IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YUEH-LAN WANG, *by and through her attorney-in-fact,* Winston Wen-Young Wong, Plaintiff, vs. NEW MIGHTY U.S. TRUST, NEW MIGHTY FOUNDATION, and CLEARBRIDGE, LLC, Defendants.	**Civil Action No. 1:10-cv-01743- JEB** **Oral Argument Requested**

DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

New Mighty U.S. Trust, New Mighty Foundation, and Clearbridge, LLC (collectively, the "Defendants") hereby move to dismiss the amended complaint in the above-captioned matter, pursuant to Federal Rule of Civil Procedure 12(b)(1), (5), (6), and (7). Pursuant to Local Civil Rule 7(f), Defendants request an oral hearing on this Motion. In support of this Motion, Defendants are submitting their Memorandum of Law in Support of Defendants' Motion to Dismiss the Amended Complaint; the Declaration of Andrew Muscato in Support of Defendants' Motion to Dismiss the Amended Complaint and exhibits thereto; and the Supplemental Declaration of Sheng-Lin Jan in Support of Defendants' Motion to Dismiss the Amended Complaint and exhibits thereto.

WHEREFORE, the Defendants respectfully request that the Court dismiss the Amended Complaint with prejudice.

Respectfully submitted,

July 15, 2011
Date

/S/

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CERTIFICATION OF SERVICE

I hereby certify that on July 15, 2011, the foregoing Defendants' Motion to Dismiss the Amended Complaint and attachments thereto will be filed with the Clerk of Court using the CM/ECF system, which shall send notification of such filing (NEF) to the following:

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Courtesy copies of the Defendants' Motion to Dismiss the Amended Complaint and attachments thereto will be sent on Monday, July 18, 2011, via courier or Federal Express to:

Honorable James E. Boasberg, United States District Judge
c/o Office of the Clerk
U.S. Courthouse
333 Constitution Ave NW # 6822
Washington, DC 20001

-and-

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Dated: July 15, 2011

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YUEH-LAN WANG, *by and through her attorney-in-fact,* Winston Wen-Young Wong, Plaintiff, v. NEW MIGHTY U.S. TRUST, NEW MIGHTY FOUNDATION, and CLEARBRIDGE, LLC, Defendants.	**Civil Action No. 1:10-cv-01743-JEB** **Oral Argument Requested**

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

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MISCELLANEOUS

Defendants New Mighty U.S. Trust ("NM-US Trust"), New Mighty Foundation ("NMF"), and Clearbridge, LLC ("Clearbridge") (collectively, "Defendants") respectfully submit this Memorandum of Law in Support of their Motion to Dismiss the Amended Complaint[1] (the "Amended Complaint" or "AC") pursuant to Federal Rule of Civil Procedure 12(b)(1), (5), (6) and (7) (the "Motion").

PRELIMINARY STATEMENT

Winston Wen-Young Wong ("Winston"), a citizen of the Republic of China ("Taiwan"), commenced this diversity action based upon a purported Taiwan power of attorney (or "POA") supposedly given to him over five years ago by the designated Plaintiff, Yueh-Lan Wang ("Yueh-Lan" or "Plaintiff"), also a citizen of Taiwan.[2]

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[1] In support of this Motion, Defendants have filed a Declaration of Andrew Muscato ("Muscato Decl.") dated July 15, 2011, a Supplemental Declaration of Prof. Sheng-Lin Jan ("Prof. Jan Supp. Decl.") dated July 15, 2011 and a Supplemental Declaration of Pao Chu Lee ("Lee Supp. Decl.") dated July 14, 2011. The Lee Supp. Decl. is attached as Exhibit H (Chinese version) and Exhibit I (certified translation), respectively, to the Muscato Decl. Defendants are also relying on the earlier filed Declarations of P.C. Lee ("Lee Decl.") dated March 25, 2011 (attached as Exhibit D (Chinese version) and Exhibit E (certified translation) to the Muscato Decl., respectively); of Prof. Jan dated March 28, 2011 (attached as Exhibit A to the Prof. Jan. Supp. Decl.) and of Stephen Vetter ("Vetter Decl.") dated March 24, 2011 (attached as Ex. K to the Muscato Decl.). Additionally, Defendants are submitting a certified translation of the Declaration of Pao Chu Lee dated March 25, 2011 that was previously submitted as Exhibit B to the Certification of Jeremy E. Hollander in support of Defendants' Motion to Dismiss the original Complaint in the action entitled Yueh-Lan Wang v. Susan Ruey-Haw Wang, Pao Chu Lee, and Vanessa Ruey-Ji Wong, dated March 28, 2011 in the United States District Court for the District of New Jersey, No. 2:10-CV-05302-CCC-JAD (the "N.J. Lee Decl."). The N.J. Lee Decl. is attached as Exhibit L to the Muscato Decl.

[2] Winston, also purportedly acting on behalf of Plaintiff through the POA, has filed a "Related Action" (AC ¶ 24) in the U.S. District Court for the District of New Jersey (No. 2:10-CV-05302) asserting the same causes of action set forth in the Amended Complaint but against different defendants. Those defendants in that action are filing a motion to dismiss based on substantially similar grounds as those raised in this motion.

The gist of the Amended Complaint is that Defendants were involved in allegedly improper transfers of unspecified assets of the "Marital Estate" of Yueh-Lan and Yung-Ching Wang ("Y.C."), Yueh-Lan's deceased husband, who also was a citizen and domiciliary of Taiwan. As averred in the Amended Complaint, these transfers allegedly took place between 2003 and 2008 and allegedly infringed upon Plaintiff's asserted statutory right as a spouse under the Taiwan Civil Code (the "Civil Code") to receive half of the marital property when her marriage to Y.C. terminated upon his death in October 2008. In addition, these purported transfers allegedly deprived Plaintiff of her full inheritance from Y.C.'s estate, also ostensibly in violation of Taiwan's Civil Code. The Amended Complaint is Winston's latest, belated attempt[3] to challenge his deceased father's alleged financial dealings through the improper use of a POA purportedly given to him by Plaintiff more than five years ago.[4]

The Amended Complaint, which includes many allegations that amount to nothing more than unsupported accusations and personal attacks on Defendants and on non-parties,[5] is subject to dismissal on five independent grounds.

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[3] In May 2009 Winston filed a Verified Complaint ("Ver. Comp.") in the Superior Court of New Jersey, Chancery Division: Probate Part, to be appointed as an "ancillary administrator" for an intestate "non-resident decedent" under N.J. Stat. Ann. § 3B:10-7 to administer unspecified alleged assets of Y.C. that may have existed in New Jersey at the time of Y.C.'s death (the "state court action").

[4] Although Winston did not attach the POA to the Amended Complaint, it was an exhibit to the state court Verified Complaint. The POA and a certified translation thereof are Exhibits B and C, respectively, to the Muscato Declaration.

