwide Christian church with a growing membership of over 17 million.”⁶ Legally, the Church operates as a Utah corporation.⁷ In this capacity, the Church owns and operates “a significant number of for-profit and non-profit entities,”⁸ including “dozens of office and apartment buildings, four universities, and three media companies.”⁹ It also does business under a long list of trade names, including “Deseret Transportation, Latter-Day Saint Philanthropies, Deseret Industries, Tabernacle Choir At Temple Square, Deseret Soap, Mormon Tabernacle Choir, Deseret Pasta, Joseph Smith Memorial Building, Millennial Star Network, Vernon Utah Livestock, Mortgage Loan Service, Farm Management Company, Beehive Clothing, and Elberta Valley Ag.”¹⁰

As a religious and philanthropic institution, the Church “promote[s], advertise[s], provide[s] instructions for, administer[s], over[sees], and collect[s]” donations from individuals “throughout Utah and the United States.”¹¹ These donations generally take three forms: tithing, fast offerings, and philanthropic contributions. “Tithing is the practice of donating a fixed percentage of earning to the [C]hurch.”¹² The Church “expects, as part of membership,” that its members “tith[e] ten percent of their income and profits.”¹³ The Church “publicly, continually,

⁶ *Church Motion to Dismiss* at 1.

⁷ *CCAC* ¶ 35. Prior to 2019, the Church was organized as two entities: the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints and the Corporation of the President of the Church of Jesus Christ of Latter-day Saints. *CCAC* ¶¶ 36–38. The court refers to those entities, as well as the current Church organization, as “the Church.”

⁸ *Id.* ¶ 39.

⁹ *Id.*

¹⁰ *Id.* ¶ 40.

¹¹ *Id.* ¶ 41.

¹² *Id.* ¶ 53.

¹³ *Id.* ¶¶ 4, 53.

and repeatedly” represents “that tithing funds are ‘always used’ for purposes like building construction, missionary work, education . . . and care for the poor and needy.”¹⁴

“Fast offerings” are an additional form of donation.¹⁵ Once a month, the Church encourages members to fast for two meals and contribute a donation “at least equal to the value of the food that would have been eaten.”¹⁶ The Church represents that fast offerings are “earmarked exclusively for aid to the poor.”¹⁷

Philanthropic contributions are charitable donations the Church receives from Church members and nonmembers alike.¹⁸ The Church’s philanthropic department, The Church of Jesus Christ of Latter-day Saints – Philanthropies (Philanthropies), solicits these donations for the benefit of the Church and its affiliated charities.¹⁹ Philanthropies operates a website where it actively solicits donations to three specific funds: a Humanitarian Aid Fund,²⁰ a General Missionary Fund,²¹ and a Church General Fund.²² The Humanitarian Aid Fund is intended to “provide[] aid to people around the world without regard to cultural or religious affiliation,”²³ and the General Missionary Fund is intended to “provide needed funding so that all who want to serve a full-time mission may do so.”²⁴ The Church represents that its organizational practices

¹⁴ *Id.* ¶ 54.

¹⁵ *Id.* ¶ 57.

¹⁶ See Joseph B. Wirthlin, *The Law of the Fast*, The Church of Jesus Christ of Latter-day Saints (April 2001), <https://perma.cc/HD4K-P7P6>.

¹⁷ CCAC ¶ 57; see also *id.* ¶¶ 58–59 (alleging statements Church leaders made about fast offerings).

¹⁸ *Id.* ¶¶ 6, 60, 78.

¹⁹ *Id.* ¶¶ 61, 66.

²⁰ *Id.* ¶ 67; see also *id.* ¶¶ 7, 65, 69.

²¹ *Id.* ¶ 71.

²² *Id.* ¶ 73. Until recently, Philanthropies solicited online donations for additional funds, including a Church History Fund. *Id.*

²³ *Id.* ¶ 67; see also *id.* ¶¶ 7, 65, 69.

²⁴ *Id.* ¶ 71.

meet “generally accepted standards” for philanthropic giving,²⁵ and that it collaborates with “well-known charitable organizations having reputations for ‘honest, effective service.’”²⁶ It also represents that “100 percent of all donations” given to Philanthropies “go to help those in need.”²⁷

Church members can tithe, make fast offerings, and tender other charitable contributions through a Church-affiliated website or by submitting “tithing slips.”²⁸ Tithing slips are physical documents that allow members to submit donations to the Church and direct their donations toward particular matters.²⁹ Prior to 2012, tithing slips allowed members to itemize their donations across nine categories: “Tithing,” “Fast Offering,” “Ward missionary,” “General missionary,” “Book of Mormon,” “Humanitarian aid,” “Temple construction,” “Perpetual education,” and “Other (specify).”³⁰ Since 2012, however, revised tithing slips direct donors to only six categories: “Tithing,” “Fast Offering,” “Ward missionary,” “General Missionary,” “Humanitarian aid,” and “Other (specify).”³¹ Additionally, the revised tithing slips state: “Though reasonable efforts will be made to use donations as designated, all donations become the Church’s property and will be used at the Church’s sole discretion to further the Church’s overall mission.”³²

²⁵ *Id.* ¶ 63.

²⁶ *Id.*

²⁷ *Id.* ¶ 64.

²⁸ *Id.* ¶ 55.

²⁹ *Id.* ¶¶ 55–56.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

II. Ensign Peak Advisors

Ensign is a Utah non-profit corporation affiliated with the Church.³³ The Church formed Ensign in 1997 as a Section 501(c)(3) organization to “benefit, perform the functions of, [and] carry out purposes of” the Church.³⁴ Consistent with this mission, Ensign is governed by senior Church leaders,³⁵ and all of Ensign’s property is “irrevocably dedicated to religious, educational and charitable purposes.”³⁶ As a practical matter, Ensign serves as the Church’s investment manager.³⁷ The Church transfers “a substantial and significant” portion of the donated funds it receives—tithes, fast offerings, and philanthropic contributions alike—to Ensign,³⁸ and Ensign holds and invests those funds.³⁹ Ensign represents that it maintains this investment reserve to support “prophetic initiatives,” supplement the Church’s budget, backstop the Church’s pension plan, backstop the Church’s “taxable entities,” and provide collateral for Church projects.⁴⁰

III. The Whistleblower Report

In December 2019, a self-styled whistleblower published a report regarding Ensign and its role in Church finance (the Report).⁴¹ Based on the Report, Plaintiffs allege the Church “deliberately ke[pt] its use of Ensign shrouded in secrecy.”⁴² For example, Plaintiffs allege Ensign “doesn’t . . . have a sign on [its] building,” employs a relatively small staff of

³³ *Id.* ¶ 42.

³⁴ *Id.* ¶ 81.

³⁵ *Id.* ¶ 43.

³⁶ *Id.* ¶ 81.

³⁷ *SEC Order* at *2.

³⁸ *CCAC* ¶ 79; *see also id.* ¶¶ 8, 59, 80.

³⁹ *See id.* ¶¶ 80, 82–83. In 2013, Ensign represented the Church granted it approximately \$1 billion per year during the preceding several years. *Id.* ¶ 114.

⁴⁰ *Id.* ¶ 114; *see also Whistleblower Report* at 43.

⁴¹ *CCAC* ¶ 11.

⁴² *Id.* ¶ 84.

approximately 75 people, and “silo[es]” those employees from each other.⁴³ Plaintiffs also allege Defendants, “in coordination,” misreported Ensign’s assets on multiple Internal Revenue Service disclosures.⁴⁴ According to the whistleblower, in 2007 Ensign reported the “Book value of all assets at end of year” was \$1,000,000.00 when it was actually \$38,000,000,000.00,⁴⁵ and in 2010, Ensign reported the “[b]ook value of all assets at end of year” was \$1,000,000.00 when it was actually \$40,000,000,000.00.⁴⁶ Plaintiffs allege Defendants did so in order to conceal Ensign’s significant wealth—approximately \$120 billion in 2019—and to continue to induce donations.⁴⁷ Finally, Plaintiffs allege Ensign “has never made a single [distribution] for any religious, educational, or charitable objective,” and that it has no plans to make any such distributions.⁴⁸ Rather, Plaintiffs allege Ensign has made unplanned distributions to the Church’s commercial ventures: (1) a \$600 million distribution to Beneficial Life, a for-profit, Church-owned life insurance company in 2009, and (2) \$1.4 billion in cumulative distributions between 2010 and 2014 to Church entities involved in the development of the City Creek Mall in Salt Lake City, Utah.⁴⁹ Plaintiffs allege Defendants channeled these distributions through other Church-affiliated entities to conceal the fact that Ensign was funding commercial ventures with donated funds.⁵⁰

⁴³ *Id.*

⁴⁴ *Id.* ¶¶ 87–90.

⁴⁵ *Id.* ¶¶ 88–89.

⁴⁶ *Id.* ¶¶ 89–90.

⁴⁷ *Id.* ¶¶ 86, 105.

⁴⁸ *Id.* ¶¶ 83, 104.

⁴⁹ *Id.* ¶¶ 105–06. Plaintiffs allege, “based on the pattern and practice suggested by these known [distributions], that discovery will uncover additional transfers from Ensign” to Church-affiliated business interests. *Id.* ¶¶ 113–15.

⁵⁰ *Id.* ¶¶ 111–12.

Before and after Ensign distributed these funds, however, the Church represented tithing funds would not be used to finance commercial ventures. Specifically, at an October 8, 2003 press conference concerning the City Creek Mall, Church leader David Burton stated “[n]one of this money comes from the tithing of our faithful members . . . that is not how we use tithing funds.”⁵¹ Similarly, in a December 2006 issue of the Church-owned magazine *Ensign*, the Church stated “no tithing funds will be used in the redevelopment” of the mall.⁵² And the Salt Lake Tribune reported on October 5, 2012 that Church leader Keith McMullin said that “not one penny of tithing goes to the [C]hurch’s for-profit endeavors.”⁵³ The article similarly reported “the Church has said no tithing went toward City Creek.”⁵⁴

The Church’s First Presidency responded to the Whistleblower Report with a statement asserting “[t]he vast majority of [donated] funds are used immediately to meet the needs of the growing Church,” but acknowledged a “portion” of donations “is methodically safeguarded through wise financial management and the building of a prudent reserve for the future.”⁵⁵ The Church further asserted that it “complies with all applicable law governing . . . donations, investments, taxes, and reserves.”⁵⁶

IV. The SEC Investigation

In February 2023, the Securities and Exchange Commission instituted cease-and-desist proceedings against the Church and Ensign.⁵⁷ The SEC alleged that beginning in 2001,

⁵¹ *Id.* ¶ 108.

⁵² *Id.* ¶ 109.

⁵³ *Id.* ¶ 110.

⁵⁴ *Id.*

⁵⁵ *See First Presidency Statement.*

⁵⁶ *Id.*; *see also* CCAC ¶¶ 12, 133, 158.

⁵⁷ CCAC ¶ 13.

