UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID O'CONNELL, individually and on behalf of all others similarly situated,

Plaintiff,

v.

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,

Defendant.

Case No. 1:20-cv-01365-KBJ

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

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INTRODUCTION

David O'Connell, a parishioner of a Catholic parish in Rhode Island, purports to bring this class action for fraud, unjust enrichment, and breach of fiduciary duty on behalf of all individuals who have contributed to an annual collection taken up in Catholic parishes around the world to support the work of the Pope. He alleges that he was led to believe that contributions to this "Peter's Pence" collection would be used "immediately" and "exclusively" to help those suffering the effects of war, oppression, natural disaster or disease throughout the world, but that the Holy See in Rome (the Pope and his subordinates) has "diverted" most of the money into various investments. Complaint ("Compl.") ¶¶ 3–4.[1]

Whether all funds donated to support the work of a charitable institution are used "immediately" for a charitable purpose, however, or whether some are invested for later use, is hardly a matter with which the law is concerned as a general proposition. And even if the investment of those funds for later use might conceivably form the basis for a legal claim in some circumstances, it cannot form the basis for this lawsuit complaining of how donated funds are used by the Holy See.

As an initial matter, the Holy See is not the defendant in this case. The defendant is the United States Conference of Catholic Bishops (the "USCCB" or "the Conference"), an assembly of bishops in the United States that has a limited role in the promotion of the Peter's Pence collection in this country, but *which does not receive the proceeds and has no control over how the proceeds are invested or spent*. Because the USCCB does not receive the money given in the Peter's Pence collection, it has not been unjustly enriched, as claimed in Count II of the Complaint. Because it has no relationship to the Plaintiff—much less "a special relationship of

[1] The Holy See is sometimes referred to, as in the Complaint, as the "Vatican." It is the highest authority of the worldwide Catholic Church and a sovereign entity under international law.

trust and confidence," *Ellipso, Inc. v. Mann*, 541 F. Supp. 2d 365, 373 (D.D.C. 2008), it has no fiduciary duty to him, as claimed in Count III. And because the USCCB is not alleged to have stated to anyone that funds donated to Peter's Pence would be spent *immediately* (or exclusively) for any specific purpose, the investment of some portion of the funds for later use cannot amount to fraud, as alleged in Count I.

Indeed, because the Complaint fails to allege that Plaintiff relied upon any specific statement by the USCCB that was false, it has failed to allege fraud with the specificity required by the Federal Rules of Civil Procedure. Plaintiff has not alleged the "who, what, when and where" of the (mis)representation(s) purportedly made to him; and he has not alleged that he personally acted in reliance on any alleged misrepresentation by the USCCB. Although the Complaint is replete with quotations from the USCCB and English-language Vatican websites, *see, e.g.*, Compl. ¶¶ 18–26, Plaintiff does not allege that he ever looked at either website at any time prior to giving. He alleges only that in "the summer of 2018, during a Sunday mass . . . he was *solicited from the pulpit* . . . [and] made a cash donation." Compl ¶ 34 (emphasis added). He provides no detail concerning the specifics of the solicitation: not who spoke, not what was said, and not what (mis)statement(s) he relied upon in choosing to give.

For all of these reasons, more fully explained below, the Complaint fails to state a claim upon which relief can be granted.

There is, moreover, a fundamental jurisdictional defect in the Complaint: it seeks to involve a civil court in the oversight of a hierarchical church's governance and administration, in violation of principles of religious freedom and church sovereignty that are firmly established by the Supreme Court. *See, e.g., Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721–23, *reh'g denied*, 429 U.S. 873 (1976) (holding that civil courts may not review

ecclesiastical actions that are "a matter of internal church government" or "at the core of ecclesiastical affairs"). It is not for a civil court to define the duties owed by the Church to its members, to regulate the communications between the hierarchy and the faithful pertaining to exclusively Church affairs, or to oversee how the Church spends its funds to pursue its religious mission. Yet that is what the Complaint asks this Court to do—to assess the adequacy of pronouncements from the pulpit about the purposes of a special Sunday collection, to regulate what portion of donated funds must be spent by the Pope immediately and what portion may be invested for later charitable use, and generally speaking to limit the Pope's discretion over how to deploy funds that are committed to his use in furtherance of the Church's religious mission. The First Amendment prohibits a civil court from interfering in such a fashion in the internal governance and administration of a hierarchical church. As this Court has held, "[w]ith few exceptions, the First and Fourteenth Amendments to the United States Constitution prevent civil courts from adjudicating matters of ecclesiastical cognizance." *Cutter v. Madison*, 1992 WL 52523, at *1 (D.D.C. Feb. 26, 1992) (citations omitted). And "[h]ow a church spends worshippers' contributions is, like the question of who may worship there, central to the exercise of religion." *Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71, 81 (D.D.C. 2019). For this reason, the Court lacks subject matter jurisdiction over the Complaint.

BACKGROUND

Founded in 1966, the USCCB is an organization composed of the bishops of the United States and the U.S. Virgin Islands.[2] It is headquartered in Washington, D.C. The USCCB

[2] *See About USCCB*, U.S. Conference of Catholic Bishops, http://www.usccb.org/about/index.cfm (last accessed July 10, 2020). Because the Complaint cites various sections of the USCCB and Vatican English-language websites, those websites are incorporated by reference into the Complaint. *See Allen v. U.S. Dep't of Educ.*, 755 F. Supp. 2d 122, 125 (D.D.C. 2010). As such, where Plaintiff's allegations contradict plain statements on those websites, the statements on the websites should control. *See Kaempe v. Myers*, 367 F.3d 958, 963 (D.C. Cir. 2004); *Edwards v. Ocwen Loan Servicing, LLC*, 24 F. Supp. 3d 21, 26 n.4 (D.D.C. 2014).

advocates and promotes the pastoral teachings of the Roman Catholic Church in such areas as liturgy, doctrine, education, family life, health care, immigration, civil rights, criminal justice and the economy.[3]

As the USCCB website notes, Peter's Pence is a collection taken up annually by participating dioceses in the United States and throughout the world "for the needs of the Holy Father."[4] It is used by the Pope for multiple purposes, including, but by no means limited to, relief to the poor and displaced: as the Vatican website says, "Peter's Pence is the name given to the financial support offered by the faithful to the Holy Father as a sign of their sharing in the concern of Successor of Peter *for the many different needs of the Universal Church and for the relief of those most in need*." [5] Another section of the Vatican website expresses it this way: "Peter's Pence also contributes to the support . . . of the Holy See," because "[t]he Pope's charitable works, supported by Peter's Pence, extend . . . to the whole of humanity, at whose service the structures of the Church exist."[6]

The USCCB maintains an Office of National Collections ("National Collections"). That office oversees and serves as a central collection point for a number of annual collections that are authorized and administered by the USCCB—for example, the Collection for the Church in Latin America, the Collection for the Church in Central and Eastern Europe, the Catholic Relief

[3] *See About USCCB*, *supra* note 2; *Mission Statement*, U.S. Conference of Catholic Bishops, http://www.usccb.org/about/mission-statement.cfm (last accessed July 10, 2020).