[5] A great number of allegations in the Amended Complaint, which is substantially identical to Plaintiff's Amended Complaint filed in the "Related Action" in the District of New Jersey, are devoted to allegations regarding conduct by Susan Ruey-Hwa Wang ("Susan"), Pao Chu Lee ("P.C. Lee") and Vanessa Ruey-Ji Wong ("Vanessa"), who are defendants in the related New Jersey Action, but not this action. (See, e.g., AC ¶¶ 55, 57, 58, 65, 70, 75, 76.)

First, Winston lacks standing. Simply put, Winston brings this action based upon a POA that does not grant him the power to bring this or any litigation in Plaintiff's name and that is, moreover, facially invalid.

Second, the Court lacks subject matter jurisdiction. Diversity jurisdiction is lacking because the allegations do not sufficiently establish the citizenship of all Defendants.

Third, the Amended Complaint should be dismissed and service quashed as to NMF because NMF has not been properly served. Plaintiff first attempted to serve process on NMF by delivering a summons and copy of the original complaint to a person who was neither an authorized agent or officer of NMF nor otherwise authorized to accept service for NMF. Plaintiff's effort to remedy this error was untimely, and service of the Amended Complaint did not cure these defects.

Fourth, the Amended Complaint should be dismissed because the necessary "Trusts" and other persons are absent parties required to be joined. However, joinder is not feasible because the addition of these absent parties would destroy diversity, the sole basis for subject matter jurisdiction here. As a matter of law, the Court should not adjudicate Plaintiff's claims, all of which involve the absent parties' rights.

Fifth, should the Court reach the substance of Plaintiff's claims, the Amended Complaint should be dismissed because it fails to plead plausible facts supporting any of the Taiwan law claims asserted. Among the deficiencies, it fails to recognize that when Y.C. died intestate he had, as was then permitted by Taiwan law and custom, three wives, including Plaintiff and P.C. Lee. Their respective interests in the alleged Marital Estate – the subject of Plaintiff's claims here – already have been the subject of litigation and binding settlements in Taiwan, entered into

before this action was commenced, in which Plaintiff and Winston (among others) recognized the status of Y.C.'s three lawful wives.

For these reasons, the Amended Complaint should be dismissed with prejudice.

STATEMENT OF FACTS[6]

The Amended Complaint

This case purportedly arises under the Court's diversity of citizenship jurisdiction. Plaintiff, a citizen and domiciliary of Taiwan (AC ¶ 10), through Winston acting pursuant to the alleged POA, alleges that Defendants, during a period spanning from 2003 to 2008, somehow acted to deprive Plaintiff of her alleged entitlement to half of the "Marital Estate" under Taiwan law. (Id. ¶¶ 1-9.)

The Amended Complaint attempts to plead nine claims: return of unspecified "assets, monies and property wrongfully held or controlled by Defendants" coupled with damages based upon Articles 1030-1, 1030-3, 1146 and 767 of the Civil Code (Counts One through Four, respectively); the conversion of unidentified "assets, monies and property" (Count Five); the retention of unidentified property resulting in unjust enrichment (Count Six); the imposition of a

[6] Although the Amended Complaint's factual allegations are presumed to be true for purposes of this motion, no such presumption applies to legal conclusions draped in the guise of factual statements. See Kowal v. MCI Commc'ns Corp., 16 F.3d 1271, 1276 (D.C. Cir. 1994); Soliman v. George Washington Univ., 730 F. Supp. 2d 17, 19 (D.D.C. 2010); see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (noting that in defending against Rule 12(b)(6) motion "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions") (citation omitted; alteration in original); Papasan v. Allain, 478 U.S. 265, 286 (1986) (on motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). The Court also may consider documents that are "central to" the Amended Complaint or that it relies upon. Marshall v. Honeywell Tech. Solutions, Inc., 536 F. Supp. 2d 59, 65-66 (D.D.C. 2008); Vanover v. Hantman, 77 F. Supp. 2d 91, 98 (D.D.C. 1999), aff'd, 38 F. App'x 4 (D.C. Cir. 2002).

constructive trust over unspecified and unidentified assets (Count Seven); an accounting (Count Eight); and a civil conspiracy (Count Nine).

Unsupported Allegations as to the Marital Estate

Y.C., a citizen and domciliary of Taiwan, died intestate on October 15, 2008, during a business trip to New Jersey. (AC ¶ 11.) Y.C. was the founder of the Formosa Plastics Group ("FPG"), today one of Taiwan's largest manufacturing companies. (Id. ¶¶ 12, 31.) Following his unexpected death, Y.C.'s remains were returned home to Taiwan where a state funeral was held at which Y.C. was celebrated by Taiwan's President as a "true son of Taiwan." (Id. ¶ 11, 12.)

Following the funeral, a Taiwan accounting firm was hired to identify the assets of Y.C.'s estate. The accountant identified estate assets of approximately "$1.7 billion of FPG stock, cash, real property and other assets owned by Y.C. in Taiwan at his death." (Id. ¶ 81.) No assets were identified by the accountant in the District of Columbia or elsewhere in the United States. (Muscato Decl. Ex. G ¶ 6.) Plaintiff, however, alleges that the list of assets is incomplete "and do[es] not include any cash, real property or other assets held by Y.C. outside Taiwan or property held by nominees" including (supposedly) in "the District of Columbia, New Jersey, in other U.S. states and elsewhere around the world." (AC ¶¶ 82-83.) While making general references to property (mostly cash and stocks) allegedly "transferred or distributed by Y.C. to third-parties . . . [and] to certain offshore and U.S. trusts" (id. ¶ 82,) the Amended Complaint avers that these other unspecified assets are "potentially worth billions of dollars." (Id. ¶ 83.) Also, though Plaintiff generally alleges that these "offshore trust structures" (the "Trusts" (id. ¶ 57)) possess billions of dollars of Y.C.'s assets that Plaintiff asserts should be part of the Martial Estate and seeks to have transfers to at least four other "Trusts" unwound, Plaintiff names as Defendants in this action only NM-US Trust, NMF and Clearbridge, out of dozens of entities and

individuals associated with the "Trusts" (all of whom are necessary and indispensable parties to this action). (See Section IV, infra.)

Citing two separate estate tax returns filed with the Taiwan tax authorities (the "TNTA") by Winston and "other heirs of Y.C." (id. ¶ 84), Plaintiff makes the conclusory allegation that "the share to be paid to [Plaintiff] from the Taiwan Assets is less than fifty-percent of the Marital Estate" to which she is entitled. (Id. ¶ 86.) Specifically, Plaintiff alleges that the Taiwan Assets "do not include distributions or transfers made to third-parties in the five years prior to Y.C.'s death, do not include property owned by Y.C. outside of Taiwan, and do not include the $7.5 billion in assets purportedly contributed by Y.C. to certain offshore and U.S trusts," including NM-US Trust. (Id.) This was allegedly done "to reduce Yueh-Lan's share of the Marital Estate and [was done] in secret and without her consent." (Id. ¶ 58.) Plaintiff asserts Defendants have received certain unspecified distributions of property from Y.C. (id. ¶¶ 132, 156, 163, 172), and makes further conclusory allegations that "the formation, management, enforcement and legality of the Trusts are dubious, and of questionable validity." (Id. ¶ 87.) Non-parties Susan, Vanessa, P.C. Lee and Wen-Heiung (William) Hung ("Hung") are identified as being responsible for, among other things, the improper "formation and funding" of the Trusts and the continued operations of the Trusts. (Id. ¶¶ 17-20, 57, 59.)