Defendants illegally evaded SEC reporting requirements by using shell corporations to divide Ensign's assets and make Ensign's total portfolio appear smaller than it actually was.⁵⁸ The SEC also alleged Defendants did so in order to avoid "negative consequences" stemming from "the size of The Church's portfolio."⁵⁹ The SEC, the Church, and Ensign negotiated a settlement in which Defendants agreed to pay a combined \$5 million in civil penalties and "cease and desist from committing or causing any violations and any future violations" of SEC rules.⁶⁰ However, the settlement did not require Defendants to admit they violated the law.⁶¹

Plaintiffs allege the Church "actively concealed this scheme from its members" by sharing annual reports from its internal auditing department affirming that "contributions received . . . [were] recorded and administered in accordance with approved Church budgets, policies, and accounting practice."⁶² Plaintiffs likewise allege the Church's auditing department never "report[ed] the practice of isolating funds in Ensign without using or tracking them,"⁶³ and the Church was intentionally "somewhat anonymous" regarding its substantial investment activity.⁶⁴ Plaintiffs allege the Church sought to "conceal the extent of [its] reserves from donors" so individuals would not "fe[el] like . . . they shouldn't make a contribution."⁶⁵

⁵⁸ *Id.* ¶¶ 13, 92–97; *see also SEC Order* at *2 (summarizing the SEC's findings).

⁵⁹ *CCAC* ¶¶ 13, 92.

⁶⁰ *SEC Order* at *7.

⁶¹ *Id.* at *1.

⁶² *CCAC* ¶¶ 100–01.

⁶³ *Id.* ¶ 101.

⁶⁴ *Id.* ¶ 102.

⁶⁵ *Id.*

V. The Consolidated Complaint

In October 2023, Plaintiffs Daniel Chappell, John Oaks, and Masen Christensen filed in this court a Proposed Class Action Complaint naming as Defendants the Church and Ensign Peak Advisors.⁶⁶ Between December 2023 and January 2024, Plaintiffs Joel Long, Kevin Risdon, Brandall Brawner, Mark Wilson, Gene Judson, and Michelle Judson filed similar Complaints in other federal district courts around the country.⁶⁷ The Judicial Panel on Multidistrict Litigation transferred all the related cases to the undersigned in April 2024.⁶⁸

To promote the efficient administration of the cases, the court issued a Case Management Order directing Plaintiffs to file a consolidated complaint.⁶⁹ Plaintiffs jointly filed their Consolidated Class Action Complaint (Consolidated Complaint or CCAC) on July 12, 2024.⁷⁰ The Consolidated Complaint names as Plaintiffs nine individuals who collectively donated hundreds of thousands of dollars to the Church between January 1, 1998 and the day the Consolidated Complaint was filed.⁷¹

Plaintiffs do not specifically allege whether their donations were tithes, fast offerings, charitable donations, or some combination. Plaintiffs also do not identify when they made donations, why they donated, or what caused them to continue donating. Except for Plaintiff

⁶⁶ See ECF 1, (case no. 2:23-cv-00794, originally filed in the District of Utah), *Proposed Class Action Complaint*.

⁶⁷ See ECF 1, (case no. 2:24-cv-00269-RJS-DAO, originally filed in the Southern District of Illinois), *Class Action Complaint*; ECF No. 1, (case no. 2:24-cv-00268-RJS-DAO, originally filed in the Eastern District of Washington), *Class Action Complaint and Jury Demand*; ECF No. 1, (case no. 2:24-cv-00277-RJS-DAO, originally filed in the Middle District of Tennessee), *Class Action Complaint*; ECF No. 1, (case no. 2:24-cv-00296-RJS-DAO, originally filed in the Central District of California), *Class Action Complaint*.

⁶⁸ See ECF 1 (case no. 2:24-md-3102), *Transfer Order*; ECF 6, *Conditional Transfer Order 1*.

⁶⁹ See ECF 60, *Initial Case Management Order*.

⁷⁰ See ECF 63, *Consolidated Class Action Complaint*.

⁷¹ *Id.* ¶¶ 18–34, 116, 118, 120, 122, 124, 126, 128, 130.

Masen Christensen, whom Plaintiffs allege is an “active member” of the Church,⁷² Plaintiffs do not specify whether they are current Church members, former Church members, or nonmembers. However, Plaintiffs each offer identical allegations that, based on the Church’s statements, they “reasonably believed that [their] donations would be used only for the purposes represented by [the Church].”⁷³ Similarly, Plaintiffs all allege that “[b]ecause of Defendants’ ongoing efforts to conceal from the public the nature and extent of the donations held by Ensign,” they “could not appreciate the true manner in which the [Church] actually intended to (and did) use [their] donations.”⁷⁴ Finally, Plaintiffs collectively allege they “did not believe and had no reason to ever suspect that [the Church] would take any portion of their donations and invest it into Ensign, where it would sit and accumulate interest in perpetuity,” nor that funds would “be used in manners antithetical to the purported mission of [the Church] and Ensign.”⁷⁵ Plaintiffs generally allege they relied on the Church’s public statements, including its representations that “the ‘vast majority’ of donated funds were ‘used immediately’ and that [the Church] complied with ‘all applicable laws.’”⁷⁶ Plaintiffs seek to represent a class of similarly situated individuals.⁷⁷

Plaintiffs’ Consolidated Complaint includes five causes of action: (1) breach of fiduciary duty, (2) fraudulent inducement, (3) fraudulent concealment, (4) fraudulent misrepresentation, and (5) unjust enrichment.⁷⁸ Plaintiffs request an array of relief in connection with these claims,

⁷² *Id.* ¶ 22.

⁷³ *Id.* ¶¶ 117, 119, 121, 123, 125, 127, 129, 131.

⁷⁴ *Id.*

⁷⁵ *Id.* ¶ 132.

⁷⁶ *Id.* ¶ 133.

⁷⁷ *Id.* ¶¶ 134–45.

⁷⁸ *Id.* ¶¶ 146–92.

including (1) certification of the proposed Class, (2) “a declaration that Defendants’ practices are illegal and a breach of their duties to Plaintiffs and the Class,” (3) “an injunction on these illegal practices,” (4) “an order requiring regular public accounting by Defendants as to the collection, use and disposition of collected funds and interest and income earned from these funds,” (5) “the appointment of a Special Master or an equally authorized panel of neutrals to monitor the collection, use and disposition of collected funds and income earned from these fund,” (6) “[c]osts, restitution, damages, and disgorgement,” (7) pre- and post-judgment interest, and (8) attorney’s fees.⁷⁹

Defendants responded with Motions to Dismiss, as well as a joint Motion to Strike Plaintiffs’ Class Allegations.⁸⁰ Thereafter, several *amici curiae* filed briefs in support of Defendants’ Motions to Dismiss.⁸¹ The Motions are fully briefed,⁸² and the court heard oral argument on the Motions on January 17, 2024.⁸³

LEGAL STANDARD

Defendants move to dismiss Plaintiffs’ Consolidated Complaint under Federal Rules of Civil Procedure 12(b)(6) and 9(b).⁸⁴ To survive a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead sufficient factual

⁷⁹ *Id.* at 50–51.

⁸⁰ See ECF 79, *Church Motion to Dismiss*; ECF 80, *Ensign Motion to Dismiss*; ECF 81, *Defendants’ Motion to Strike*.

⁸¹ See ECF 102, *Amicus Brief of Ayuda Incorporated, CharityVision, Five.12 Foundation, and Thanksgiving Point, In Support of Motion to Dismiss of the Church of Jesus Christ of Latter-Day Saints*; ECF 103, *Brief of the General Conference of Seventh-Day Adventists and National Association of Evangelicals as Amici Curiae in Support of Defendants*; ECF 104, *Brief of the J. Reuben Clark Law Society as Amicus Curiae in Support of Defendants*.

⁸² See *Consolidated Opposition*; ECF 112, *Plaintiffs’ Memorandum in Opposition to Defendants’ Motion to Strike Class Allegations*; ECF 134, *Consolidated Reply in Support of Defendants’ Motions to Dismiss (Consolidated Reply)*; ECF 135, *Reply in Support of Defendants’ Motion to Strike the Class Allegations in Plaintiffs’ Consolidated Class Action Complaint*.

⁸³ See ECF 144, *Minute Entry for Motion Hearing Held on 1/17/2025*.

⁸⁴ *Motion to Dismiss* at 1.

allegations “to state a claim to relief that is plausible on its face.”⁸⁵ A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁸⁶ In other words, a plaintiff must establish “more than a sheer possibility that a defendant has acted unlawfully.”⁸⁷ “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements” are insufficient.⁸⁸ Nevertheless, a court must accept as true all well-pleaded factual allegations in a plaintiff’s complaint and draw reasonable inferences based on those facts in the plaintiff’s favor.⁸⁹ Federal Rule of Civil Procedure 9(b) imposes a heightened pleading standard when “alleging fraud or mistake.”⁹⁰

ANALYSIS

The Church advances in its Motion to Dismiss three main sets of arguments.⁹¹ First, the Church maintains Plaintiffs’ claims are untimely and barred by the applicable statute of limitations. Second, the Church contends that Plaintiffs’ claims are inadequately pled under the Federal Rules of Civil Procedure. Finally, the Church argues Plaintiffs’ claims must be dismissed under the “church autonomy doctrine.”⁹²

The church autonomy doctrine is a judicially created doctrine designed to effectuate religious protections arising under the Establishment and Free Exercise clauses of the First

⁸⁵ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁸⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*; *Checkley v. Allied Prop. & Cas. Ins. Co.*, 635 F. App’x 553, 556 (10th Cir. 2016).

⁹⁰ Fed.R.Civ.P.9(b); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.* 551 U.S. 308 (2007) (stating Rule 9(b) is a “heightened pleading standard” compared to the “short and plain statement” required under Federal Rule of Civil Procedure 8(a)).

⁹¹ Ensign’s Motion to Dismiss largely incorporates the same set of arguments.

⁹² *See generally, Church Motion to Dismiss.*

Amendment.⁹³ At its core, the church autonomy doctrine operates to guard “the fundamental rights of churches to ‘decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’”⁹⁴ Courts sometimes invoke the church autonomy doctrine to avoid entangling themselves with various religious disputes, especially those relating to ecclesiastical questions, matters of faith, and church administration.

The Church’s Motion raises significant questions about the preclusive effect of the church autonomy doctrine on Plaintiffs’ claims. Indeed, the Church’s foremost arguments in support of its Motion to Dismiss rest on its contention that the church autonomy doctrine bars the court from even considering Plaintiffs’ Consolidated Complaint.⁹⁵ To be sure, this case and the nature of Plaintiffs’ claims present complex, potentially novel questions concerning the application of the church autonomy doctrine to civil fraud claims. But however those questions might be answered, the First Amendment does not constrain the court’s consideration of other deficiencies with Plaintiffs’ claims—including procedural bars and inadequate pleading under the governing rules.⁹⁶ Indeed, the judicial canon of constitutional avoidance requires the court to

⁹³ See generally, *Gaddy v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*, 451 F.Supp.3d 1227 at 1233–35 (D. Utah 2020).

⁹⁴ *Id.* (quoting *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 (10th Cir. 2002)).

⁹⁵ See *Church Motion to Dismiss* at 9–17; *Ensign Motion to Dismiss* at 3 (“The unconstitutionality of Plaintiffs’ claims is addressed thoroughly in the Church’s motion, and Ensign Peak incorporates those arguments fully by reference here.”).