[4] Committee on National Collections, *One Church, One Mission: Guidelines for Administering USCCB National Collections in Dioceses*, U.S. Conference of Catholic Bishops 3 (2011), http://www.usccb.org/about/national-collections/collection-administration/upload/one-church-one-mission-guidelines-national-collections.pdf.

[5] *Peter's Pence*, The Vatican, http://m.vatican.va/roman_curia/secretariat_state/obolo_spietro/documents/index_en.htm#:~:text=Peter's%20Pence&text=Peter's%20Pence%20is%20the%20name,of%20those%20most%20in%20need (last accessed July 10, 2020) (emphasis added).

[6] *Peter's Pence: A History as Ancient as the Church*, The Vatican, http://www.peterspence.va/en/storia/storia-dell-obolo html (last accessed July 10, 2020).

Services Collection, the Catholic Home Missions Appeal, the Catholic Communication Campaign, and the Catholic Campaign for Human Development.[7] Declaration of Mary Mencarini Campbell ("Campbell Decl.") ¶ 3.[8] In the case of those collections, which are taken up in Catholic parishes[9] to support the work of the USCCB itself, the USCCB receives the donated funds and decides how they are spent.

Separate and apart from those collections of the Conference itself, its Office of National Collections provides assistance to the Holy See in promoting the Holy Father's Peter's Pence collection in the United States.[10] Toward that end, it makes available on its website a range of materials that individual dioceses may utilize in connection with a diocese's Peter's Pence collection.[11] However, the USCCB's role is not to collect or receive any of the funds given to the Peter's Pence collection. Campbell Decl. ¶¶ 2, 4–5. The USCCB's website itself makes it clear that Peter's Pence funds are handled differently from the funds raised through the USCCB's own national collections: Peter's Pence funds are not aggregated by National Collections at the USCCB, but rather are routed by dioceses directly to the Papal representative to the United States at the Apostolic Nunciature in Washington, D.C.[12] If funds are mistakenly

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[7] *See, e.g.*, *Annual Reports*, U.S. Conference of Catholic Bishops, http://www.usccb.org/about/national-collections/annual-reports.cfm (last accessed July 10, 2020) (enumerating collections for which the USCCB receives the donated funds and for which it provides annual financial reports).

[8] To the extent the Court chooses to rely upon Ms. Campbell's declaration, it may convert this motion to a motion for summary judgment. *See* Fed. R. Civ. P. 12(d).

[9] The Catholic Church in the United States is divided into dioceses and the dioceses themselves are divided into individual parishes.

[10] *Peter's Pence*, U.S. Conference of Catholic Bishops, http://www.usccb.org/catholic-giving/opportunities-for-giving/peters-pence/index.cfm (last accessed July 10, 2020).

[11] *2020, Peter's Pence Collection Resources*, U.S. Conference of Catholic Bishops, http://www.usccb.org/catholic-giving/opportunities-for-giving/peters-pence/collection/index.cfm (last accessed July 10, 2020).

[12] *See Frequently Asked Questions*, U.S Conference of Catholic Bishops, http://www.usccb.org/about/national-collections/collection-administration/national-collections-frequently-asked-questions.cfm (last accessed July 10, 2020); *see also* Peter's Pence Collection Transmittal Form, *available at* http://www.usccb.org/about/national-collections/collection-administration/upload/ppc-2013.pdf (last accessed July 10, 2020).

transmitted by a diocese to the USCCB, they are transferred or forwarded to the Apostolic Nunciature. Campbell Decl. ¶ 4. The USCCB has no control over how those funds are used or invested by the Pope. It has no role in deciding how those funds are used or invested. It has no antecedent knowledge as to specifically how or when the funds will be used or invested, and it receives no reports from the Holy See specifying the uses to which Peter's Pence funds have been applied. *Id.* ¶ 5.

ARGUMENT

Federal Rule of Civil Procedure 12(c) authorizes a motion for judgment on the pleadings after the pleadings are closed. Fed. R. Civ. P. 12(c). The standard for reviewing a motion for judgment on the pleadings is "virtually identical" to that applied to a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Rasheed v. D.C. Public Schools*, 2019 WL 3598638, at *2 (D.D.C. Aug. 6, 2019) (quoting *Bauman v. District of Columbia*, 744 F. Supp. 2d 216, 221 (D.D.C. 2010)). To survive a Rule 12(b)(6) motion (and, by extension, a Rule 12(c) motion), Plaintiff must plead facts sufficient to establish every element of the claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The allegations "must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Complaint must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* If the facts alleged, taken as true, would not "state a claim to relief that is plausible on its face," the action must be dismissed. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). That is the case here. The Complaint fails to state a claim against the USCCB under any legal theory. All the Complaint offers are allegations of the most vague and conclusory nature that do not come close to satisfying the standards of *Iqbal* and *Twombly*.

Accordingly, USCCB is entitled to judgment as a matter of law on all counts included in the Complaint.

Federal Rule of Civil Procedure 12(h)(3) provides that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). Because resolution of Plaintiff's claim would entangle this Court in questions of purely ecclesiastical cognizance that cannot be resolved by a civil court without encroachment into church practice, the case should be dismissed in its entirety for lack of subject matter jurisdiction.