Plaintiff vaguely alleges, without support, that Defendants, among other things:

- "have unique knowledge concerning the assets of the Marital Estate and the distributions received by the New Mighty Trust from the Marital Estate in the five years preceding Y.C.'s death" (id. ¶1);
- "hold, control or manage substantial assets, monies and property owned, held or maintained by Y.C. before his death or for the benefit of Y.C. and his estate" (id. ¶ 2);
- "received distributions of real and personal property from Y.C., directly or indirectly during the period of October 15, 2003 to October 15, 2008, without the

consent of [Plaintiff] and for the purpose of reducing [Plaintiff's] share of the Marital Estate" (id. ¶ 2; see also id. ¶¶ 5, 9);

- "directly or indirectly obtained, acquired, procured, received, maintained, controlled, otherwise came into possession of, used, transferred, disposed of or conveyed assets, monies and property owned, held, controlled or maintained by Y.C. before his death" (id. ¶ 6; see also id. ¶ 8);

- "established, directed or assisted in the creation of testamentary instruments, other offshore accounts, corporations and financial accounts to improperly, wrongfully and unlawfully convey said property" (id. ¶ 182);

- "refused to provide any and all information regarding the location and an accounting of said property in order to obstruct the calculation and distribution of [Plaintiff's] share of the Marital Estate" (id. ¶ 183); and

- "benefited from the fraudulent acquisition and improper use of the assets, monies and property owned, held or maintained by or for the benefit of Y.C. prior to his death." (Id. ¶ 186.)

Additionally, while the Amended Complaint is premised on the contention that Plaintiff is Y.C.'s "only legal spouse" (id. ¶¶ 10, 27) and that P.C. Lee was merely Y.C.'s "companion . . . during the later years of his life" (id. ¶ 17), that contention is squarely rebutted by Taiwan law and by the previous settlements between the parties in Taiwan. (Prof. Jan Supp. Decl. ¶ 11; id. Ex. A ¶¶ 17-18; Muscato Decl. Ex. E ¶¶ 8-9; Muscato Decl. Ex. J.) Specifically, P.C. Lee sought a determination of her spousal rights under Taiwan law in a Taiwan lawsuit she filed (the "P.C. Lee Lawsuit") against Winston, who had challenged, as he presently does, her legal status as a spouse of Y.C.[7] The P.C. Lee Lawsuit resulted in a settlement agreement which acknowledged P.C. Lee was a wife of Y.C. (Muscato Decl. Ex. E ¶ 9.) And in the "Tax

[7] A copy of the P.C. Lee Lawsuit is attached as Ex. A to the Lee Declaration (Chinese version – attached as Muscato Decl. Ex. D) and as Ex. F to the Muscato Decl. (certified translation).

Settlement Agreement" referred to in the Amended Complaint (AC ¶¶ 149-53)[8] P.C. Lee, Winston and Plaintiff (and other family members) agreed that, contrary to the allegations in the Amended Complaint, P.C. Lee, Plaintiff and Y.C.'s other wife, Wang Yang-Jiao (Winston's own mother), were all spouses of Y.C. (Muscato Decl. Ex. J.)[9]

Moreover, while the Amended Complaint refers to the state court action that Winston commenced in New Jersey (AC ¶ 25), it fails to reveal that said action is a limited proceeding in which Winston seeks to be appointed as an "ancillary administrator" for a "non-resident decedent" to administer unspecified alleged assets of Y.C. that Winston claims may have existed in New Jersey at the time of Y.C.'s death. Winston also fails to mention that no ancillary administrator has been appointed and the Court has not even determined its jurisdiction to do so, given no New Jersey asset has been identified requiring ancillary administration in New Jersey.[10]

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[8] The Tax Settlement Agreement is attached as Ex. A to the Lee Supp. Declaration (Chinese version) and as Ex. J to the Muscato Declaration (certified translation) (both redacted and without exhibits).

[9] In light of Plaintiff and Winston's acknowledgements of P.C. Lee's legal status as Y.C.'s spouse in these settlements (Muscato Decl. Ex. E ¶ 9.; Muscato Decl. Ex. J), the allegations that P.C. Lee "has never been adjudicated a legal wife of Y.C. by any court" (AC ¶ 18) and that Plaintiff "was recognized as Y.C.'s only spouse by the [TNTA]" for the limited purpose of that proceeding (id. ¶ 10), are obviously intended to obfuscate the truth. Notably, it ignores that under Taiwan law and custom at the time, Y.C. was permitted to have multiple wives. (Prof. Jan. Supp. Decl. ¶ 11; id. Ex. A ¶ 17.) Moreover, a judicial declaration is not needed, as P.C. Lee discontinued her lawsuit in light of Plaintiff and Winston's recognition of her status as a spouse. (Prof. Jan. Supp. Decl. ¶ 11.) Also, the allegation that, as part of the Tax Settlement Agreement, Defendants agreed not to "challenge the TNTA's determination that there was only one spousal deduction and that [Plaintiff] was Y.C.'s spouse" (id. ¶ 150) says nothing about P.C. Lee's legal status as a spouse. (Prof. Jan Supp. Decl. ¶ 12.)

[10] The state court permitted limited discovery to determine whether Y.C. had any New Jersey assets at the time of his death that require ancillary administration. No such assets were identified. Winston and another party appealed from the court's discovery orders on the basis that the court unduly restricted discovery. Other interested parties have cross appealed asserting that the state court permitted discovery that is inappropriate for such a limited, summary proceeding. The parties are awaiting a decision from the Superior Court of New Jersey, Appellate Division.

Meanwhile, Y.C.'s substantial estate in Taiwan has been distributed to his heirs, including Plaintiff and her alleged "attorney-in-fact," Winston.