⁹⁶ See, e.g., *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 792 (9th Cir. 2025) (declining to treat the church autonomy doctrine as a structural bar preventing it from reaching the merits of Huntsman’s fraud claims against the Church that concern facts nearly identical to those presented here); *Belya v. Kapral*, 45 F.4th 621, 630 (2d Cir. 2022) (“[w]hen a case can be resolved by applying well-established law to secular components of a dispute, such resolution by a secular court presents no infringement upon a religious association’s independence.”).

focus on nonconstitutional failures before reaching the church autonomy doctrine.⁹⁷ Ultimately, the court does not reach Defendants’ church autonomy doctrine arguments here because the pending Motions compel dismissal of Plaintiffs’ Consolidated Complaint on other grounds.

Considering Defendants’ Motions to Dismiss together, the court concludes

(1) Defendants’ statute of limitations defense precludes each of Plaintiffs’ claims and, in any event, (2) Plaintiffs plead insufficient facts under Federal Rules of Civil Procedure 12(b) and 9(b) to show they are entitled to relief. Accordingly, the court dismisses each of Plaintiffs’ claims with prejudice and denies as moot Defendants’ Motion to Strike.

I. Statute of Limitations

Defendants argue Plaintiffs’ claims each fail as a matter of law because they are time-barred under the applicable statute of limitations.⁹⁸ Defendants contend, and Plaintiffs do not dispute,⁹⁹ that Utah’s three-year statute of limitations for fraud-based claims applies to each of Plaintiffs’ claims.¹⁰⁰ Defendants maintain Plaintiffs had at least constructive notice of Defendants’ allegedly fraudulent conduct no later than February 2020, such that their claims

⁹⁷ See, e.g., *Jean v. Nelson*, 472 U.S. 846, 854 (1985) (“Prior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision.”); *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 446 (1988) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”); *Baer v. Meyer*, 728 F.2d 471, 474 (10th Cir. 1984) (“The principles of American jurisprudence caution us not to decide a constitutional issue if a proper construction of a statute or an interpretation of existing case law could be controlling.”).

⁹⁸ *Church Motion to Dismiss* at 30–36; *Ensign Motion to Dismiss* at 17–21.

⁹⁹ See, e.g., *Consolidated Opposition* at 34 (acknowledging “Plaintiffs’ [fraud and breach of fiduciary duty] claims are subject to statutory discovery rules”); *id.* at 38 (“Plaintiffs’ unjust enrichment claims are not time-barred, even accepting that they are subject to the same statute of limitations as their fraud claims.”). Because Plaintiffs did not specifically contest this issue in their *Consolidated Opposition* or at oral argument, the court considers it waived.

¹⁰⁰ *Church Motion to Dismiss* at 31, 35; *Ensign Motion to Dismiss* at 17, 19–20. See also *Rabo Agrifinance, Inc. v. Bliss*, 227 F. Supp. 3d 1249, 1252 (D. Utah 2017) (“The Utah Supreme Court has held the three year statute of limitations applies to all common law claims that are grounded in fraud.”); *Hill v. Allred*, 28 P.3d 1271, 1276 (Utah 2008) (applying Utah’s statute of limitations for fraud to claims for “fraudulent conversion or unjust enrichment, breach of implied contract, money laundering, fraudulent misrepresentation, racketeering, and intentional infliction of emotional harm” because they each “flow[ed]” from the plaintiff’s fraud allegations).

became time-barred in February 2023.¹⁰¹ Plaintiffs argue “the question of when [they] had constructive notice of their claims . . . is a fact-dependent one that should not be resolved on a motion to dismiss.”¹⁰²

The court agrees with Defendants. Utah’s statute of limitations for fraud, Utah Code § 78B-2-305(3), “begin[s] running from the date a plaintiff either discovered or should have discovered his or her claim.”¹⁰³ In other words, the statute of limitations begins running when a plaintiff has “actual or constructive knowledge of the relevant facts forming the basis of [their claim].”¹⁰⁴ Constructive knowledge arises when “by reasonable diligence and inquiry,” a plaintiff “should know[] the relevant facts of the fraud perpetrated against [them].”¹⁰⁵ If a plaintiff “has opportunity of knowing the facts constituting the alleged fraud,” they “cannot be inactive and afterwards allege a want of knowledge.”¹⁰⁶

Courts may impute constructive knowledge based on the existence of news articles about the facts forming the basis of a plaintiff’s claims.¹⁰⁷ In *Grynberg v. Total S.A.*, for example, the Tenth Circuit affirmed the district court’s grant of summary judgment for the defendants and determined the plaintiff’s claims were barred by a Colorado statute of limitations because he

¹⁰¹ *Church Motion to Dismiss* at 32–34; *Ensign Motion to Dismiss* at 18–19.

¹⁰² *Consolidated Opposition* at 34.

¹⁰³ *Russell Packard Dev., Inc. v. Carson*, 108 P.3d 741, 746 (Utah 2005).

¹⁰⁴ *Id.*

¹⁰⁵ *Colosimo v. Roman Catholic Bishop of Salt Lake City*, 156 P.3d 806, 811 (Utah 2007) (quoting *Baldwin v. Burton*, 850 P.2d 1188, 1196 (Utah 1993)).

¹⁰⁶ *Id.*

¹⁰⁷ See e.g., *Stelin v. Biomune Sys.*, 154 F.3d 1191, 1201–03 (10th Cir. 1998) (holding that news article in widely-read investor publication triggered investor’s duty to exercise reasonable diligence); *Thompson v 1-800 Contacts, Inc.*, No. 2:16-cv-1183-TC, 2018 WL 2271024, at *13 (D. Utah May 17, 2018) (“Publicly available documents may be sufficient to charge a plaintiff with constructive knowledge. For example, in cases alleging securities fraud, investors had reason to track the companies in which they invested.”); *Stichting Pensioerfonds ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1139 (C.D. Cal. 2011) (stating “press reports and earlier-filed lawsuits placed [the plaintiff] on notice regarding the . . . element of its claim” because “[a]ll the facts had been widely-reported”).

“should have known” that he could bring claims against the defendants once the Wall Street Journal, New York Times, Financial Times, and Los Angeles Times published articles concerning the underlying facts.¹⁰⁸ Although the court considered the fact that plaintiff admitted to reading only one of these articles,¹⁰⁹ the Tenth Circuit reasoned that a person of the plaintiff’s wealth and business acumen, acting “with reasonable diligence,” could have “learn[ed] of matters reported in the leading business newspapers circulated in this country.”¹¹⁰ It also noted that “[w]here events receive . . . widespread publicity, plaintiffs may be charged with knowledge of their occurrence.”¹¹¹

The *Grynberg* court relied on several out-of-circuit cases as examples where plaintiffs could fairly be charged with knowledge of public information: *Patterson v. United States*, where the First Circuit held a “cause of action accrued when [the] FBI’s involvement in [the] plaintiffs’ father’s death received widespread publicity”¹¹²; *In re Briscoe*, where the Third Circuit held “plaintiffs had a ‘reasonable opportunity to discover the alleged wrong’ due to ‘extensive publicity’ regarding dangerous diet drugs that injured them”¹¹³; and *Fulcher v. United States*, where the Fourth Circuit held a “‘prudent landowner exercising reasonable diligence should . . . have discovered the government’s open and notorious occupation of the land’ because of ‘extensive publicity and discussion.’”¹¹⁴

¹⁰⁸ *Grynberg v. Total S.A.*, 538 F.3d 1336, 1348–49 (10th Cir. 2008).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 1349.

¹¹¹ *Id.* (quoting *Hughes v. Vanderbilt Univ.*, 215 F.3d 543, 548 (6th Cir. 2000)).

¹¹² *Id.* (quoting *Patterson v. United States*, 451 F.3d 268, 271 (1st Cir. 2006)).

¹¹³ *Id.* (quoting *In re Briscoe*, 538 F.3d 201, 223–24 (3d Cir. 2006)).

¹¹⁴ *Id.* (quoting *Fulcher v. United States*, 696 F.2d 1073, 1077 (4th Cir. 1982)).

The Tenth Circuit then contrasted those situations with several cases in which plaintiffs could not fairly be charged with knowledge of public information,¹¹⁵ including *Maughan v. SW Servicing, Inc.*¹¹⁶ In *Maughan*, the “plaintiffs sued a uranium mill for wrongful death, alleging that the mill had caused leukemia that killed their children and spouses.”¹¹⁷ The *Maughan* court determined that publicly available information documenting a connection between radiation exposure and leukemia did not imbue the plaintiffs with constructive notice because “the average layman would [not] understand, after reading that fall-out from atomic bombs causes cancer, that the local uranium mill may have caused leukemia.”¹¹⁸ Further, it reasoned that not even “the doctors who had been consulted by the plaintiffs’ decedents . . . correlate[d] the leukemia with the mill.”¹¹⁹

Here, there is abundant evidence establishing Plaintiffs were on constructive notice of Defendants’ alleged conduct more than three years before they brought suit. The Whistleblower Report—published in 2019¹²⁰—is clearly “the genesis” of Plaintiffs’ Consolidated Complaint and the factual basis of many of Plaintiffs’ allegations.¹²¹ Plaintiffs do not plead they were

¹¹⁵ *Id.* at 1349–51.

¹¹⁶ *See id.* at 1349–50 (citing *Maughan v. SW Servicing, Inc.*, 758 F.2d 1381, 1383 (10th Cir. 1985)).

¹¹⁷ *Id.*

¹¹⁸ *Id.* (quoting *Maughan*, 758 F.2d at 1389).

¹¹⁹ *Id.*

¹²⁰ *See CCAC* ¶ 11 (“In December 2019, a whistleblower with extensive knowledge of Defendants’ finances divulged that over the past two decades, [the Church] has funneled billions of dollars of donations into covert permanent investments through Ensign.”).

¹²¹ *See* ECF 145, *Transcript of Motion Hearing Held on January 17, 2025 (Hearing Transcript)* at 47:1–3 and *CCAC* ¶¶ 39, 79, 81–85, 88, 90, 105–06, 110–15. Plaintiffs likewise cite a YouTube video affiliated with the Whistleblower Report. *See CCAC* ¶¶ 87, 89.

individually aware of the Report near or at the time of its publication,¹²² but it was a readily accessible document from which Plaintiffs could have learned the core facts underlying their claims. It “strains credulity” that reasonably diligent individuals who had donated substantial sums of money to the Church and were otherwise interested in Church affairs would not have “learn[ed] of matters” described in the Report at or near the time of its release.¹²³ No imprecise information, scientific uncertainty, or lack of expertise would have “hampered” Plaintiffs’ discovery of the key facts upon reasonably diligent investigation.¹²⁴ And yet Plaintiffs filed the earliest of the individual suits underlying the present multidistrict litigation in October 2023, approximately three years and ten months after the Whistleblower Report was published.