I. THE USCCB IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON PLAINTFF'S FRAUD CLAIM (COUNT I).

To state a claim for fraud under Rhode Island or District of Columbia law, plaintiffs must allege facts sufficient to establish (1) a false representation in reference to a material fact (2) made with knowledge of its falsity (3) with the intent to deceive, and (4) action taken in reliance upon the representation.[13] *See Fort Lincoln Civic Ass'n, Inc. v. Fort Lincoln New Town Corp.*, 944 A.2d 1055, 1074 n. 22 (D.C. 2008) (quoting *Bennett v. Kiggins*, 377 A.2d 57, 59–60 (D.C. 1977)); *Nat'l Credit Union Admin. Bd. v. Regine*, 795 F. Supp. 59, 70 (D.R.I. 1992) (citations omitted).[14]

[13] Although state substantive law governs the burden of proving fraud at trial, the procedure for pleading fraud in federal court in a diversity suit is established by Federal Rule of Civil Procedure 9(b). *N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 13 (1st Cir. 2009). "Thus, while a federal court will examine state law to determine whether the elements of fraud have been pled sufficiently to state a cause of action, the Rule 9(b) requirement that the *circumstances* of the fraud must be stated with particularity is a federally imposed rule." *Hayduk v. Lanna*, 775 F.2d 441, 443 (1st Cir. 1985) (emphasis in original).

[14] Both the District of Columbia and the state of Rhode Island's conflict of laws principles dictate that, where no conflict of law exists, a choice of law analysis is unnecessary. *See Lurie v. Mid-Atl. Permanente Med. Grp., P.C.*, 729 F. Supp. 2d 304, 324 (D.D.C. 2010); *Providence Metallizing Co. v. Tristar Prods., Inc.*, 717 F. Supp. 2d 227, 230 (D.R.I. 2010).

A claim based on fraud must also satisfy the heightened pleading standard of Rule 9(b), which requires the plaintiff to "state *with particularity* the circumstances constituting fraud[.]" Fed. R. Civ. P. 9(b) (emphasis added); *see United States ex rel. Williams v. Martin-Baker Aircraft Co.*, 389 F.3d 1251, 1256 (D.C. Cir. 2004); *Powers v. Boston Cooper Corp.*, 926 F.2d 109, 111 (1st Cir. 1991). Rule 9(b)'s particularity requirement ensures that the defendant has "notice of the claim," prevents "attacks on [the defendant's] reputation where the claim for fraud is unsubstantiated," and protects the defendant "against a strike suit brought solely for its settlement value." *Anderson v. USAA Cas. Ins. Co.*, 221 F.R.D. 250, 253 (D.D.C. 2004) (citations omitted); *see also Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1279 n.3 (D.C. Cir. 1994) ("Rule 9(b) attempts in part to prevent the filing of a complaint as a pretext for discovery of unknown wrongs." (citations omitted)). Although the court must construe the allegations of fact in the light most favorable to the non-moving party, the plaintiff "nevertheless must satisfy his burden by stating with particularity the supporting factual allegations for his claim." *Anderson*, 221 F.R.D at 253.

The Complaint fails to allege facts that raise Plaintiff's fraud claim beyond a "speculative level," *Twombly*, 550 U.S. at 555, much less plead "with particularity" the circumstances constituting fraud, Fed. R. Civ. P. 9(b).

A. The Complaint Fails to Allege With Particularity the Circumstances of Any Fraudulent Representation.

The Complaint does not come close to pleading with particularity the circumstances of the alleged fraudulent representation. To satisfy Rule 9(b)'s heightened pleading standard, "[t]he claimant must plead with particularity matters such as the time, place and content of the false [representations], the misrepresented fact and what the opponent retained or the claimant lost as a consequence of the alleged fraud." *Busby v. Capital One, N.A.*, 772 F. Supp. 2d 268, 275–76

(D.D.C. 2011) (citing *Martin-Baker Aircraft Co.*, 389 F.3d at 1256); *see also Alt. Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 29 (1st Cir. 2004) ("[T]he pleader usually is expected to specify the who, what, where, and when of the allegedly false or fraudulent representation."). The Complaint falls far short of Rule 9(b)'s particularity requirements.

First, the Complaint fails to "identify with specificity *who* precisely was involved in the fraudulent activity." *Martin-Baker Aircraft Co.*, 389 F.3d at 1257 (emphasis added). The Complaint must identify the "*individuals* allegedly involved in the fraud." *Id.* at 1256 (emphasis added) (citing *United States ex rel. Joseph v. Cannon*, 642 F.2d 1373, 1385–86 (D.C. Cir. 1981)). General allegations that a group or organization made the alleged misrepresentation are insufficient. *See, e.g.*, *id.* at 1257 (finding complaint that referred "generally to 'management' . . . without ever explaining the role these individuals played in the alleged fraud" insufficient under Rule 9(b)); *Cannon*, 642 F.2d at 1385 (finding pleading that did not specify "which members of the Senator's staff were involved" in alleged fraud too "generalized and vague" to satisfy Rule 9(b)). Here, Plaintiff merely alleges that he "was solicited from the pulpit," Compl. ¶ 34, but he does not specify by whom he was solicited—in other words, who made the alleged misrepresentation to him and on whose behalf. In short, the Complaint fails to identify the individual who made the alleged misrepresentation upon which Plaintiff allegedly relied—much less allege that that unnamed person was acting as an agent of the USCCB.

The Complaint refers to a number of statements about Peter's Pence that appear on the USCCB's website. *See* Compl. ¶¶ 18–24. But nowhere does the Complaint allege that Plaintiff was aware of any of those statements. In short, Plaintiff does not allege that *the USCCB* made any statement to him. The only statement that he alleges was made to him was a single statement by an unidentified person from the pulpit on a Sunday. Because the Complaint fails to

identify with particularity *who* made the allegedly fraudulent communication to him, it is insufficient under Rule 9(b).

Second, the Complaint fails to identify with particularity *what* fraudulent statements were made to the Plaintiff. *Acosta Orellana v. CropLife Int'l*, 711 F. Supp. 2d 81, 97 (D.D.C. 2010). A plaintiff asserting a claim of fraudulent misrepresentation must identify the "*content* of the false misrepresentations [and] the *fact misrepresented.*" *Kowal*, 16 F.3d at 1278 (emphasis added) (citations omitted); *see Poblete v. Rittenhouse Mortg. Brokers*, 675 F. Supp. 2d 130, 135 (D.D.C. 2009) (finding plaintiff's vague allegation that he was the victim of a "mortgage scam" insufficient under the heightened standard of Rule 9(b)). Again, although the Complaint refers repeatedly to statements on the USCCB website, it does not identify a single statement from USCCB resources that Plaintiff saw or relied upon in choosing to donate. To the contrary, the Complaint itself makes clear that *Plaintiff did not read or learn of any statement on the USCCB website before making his donation*. *See* Compl. ¶ 35 ("*Even if* [Plaintiff] had slowly and carefully researched external sources such as the USCCB or Vatican websites . . .") (emphasis added). Rather, Plaintiff's allegations boil down to a single detail-deficient instance in which "he was solicited from the pulpit as directed by USCCB to help those in need of emergency relief[.]" Compl. ¶ 34. Nowhere does Plaintiff specify precisely what the unnamed person from the pulpit actually said, which makes it impossible to determine whether that person fraudulently misled him. *See Poblete*, 675 F. Supp. 2d at 135. Plaintiff alleges simply that "[n]othing he saw or heard, on that day or beforehand, told him or made him understand that his donations to Peter's Pence would be used for anything other than emergency assistance to the neediest people around the world." Compl. ¶ 34. But it is obviously insufficient for Plaintiff to allege that he didn't understand all of the uses to which the Pope might put his "Peter's Pence" funds. Because

the Complaint fails to specify precisely *what* was said to him, it fails to meet the particularity requirement of Rule 9(b).