ARGUMENT

I. THE AMENDED COMPLAINT SHOULD BE DISMISSED BECAUSE THE POA IS INVALID AND DOES NOT AUTHORIZE WINSTON TO SUE

Winston's standing to bring this action on behalf of Plaintiff is wholly dependent upon the Court finding that he is acting pursuant to a valid POA that specifically grants him the power to bring this litigation on behalf of Plaintiff. The POA here fails in both respects under Taiwan Law (Prof. Jan Supp. Decl. Ex. A ¶ 3; id. Ex. A ¶¶ 5-9), and therefore this action should be dismissed. See, e.g., Ficken v. AMR Corp., 578 F. Supp. 2d 134, 140 & n.2 (D.D.C. 2008) ("[T]he plaintiff may not sue on his [adopted adult son's] behalf unless he is authorized to do so by a duly executed power of attorney. . . . The plaintiff purports to submit a power of attorney signed by [his adopted son.] . . . But this document is not legally sufficient . . . ."); Washington v. Twp. of Hillside City Council, No. 06-3102, 2008 WL 2683360, at *5 (D.N.J. July 2, 2008) ("Because Plaintiff's power of attorney has been revoked, she lacks standing to assert any claims on behalf of Ms. Knight, [and] accordingly, any such claims must be dismissed.").[11]

[11] See also Marina Mgmt. Servs., Inc. v. Vessel My Girls, 202 F.3d 315, 319 (D.C. Cir. 2000) (reversing denial of motion to dismiss where the "record provide[d] no evidence" that party who was purporting to bring suit as an agent pursuant to a power of attorney was authorized to bring such suit, and remanding for determination of this issue); The S.S. Denny, 40 F. Supp. 92, 97-98 (D.N.J. 1941) (court may always inquire "into the authority of the person bringing the suit, where . . . the litigation is instituted by one who purports to be acting" on another's behalf, and if "the suit is not authorized, the court may dismiss it"), rev'd on other grounds, 127 F.2d 404 (3d Cir. 1942).

A. The POA Does Not Authorize Winston To Prosecute Litigation on Plaintiff's Behalf As Required By Taiwan Law

By its own terms, the POA does not authorize this (or any other) litigation. Instead, it only authorizes Winston to dispose of Plaintiff's assets and, in connection therewith, to sign legal documents on her behalf. (Muscato Decl. Ex. C.) This omission is fatal since Taiwan law requires that the power to bring litigation be specifically set forth. (Prof. Jan Supp. Decl. ¶ 3; id. Ex. A ¶¶ 6-7 ("Article 534 provides in relevant part: 'The mandatory who has a general mandate may do all acts, unless the following acts for which a specific commission shall be given: . . . (5) To bring an action for the satisfaction of a claim;'").)[12] Consequently, the Court should dismiss this action on the ground that the POA does not authorize Winston to prosecute this (or any) litigation. See Ficken, 578 F. Supp. 2d at 139-40.

B. Even if the POA Authorized Litigation (And It Does Not), the POA is Invalid Under Taiwan Law

Under Taiwan law, in order for a POA (or a "contract of mandate") to be validly executed and effective it must be signed by the principal. (Prof. Jan Supp. Decl. Ex. A ¶ 9.)[13] Here,

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[12] District of Columbia law is in accord. See, e.g., Lewis v. Dist. of Columbia, 534 F. Supp. 2d 20, 21 n.1 (D.D.C.) (holding that holder of POA was "not qualified" to represent the grantor; "This power of attorney pertains to two specific actions in the District of Columbia courts, and does not appear to authorize Mr. Lewis to pursue a new action in this federal district court on his [the grantor's] behalf."), aff'd sub nom. Lewis v. Fenty, 296 F. App'x 75 (D.C. Cir. 2008); see also Ulliman Schutte Constr., LLC v. Emerson Process Mgmt. Power & Water Solutions, No. 02-1987, 2006 WL 1102838, at *9 (D.D.C. Mar. 31, 2006) ("'It is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement.'") (citation omitted).

[13] District of Columbia law is the same. D.C. Code Section 21-2101(b) provides that "[a] statutory power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with subsection (a) of this section [which includes signature by grantee], the form is properly completed, and the signature of the principal is acknowledged." See also Ficken, 578 F. Supp. 2d at 140 n.2 ("[T]his [supposed power of attorney] is not legally sufficient *(cont'd)*

however, the POA was signed by a "Proxy signatory" named Hsieh Yueh-Er and not by Plaintiff. (Muscato Decl. Ex. C.) Accordingly, because the POA is facially invalid the action should be dismissed as Winston lacks standing. See Ficken, 578 F. Supp. 2d at 139-40 (dismissing action brought pursuant to facially invalid POA).

Furthermore, Winston himself has admitted in the state court action that Plaintiff is incompetent (Muscato Decl. Ex. A ¶¶ 1, 36), and under such circumstances, a Taiwan court would not permit him to continue to assert the validity of the POA. (Prof. Jan Supp. Decl. ¶ 3.)[14] Although the Amended Complaint alleges that Plaintiff "has not been found to be without capacity by any court, government agency or authority" (AC ¶ 10), such a finding is not necessary. (Prof. Jan Supp. Decl. ¶ 3.) The POA does not provide for its continued validity in the event of Plaintiff's disability (Muscato Decl. Ex. C), and under Taiwan (and District of Columbia) law the POA became invalid upon Plaintiff's incompetency without such language. (Prof. Jan. Supp. Decl. ¶ 3; id. Ex. A ¶ 8 ("Article 550 specifically provides that: '[t]he mandate terminates when one of the parties . . . loses his capacity to make juridical acts, unless it is otherwise provided by contract, or unless, from the nature of the affairs commissioned, such mandate cannot be extinguished.'"); D.C. Code §§ 21-2081, 21-2082 (incompetency of principal terminates power of attorney unless it contains "words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or

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(cont'd from previous page)
because it fails to comply substantially with D.C. Code § 21-2101(a) in that it is not notarized or dated . . . .").

[14] The allegation that non-parties P.C. Lee and Susan "warranted that they did not object to [Plaintiff's] capacity or the authority of [Winston] to act as her agent" in connection with the Tax Settlement Agreement (AC ¶ 153) has no bearing on POA's validity or scope. (Prof. Jan Supp. Decl. ¶ 4.)

incapacity").) Accordingly, for this separate and independent reason Winston cannot bring the present lawsuit on Plaintiff's behalf. (Prof. Jan Supp. Decl. Ex. A ¶ 8.)

II. THE COURT LACKS SUBJECT MATTER JURISDICTION

Where, as here, subject matter jurisdiction is based upon diversity of citizenship (see AC ¶ 21), there must be complete diversity between the parties; that is, all plaintiffs must have citizenship different from that of all defendants. See Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267 (1806). "'Because federal courts are of limited jurisdiction, there is a presumption against the existence of diversity jurisdiction,'" and "'the party seeking the exercise of diversity jurisdiction bears the burden of pleading the citizenship of each and every party to the action.'" Loughlin v. United States, 393 F.3d 155, 171 (D.C. Cir. 2004) (citation omitted; emphasis added). Accordingly, the party asserting jurisdiction must establish by a "preponderance of the evidence that the court has subject matter jurisdiction." McQueen v. Woodstream Corp., 672 F. Supp. 2d 84, 87 (D.D.C. 2009). Here, diversity of citizenship jurisdiction does not exist because Plaintiff has failed to satisfy her burden of properly alleging the citizenship of all Defendants.

The Amended Complaint alleges that NM-US Trust is a "trust formed under the laws of the District of Columbia with [its] principal place of business located in the District of Columbia" (AC ¶ 14) and that it is a citizen of "Virginia and/or the District of Columbia." (Id. ¶ 21.) However, these allegations are insufficient (not to mention incorrect) to allege the citizenship of a trust.