Moreover, a deluge of local and national reporting followed the release of the Whistleblower Report. Two such articles are cited in Plaintiffs’ Consolidated Complaint: (1) a February 8, 2020 Wall Street Journal article titled *The Mormon Church Amassed \$100 Billion, It Was the Best-Kept Secret in the Investment World*,¹²⁵ and (2) a February 8, 2020 Salt Lake Tribune article titled *LDS Church Kept the Lid on Its \$100B Fund for Fear Tithing Receipts Would Fall, Account Boss Tells Wall Street Journal*.¹²⁶ The court takes judicial notice of these

¹²² At oral argument, Plaintiffs’ counsel made somewhat contradictory statements about Plaintiffs’ awareness of the Whistleblower Report. Compare, e.g., *Hearing Transcript* at 97:12–14 (“To be sure, in 2019 there was the letter to an IRS director published. The plaintiffs were not involved in that. The plaintiffs didn’t know about it.”); with *id.* at 100:16–19 (“To be sure, this IRS letter goes out and is published. It got a lot of press. It was sent around.”). But by citing the Whistleblower Report in their Complaint, see, e.g., CCAC ¶ 11, citing the Church’s response to the Report through the First Presidency Statement, see, e.g., *id.* ¶ 12, and pleading they “relied on Defendants’ affirmative representations regarding their use of donated funds,” see, e.g., *id.* ¶ 48, Plaintiffs at least imply they obtained some basic awareness of the Report’s existence at or near the time of its release.

¹²³ *Grynberg*, 538 F.3d at 1349.

¹²⁴ *Id.* at 1350.

¹²⁵ CCAC ¶ 102 n.46 (citing Ian Lovett & Rachael Levy, *The Mormon Church Amassed \$100 Billion, It Was the Best-Kept Secret in the Investment World*, Wall Street Journal (Feb. 8, 2020, 5:07 PM), <https://perma.cc/578H-2SYV>).

¹²⁶ *Id.* ¶ 102 n.47 (citing Peggy Fletcher Stack, *LDS Church Kept the Lid on Its \$100B Fund for Fear Tithing Receipts Would Fall, Account Boss Tells Wall Street Journal*, Salt Lake Tribune (Feb. 8, 2020, 1:40 PM), <https://perma.cc/2Z7V-9TYV>).

articles,¹²⁷ as well as the following thirteen media reports between December 16, 2019 and February 6, 2020, to demonstrate the extensive nationwide reporting on Defendants' alleged fraud that quickly followed publication of the Whistleblower Report:¹²⁸

- Benjamin Wood, *Whistleblower Claims That LDS Church Stockpiled \$100 Billion in Charitable Donations, Dodged Taxes*, Salt Lake Tribune (Dec. 16, 2019, 8:25 PM), <https://perma.cc/3226-3FLK>.
- Jon Swaine, Douglas MacMillan, & Michelle Boorstein, *Mormon Church Has Misled Members on \$100 Billion Tax-Exempt Investment Fund, Whistleblower Alleges*, Washington Post (Dec. 17, 2019), <https://perma.cc/25ZZ-SQ5R>.
- Tad Walch, *Church Responds to Allegations Made by Former Employee in IRS Complaint*, Deseret News (Dec. 17, 2019, 12:43 PM), <https://perma.cc/4GP6-MJES>.
- Jerad Giottonini, *Whistleblower Alleges Church Misused \$100 Billion in Accounts Intended For Charitable Purposes*, ABC4 News (Dec. 17, 2019, 12:12 PM), <https://perma.cc/YPT3-P52Y>.
- Cristina Flores, *Will LDS Church Suffer Consequences After Whistleblower Claims It Sits on \$100B?*, KUTV News (Dec. 17, 2019, 8:15 PM), <https://perma.cc/GHX9-DLSE>.
- Caleb Parke, *Mormon Church Misled Members on Tax-Exempt Investment Fund, Whistleblower Claims*, Fox News (Dec. 18, 2019, 1:28 PM), <https://perma.cc/X9EN-63EL>.
- Cheri Mossburg & Stephanie Becker, *Mormon Church Accused of Stockpiling Billions, Avoiding Taxes*, CNN (Dec. 18, 2019, 8:50 PM), <https://perma.cc/RJ39-DBD7>.
- Jack Jenkins, *LDS Church Fund Unlikely to Face IRS Backlash, Experts Say*, Salt Lake Tribune (Dec. 19, 2019, 6:03 PM), <https://perma.cc/9X7C-V57K>.
- Larry Curtis, *LDS Church Releases Explanation of Its Use of Tithes, Donations After \$100B Fund Revealed*, KUTV News (Dec. 20, 2019, 5:39 PM), <https://perma.cc/PH4F-WRCH>.

¹²⁷ Taking judicial notice of these articles is proper because their publication is not subject to reasonable dispute and because the court considers them not for their truth but only as evidence of the information in the public realm shortly following the release of the Whistleblower Report. See Fed. R. Evid. 201(b)–(d) (stating the court “may judicially notice a fact that is not subject to reasonable dispute”); *Est. of Lockett v. Fallin*, 841 F.3d 1098, 1111 (10th Cir. 2016) (“When courts have taken judicial notice of contents of news articles, they have done so for proof that something is publicly known, not for the truth of the article’s other assertions.”) (citation omitted).

¹²⁸ The thirteen publications referenced are from major national news media outlets (including the Washington Post, CNN, Fox News, Forbes, and the Associated Press), the two dominant Utah newspapers (the Salt Lake Tribune and Deseret News), as well as the CBS and ABC Utah television affiliates (ABC4 and KUTV). The Church also identifies in an exhibit submitted with its Motion to Dismiss an additional twelve publications between December 2019 and February 2020 in less prominent media outlets, including Utah radio outlets associated with National Public Radio (KUER and Radio West), The Christian Post, Mercury News, Inside Hook, the Star Tribune, 9 News, and others. See ECF 79-1, *Tithing Class Action Articles*.

- Peter J. Reilly, *More on the Mormon Ensigngate*, Forbes (Dec. 20, 2019, 2:35 PM), <https://perma.cc/8DYY-T984>.
- Nate Carlisle, *Excerpts Show How the LDS Church Tried to Keep a Lid on Its \$100B Account, Even Freezing Out Apostle Boyd K. Packer*, Salt Lake Tribune (Dec. 22, 2019, 7:00 AM), <https://perma.cc/MEB8-QZPM>.
- Michelle Boorstein & Jon Swaine, *These Mormon Twins Worked Together on an IRS Whistleblower Over the Church's Billions—And It Tore Them Apart*, Washington Post (Jan. 16, 2020), <https://perma.cc/5YZ5-4TET>.
- Samuel Brunson, *What's A Church? That Can Depend on The Eye of The Beholder or Papers Filed With the IRS*, Salt Lake Tribune (Feb. 6, 2020, 11:06 AM), <https://perma.cc/N4HY-F3RW>.

Additionally, at least five individuals—presumably members of Plaintiffs’ proposed class—initiated no fewer than three timely lawsuits based on the Whistleblower Report and associated media coverage years before any of the individual Plaintiffs in the present Multidistrict Litigation filed their individual suits.¹²⁹ The first of these cases, a fraud and racketeering case filed less than three months after publication of the Whistleblower Report, is *Cook, Vessels, and Taggart v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*, filed in this court on February 10, 2020.¹³⁰ The core factual allegations in that suit are remarkably similar to the allegations in this case. Plaintiffs there, as here, alleged “[t]he Church is currently engaged and has for decades been engaged in a scheme to extract tithing [] from its members, including Plaintiffs, based on false claims, pretenses, misinformation, misdirection, and lies.”¹³¹ As here, plaintiffs in *Cook* further complained “the Church has amassed billions of dollars in savings and investment portfolios, which further prove that tithing and offerings are not being used as the Church claims to its members.”¹³² The *Cook* plaintiffs

¹²⁹ See, e.g., *In re Zyprexa Prod. Liab. Litig.*, 549 F. Supp. 2d 496, 534–37 (E.D.N.Y. 2008) (finding plaintiffs were on inquiry notice of their claims based in part on the existence of comparable lawsuits and “the extensive media coverage they received”).

¹³⁰ ECF 1, (case No. 2:20-cv-80-TS), *Complaint for Damages and Injunctive Relief for Violations of the Federal Racketeering Influenced and Corrupt Organizations Act*.

¹³¹ *Id.* ¶ 3.

¹³² *Id.* ¶ 14.

alleged they learned of the Church's fraud based on the December 17, 2019 Washington Post article referenced above, and that they provided a draft Complaint to the Church for review as early as January 20, 2020.¹³³

A second lawsuit against the Church, *Gaddy v. The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*,¹³⁴ was filed approximately four months before the release of the Whistleblower Report.¹³⁵ The initial Complaint included claims focused primarily on the Church's teachings and beliefs.¹³⁶ But on March 30, 2020, Gaddy sought leave to file an amended complaint to incorporate allegations based on the Whistleblower Report.¹³⁷ Like the *Cook* lawsuit, Gaddy included in her Amended Complaint fraud and racketeering claims based in part on factual allegations similar to those here. Among other things, Gaddy alleged:

In late 2019 an IRS whistleblower complaint was filed against [the Church]. It provides compelling documentation that [the Church] used tithing principal (not merely investment proceeds) for profit-making entity expenses, including but not limited to \$1.4 billion in the development of City Creek Mall, Salt Lake City, despite repeated specific assurances by [Church] employees and agents that no tithing would be and/or was used for such a purpose. By comparison, [the Church] had donated just \$1.1 billion in global humanitarian aid between 1985 and 2011.”¹³⁸

Similarly, Gaddy alleged “Ensign Peak Advisors is an asset and investment management firm created in 1997 which, upon information and belief, has accumulated profits from investing tithing to over \$100+ billion in a mostly liquid fund used to finance for-profit businesses,

¹³³ *Id.* ¶¶ 69, 32.

¹³⁴ See ECF 2, (case no. 2:19-cv-00554-RJS-DBP, filed in the District of Utah), *Proposed Class Action Complaint*.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See ECF 32, (case no. 2:19-cv-00554-RJS-DBP, filed in the District of Utah), *Plaintiff's Motion for Leave to File Amended Complaint* at 6–7. The court granted the Motion on May 13, 2020. See ECF 36, (case no. 2:19-cv-00554-RJS-DBP, filed in the District of Utah), *Docket Text Order Granting Motion for Leave to File*.

¹³⁸ ECF 32-1, (case no. 2:19-cv-00554-RJS-DBP, filed in the District of Utah), *[Proposed] Amended Class Action Complaint* ¶ 5.

including the development of SLC-based City Creek Mall.”¹³⁹ And she alleged Ensign provided funds to “bail-out Beneficial Life Insurance, another for-profit [Church] affiliate, which as of 2009 has ceased to write insurance policies.”¹⁴⁰ And in support of her claims, Gaddy cited to many of the same allegedly false statements from Church leaders that Plaintiffs in this lawsuit infer they relied on.¹⁴¹

The third case, *Huntsman v. Corporation of the President of the Church of Jesus Christ of Latter-day Saints et al.*, was filed on March 22, 2021.¹⁴² The Whistleblower Report was the stated impetus of the *Huntsman* suit, where the plaintiff asserted a single fraud claim based on allegations that the Church falsely represented that tithing funds would be used only for charitable purposes but instead used them to support commercial endeavors.¹⁴³

The court takes judicial notice of the existence of these cases as additional evidence of the information in the public realm at or near the time the Whistleblower Report was published and widely reported in nationwide media and, in turn, as evidence that a reasonable individual who had made significant monetary donations and was otherwise interested in Church affairs had at least constructive knowledge of the Church’s alleged fraud.¹⁴⁴

¹³⁹ *Id.* ¶ 43.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* ¶ 85 (identifying several Church statements disavowing the use of tithing funds in the development of City Creek Mall).