Third, the Complaint only vaguely identifies *when* the alleged misrepresentation was made. *See Martin-Baker Aircraft Co.*, 389 F.3d at 1257 (holding insufficient under Rule 9(b) allegations that "nebulously allege" the time period of the alleged fraudulent representation). Plaintiff alleges only that he heard a solicitation at a mass "[i]n the Summer of 2018." Compl. ¶ 34. That allegation is too vague to meet the particularity requirement of Rule 9(b).

And *fourth*, the Complaint does not state with particularity "what . . . the claimant lost as a consequence of the alleged fraud." *Busby*, 772 F. Supp. 2d at 275–76; *see Jefferson v. Collins*, 905 F. Supp. 2d 269, 286 (D.D.C. 2012) ("[The plaintiff's injury must be pleaded with particularity."). The Complaint offers no indication of the amount Plaintiff donated to the Peter's Pence collection. *See Busby*, 772 F. Supp. 2d at 277; Compl. ¶ 34 (alleging Plaintiff "made a cash donation" during a "Sunday mass"). Did he drop a dollar bill in the collection plate, or did he make a substantial contribution? The Complaint lacks any detail on this point and so does not state with particularity what harm the Plaintiff suffered—or whether he suffered any material harm at all.

In sum, the Complaint does not allege any of the specific circumstances pertaining to the alleged fraudulent representation. Its bare allegations fail to provide the USCCB with the ability to "defend against the charge and not just deny that they have done anything wrong." *Martin-Baker Aircraft Co., Ltd.*, 389 F.3d at 1259. The Complaint fails altogether to meet Rule 9(b)'s particularity requirement and should, therefore, be dismissed.

B. The Complaint Fails to Allege with Particularity any Facts Amounting to Fraudulent Concealment.

Plaintiff cannot avoid Rule 9(b)'s requirement of particularity by alleging that facts were "fraudulently concealed" from him. *See* Compl. ¶¶ 52–56. To determine whether facts were fraudulently concealed, one must first know what was said in the first place. For this reason alone, Plaintiff's fraudulent concealment claim must fail.

The fraudulent concealment claim fails, however, for an additional, even more fundamental reason. "A claim of fraudulent concealment is not actionable absent a duty to disclose." *Francisco v. U.S. Marshalls Serv.*, 2014 WL 652147, at *13 (D.R.I. Feb. 19, 2014); *see also Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1131 (D.C. 2015) ("[M]ere silence does not constitute fraud unless there is a duty to speak.") (quoting *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 439 (D.C. 2013)). A duty to speak arises only when there is some "special relationship" or contact between the parties justifying the imposition of a duty. *Jefferson*, 905 F. Supp. 2d at 287; *see W. Reserve Life Assur. Co. of Ohio v. Caramadre*, 847 F. Supp. 2d 329, 340 (D.R.I. 2012).

As discussed below in Part III, the USCCB had no "special relationship" with Plaintiff giving rise to a duty of disclosure. Indeed, the Complaint fails to allege *any* facts to establish that the USCCB (a membership organization of bishops sited in Washington, D.C.) had *any* relationship at all with Plaintiff. Not only did the USCCB have no direct connection with Plaintiff giving rise to a "special relationship," so far as one can tell from the Complaint, Plaintiff had no knowledge that an organization called the United States Conference of Catholic Bishops even existed at the time he made a donation to the Peter's Pence collection.

It is "possible for circumstances to give rise to a duty to disclose" absent a special relationship between the parties. *W. Reserve*, 847 F. Supp. 2d at 340. But where, as here, "the

[parties] had no contractual relationship, no communications, no business dealings and no direct dealings – [the facts] do not give rise to such a duty." *Id.* There is certainly no basis for such a duty in a case like this, where Plaintiff never alleges that he saw or read anything on the USCCB's website before making his donation.

C. The Complaint Fails to Allege Facts Establishing the USCCB's Knowledge of Any Falsity or Intent to Deceive.

Although Rule 9(b) permits a plaintiff to allege knowledge and intent "generally," Fed. R. Civ. P. 9(b), the complaint must identify "the basis for inferring scienter" and "set forth specific facts that make it reasonable to believe that defendant knew that a statement was materially false or misleading." *N. Am. Catholic Educ.*, 567 F.3d at 13 (citations omitted); *see Rodriguez v. Lab. Corp. of America Holdings*, 13 F. Supp. 3d 121, 129–30 (D.D.C. 2014) (holding that a "formulaic recitation of the elements of fraud" is insufficient when a plaintiff fails to allege any facts suggesting defendant knew represented information to be inaccurate, or intended to deceive the plaintiff by providing false information).

The Complaint alleges that the USCCB "knew or should have known" that the representations on its website were false. Compl. ¶ 50. But that is precisely the kind of "formulaic recitation" that is insufficient. *Rodriguez*, 13 F. Supp. 3d at 130. And the formula that is invoked is itself the wrong one: an allegation of *negligence* is insufficient to satisfy the knowledge element of a *fraud* claim. *See id.* What is lacking in the Complaint's knowledge-of-falsity allegations are "specific facts" showing that the USCCB *knew* that some funds collected through the Peter's Pence collection would be invested rather than routed immediately to the needy.

The Complaint's allegations of the USCCB's "intent to deceive" are even more threadbare. Plaintiff merely states that the USCCB "intended" Plaintiff to rely on its

representations regarding the use of funds, Compl. ¶ 50, but he never alleges that the USCCB *intended* to deceive anyone about whether the donated funds would all be disbursed immediately. The Complaint simply proffers no facts giving rise to an inference of an intent to deceive. *Rodriguez*, 13 F. Supp. 3d at 130.