Though federal courts in the District of Columbia have not definitively established a test for determining the citizenship of a trust, the Third Circuit has recently examined this question and concluded that a court "might determine the citizenship of a trust by selecting among four possible tests: (a) look to the citizenship of the trustee only; (b) look to the citizenship of the beneficiary only; (c) look to the citizenship of either the trustee or the beneficiary depending on

who is in control of the trust in the particular case; or (d) look to the citizenship of both the trustee and the beneficiary." Emerald Investors Trust v. Gaunt Parsippany Partners, 492 F.3d 192, 201 (3d Cir. 2007) (discussing Navarro Sav. Ass'n v. Lee, 446 U.S. 458 (1980), and Carden v. Arkoma Assocs., 494 U.S. 185 (1990)). None of these options considers the state of formation of the trust or the state where the trust has its principal place of business as relevant to determining citizenship for diversity purposes.

The Emerald Investors court adopted the fourth alternative and considered both the citizenship of the trust's trustees and beneficiaries for purpose of determining a trust's citizenship for diversity. See Emerald Investors, 492 F.3d at 205. Defendants respectfully submit that this approach is the most consistent with the Supreme Court's directive in Carden that, for diversity purposes, artificial entities other than corporations take the citizenship of all their "members." See id., 494 U.S. at 195-96 (rejecting, for purposes of determining the citizenship of a limited partnership, "the contention that to determine, for diversity purposes, the citizenship of an artificial entity, the court may consult the citizenship of less than all of the entity's members"). As the court in Emerald Investors recognized, both the beneficiaries and the trustee(s) possess the essential characteristics of "members" of a trust – the beneficiaries because they are "in a position similar to that of the limited partners in a limited partnership," 492 F.3d at 202, and the trustee because it "is more than a mere manager of a trust inasmuch as . . . legal title [to the assets is] vested in the trustee," id. at 205-06. Accordingly, this Court should look to the citizenship of all trustees and all beneficiaries of NM-US Trust to determine its citizenship for diversity purposes.[15]

[15] Although other courts have adopted a "trustee only" rule, they have done so without discussion, and apparently under the belief that Navarro dictates such a rule. See, e.g., Hicklin Eng'g, L.C. v. Bartell, 439 F.3d 346, 348 (7th Cir. 2006); Johnson v. Columbia Props. Anchorage, LP, 437 F.3d *(cont'd)*

Plaintiff's allegations in the Amended Complaint fail to establish that NM-US Trust is a diverse defendant. Though Plaintiff alleges that Clearbridge, alleged to be a citizen of Virginia and Washington, D.C. (AC ¶ 21), "is the trustee of NM-US Trust" (id. ¶ 16), the allegations regarding the citizenship of NM-US Trust's beneficiaries are deficient. While initially asserting that NMF is a citizen of Delaware and the District of Columbia (id. ¶ 21), and "the only beneficiary" (id. ¶ 15 (emphasis added)), Plaintiff then further alleges that "[t]he beneficiaries of Defendant NM-US Trust are certain charities, philanthropies and the grantors of Defendant NM-US Trust, including [NMF], which was formed in January 2006." (Id. ¶ 123) (emphasis added.) There are, however, no allegations of the citizenship (or even an identification) of these other alleged beneficiaries (i.e., the charities, philanthropies and grantors of NM-US Trust). Because the citizenship of all NM-US Trust beneficiaries must be determined before the Court can exercise diversity jurisdiction, see Emerald Investors, 492 F.3d at 201 n.12, and because there is a complete absence of allegations regarding the citizenship of NM-US Trust beneficiaries (with the lone exception of NMF), the court lacks subject matter jurisdiction.[16]

III. ALTERNATIVELY, NMF HAS NOT BEEN PROPERLY AND TIMELY SERVED

Under Fed. Rule Civ. P. 4(h)(1)(B), service on a corporation, partnership or association can be made by delivering a copy of the summons and complaint "to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of

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894, 899-900 (9th Cir. 2006). But that reading of Navarro is mistaken; Navarro addressed only whether the trustees, rather than the trust, were the real parties to the controversy. See Carden, 494 U.S. at 192-93 ("Navarro had nothing to do with the citizenship of the 'trust,' since it was a suit by the trustees in their own names."); see also Emerald Investors, 492 F.3d at 201-02 (rejecting trustee-only rule).

[16] As explained below, because NMF is a necessary party that cannot be joined and because the action should not proceed in its absence, NMF is therefore "indispensable" and cannot simply be dismissed from the action to save diversity jurisdiction.

process and – if the agent is one authorized by statute and the statute so requires – by also mailing a copy of each to the defendant." Fed. R. Civ. P. 4(h)(1)(B). Initially, Plaintiff attempted to serve NMF by serving process on "John C. Wannen R/A." (See Docket Entry No. 3.) As Defendants stated in their motion to dismiss the original complaint, John C. Wannen is not authorized to accept service on behalf of NMF as an agent, nor is he an officer of NMF. (Muscato Decl. Ex. K ¶ 5.) After Defendants' prior motion to dismiss raised this point, Plaintiff attempted to serve NMF on April 6, 2011, by delivering a copy of the summons and original complaint to NMF's process agent in Delaware. (See Docket Entry No. 12.) This second attempted service is also defective because it was made in an untimely fashion 174 days after Plaintiff filed her original complaint in this action, well beyond the 120 days permitted by Fed. Rule Civ. P. 4(m).

Where a plaintiff fails to make proper service within 120 days of filing a complaint, she carries "the burden of showing good cause" for the failure. Whitehead v. CBS/Viacom, Inc., 221 F.R.D. 1, 2-3 (D.D.C. 2004). Inadvertence or neglect of counsel to serve in a timely fashion is insufficient to establish "good cause." See United States ex rel. Cody v. Computer Scis. Corp., 246 F.R.D. 22, 26 (D.D.C. 2007); accord Whitehead, 221 F.R.D. at 3. "Good cause" is absent here. Plaintiff commenced this action on October 14, 2010. But Plaintiff did not even first attempt to serve NMF with the initial process until February 9, 2011, just two days before the expiration of the 120-day time limit for serving the original complaint under Fed. Rule Civ. P. 4(m). (See Docket Entry No. 3.) Following this deficient attempt at service, Plaintiff's next attempted service on NMF was not made until 54 days after the service deadline had expired.

Although District Courts have discretion to extend the time for initial service of process absent a showing of good cause, the factors strongly weigh against granting an extension here.

In Colston v. First Guarantee Commercial Mortgage Corp., 665 F. Supp. 2d 5 (D.D.C. 2009), this Court concluded that granting a discretionary extension would be against the interests of justice as a result of several factors: plaintiff was at all times represented by counsel, the defendant was not evading service, and defendant would have been prejudiced by an extension because it would had to defend against a claim that otherwise would be time-barred. Id. at 10.