¹⁴² See ECF 1 (case No. 2:21-cv-02504, filed in the Central District of California), *Complaint for Fraud*.

¹⁴³ *Id.* ¶¶ 27–42.

¹⁴⁴ *Cf. Est. of Lockett*, 841 F.3d at 1111 (quoting *Lee v. City of L.A.*, 250 F.3d 668, 690 (9th Cir. 2001) (“On a Rule 12(b)(6) motion to dismiss, when a court takes judicial notice of another court’s opinion, it may do so not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.”)); *Pace v. Swerdlow*, 519 F.3d 1067, 1072 (10th Cir. 2008) (holding a district court appropriately took judicial notice of materials including state court documents).

Plaintiffs do not expressly deny they were aware of the Whistleblower Report and related media coverage.¹⁴⁵ Instead, they point to a YouTube video associated with the Whistleblower Report and argue the “then-unsubstantiated internet video was not, on its own, enough to trigger an independent inquiry, especially in light of Defendants’ continued denials and obfuscations.”¹⁴⁶ Plaintiffs likewise argue “they only became truly aware of Defendants’ conduct when the SEC Order was made public and, thereafter, in May 2023 when 60 Minutes ran an exposé on the [W]histleblower [R]eport and related matters.”¹⁴⁷ But Plaintiffs’ argument misapprehends the constructive notice standard and disregards the volume of information in the public realm in late 2019 and early 2020. A review of the sources cited in the Consolidated Complaint—the Whistleblower Report and the two February 2020 articles—as well as the articles and cases noted above, reveals there was extensive nationwide, publicly-available information regarding the Whistleblower’s allegations.

In any event, the standard under Utah law for when the applicable statute of limitations began to run is not when Plaintiffs became “truly aware” of Defendants’ conduct. Rather, it began when a reasonable, similarly-situated individual would be sufficiently aware of the allegations against Defendants such that they would inquire further.¹⁴⁸ Plaintiffs largely ignore

¹⁴⁵ See *supra* n.124. The court acknowledges Plaintiffs “did not have the burden to plead on this issue,” see *Bistline*, 918 F.3d at 866 n.12, but notes the Consolidated Complaint nonetheless raises the matter: “Plaintiffs and Class members did not discover and could not discover [Defendants’ conduct] through the exercise of reasonable diligence,” “[a]ny applicable statutes of limitation have been tolled by . . . Defendants’ knowing, active, and ongoing fraudulent concealment of the facts alleged herein,” “the hardship that enforcing any limitations period would impose on . . . Plaintiffs would outweigh any prejudice to Defendants,” and “enforcing the limitations period here would be irrational and unjust.” *CCAC ¶¶* 46–47, 50–51.

¹⁴⁶ *Consolidated Opposition* at 36.

¹⁴⁷ *Id.* at 36–37.

¹⁴⁸ See Utah Code § 78B-2-305(3) (“[T]he cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake.”); see also *Intel Corp. Inv. Policy Comm. V. Sulyma*, 589 U.S. 178, 185 (2020) (“[T]he word ‘discovery,’ when used in a statute of limitations without qualification, ‘encompasses not only those facts the plaintiff actually knew, but also those facts a reasonable diligent plaintiff would have known.’”) (quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010)).

this standard and fail to engage with it in their papers. The Whistleblower Report, coupled with the extensive media coverage it received in reputable local and national publications, in addition to parallel lawsuits predating the SEC Order and the 60 Minutes “exposé,” collectively compel the court to conclude that a reasonable individual with a personal interest in the Church’s use of donated funds should have been aware of Defendants’ alleged fraud no later than early 2020.

Plaintiffs separately argue that “[w]here a plaintiff pleads that a defendant took affirmative steps to conceal its conduct, a plaintiff can avoid full operation” of the applicable discovery rule “by making a *prima facie* showing of fraudulent concealment.”¹⁴⁹ Plaintiffs then point to the First Presidency’s Statement in response to the Whistleblower Report to suggest they have made such a showing.¹⁵⁰ But the rule Plaintiffs rely on is inapplicable here. In *Russell Packard Development, Inc. v. Carson*, the Utah Supreme Court carefully distinguished between statutory discovery rules (applicable to statutes of limitation containing provisions that expressly toll the running of a statute of limitations) and equitable discovery rules (applicable to statutes of limitation that contain no such provision).¹⁵¹ Citing its prior decision in *Berenda v. Langford*, the *Carson* court acknowledged it had previously applied an exception to statutory discovery rules where a plaintiff did not become aware of the availability of a claim “because of [a] defendant’s concealment or misleading conduct.”¹⁵² However, the court “clarif[ied] and emphasize[d]” that this exception applied only to equitable discovery rules.¹⁵³ The court explicitly identified Utah’s statute of limitations for fraud as containing a statutory discovery rule

¹⁴⁹ *Consolidated Opposition* at 35.

¹⁵⁰ *Id.* at 36 n.17.

¹⁵¹ 108 P.3d 741, 746–47 (Utah 2005).

¹⁵² *Id.* at 747; *see also Berenda v. Langford*, 914 P.2d 45 (Utah 1996).

¹⁵³ *Russell Packard Dev.*, 108 P.3d at 747.

and stated “it would be inappropriate to apply the concealment version of the [equitable] discovery rule[s] in the context of the three-year statute of limitations for fraud.”¹⁵⁴ For this reason, it is inappropriate for the court to apply equitable tolling rules to Plaintiffs’ claims sounding in fraud.

Plaintiffs also rely on the First Presidency Statement to argue this case presents a factual question about when a reasonable person would have suspected Defendants of wrongdoing, which they contend precludes resolution of Defendants’ statute of limitations defense at this stage.¹⁵⁵ Plaintiffs cite *Bistline v. Parker*¹⁵⁶ for this purpose.¹⁵⁷ But *Bistline* concerned claims brought by former members of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS), which illegally practices polygamy, against attorneys for the FLDS Church’s Prophet, Warren Jeffs.¹⁵⁸ The Tenth Circuit found that although the complaint contained “allegations . . . that *could* be interpreted to indicate plaintiffs[] duty to inquire further, [it] could not say as a matter of law that plaintiffs *should* have suspected defendants of wrongdoing.”¹⁵⁹ Importantly, the court reached its decision “in light of the incredibly unique and extreme factual circumstances” alleged in the plaintiffs’ complaint.¹⁶⁰ The Tenth Circuit noted, for example, plaintiffs’ allegations that, as members of the FLDS Church, they experienced “multi-generational entrenchment in a community entirely insulated from the outside world, a lack of outside education that could alert them to their legal rights and the impacts of defendants’ action,

¹⁵⁴ *Id.* at 746–47.

¹⁵⁵ *See, e.g., Consolidated Opposition* at 36 n.17.

¹⁵⁶ 918 F.3d 849 (10th Cir. 2019).

¹⁵⁷ *See Consolidated Opposition* at 34–35.

¹⁵⁸ *Bistline*, 918 F.3d at 854.

¹⁵⁹ *Id.* at 881.

¹⁶⁰ *Id.* at 884.

and in some cases specialized schooling to indoctrinate them against recognizing their legal claims.”¹⁶¹ The Tenth Circuit likewise highlighted the plaintiffs’ allegations that they “were continually informed in these severely isolated circumstances that defendants were their only legal resource, and thus one of their sole links to the outside world.”¹⁶² The Tenth Circuit concluded these allegations raised a “factual question regarding the point at which a reasonably prudent person in these unusual circumstances should have become suspicious of Defendants.”¹⁶³

Plaintiffs’ Consolidated Complaint is devoid of any comparable allegations and, by implication, any similar questions of fact. For example, even accepting as true that the First Presidency Statement contained false statements concerning the Church’s use of donated funds, the Consolidated Complaint does not allege Plaintiffs experienced community isolation, under-education, indoctrination, or any other circumstances that would prevent them from critically examining the Whistleblower Report and related Church statements.¹⁶⁴ And no such circumstances prevented the *Cook*, *Gaddy*, and *Huntsman* plaintiffs from doing so. That Plaintiffs generally trusted Defendants is insufficient; a plaintiff cannot overcome a statute of limitations defense by pleading willful ignorance.¹⁶⁵

¹⁶¹ *Id.* at 882.

¹⁶² *Id.*

¹⁶³ *Id.* at 881. Notably, the Circuit analogized the *Bistline* plaintiffs’ circumstances to cases from the District of Arizona and Western District of Arkansas, where courts held statutes of limitations inapplicable due to “psychological manipulation” and “brainwashing” *Id.* at 882–83 (citing *Barba v. Seung Heun Lee*, No. CV 09-1115-PHX-SRB, 2009 WL 87447368 (D. Ariz. Nov. 4, 2009) (unpublished) and *Kolbek v. Twenty First Century Holiness Tabernacle Church, Inc.*, No. 10-cv-4124, 2013 WL 6816174 (W.D. Ark. Dec. 24, 2013)).

¹⁶⁴ Neither do Plaintiffs state they ever saw or heard any Church statements they otherwise argue concealed the alleged fraud.

¹⁶⁵ See *Colosimo*, 156 P.3d at 811 (“[A] party who has opportunity of knowing the facts constituting the alleged fraud cannot be inactive and afterwards allege a want of knowledge. Instead, if the facts known to a plaintiff would prompt a reasonably prudent person to further investigate, the plaintiff should make reasonable inquiry.”) (internal citations and quotation marks omitted).

The court recognizes Utah’s statute of limitations for fraud “almost always presents a question of fact as to when [a] plaintiff did discover or should have discovered the defendants’ wrongdoing,” such that a statute of limitations defense is rarely amenable to resolution at the pleading stage.¹⁶⁶ Indeed, the court earlier analogized this case to *Grynberg*, an “inquiry notice” case resolved at the summary judgment stage.¹⁶⁷ But the Tenth Circuit permits resolution of a statute of limitations defense “on a Rule 12(b)(6) motion when the dates given in the complaint make clear that the right sued upon has been extinguished.”¹⁶⁸ Such is the case here: Plaintiffs expressly cite the Whistleblower Report and related reporting in the Consolidated Complaint.¹⁶⁹ Moreover, Plaintiffs do not respond to the Church’s argument that “Plaintiffs’ Consolidated Complaint . . . prove[s] Plaintiffs were on inquiry notice of the Church’s alleged misconduct” by citing and relying on the December 2019 Whistleblower Report, a February 2020 Wall Street Journal article, and a February 2020 Salt Lake Tribune article.¹⁷⁰ Nor do Plaintiffs acknowledge the extensive national and local media coverage Defendants submitted with their Motion to Dismiss.¹⁷¹ Additionally, Plaintiffs raised no objection at the January 17, 2025 motion hearing to the court taking judicial notice of the “26 separate media accounts about the whistleblower report

¹⁶⁶ *Bistline*, 918 F.3d at 881 (10th Cir. 2019).

¹⁶⁷ *Grynberg*, 538 F.3d at 1335.