The Complaint refers to news reports that portions of the Peter's Pence funds were invested or used to defray Vatican expenses. But those news reports were published in or after October 2019—more than a year after Plaintiff claims to have been solicited to donate in the summer of 2018. Compl. ¶¶ 27, 29, 30, 34. Even assuming, *arguendo*, that those news reports were accurate, the Complaint fails to allege any facts to support the notion that *the USCCB* knew more than a year earlier something that was reported in late 2019.

There is no reason to believe that this defect in the Complaint can be cured. For not only does the USCCB not collect the funds raised in the Peter's Pence collection; it does not exercise control over those funds, it has no role in deciding how the funds are used by the Pope, and it receives no reports from the Holy See on how they are used. *See* Campbell Decl. ¶¶ 4–5. Under these circumstances, there can be no good-faith basis to allege that the USCCB had knowledge of any alleged misuse of Peter's Pence funds or any intent to deceive potential donors.

D. The Complaint Fails to Allege Facts Establishing that Plaintiff Made His Donation in Reliance Upon any Misrepresentation by the USCCB.

To establish a claim for fraud, Plaintiff must also allege and prove that he took action in reliance upon a (mis)representation by the USCCB. *See Fort Lincoln*, 944 A.2d at 1074 n. 22 (quoting *Bennett*, 377 A.2d at 59–60). In Plaintiff's first claim for relief, he asserts that he "decided to donate to Peter's Pence based in part on the representations communicated to [him] by USCCB." Compl. ¶ 50. But the Complaint contains no other allegation, and certainly no particularized allegation, establishing the reliance element of his fraud claim.

To the contrary, as noted above, the Complaint ultimately makes clear that Plaintiff never read any of the statements on the USCCB website that he now claims were misleading. Compl. ¶ 35 ("Even if [he] had slowly and carefully researched external sources such as the USCCB or Vatican websites, . . ."). Having neither seen nor heard any statements by the USCCB before donating, Plaintiff could not possibly have relied upon them. *Sundberg*, 109 A.2d at 1131 (affirming dismissal of fraud claim because "appellants did not allege in their complaint that appellees made any misrepresentations or omissions prior to the time the appellants signed the sales contract"); *Jefferson*, 905 F. Supp. 2d at 286–87 (same).

Hoping to redress this defect, Plaintiff attempts to create the impression that he received a communication from the USCCB *indirectly*, through an intermediary in the person of an unidentified speaker at his parish church. Compl. ¶ 34 ("[H]e was solicited from the pulpit as directed by USCCB."). Yet because he has made no specific allegation as to precisely who said what to him "from the pulpit," *see* discussion in Part I.A, *supra*, it is not possible to infer that he relied upon any alleged misrepresentation *by the USCCB.*

In sum, Plaintiff has made only the vaguest gesture in the direction of the required reliance element of his fraud claim. For this reason as well, the fraud claim against the USCCB must fail.

For all of the foregoing reasons, judgment should be entered for the USCCB on Count I.

II. PLAINTIFF'S UNJUST ENRICHMENT CLAIM (COUNT II) FAILS BECAUSE NO BENEFIT WAS CONFERRED UPON, OR RETAINED BY, THE USCCB.

Plaintiff's second cause of action consists of a threadbare recitation of the elements of unjust enrichment interwoven with an inaccurate depiction of the USCCB's role in the Peter's

Pence collection. Because uncontroverted documents[15] cited in Plaintiff's Complaint indicate that the USCCB does not receive contributions from the Peter's Pence collection, Count II fails to allege a claim for unjust enrichment.

Under District of Columbia law, "the elements of a claim for unjust enrichment are: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant retains the benefit; and (3) under the circumstances, the defendant's retention of the benefit is unjust." *Sabre Int'l Sec. v. Torres Advanced Enter. Sols., LLC*, 60 F. Supp. 3d 36, 41 (D.D.C. 2014) (citing *News World Commc'ns, Inc. v. Thompsen*, 878 A.2d 1218, 1222 (D.C. 2005)).[16] To satisfy the first prong of the inquiry, a plaintiff must be able to tie its payments directly to the allegedly enriched party. *Id.* at 41–42. As to the second prong, a defendant cannot be said to have "retained" the benefit where the defendant did not actually receive and keep the funds. *Paul v. Judicial Watch, Inc.*, 543 F. Supp. 2d 1, 8 (D.D.C. 2008).

In the instant case, Plaintiff's unjust enrichment claim asserts generally that the USCCB received a benefit because it "received money from Plaintiff." Compl. ¶ 59. As Plaintiff would have known (and might have acknowledged) had he reviewed portions of the USCCB website not quoted in his Complaint, Peter's Pence contributions are not sent to the USCCB. *See* discussion at pp. 4–5, *supra*.[17] Plaintiff's allegations that his payment went *to the USCCB* are baseless, and this Court is not obligated to accept them as true because they are contradicted by documents cited in the Complaint itself. In the event of such a contradiction, the statements on the USCCB's website should control. *See Kaempe*, 367 F.3d at 963; *Edwards*, 24 F. Supp. 3d at

[15] Because Plaintiff cites various sections of the USCCB website, that website is incorporated by reference into the Complaint. *See Allen*, 755 F. Supp. 2d at 125.

[16] Rhode Island requires the plaintiff to establish the same elements for a claim of unjust enrichment. *See Pickett v. Ditech Fin., LLC*, 322 F. Supp. 3d 287, 292 (D.R.I. 2018); *High Rock Westminster St. LLC v. Bank of N. Am., N.A.*, 2014 WL 3867699, at *2 (D.R.I. Aug. 6, 2014).

[17] *See also Frequently Asked Questions*, *supra* note 12; *Transmittal Form*, *supra* note 12.