All of these factors warranting dismissal are present here. First, Winston is and has continuously been represented by sophisticated counsel (who purports to represent Plaintiff as well, via the alleged POA).[17] Second, NMF has not evaded service, and Plaintiff has not suggested to the contrary. Finally, NMF would be prejudiced if an extension were granted because, as explained by Prof. Jan, Plaintiff's claim, even if permitted under Article 1030-3 of the Civil Code (which, as described more fully below, is not the proper provision), would be time-barred by that provision's two-year statute of limitations.[18] (Prof. Jan Supp. Decl. Ex. A ¶ 15.)

Absent proper service of process, a court may not exercise personal jurisdiction over the defendants named in a complaint. See Gorman v. Ameritrade Holding Corp., 293 F.3d 506, 514 (D.C. Cir. 2002) ("Even if there are sufficient contacts for a court to assert personal jurisdiction over a defendant, it lacks power to do so unless the procedural requirements of effective service of process are satisfied."). Actual notice of the lawsuit does not substitute for technically correct

[17] Gibbons P.C. has continuously represented Winston since the filing of his complaint in the state court action in New Jersey on May 13, 2009.

[18] While the expiration of a statute of limitations is a factor that could warrant a permissive extension of time, this factor does not require the Court to extend time for service of process. See Mann v. Castiel, 729 F. Supp. 2d 191, 198 (D.D.C. 2010) ("While the Court considers plaintiffs' ability to refile a major factor in its calculus, the existence, or potential existence, of a time bar does not automatically warrant a discretionary extension of time."); see id. at 198-200, *(cont'd)*

service under Rule 4 because, if service is not properly made, the court has no jurisdiction to render a personal judgment against a defendant. See Cody, 246 F.R.D. at 26; see also Whitehead, 221 F.R.D. at 2-3.

Accordingly, Plaintiff's initial failure to properly serve NMF under Rule 4(h)(1)(B) is grounds for dismissing the complaint. See Prunté v. Universal Music Grp., 248 F.R.D. 335, 337-39 (D.D.C. 2008) (dismissing complaint for failure to properly serve a company though a proper agent; noting that even if the defendant received notice "[i]t is established that actual notice alone cannot cure otherwise defective service"); see generally Fed. R. Civ. P. 12(b)(5). And because the second service attempt was untimely, and there is no good cause to extend the time to make service, the second attempt is also invalid and the complaint against NMF should be dismissed. See Mann, 729 F. Supp. 2d at 196-98, 200 (citing Fed. R. Civ. P. 4(m)).[19]

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202 (dismissing case; plaintiffs were not entitled to extension of time to effect service); accord Colston, 665 F. Supp. 2d. at 10.

[19] Because service of initial process was never properly made on NMF under Rule 4(h), the Court never acquired jurisdiction over NMF. See Gorman, 293 F.3d at 514. Thus, it matters not that the Amended Complaint was electronically delivered to NMF's counsel. A plaintiff cannot resort to alternative methods for serving papers, such as those specified in Rule 5 (including serving papers on NMF's attorney), to effect service of an amended pleading without first complying with the exacting service rules of Rule 4. See, e.g., Cryer v. UMass Med. Correctional Health, No. 10-11346, 2011 WL 841248, at *2 (D. Mass. Mar. 7, 2011) ("[W]here service of process of the original complaint has not been effected properly, [plaintiff] may not use Rule 5 to effect service of process of an amended complaint as a means to circumvent Rule 4's requirements concerning service. To hold otherwise would eviscerate the detailed requirements [of Rule 4]."); Kohus v. Ohio State Highway Patrol, No. 1:09-cv-658, 2009 WL 6808780, at *3 (S.D. Ohio Dec. 22, 2009) (where defendant was never properly served with the original complaint, court never acquired jurisdiction over defendant and thus service of amended complaint under Rule 5 was improper); accord 1 James Wm. Moore et al., Moore's Federal Practice 5.02[1][b] (3d ed. 2011).

IV. THE AMENDED COMPLAINT FAILS TO JOIN INDISPENSABLE PARTIES

The Amended Complaint should be dismissed because of Plaintiff's failure (and inability) to join numerous necessary and indispensable parties under Rule 19. See Fed. Rule Civ. P. 12(b)(7) (action may be dismissed for failure to join party pursuant to Rule 19). Most glaringly, Plaintiff has not named as parties the "Trusts" and individuals and entities included therein,[20] all of whom are indispensable to this action. See id.

In her original Complaint, Plaintiff named 20 "John Doe" defendants ("Does") on the basis that they were persons and entities who improperly received Marital Estate assets. When Defendants moved to dismiss on the basis that the Does destroyed diversity, Plaintiff dropped the Does as defendants instead of attempting to allege their citizenship. The Does were likely the "Trusts" and other entities or persons who remain part of the Amended Complaint's allegations

[20] As alleged in the Amended Complaint, the "offshore trust structures" (defined as the "Trusts" – Am Compl. ¶ 57) include: Grand View Purpose Trust (¶ 88); Harrington Trust Limited (¶¶ 89, 96); Grand View Private Trust Company Limited (¶ 89); the Business Management Committee of Grand View Private Trust Company Limited (¶ 90); the Directors and Officers of Grand View Private Trust Company Limited, including Hung, William Wong, Susan, Wilfred Wang, Sandy Wang, Charnita L. Howes, and Appleby Services (Bermuda) Ltd. (¶ 90); Wang Family Trust (¶ 91); Transglobe Purpose Trust (¶ 95); Transglobe Private Trust Company Limited (¶ 96); the Business Management Committee of Transglobe Private Trust Company Limited (¶ 97); the Directors and Officers of Transglobe Private Trust Company Limited (same as GVPTCL, ¶ 97); Transglobe Trust a/k/a the China Trust (¶ 98); Vantura Purpose Trust (¶ 103); Codan Trust Company Limited (¶¶ 104, 112); Vantura Private Trust Company Limited (¶ 104); the Business Management Committee of Vantura Private Trust Company Limited (¶ 105); the Directors and Officers of Vantura Private Trust Company Limited, including Belinda F. Clarke and Craig W. MacIntyre (¶ 105); Vantura Trust (¶ 106); Universal Link Purpose Trust (¶ 111); Universal Link Private Trust Company Limited (¶ 112); the Business Management Committee of Universal Link Private Trust Company Limited (¶ 113); the Directors and Officers of Universal Link Private Trust Company Limited (same as VPTCL, ¶ 113); Universal Link Trust (¶ 114); New Mighty Trust (¶ 119); Donald Kozusko (¶ 120); Creative II Holding, Inc. (¶ 122); Creative II Corporation, Inc. (¶ 121); Sound International Investment Corporation (¶ 122); certain unidentified charities and philanthropies (¶ 122); New Mighty Family Trust (¶ 126); New Mighty Private Trust Company (¶ 128); the Business Management Committee of New Mighty Private Trust Company (¶ 130); Citco Trustees (Cayman) Limited (¶ 128); and New Mighty Purpose Trust (¶ 128).

but who are now unnamed as parties while necessary to this lawsuit. Plaintiff pretends otherwise only because she recognizes that their joinder as party defendants would destroy diversity and require dismissal. Such maneuvering and sleight of hand, however, cannot obfuscate reality.