¹⁶⁸ *Sierra Club v. Okla. Gas & Elec.*, 816 F.3d 666, 671 (10th Cir. 2016); *see also Saxena v. Allen*, No. 23-1212, 2023 WL 8476264, at *2 (10th Cir. Dec. 7, 2023) (unpublished) (“Here, the relevant dates appear in [Plaintiff’s] complaint, and [Plaintiff] does not suggest otherwise on appeal, so the district court did not err on this basis.”); *Nowell v. Medtronic, Inc.*, No. 19-2073, 2021 WL 4979300 at *4 (10th Cir. Oct. 27, 2021) (unpublished) (“Because the critical dates appear plainly on the face of [Plaintiff’s] complaint, the statute of limitations defense was properly raised and resolved in the Rule 12(b) context.”); *Susoeff v. Michie*, No. 6:16-cv-01287-JTM, 2016 WL 4990256, at *5 (D. Kan. Sept. 19, 2016) (charging Plaintiffs with constructive notice at the Rule 12 stage because they “offer nothing in the complaint or elsewhere to show they could not have reasonably discovered the basis of their claims” before the statute of limitations ran.).

¹⁶⁹ *See* ECF 145, *Transcript of Motion Hearing Held on January 17, 2025 (Hearing Transcript)* at 47:1–3 and CCAC ¶¶ 39, 79, 81–85, 88, 90, 102 n.46, 105–06, 110–15. Plaintiffs likewise cite a YouTube video affiliated with the Whistleblower Report. *See* CCAC ¶¶ 87, 89.

¹⁷⁰ *Church Motion to Dismiss* at 32.

¹⁷¹ *See generally, Consolidated Opposition* at 35–37; *Tithing Class Action Articles*.

between December 2019 and February 2020 . . . in no fewer than 20 media outlets, including The Washington Post, the Salt Lake Tribune . . . Forbes, CNN, [and] Bloomberg.”¹⁷²

Critically, Plaintiffs nowhere argue or explain how the inquiry notice analysis could result in a different conclusion if the court defers ruling on the issue until Defendants raise it again in a Rule 12(c) or Rule 56 motion. Here, the court makes no determination concerning what Plaintiffs were actually aware of and when—only that the overwhelming information in the public domain by early 2020 would have inspired (and in fact did inspire) similarly-situated individuals to learn about the facts underlying their claims and file suit. Nothing gleaned in discovery could retroactively change the fact that this information existed in the public realm or that Plaintiffs’ Consolidated Complaint expressly relies on this information. Even assuming the most favorable facts for the Plaintiffs—that they were not aware of the Whistleblower Report, the related media reporting, or the earlier filed lawsuits, or that they genuinely believed Church statements decrying any misconduct— the statute of limitations result would be no different.

The dates on the face of the Consolidated Complaint and the evidence of which this court takes judicial notice together “make clear” that a reasonably prudent person in Plaintiffs’ position would have known the facts underlying the Church’s alleged fraud such that they would have inquired further upon publication of the Whistleblower Report and the related reporting and lawsuits. Accordingly, Utah’s three-year statute of limitations for fraud began running no later than early 2020 and barred Plaintiffs from initiating their individual suits in late 2023 and early 2024.

¹⁷² *Hearing Transcript* at 97–107.

II. Failure to State a Claim

Even if the Consolidated Complaint raises a question of fact as to when Plaintiffs should be charged with inquiry notice, the court finds Plaintiffs nonetheless failed to adequately plead their claims. Defendants argue Plaintiffs' individual claims each fail as a matter of law because Plaintiffs fail to plead facts establishing the requisite elements of their claims under Rule 12(b)(6) and fail to plead their fraud-based claims with the heightened degree of particularity required under Rule 9(b).¹⁷³ The court considers these arguments regarding Plaintiffs' claims in the following order: (A) breach of fiduciary duty, (B) fraudulent inducement and fraudulent misrepresentation, (C) fraudulent concealment, and (D) unjust enrichment.

A. Breach of Fiduciary Duty

To state a common law claim for breach of fiduciary duty, a plaintiff must plead four elements: "(1) the existence of a fiduciary relationship (such as attorney-client, physician-patient, or insurer-insured); (2) breach of the fiduciary duty; (3) causation, both actual and proximate; and (4) damages."¹⁷⁴

Defendants argue Plaintiffs fail to state a claim for breach of fiduciary duty for two reasons. First, Defendants argue they do not stand in a fiduciary relationship with Plaintiffs.¹⁷⁵ Second, Defendants argue Plaintiffs lack standing to pursue their claim for breach of fiduciary duty under Utah's common law donor standing rule.¹⁷⁶ The court agrees with Defendants that

¹⁷³ The parties agree Utah law governs Plaintiffs' claims. See *CCAC* ¶¶ 14, 138; *Church Motion to Dismiss* at 8 n.9; *Ensign Motion to Dismiss* at 17 n.7.

¹⁷⁴ *Gables at Sterling Vill. Homeowners Ass'n, Inc. v. Castlewood-Sterling Vill. I, LLC*, 417 P.3d 95, 109–10 (Utah 2018).

¹⁷⁵ *Church Motion to Dismiss* at 17–18; *Ensign Motion to Dismiss* at 5–6.

¹⁷⁶ *Church Motion to Dismiss* at 19–20; *Ensign Motion to Dismiss* at 6. The Church also independently argues Plaintiffs fail to plead breach. See *Church Motion to Dismiss* at 19. The court resolves the claim on Defendants' two shared arguments and does not reach this issue.

Plaintiffs fail to plead the existence of a fiduciary relationship between themselves and Defendants and therefore the court need not decide whether Utah’s common law donor standing rule applies to Plaintiffs’ claim.¹⁷⁷

Defendants’ contend their relationships with Plaintiffs, whether as between church and parishioner or as between donee and donor, do not give rise to fiduciary duties.¹⁷⁸ Plaintiffs accept Defendants’ argument that no fiduciary relationship exists between them by virtue of their church-parishioner relationships,¹⁷⁹ but they contend their donee-donor relationship gives rise to a fiduciary relationship.¹⁸⁰ Plaintiffs cite the following provision of the Utah Charitable Solicitations Act (UCSA) in support of their position:

Every person soliciting, collecting, or expending contributions for charitable purposes, and every officer, director, trustee, or employee of any person concerned with the solicitation, collection, or expenditure of those contributions, shall be considered to be a fiduciary and acting in a fiduciary capacity.¹⁸¹

Defendants argue that Plaintiffs’ interpretation of the UCSA is contrary its plain language and the prevailing understanding that a charity does not owe a fiduciary duty to its donors. The court agrees.

¹⁷⁷ Utah’s common law donor standing rule generally prohibits donors from suing to enforce the terms of their gifts. Plaintiffs and the Church cite *Siebach v. Brigham Young Univ.*, 361 P.3d 130 (Utah Ct. App. 2015) in support of their arguments regarding donor standing. *Church Motion to Dismiss* at 19; *Consolidated C_pposition* at 23. There, the court impliedly distinguished between fraud claims that involve “improper inducement” and claims for breach of fiduciary duty by finding the former was not barred by Utah’s common law donor standing rule while leaving in place the trial court’s determination that the plaintiff’s breach of fiduciary duty claim was barred. *Siebach*, 361 P.3d at 140–41. But here, because no fiduciary relationship exists between Plaintiffs and Defendants, the court need not decide this claim on that basis.

¹⁷⁸ *Church Motion to Dismiss* at 17–19; *Ensign Motion to Dismiss* at 5–6.

¹⁷⁹ *Consolidated C_pposition* at 21 (“Plaintiffs do not argue that the fiduciary relationship exists because they are Defendants’ parishioners.”).

¹⁸⁰ *Id.* at 20–22.

¹⁸¹ See *CCAC* ¶ 147 (citing Utah Code § 13-22-23).

The UCSA says nothing about donors, and Plaintiffs have not meaningfully explained why any canons of construction, legislative history, or other interpretive aid support reading the statute to impose fiduciary relationships between charities and their donors.¹⁸² A plain reading of the UCSA text suggests that individuals “soliciting, collecting, or expending contributions for charitable purposes” or “concerned with the solicitation, collection, or expenditure” of charitable contributions “act[] in a fiduciary capacity” with respect to the *organizations* on whose behalf they solicit, collect, and spend those contributions.

Furthermore, Plaintiffs cite no legal authority to support the notion that the UCSA (or any other legal framework) imposes fiduciary relationships between charities and their donors. To the contrary, Plaintiffs’ interpretation is inconsistent with how courts and other authorities typically understand fiduciary relationships. For example, Defendants point to *Orlando Millenia, LC v. United Title Services of Utah, Inc.*¹⁸³ There, the Utah Supreme Court explained that fiduciary relationships arise when one party “is required to act for the benefit of [the other] on all matters within the scope of their relationship,”¹⁸⁴ such as an attorney, who is “required to represent their clients’ interests diligently,” or a principal’s agent, “who is required to act solely for the benefit of the principal in matters connected with the agency.”¹⁸⁵ Through that controlling lens, Plaintiffs’ argument would yield an absurd result where an agent for a non-profit organization is required to “solely” act for the benefit of individual donors rather than for

¹⁸² Plaintiffs cite *United States v. McKibbin*, 878 F.3d 967 (10th Cir. 2017) for the proposition that the court may not “insert any new limiting adjective” into the UCSA. See *Consolidated Opposition* at 22. But the court is adding no adjective or any other language here; rather, it is interpreting the plain language of the UCSA, noting the law of nonprofit organizations, and considering the potentially absurd results that would arise from Plaintiffs’ reading of the statute.

¹⁸³ See *Ensign Motion to Dismiss* at 5.

¹⁸⁴ *Orlando Millenia, LC v. United Title Servs. of Utah, Inc.*, 355 P.3d 965, 971 (Utah 2015) (quoting *Fiduciary*, Black’s Law Dictionary (9th ed. 2009) (alteration in original)).

¹⁸⁵ *Id.*

the organization itself.¹⁸⁶ Defendants also cite the Restatement of Charitable Nonprofit Organizations,¹⁸⁷ which states that charities are required to act for the benefit of their charitable purpose—not for the benefit of their donors.¹⁸⁸ The Restatement also provides that “[a] fiduciary of a charity is a person who has substantial powers with respect to a charity”¹⁸⁹ and explains that a fiduciary owes duties of care and loyalty to the charity itself—“to advance [the] charity’s purpose”¹⁹⁰—and nowhere imposes similar duties with respect to donors.¹⁹¹ Because Plaintiffs’ interpretation of the UCSA lacks support, the court finds the UCSA does not create a fiduciary relationship between Plaintiffs and Defendants. Accordingly, Plaintiffs’ claim for breach of fiduciary duty must be dismissed for failure to state a claim.

B. Fraudulent Inducement and Fraudulent Misrepresentation

To state a claim for fraudulent inducement and fraudulent misrepresentation, a plaintiff must plead the same nine elements:

(1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor (a) either knew to be false or (b) made recklessly knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to (9) act to the party’s injury and damage.¹⁹²

¹⁸⁶ For example, Plaintiffs’ interpretation of the statute would make every church, mosque, and synagogue in the state of Utah a fiduciary to its donating members, and every political campaign a fiduciary to its financial backers.

¹⁸⁷ See *Church Motion to Dismiss* at 18–19.