26 n.4. The USCCB's website, which Plaintiff cites liberally throughout its Complaint, *see* Compl. ¶¶ 10, 18–24, 26, makes clear that the collections from Peter's Pence go directly to the Apostolic Nunciature.[18]

The Court's reasoning in *Sabre* disposes of Plaintiff's unjust enrichment claim. In *Sabre*, the plaintiff alleged that it conferred a benefit on two individual defendants. The court noted, however, that the plaintiff actually "conferred a benefit on Torres, who subsequently paid salaries and bonuses to the Individual Defendants." *Sabre*, 60 F. Supp. 3d at 41–42. Despite the fact that the salaries and bonuses "might theoretically constitute a benefit for purposes of an unjust enrichment claim," *id.* at 42, the court granted defendants' motion for judgment on the pleadings because Sabre had not connected the benefit conferred on Torres with the salaries and bonuses of the individual defendants. *Id.*

The Court's rationale for dismissing the individual claims in *Sabre* applies *a fortiori* to the unjust enrichment claim here. Plaintiff does not allege any specifics showing that the USCCB received his donation or any of the donated funds, directly or indirectly. The funds are transmitted by dioceses to the Apostolic Nunciature, which is wholly separate and legally distinct from the USCCB. The Apostolic Nunciature is the Vatican embassy in the United States, with a direct line to the ultimate actual recipient of the funds, the Holy See. Campbell Decl. ¶ 4. The USCCB's website makes it unmistakably clear that "**Gifts for the Peter's Pence Collection should NOT be sent to USCCB,** but instead should be sent directly to the Vatican through the Apostolic Nunciature in the United States . . . ."[19] Additionally, the donation form that is made

[18] *See Frequently Asked Questions*, *supra* note 12 (directing payment "[f]or all Collections *except* Peter's Pence" to the USCCB and expressly directing payment for Peter's Pence Collection to the Apostolic Nunciature (emphasis added)).

[19] *How to Give*, U.S. Conference of Catholic Bishops, *available at* http://www.usccb.org/about/national-collections/how-to-give/index.cfm (last accessed July 10, 2020) (emphasis in original).

available to dioceses clearly states that checks should be sent directly to the Apostolic Nunciature – again, *not* to the USCCB.[20] The Complaint does not contain a single reference to the Apostolic Nunciature, let alone "connect" the payments flowing directly to the Apostolic Nunciature to any benefit conferred on the USCCB. There is not a scintilla of factual content in Plaintiff's bare allegation that he conferred a benefit *on the USCCB* through his contribution to Peter's Pence.

For absolute clarity, the USCCB has attached to this memorandum a declaration by Mary Mencarini Campbell, the USCCB employee with direct responsibility for the Conference's National Collections office. If the Court is unable to conclude that the USCCB's website alone establishes that the USCCB does not receive Peter's Pence funds, it may choose to refer to Ms. Campbell's declaration. That declaration confirms that Peter's Pence funds are in fact transmitted directly by dioceses to the Apostolic Nunciature, and that if any funds are mistakenly transmitted to the USCCB, they are promptly rerouted to the Apostolic Nunciature. In short, the USCCB does not retain any of the funds donated to the Peter's Pence collection. Campbell Decl. ¶ 4. The USCCB did not therefore "benefit" from them.

Needless to say, where the USCCB has not received a benefit from Plaintiff, the USCCB cannot be said to have retained such benefit. And where the defendant has not retained the plaintiff's money, restitution is unavailable. *Paul*, 543 F. Supp. 2d at 8 ("Plaintiff's claim against Fitton and Orfanedes for unjust enrichment fails for yet another reason. Plaintiff has made no allegation that either Fitton or Orfanedes retained any of the donated funds for themselves. Based on the allegations in the complaint, Judicial Watch was the recipient of the contributions—not Fitton or Orfanedes.").

[20] *See Transmittal Form*, *supra* note 12.

In short, the USCCB was not unjustly enriched because it was never "enriched" at all. And it cannot provide "restitution" when it never retained the funds that Plaintiff seeks to reclaim. For these reasons, Defendant is entitled to judgment on Count II.

III. PLAINTIFF'S CLAIM FOR BREACH OF FIDUCIARY DUTY (COUNT III) FAILS BECAUSE PLAINTIFF HAS NOT ALLEGED FACTS WHICH, IF TRUE, WOULD EVIDENCE A FIDUCIARY RELATIONSHIP WITH HIM.

Plaintiff's final claim alleges that the USCCB breached (undefined) fiduciary duties in connection with the administration of Peter's Pence. Compl. ¶¶ 62–63. Plaintiff's fiduciary duty claim arises out of the same sparse nucleus of fact as his fraud claim. For that reason, the fiduciary duty claim is also subject to the heightened pleading requirement of Federal Rule 9(b). *See Hayduk*, 775 F.2d at 443 (Rule 9(b) applies to counts other than fraud where fraud "lies at the core of the action," such as when a defendant allegedly "developed a scheme . . . for the purpose of cheating [another person.]"); *United States ex rel. Grynberg v. Alaska Pipeline Co.*, 1997 WL 33763820 (D.D.C. 1997) ("[I]t is the character of the claim . . . that determines the application of Rule 9(b)."); *Frota v. Prudential-Bache Sec., Inc.*, 639 F. Supp. 1186, 1193 (S.D.N.Y. 1986) ("Rule 9(b) extends to all averments of fraud or mistake, whatever may be the theory of legal duty—statutory, common law, tort, contractual, or fiduciary.").

Not only does Count III fail to satisfy the exacting pleading standards of Rule 9(b), it fails by any measure to state a claim for breach of fiduciary duty. It alleges no facts to support a conclusion that the USCCB is a fiduciary to American Catholics generally, or that the USCCB had a relationship of trust and confidence with Plaintiff personally. Where there is no fiduciary relationship, there can be no breach of fiduciary duty.

"To state a claim for breach of fiduciary duty, a plaintiff must allege facts sufficient to establish the following: (1) defendant owed plaintiff a fiduciary duty; (2) defendant breached that

duty; and (3) to the extent plaintiff seeks compensatory damages—the breach proximately caused an injury." *Paul*, 543 F. Supp. 2d at 5–6.[21] Bald allegations that a fiduciary duty exists between the parties, without pleading "any facts which show the existence of a special relationship of trust or confidence" do not sufficiently allege a claim for breach of fiduciary duty. *Henok v. Chase Home Fin., LLC*, 915 F. Supp. 2d 162, 169 (D.D.C. 2013). Here, there are no allegations to support the existence of a fiduciary duty, and no allegations sufficient to establish a breach even if such a duty were to exist.

Fiduciary relationships fall into a number of categories that are well recognized in existing law. These include the relationships of attorney-client, doctor-patient, trustee-beneficiary, guardian-ward, and others. *See Krukas v. AARP, Inc.*, 2020 WL 2198085, at *4 (D.D.C. May 6, 2020). The relationship between a member of a church and a conference of bishops (or any other group of senior church leaders) is not among the forms of fiduciary relationship recognized in American law. The Complaint itself alleges nothing to suggest that such a relationship is *per se* a fiduciary one.