In this District, a Rule 19 analysis involves "'a two-step procedure for determining whether an action must be dismissed because of the absence of a party needed for a just adjudication.'" Capitol Med. Ctr., LLC v. Amerigroup Md., Inc., 677 F. Supp. 2d 188, 191-92 (D.D.C. 2010) (citation omitted). First, under Rule 19(a), a court must order joinder of any "required party." See Fed. R. Civ. P. 19(a). A party is "necessary" under this rule and required to be joined if, "without that party, (1) 'the court cannot accord complete relief among existing parties' or (2) proceeding would either (i) 'impair or impede the [party]'s ability to protect [its] interest' in the action or (ii) 'leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the [missing party's] interest' in the action." Capitol Med. Ctr., 677 F. Supp. 2d at 192 (alterations in original) (quoting Fed. R. Civ. P. 19(a)(1)). Under Rule 19(a), if joinder of a required party would "deprive the court of subject-matter jurisdiction," Fed. R. Civ. P. 19(a), then joinder is not feasible. See Cloverleaf Standardbred Owners Ass'n v. Nat'l Bank of Wash., 699 F.2d 1274, 1275-76, 1280 (D.C. Cir. 1983) (affirming holding that joinder of non-diverse absentee was not feasible).[21]

[21] It is also readily apparent, based upon the allegations of the Amended Complaint, that the Court lacks personal jurisdiction over the Trusts making their joinder not feasible. See DMP Corp. v. Rederiaktiebolaget Nordstjernan, No. 82-1877, 1983 WL 680, at *4 (D.D.C. Apr. 14, 1983) Plaintiff has not alleged, with the exception of Defendants, that the Trusts' presence in the District of Columbia is "continuous and systematic" such that exercising general jurisdiction would comport with either due process or the law of the District of Columbia. Nor has Plaintiff alleged that her claims "arise from" any contacts the Trusts have with the District of Columbia for permissibly exercising long-arm jurisdiction.

Second, if an absentee is required to be joined under the Rule 19(a) criteria, but joinder is not feasible, the analysis proceeds under Rule 19(b) to "determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b); see also Corsi v. Eagle Publ'g, Inc., No. 07-02004, 2008 WL 239581, at *5 (D.D.C. Jan. 30, 2008). The factors to be considered include:

> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
>
> (2) the extent to which any prejudice could be lessened or avoided by:
>
> (A) protective provisions in the judgment;
>
> (B) shaping the relief; or
>
> (C) other measures;
>
> (3) whether a judgment rendered in the person's absence would be adequate; and
>
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. 19(b).

Such an analysis here demonstrates that the absent "Trusts" and others are required parties whose joinder is not feasible because it would destroy the Court's diversity jurisdiction (and they are not subject to personal jurisdiction in the District of Columbia), and are parties in whose absence the action should not proceed. Accordingly, dismissal under Rule 12(b)(7) is warranted.

All of the entities and persons encompassing the "Trusts" identified in paragraphs 57-63 and 87-118 of the Amended Complaint are required parties under Rule 19(a) for an adjudication of Plaintiff's claims. The Amended Complaint alleges that, without Plaintiff's consent, Defendants, among others, were somehow involved in alleged improper transfer of assets from the Marital Estate to the Trusts, which allegedly still hold those assets. (See AC ¶¶ 57-118.)

Plaintiff seeks, among other things, to impose a constructive trust over those very assets, to compel an accounting of the assets, to void the transfers of the assets, and to compel the return of the assets to Plaintiff. (See id., Prayer for Relief, at ¶¶ (D)-(I).)[22] Joinder of the Trusts is required under Rule 19(a) for several reasons.

First, and most importantly, the Trusts plainly have "an interest relating to the subject of the action," Fed. R. Civ. P. 19(a)(1)(b) – i.e., the assets alleged to have been improperly transferred from the Marital Estate to the Trusts – and their absence from this lawsuit would abrogate their ability to protect their interests. See Fed. R. Civ. P. 19(a)(1)(B)(i); Brown v. Christman, 126 F.2d 625, 631 n.23 (D.C. Cir. 1942) ([A]ll persons with conflicting claims to a particular fund are said to be indispensable parties. . . . "Where a suit in equity has for its object the disposal of a trust fund, all known claimants of the fund must be made parties." "[W]here a number of persons have undetermined interests in the same property, or in a particular trust fund, and one of them seeks, in an action, to recover the whole, to fix his share, or to recover a portion claimed by him . . . other persons with similar interests are indispensable parties. The reason is that a judgment in favor of one claimant for part of the property or fund would necessarily determine the amount or extent which remains available to the others. Hence, any judgment in the action would inevitably affect their rights.") (citations omitted); see also Hoheb v. Muriel, 753 F.2d 24, 25-27 (3d Cir. 1985) (holding that where tenants in common sold their land, and several former tenants in common subsequently brought action to rescind sale for fraud, Rule

[22] As explained below, see infra at 27-29, the allegations fail to state a claim because the Civil Code provisions invoked in the Amended Complaint do not impose liability for mere receipt of transfers out of the Marital Estate, even if those transfers were wrongful, and Plaintiff does not allege that Defendants are wrongfully in possession of any specific marital property subject to return. (Prof. Jan Supp. Decl. ¶¶ 7-8; id. Ex. A ¶ 10.) But even if the Civil Code somehow did impose such liability, it still would be dismissed for failure to join required parties.

19(a) required joinder of remaining former tenants in common); Marra v. Burgdorf Realtors, Inc., 726 F. Supp. 1000, 1003-04 (E.D. Pa. 1989) (where adjudication of plaintiff's claim would necessarily determine title to property in which absent party had interest, absent party was required to be joined).

Second, without the Trusts' participation, the Court "cannot accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A). Because the Trusts are not before this Court, the Court cannot compel them to return the disputed assets, the very relief Plaintiff seeks. (See AC, Prayer for Relief, ¶ (G).) See, e.g., Fortuin v. Milhorat, 683 F. Supp. 1, 3-4 (D.D.C. 1988) ("Because this court can make a legally binding adjudication 'only between the parties actually joined in the action,' a judgment in favor of [plaintiff] would quiet title as between [plaintiff] and [defendant], but not as between [plaintiff] and [a] non-party . . . .") (citation omitted); Nat'l Coal Ass'n v. Clark, 603 F. Supp. 668, 672-73 (D.D.C. 1984) (noting due process prohibits enforcing a judgment against absentee that prejudices its rights).