¹⁸⁸ See, e.g., Restatement of Charitable Nonprofit Organizations § 1.01(a) (Am. L. Inst. 2021) (“A charity is a legal entity with exclusively charitable purposes, established for the benefit of indefinite beneficiaries, and prohibited from providing impermissible private benefit.”).

¹⁸⁹ *Id.* § 2.01(a).

¹⁹⁰ *Id.* § 2.02 cmt. a.

¹⁹¹ Compare *id.* ch. 2, with *id.* ch. 6.

¹⁹² *Webster v. JP Morgan Chase Bank, NA*, 290 P.3d 930, 936 (Utah Ct. App. 2012); see also *Keith v. Mountain Resorts Dev., LLC*, 337 P.3d 213, 225–26 (Utah 2014) (applying these elements to a fraudulent inducement claim); *Larsen v. Exclusive Cars, Inc.*, 97 P.3d 714, 716 (Utah Ct. App. 2004) (applying these elements to a fraudulent misrepresentation claim).

Additionally, Federal Rule of Civil Procedure 9(b) requires a plaintiff to “state with particularity the circumstances constituting fraud.”¹⁹³ This means a plaintiff must “set forth the time, place and contents of the false representation, the identity of the party making the false statements, and the consequences thereof.”¹⁹⁴

Defendants argue Plaintiffs fail to state claims for fraudulent inducement and fraudulent misrepresentation for three reasons. First, Defendants argue Plaintiffs fail to plead Defendants made any false statements.¹⁹⁵ Second, Defendants argue Plaintiffs fail to plead reliance on any of Defendants’ statements.¹⁹⁶ Third, Defendants argue Plaintiffs fail to plead the essential facts of their claims with the required degree of particularity.¹⁹⁷

The court declines to decide whether Plaintiffs adequately pled the falsity element of their claims. However, Plaintiffs’ attempt to plead generalized reliance as a group fails under Rule 12 because Plaintiffs do not identify whether each named Plaintiff actually heard or relied on any one or more specific representations and fail to explain in what way the allegedly false representations caused them to change their donating behavior. In turn, Plaintiffs’ claims also fail under the heightened pleading standard of Rule 9(b).

In support of their fraudulent inducement claim, Plaintiffs allege Defendants made four “false representations regarding contemporaneously existing material facts and made promises of future performance with no contemporaneous intent to perform”: (1) “donated funds would be

¹⁹³ Fed. R. Civ. P. 9(b).

¹⁹⁴ *Koch v. Koch Indus.*, 203 F.3d 1202, 1236 (10th Cir. 2000).

¹⁹⁵ *Church Motion to Dismiss* at 21–24; *Ensign Motion to Dismiss* at 8–10.

¹⁹⁶ *Church Motion to Dismiss* at 24–27; *Ensign Motion to Dismiss* at 10–11.

¹⁹⁷ See, e.g., *Church Motion to Dismiss* at 21, 25, 27; *Ensign Motion to Dismiss* at 7, 10. Ensign independently argues Plaintiffs fail to plead the first element of their fraudulent inducement and fraudulent misrepresentation claims—that Ensign made a representation. *Ensign Motion to Dismiss* at 7. The court need not decide this issue because it concludes Plaintiffs’ claims fail on Defendants’ shared arguments.

directed towards charitable purposes”; (2) “funds donated to specific church organizations would be directed toward those organizations and used exclusively for charitable purposes”; (3) “the ‘vast majority’ of donated funds would be used for charitable purposes”; and (4) “[the Church] followed all applicable laws regarding its use of donated funds.”¹⁹⁸ And as for Plaintiffs’ fraudulent misrepresentation claim, Plaintiffs base their claim on statements made by the Church that no tithing funds would be used to finance City Creek mall.¹⁹⁹

In the Consolidated Complaint, Plaintiffs only generally allege they “reasonably relied” on these representations.²⁰⁰ They do not plead they actually heard or read—individually or collectively—any specific representation, nor that any individual representation induced them to donate. Nor do Plaintiffs plead when they started making donations or what first caused them to donate. Thus, neither Defendants nor the court can ascertain whether any or all of the Plaintiffs began making donations before Defendants’ allegedly false representations, nor whether any of the representations changed Plaintiffs’ donating behavior. Reading the Complaint as a whole, the court and Defendants are left to guess whether anyone relied on anything and to what end. Plaintiffs’ group-wide, conclusory allegations that they reasonably relied on the Church’s various allegedly false representations are insufficient to give rise to a reasonable inference that Defendants are liable to them for fraud.

Plaintiffs argue the court may infer individualized reliance under the present circumstances.²⁰¹ However, precedent does not support this approach. Plaintiffs primarily rely

¹⁹⁸ *CCAC* ¶ 158.

¹⁹⁹ *Id.* ¶¶ 178–79.

²⁰⁰ *CCAC* ¶¶ 48, 49, 117, 119, 121, 123, 125, 127, 129, 131, 133, 164, 181.

²⁰¹ *Consolidated Opposition* at 26.

on the undersigned's decision in *Roberts v. C.R. England* in support of this position.²⁰² But *Roberts* concerned how a plaintiff may prove class action-wide reliance at the Rule 23(b) stage, not how it must be pled under Rule 12. In the cited portion of *Roberts*,²⁰³ the court considered the plaintiffs' motion for class certification—specifically, whether Plaintiffs had satisfied Rule 23(b)'s predominance inquiry.²⁰⁴ For purposes of this inquiry, the court held reliance was not an “individualized issue[] requiring evidence for each class member.”²⁰⁵ Rather, the court held it could infer class-wide reliance under Rule 23(b) based on “abundant” circumstantial evidence.²⁰⁶

Plaintiffs cite no authority applying this principle to a threshold Rule 12 analysis for *named plaintiffs* seeking to represent a class.²⁰⁷ Every named plaintiff must have an actionable claim at the outset of a proposed class action. Here, where there are no allegations demonstrating the named Plaintiffs actually relied on any specific representation to their own detriment, no court could rule that such Plaintiffs could adequately represent a class under Rule 23 because they failed to state plausible fraud claims in the first instance.

Because Plaintiffs fail to adequately plead the reliance element of their fraudulent misrepresentation and inducement claims under Rule 12, it naturally follows that they also fail to meet the heightened pleading requirements of Rule 9(b).²⁰⁸ This Rule requires a party to plead

²⁰² *Id.*

²⁰³ *Roberts v. C.R. England, Inc.*, 318 F.R.D. 457, 512 (D. Utah 2017) (quoting Fed. R. Civ. P. 23(b)(3)).

²⁰⁴ Fed. R. Civ. P. 23(b) (“A class action may be maintained if . . . the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members.”).

²⁰⁵ *Roberts*, 318 F.R.D. at 513.

²⁰⁶ *Id.* at 514. Importantly, the class certification motion was resolved at the summary judgment stage with the benefit of a robust factual record supporting the inference for class certification purposes.

²⁰⁷ The other cases Plaintiffs cite in support of their position likewise apply an inference of reliance in the class certification context. See Consolidated Opposition at 26 (citing *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1089–90 (10th Cir. 2014) and *Murphy v. Gospel for Asia, Inc.*, 327 F.R.D. 227, 238–40 (W.D. Ark. 2018)).

²⁰⁸ See, e.g., *Church Motion to Dismiss* at 21, 25, 27; *Ensign Motion to Dismiss* at 7, 10.

the “who, what, where, when, and how” of the alleged fraud,²⁰⁹ as well as “injuries they suffered as a result.”²¹⁰ The purpose of this Rule is to “afford [a] defendant fair notice of a plaintiff’s claims and the factual grounds supporting those claims.”²¹¹

Plaintiffs’ allegations, taken as a whole, fail in this regard. Generally, Plaintiffs’ fraudulent inducement and fraudulent misrepresentation claims allege the Church solicited three types of donations—tithing, fast offerings, and charitable contributions—for particular charitable purposes, and that the Church acted inconsistently with representations it made to donors regarding the use and management of donated funds. But the Consolidated Complaint infrequently identifies “who” made these statements, “what” the statements were, and “where” and “when” the statements were made. But even where the Complaint identifies these facts,²¹² Plaintiffs fail to plead “how” the statements were fraudulent or in what manner they caused a specific injury—that is, the “consequences thereof.”²¹³

For example, the individual Plaintiffs plead in conclusory fashion that they donated to the Church based on its various representations.²¹⁴ But as discussed above, Plaintiffs fail to allege specific facts giving rise to a reasonable inference that any one or more specific representations induced any particular conduct (including any donations). By extension, it is unclear which statements caused harm to which Plaintiffs and why (i.e., the consequences of Defendants’

²⁰⁹ *Clinton v. Sec. Benefit Life Ins. Co.*, 63 F.4th 1264, 1277 (10th Cir. 2023).

²¹⁰ *Id.* at 1279 (explaining a plaintiff “must” allege “injuries they suffered as a result” of [defendant’s] fraudulent misrepresentations” to satisfy Rule 9(b)).

²¹¹ *Id.* at 1277.

²¹² *See CCAC* ¶¶ 59, 67, 77, 108, 110, 133. The parties’ papers also refer to Defendants’ alleged representation that tithing funds were “always used” for certain purposes. *See, e.g., id.* ¶ 55; *Church Motion to Dismiss* at 21. But Plaintiffs do not point the court to the time and place of Defendants’ alleged representation, nor the identity of the individual making it.

²¹³ *Koch*, 203 F.3d at 1236.

²¹⁴ *See, e.g., CCAC* ¶¶ 116–17.

alleged fraud). Plaintiffs do not indicate whether their donations represent tithing, fast offerings, charitable contributions, or some combination of the three. Likewise, no Plaintiffs plead the dates of their donations (except that they occurred after January 1, 1998 and before July 2024). In other words, Plaintiffs do not sufficiently allege any “causal link” between the alleged fraud and any subsequent actions.²¹⁵

These collective deficiencies are fatal given that “Plaintiffs have the best knowledge of their own experiences and whether there was ever a particular misrepresentation that caused them” to donate to the Church.²¹⁶ Accordingly, under Rule 9(b), Defendants are without adequate notice of the factual circumstances underlying Plaintiffs’ fraudulent inducement and misrepresentation claims.

C. Fraudulent Concealment

To state a claim for fraudulent concealment, a plaintiff must plead (1) the existence of a legal duty to communicate, (2) that a defendant failed to disclose information known to them, and (3) that the nondisclosed information was material.²¹⁷ A party’s nondisclosure “must amount to fraud.”²¹⁸ In other words, it “must amount to an affirmation that a state of things exists which does not exist, and the uninformed party must be deprived to the same extent as if a positive assertion has been made.”²¹⁹ “To be material, the information must be ‘important.’ Importance, in turn, can be gauged by the degree to which the information could be expected to

²¹⁵ See *Chinitz v. Ally Bank*, No. 2:19-cv-00059, 2020 WL 1692817, at *7 (D. Utah Apr. 7, 2020) (requiring Plaintiffs to allege a “causal link between [Defendant’s] alleged misrepresentation and the actions [Plaintiff] took”); see also *Gaddy v. Corp. cf President cf Church cf Jesus Christ cf Latter-Day Saints*, 665 F. Supp. 3d 1263, 1284 (D. Utah 2023) (*Gaddy III*).