A fiduciary duty may also arise in limited circumstances when "a special relationship of trust and confidence exists in a particular case." *Ellipso*, 541 F. Supp. 2d at 373 (quotation omitted). A typical example is the case in which two parties to a contract "extend[] their relationship beyond the limits of the contractual obligation to a relationship founded upon trust and confidence." *Paul*, 543 F. Supp. 2d at 6 (citing cases).

[21] Rhode Island applies the same three-prong test for breach of fiduciary duty. *Chain Store Maint., Inc. v. Nat'l Glass & Gate Serv., Inc.*, 2004 WL 877599, at *13 (R.I. Super. Ct. Apr. 21, 2004). As in the District of Columbia, to establish that a fiduciary relationship exists, the plaintiff must allege facts "sufficient to establish a special relationship of trust and confidence that requires the purported fiduciary to act in the best interests of the other party rather than in its own best interests." *VanWest v. Midland Nat'l Life Ins. Co.*, 2000 WL 34019293, at *3 (D.R.I. Mar. 27, 2000).

Plaintiff's sweeping allegations concerning the USCCB's purported role in the Peter's Pence collection fail to establish that the USCCB had any relationship at all with him—let alone a "special relationship" making the USCCB his fiduciary. The mere allegation that the USCCB "promoted" the Peter's Pence collection, Compl. ¶ 62, is not remotely adequate to create a special relationship of trust and confidence. The allegation that the USCCB "solicit[ed]" charitable contributions is likewise inadequate. *Id.* Absent a pre-existing relationship of trust and confidence, neither "promotion" nor "solicitation" can create a fiduciary relationship. And even if they could, Plaintiff never alleges that the USCCB solicited *his* contribution or engaged him directly. The allegation that the USCCB "oversaw and collected funds from donors," *id.*, is also inadequate. Mere "collection of funds" does not a fiduciary make—even if the USCCB collected the funds, which it does not.[22] Much more is required.

Plaintiff alleges nothing more of consequence. He provides no basis for concluding that his relationship with the USCCB displayed the "sort of intimacy, confidence, and trust that typify fiduciary relationships." *Krukas*, 2020 WL 2198085, at *6. In truth, "[n]othing in the [Complaint] indicates that plaintiff[] had any contact with [the defendant] let alone that plaintiff[] had the sort of special relationship of trust or confidence with [defendant] that can give rise to fiduciary duties." *Id.* at *4. Plaintiff's failure to allege that he had direct contact of any kind with the USCCB dooms his fiduciary duty claim. *Id.*; *see also Sandza v. Barclays Bank PLC*, 151 F. Supp. 3d 94, 107 (D.D.C. 2015) ("[A]s defendants point out, Ms. Sandza does not even allege that Barclays had any direct contact with her.").

Even if a fiduciary relationship were to exist, Plaintiff has not successfully alleged a breach. As Plaintiff notes in one of his accurate allegations, "The USCCB National Collections

[22] *See* discussion *supra*, pp. 16–18.

Committee oversees the *promotion* of the Peter's Pence Collection." Compl. ¶ 19 (emphasis added). In that regard, USCCB's participation is limited to making available promotional materials to individual dioceses. *Id.* ¶ 20.[23] Collections occur within dioceses, which are not parties here. Once Peter's Pence funds leave the dioceses, further handling and distribution are the domain of the Apostolic Nunciature and the Holy See itself. Campbell Decl. ¶¶ 4–5. Therefore, even if some kind of fiduciary relationship had existed between the USCCB and Plaintiff, it would not have extended to the use of funds from Peter's Pence because the USCCB had no role in determining how the funds were ultimately used.

Because Plaintiff has failed to allege facts giving rise to a fiduciary relationship with the USCCB, or establishing a breach of fiduciary duty, judgment should be entered in favor of Defendant on Plaintiff's Count III.

IV. THE COMPLAINT IS BARRED BY THE FIRST AMENDMENT AND SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

As explained above, the Complaint fails to allege facts sufficient to make out the elements of any common law claim, even in a purely secular context. But the context of the Complaint here is anything but purely secular. It concerns a Church's solicitation and expenditure of funds for purely religious purposes—more specifically, the solicitation and expenditure of funds to support the work of the Pope. It raises two basic questions about how the highest authorities of the Church may choose to allocate those funds to support the religious mission of the Church in general and the Pope in particular: whether the Pope is required to use all donated funds "immediately" to support victims of war, oppression, and famine (or instead may invest a portion for growth and later expenditure), and whether the Pope must use all

[23] For the reasons stated *supra*, pp. 9–10, Plaintiff has failed to allege that these website statements materially misled him and therefore, he has no claim for breach of any duty owed related to the promotional materials.

donated funds "exclusively" for those purposes (or also for other legitimate religious purposes as determined by the Pope). One need only state the questions presented here to see that they involve matters that are appropriately the province of the Church, not a civil court.

Plaintiff's real lament is that the Church has invested, used, and distributed the Peter's Pence collection in ways of which he does not approve. And his Complaint is a thinly disguised invitation to this Court to second-guess the Holy See's decisions about the use of the Peter's Pence collection. First Amendment jurisprudence, including decisions of the Supreme Court, forecloses such an effort.

Civil courts (with limited exceptions) should not involve themselves in intra-church disputes. This doctrine, known as the ecclesiastical abstention doctrine, is grounded in a "long line of Supreme Court cases that affirm the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 462 (D.C. Cir. 1996) (quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)).

This "long line" of Supreme Court precedent began as early as *Watson v. Jones*, which held that determinations of "discipline, or of faith, or ecclesiastical rule, custom, or law" by church authorities are binding on civil courts. 80 U.S. 679, 727(1871). *Gonzalez v. Roman Catholic Archbishop* reaffirmed the restriction, stating that "[i]n the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive." 280 U.S. 1, 16 (1929). In *Serbian Eastern Orthodox Diocese v. Milivojevich*, the Supreme Court made the rule still more restrictive, recognizing that civil courts may not "engag[e] in a searching and therefore impermissible inquiry into church polity," which includes decisions which are "a

matter of internal church government" or "at the core of ecclesiastical affairs." 426 U.S. 696, 721–23; *see also Kedroff*, 344 U.S. at 116. The Supreme Court also noted that civil courts could not inquire into whether such a decision was arbitrary, as that inquiry "must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else the substantive criteria by which they are supposedly to decide the ecclesiastical question." *Milivojevich*, 426 U.S. at 713.