²¹⁶ *Gaddy III*, 665 F. Supp. 3d at 1288.

²¹⁷ *Yazd v. Woodside Homes Corp.*, 143 P.3d 283, 286 (Utah 2006); *HKS Architects, Inc. v. MSM Enters. Ltd.*, 496 P.3d 228, 239 (Utah Ct. App. 2021).

²¹⁸ *McDougal v. Weed*, 945 P.2d 175, 179 (Utah 1997).

²¹⁹ *Id.*

influence” an individual to act.²²⁰ However, courts do not judge materiality from the perspective of an individual who claims they were misled.²²¹ Materiality is evaluated from the perspective of an objectively reasonable individual.²²²

Defendants argue Plaintiffs fail to state a claim for fraudulent concealment for two reasons. First, Defendants argue they did not owe Plaintiffs a duty to disclose.²²³ Second, Defendants argue Plaintiffs do not plead materiality because they do not and cannot “plead what facts [were] material to a ‘reasonable person’ in deciding whether to give tithes to the Church.”²²⁴ Plaintiffs respond that Defendants owed them a duty to disclose by nature of the parties’ fiduciary relationship and Defendants’ incomplete representations, and they contend they pleaded materiality in alleging they would not have donated funds, or would have donated lesser amounts, had they known how their funds were being used.²²⁵

The court has serious doubts that Defendants owed Plaintiffs a legal duty to disclose Defendants’ disposition of donated funds. But even accepting that a such duty existed, the court agrees with Defendants that Plaintiffs have not adequately pled materiality.²²⁶ Plaintiffs broadly premise their fraudulent concealment claim on Defendants’ failure to affirmatively disclose Ensign’s existence, the Church’s use of Ensign to hold and invest donated funds, and the amount of Defendants’ holdings.²²⁷ Yet, the Consolidated Complaint is devoid of any allegations

²²⁰ *Yazd*, 143 P.3d at 289.

²²¹ *Gilbert Dev. Corp. v. Wardley Corp.*, 246 P.3d 131, 140–41 (Utah Ct. App. 2010).

²²² *Id.* The parties agree on this point. See *Church Motion to Dismiss* at 28; *Ensign Motion to Dismiss* at 12; *Consolidated Opposition* at 31.

²²³ *Church Motion to Dismiss* at 28; *Ensign Motion to Dismiss* at 11–12.

²²⁴ *Church Motion to Dismiss* at 28–29. See also *Ensign Motion to Dismiss* at 12–14.

²²⁵ *Consolidated Opposition* at 31–32.

²²⁶ The court has further concerns regarding Plaintiffs’ ability to plead materiality without encountering a church autonomy doctrine problem, but it does not address this issue here.

²²⁷ See generally *CCAC* ¶¶ 168–76.

identifying why and how this information would be material to an objectively reasonable donor—be they a tithe payer, fast-offeror, charity contributor, or all three. Plaintiffs do not plead why Ensign’s existence and investment activities would dissuade the typical church member, who accepts that the Church has an ecclesiastical directive to collect tithes, from paying tithing.

Plaintiffs contend they adequately pled materiality in alleging they “reasonably believed that [their] donations would be used for the purposes represented by [the Church],” and that “[b]ecause of Defendants’ ongoing efforts to conceal from the public the nature and extent of the donations held by Ensign, [they] could not appreciate the true manner in which the [Church] actually intended to (and did) use [their] donations.”²²⁸ But beyond inserting the term “reasonably,” these allegations—which are the only ones purporting to touch upon the materiality element—are specific to the individual Plaintiffs. As such, these allegations do not convey why the information would be material to an objective, reasonable donor.²²⁹ Plaintiffs therefore do not properly allege the materiality element of their fraudulent concealment claim.

Plaintiffs also argue that the question of materiality is highly fact dependent and thus improper for decision at the pleading stage.²³⁰ But even so, this does not excuse Plaintiffs from their obligation to plead plausible claims. Plaintiffs must plead some factual basis for their claim, which requires that specific nondisclosed information would have influenced an

²²⁸ *Consolidated Opposition* at 31–32 (citing *CCAC* ¶¶ 117, 119, 121, 123, 125, 127, 129, 131).

²²⁹ At least in view of Plaintiffs’ claims and theories, this is not just a technical failing. Even if materiality need not be pled in every instance in terms of the reasonable person standard, it is essential here where there are multiple modes of donation and numerous unspecified potential facts that may materially impact similarly situated donors. And as noted, weighty First Amendment issues may be implicated depending on Plaintiffs’ unexpressed theories concerning materiality. The failure to plead materiality here except in the most conclusory fashion deprives Defendants of meaningful arguments that Plaintiffs’ fraudulent concealment claim is barred in whole or in part by the church autonomy doctrine.

²³⁰ *Id.* at 31.

objectively reasonable donor to act.²³¹ Plaintiffs have not done this, and it is fatal to their claim for fraudulent concealment.

D. Unjust Enrichment

To state a claim for unjust enrichment, a plaintiff must plead “(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value.”²³²

Defendants contend Plaintiffs fail to state a claim for unjust enrichment for two reasons. First, Defendants argue Plaintiffs premise the “unjustness” of Defendants’ “enrichment” on Defendants’ alleged fraud while failing to adequately plead each of their fraud claims.²³³ Second, Defendants argue they have not inequitably retained any benefit because “a donation is made without [the] expectation of anything in return.”²³⁴ Plaintiffs do not respond to

²³¹ In Reply, Defendants argue the special pleading requirements of Federal Rule of Civil Procedure 9(b) apply to Plaintiffs’ fraudulent concealment claim, and that Plaintiffs fail to plead the materiality element of their claim with the required degree of particularity. *Consolidated Reply* at 20. Upon review of relevant caselaw, the court is inclined to agree that Rule 9(b) applies. *See Koch*, 203 F.3d at 1235 (applying Rule 9(b) to a general fraud claim “alleg[ing] that the Defendants misrepresented and concealed information”); *Dummar v. Lummis*, 543 F.3d 614, 621 (10th Cir. 2008) (stating “fraudulent concealment,” as an equitable means of tolling a statute of limitations, “must be pleaded with particularity”); *Marcovecchio v. Wright Med. Grp., Inc.*, No. 2:18-cv-00274, 2019 WL 1406606, at *8 (D. Utah Mar. 28, 2019) (applying Rule 9(b) to a fraudulent concealment claim under Utah law); *DP Creations, LLC v. Ortiz*, No. 2:19-cv-00948-HCN-DBP, 2021 WL 2895239, at *5 (D. Utah Mar. 5, 2021) (same). The court is also inclined to find Plaintiffs broadly fail to plead the factual bases of their claim with the requisite degree of particularity, including the specific affirmative statements (or other factual circumstances) giving rise to Defendants’ alleged duty to disclose its disposition of donated funds, the specific undisclosed information that would make Defendants’ affirmative statements non-misleading, and the specific ways in which the undisclosed information was material. Still, the court does not decide the issue on these grounds because Defendants only raise Rule 9(b) in Reply and Plaintiffs’ claim fails for independent reasons under Rule 12.

²³² *Berrett v. Stevens*, 690 P.2d 553, 558 (Utah 1984).

²³³ *Church Motion to Dismiss* at 29. *See also Ensign Motion to Dismiss* at 14–15.

²³⁴ *Church Motion to Dismiss* at 29. *See also Ensign Motion to Dismiss* at 14–15.

Defendants’ first argument, but contend Defendants’ second argument fails because it “attempt[s] to graft an additional element onto Plaintiffs’ unjust enrichment claim[.]”²³⁵

Plaintiffs implicitly concede the premise that their unjust enrichment claims are predicated on their fraud allegations by failing to address Defendants’ first argument.²³⁶ As outlined in the preceding sections, Plaintiffs have not properly stated fraud claims under Rule 12 or Rule 9. Accordingly, Plaintiffs also fail to state a claim for unjust enrichment.²³⁷

²³⁵ *Consolidated C_pposition* at 32–34.

²³⁶ See *Digital Ally, Inc. v. Utility Associates, Inc.*, 882 F.2d 974, 977 (10th Cir. 2018) (concluding a failure to address an alternate bases in a dispositive motion “amounts to a concession”); *Hinsdale v. City of Liberal, Kan.*, 19 Fed. App’x 749, 769 (10th Cir. 2001) (affirming dismissal of a claim after the district court concluded the plaintiff abandoned the claim in failing to address it in his opposition memorandum); *Bella Monte Owners Ass’n, Inc. v. Vial Fotheringham, LLP*, No. 2:19-cv-00212-TC-JCB, 2021 WL 5961566, at *7 (D. Utah Dec. 16, 2021) (“If a party fails to make an argument in opposition to a motion for summary judgment, that argument is waived.”); *Fullen v. City of Salina, Kan.*, No. , 2021 WL 4476780, at *14 (D. Kan. Sept. 30, 2021) (finding the plaintiffs “tacitly concede[d]” their claim by failing to respond to the defendants’ argument on a motion to dismiss).

²³⁷ See, e.g., *Storey v. Seipel*, No. 2:22-cv-00486-RJS-DAO, 2024 WL 4436609, at *6 (D. Utah Oct. 24, 2024) (“Plaintiff’s claim[] for unjust enrichment . . . [is] based almost entirely on allegations of fraud. As such, [it is] subject to the heightened pleading requirements of Rule 9(b).”).

CONCLUSION

For the foregoing reasons, the court GRANTS the Church's Motion to Dismiss²³⁸ and GRANTS Ensign's Motion to Dismiss.²³⁹ Because the court decides the Motions first and foremost on the statute of limitations issue, the court dismisses each of Plaintiffs' claims with prejudice. Finally, the court DENIES as moot Defendants' joint Motion to Strike.²⁴⁰ The Clerk of Court is directed to close the case.

DATED this 17th day of April 2025.

BY THE COURT:


ROBERT J. SHELBY
United States Chief District Judge

²³⁸ ECF 79.

²³⁹ ECF 80.

²⁴⁰ ECF 81.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN RE: THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS TITHING
LITIGATION

This document relates to all actions.

JUDGMENT IN A CIVIL CASE

2:24-md-03102-RJS-DAO

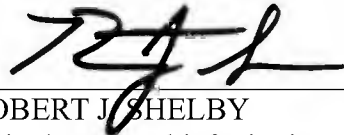
Chief District Judge Robert J. Shelby

Chief Magistrate Judge Daphne A. Oberg

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of
Defendants.

SO ORDERED this 17th day of April 2025.

BY THE COURT:



ROBERT J. SHELBY
United States Chief District Judge

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that in the foregoing, no privacy redactions were required and no such redactions were made. I further certify that the foregoing document has been scanned for viruses with the most recent version of SentinelOne software (SentinelOne software version 24.2.3.471), and according to the program, is free of viruses.

Counsel also certifies that the hard copies submitted to the Court are exact copies of the ECF filing of July 22, 2025.

Dated: July 22, 2025

SCOTT A. GEORGE
SCOTT A. GEORGE

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit using the appellate CM/ECF system, which will automatically provide notice of the filing to all case participants.

Dated: July 22, 2025

SCOTT A. GEORGE
SCOTT A. GEORGE