Today, "[w]ith few exceptions, the First and Fourteenth Amendments to the United States Constitution prevent civil courts from adjudicating matters of ecclesiastical cognizance." *Cutter*, 1992 WL 52523, at *1. There can be no civil court jurisdiction when a defendant shows that "resolution of th[e] claim will require the Court to undertake an assessment of religious . . . policy." *Gregorio v. Hoover*, 238 F. Supp. 3d 37, 51 (D.D.C. 2017). And that is undeniably the case when it comes to decisions about how to articulate and advance the mission behind church donations. *"How a church spends worshippers' contributions is, like the question of who may worship there, central to the exercise of religion*." *Ambellu*, 387 F. Supp. 3d at 80 (D.D.C. 2019) (emphasis added). "[E]valuating the [claims on how a Church spends donations] would require the Court to decide who is rightfully empowered to make financial decisions for the Church[,]" which is impermissible. *Id.* The mere fact that money is involved does not bestow jurisdiction on civil courts: when claims "involve matters of church governance and are not *purely secular* matters . . . resolution of such disputes is properly for church officials." *United Methodist Church, Baltimore Annual Conference v. White*, 571 A.2d 790, 796 (D.C. 1990) (emphasis added).

To be sure, the Supreme Court appears to have reserved the possibility that in limited circumstances a civil court may adjudicate an accusation that a church, acting in bad faith, has

defrauded donors by diverting collected funds to secular purposes that are purely private or otherwise illicit. Thus, in *Milivojevich*, the Court noted that there may be "room for 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' *when church tribunals act in bad faith for secular purposes*." 426 U.S. at 713 (emphasis added). However, the same Court also described this fraud exception as "dictum only." *Id.* at 712. Perhaps for that reason, the "exception" is seldom, if ever, successfully invoked. *See Moon v. Moon*, 431 F. Supp. 3d 394, 414 n.28 (S.D.N.Y. 2019) ("Plaintiff fails to cite (and this Court has been unable to identify) a single case applying the 'fraud or collusion' exception as the basis for civil court intervention in an otherwise nonjusticiable church controversy."); *Smith v. White*, 7 N.E.3d 552, 565–69 (Ohio Ct. App. 2014) (discussing possibility of "fraud exception," but noting that many jurisdictions have rejected its application, and finding it inapplicable except in "extraordinary circumstances").

Plaintiff here has not alleged that any alleged representations were made "in bad faith for secular purposes." *Milivojevich*, 426 U.S. at 713. Although he clearly objects to the manner in which some of the worldwide Peter's Pence collection is reported to have been invested, he does not allege that any of the funds were ultimately spent for secular purposes. *Heard v. Johnson*, 810 A.2d 871, 881–82 (D.C. 2002) (finding that the "fraud or collusion" exception did not apply because the plaintiff had not asserted "that the allegedly defamatory manual was published *for secular purposes* by a church tribunal" (emphasis added)); *Moon*, 431 F. Supp. 3d at 414 (finding no subject matter jurisdiction because "any allegations of fraud pertain[ed] not to secular activities," but religious determinations). That the money may have been invested in secular instruments (or used to cover investment fees) does not satisfy that requirement: all

investments are in secular enterprises, but investments by their nature are intended to yield gains, and there is no allegation that the gains were diverted to secular aims.

Other than the carve-out for the bad-faith diversion of church funds for secular use, we are aware of one other category in which civil courts have asserted jurisdiction directly over a church's use of church funds. There is some law to the effect that courts may have subject matter jurisdiction over a proper claim that a plaintiff pledged a donation to a specific, identified, charitable purpose, and that a church improperly diverted it to a different use. *See, e.g.*, *Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 831 (Miss. 2009). But for such a claim to be viable, "[t]he donor must [] pledge his or her contribution for the solicited purpose," *id.*, that is, the donor must take formal steps to designate his donation to a specific, identified, charitable use. *See Barker v. Wardens & Vestrymen of St. Barnabas Church*, 126 N.W.2d 170, 177 (Neb. 1964) (finding viable subscription donation claim when the subscription card expressly stated the contribution was for a new building).

Plaintiff here did not allege any such pledge; he identifies no discrete charitable use to which he personally pledged his cash contribution at the collection or to which he otherwise specifically designated his gift. And he does not allege that he took any steps to assure that his gift would be used "immediately" or "exclusively" for any specific use. The Complaint, therefore, is not about an improper diversion of specifically committed funds, but about Plaintiff's displeasure over the Holy See's uses of the worldwide Peter's Pence collection. This is precisely the kind of case for which subject matter jurisdiction is lacking, as cases which "involve inquiry into ecclesiastical decisions regarding how best to use the organization's resources [are] impermissible." *Nevius v. Afr. Inland Mission Int'l*, 511 F. Supp. 2d 114, 120 (D.D.C. 2007); *see also Ambellu*, 387 F. Supp. 3d at 80 (noting judicial review of spending-

related decisions "would constitute an impermissible judicial interference with the Church's ability to make governance and spending decisions"); *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 429 (D.C. 1996), *cert. denied*, 520 U.S. 1155 (1997) (civil court unequipped to answer the following questions: "Who in the church establishes its spending priorities?" "What should be the collection . . . practices of the church?" "What cash management and investment decisions should be made?"); *id.* ("[A] church's financial regime . . . necessarily reflects an array of decisions about a member's obligation to pledge funds, and about the leaders' corresponding responsibility to account for those funds, that a civil court cannot arbitrate without entangling itself in doctrinal interpretations[.]"); *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007) ("Determining whether actions, including expenditures, by a church's pastor, secretary, and chairman of the Board of Trustees were proper requires an examination of the church's view of the role of the pastor, staff, and church leaders, their authority and compensation, and church management.").

In sum, Plaintiff's concerns about the Holy See's use of funds from Peter's Pence belong to a category of questions that must be left to church authorities, and which this Court lacks subject matter jurisdiction to answer. The burden of establishing that the Court has subject matter jurisdiction over its claims rests with Plaintiff. Because by its essential allegations, the Complaint seeks to involve this Court in questions about how the Pope utilizes Peter's Pence funds, Plaintiff has not carried, and cannot carry, that burden. Pursuant to Federal Rule of Civil Procedure 12(h)(3), the Court should dismiss this case in its entirety.

CONCLUSION

For the foregoing reasons, USCCB respectfully asks this Court to dismiss this case pursuant to Rule 12(h)(3), or enter judgment on the pleadings or, in the alternative, summary judgment, in favor of the USCCB.

Respectfully submitted,

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July 10, 2020

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I caused a true and correct copy of the foregoing to be served on all counsel of record via the Court's electronic filing system.

Dated: July 10, 2020 By: /s/ *Kevin T. Baine*