Because the absent Trusts are necessary parties, the Court must consider whether such joinder is feasible. Unquestionably it is not. Joinder of the Trusts would destroy diversity jurisdiction. Citizenship of both the trustees and the beneficiaries is considered for purposes of determining a trust's citizenship for diversity purposes. See Emerald Investors Trust v. Gaunt Parsippany Partners, 492 F.3d 192, 205 (3d Cir. 2007). Here, Plaintiff has failed to allege the citizenship of the trustees and beneficiaries. (See, e.g., AC ¶¶ 62, 88, 91, 95, 98, 103, 106, 111, 114, 122.) That failure precludes diversity jurisdiction. See Loughlin v. United States, 393 F.3d 155, 171 (D.D.C. 2007) ("'party seeking the exercise of diversity jurisdiction bears the burden of pleading the citizenship of each and every party to the action'") (citation omitted; emphasis added); Howell ex rel. Goerdt v. Tribune Entm't Co., 106 F.3d 215, 218 (7th Cir. 1997) (holding

that, with exceptions not applicable here, "the existence of diversity jurisdiction cannot be determined without knowledge of every defendant's place of citizenship").

Moreover, to the extent the Amended Complaint suggests the citizenship of any absent entities or individuals, all indications are that they are foreign citizens or entities formed under the laws of other countries whose inclusion in the action would destroy diversity. (See, e.g., AC ¶¶ 57, 60, 91, 98, 106, 114.) Diversity jurisdiction does not exist where an alien plaintiff (like Plaintiff) sues another alien. See Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 569 (2004) (where plaintiff-partnership was Mexican citizen and defendant was Mexican corporation, "aliens were on both sides of the case, and the requisite diversity was therefore absent"); Saadeh v. Farouki, 107 F.3d 52, 55 (D.C. Cir. 1997) (diversity statute does "not confer jurisdiction over a lawsuit involving an alien on one side, and an alien and a citizen on the other side").

Because absent parties need to be joined, but joinder is not feasible, the Court must finally consider whether to proceed in their absence or dismiss the action. As noted above, the factors enumerated in Rule 19(b) favor dismissal. A judgment rendered without the Trusts' participation poses significant potential prejudice to both the Trusts and the existing parties. See, e.g., Capitol Med. Ctr., LLC v. Amerigroup Md., Inc., 677 F. Supp. 2d 188, 194 n.9 (D.D.C. 2010) ("Evaluation of the first Rule 19(b) factor 'overlaps considerably with the Rule 19(a) analysis.'") (citation omitted); see also Dawavendewa v. Salt River Project Agric. Improvement & Power Dist., 276 F.3d 1150, 1162 (9th Cir. 2002) ("The prejudice to the [absent party] stems from the same impairment of legal interests that makes the [absent party] a necessary party under Rule 19(a)(2)(i)."). The absent Trusts have an interest in the alleged assets claimed in this action, and their absence from this lawsuit could impair their ability to protect that interest. See, e.g.,

Brown, 126 F.2d at 631; Fortuin, 683 F. Supp. at 3-4 (holding that where plaintiff claimed existence of oral agreement with defendant to purchase defendant's house, party who subsequently purchased house from defendant was indispensable under Rule 19(b) because a court can make a legally binding adjudication "only between the parties actually joined in the action"); Nat'l Coal Ass'n, 603 F. Supp. at 672-73 (holding that, in actions by coal producer trade associations and environmental groups to invalidate land swap between federal government and private landowner, private landowner was indispensable party under Rule 19(b)); Torrence v. Shedd, 144 U.S. 527, 531-32 (1892) (holding that, in action for title to real property, competing claimants were required indispensable parties).

Moreover, in light of the exceptionally broad relief sought by Plaintiff, it would be difficult, if not impossible, to fashion a meaningful judgment without affecting the absent parties interest. See, e.g., Tick v. Cohen, 787 F.2d 1490, 1494-95 (11th Cir. 1986) (concluding that absent beneficiaries were necessary and indispensable to litigation brought against trustees of land trusts for, inter alia, restoration of trust assets and an accounting especially it was "difficult to envision any conceivable way to fashion a meaningful judgment which will not affect the absent beneficiaries interests"); Nat'l Coal Ass'n, 603 F. Supp. at 672-73.

Like the Trusts, P.C. Lee also is required to, but cannot be, joined under Rule 19. As a lawful spouse of Y.C., she has a right to a portion of the spousal share while Plaintiff claims the entire 50% spousal share. A judgment in P.C. Lee's absence unavoidably risks prejudicing her spousal rights and the action should not proceed in her absence. See, e.g., Brown v. Christman, 126 F.2d 625, 631-32 n.23 (D.C. Cir. 1942) ("'[A]ll persons with conflicting claims to a particular fund are said to be indispensable parties.'"). But P.C. Lee's joinder would destroy diversity – the sole basis of jurisdiction here. As a dual American-Taiwanese citizen who is

domiciled in Taiwan, P.C. Lee is "stateless" for diversity purposes. This is fatal to the Court's diversity jurisdiction. See, e.g., Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828-29 (1989) (presence of "stateless" American citizen domiciled abroad destroys complete diversity).

In order "to be a citizen of a State within the meaning of the diversity statute, a natural person must both be a citizen of the United States and be domiciled within the State." Id. at 828. P.C. Lee is considered an American citizen, but she is not domiciled "within [a] State." While the Amended Complaint states that P.C. Lee is "a domiciliary of New Jersey" (AC ¶ 17), P.C. Lee is actually domiciled in Taiwan. "[I]t is well-settled that citizenship is substantially synonymous with domicile." Mays v. Meeks, No. 05 2116, 2006 WL 890671, at *4 (D.D.C. April 5, 2006). And in turn, a "party's domicile is determined by two factors: (1) physical presence in the jurisdiction, and (2) an intent to remain there for an unspecified or indefinite period of time." Id.; see also Anwo v. INS, 607 F.2d 435, 438 n.7 (D.C. Cir. 1979) ("It is th[e] element of intent to establish a permanent abode that distinguishes 'domicile' from 'residence . . .'.).

P.C. Lee is unquestionably not present in New Jersey. She also intends to remain in Taiwan indefinitely. (Muscato Decl. Ex. L ¶ 4.) Though she owns a house in Short Hills, New Jersey, she lived there only when she traveled with Y.C for visits to New Jersey. In the nine years preceding Y.C.'s death, P.C. Lee spent a total of about 63 days at that New Jersey house, and she has not spent anytime whatsoever in New Jersey since Y.C.'s death in 2008. (Id.) Moreover, P.C. Lee's personal effects are in Taiwan, she is registered to vote only in Taiwan and most of her family resides there (as did Y.C.). (Id. ¶¶ 5-6.) Thus, it is plain that Taiwan, her domicile and her presence in this action would destroy diversity. (There are also no allegations suggesting that P.C. Lee would be subject to personal jurisdiction in this Court.)

Accordingly, P.C. Lee is a party who must be joined under Rule 19 but whose joinder is not feasible. Because the action cannot proceed in her (or the Trusts') absence, it should be dismissed under Rule 12(b)(7). See Cloverleaf, 699 F.2d at 1275-76, 1280; DMP Corp. v. Rederiaktiebolaget Nordstjernan, No. 82-1877, 1983 WL 680, at *4 (D.D.C. Apr. 14, 1983).

V. IN ANY EVENT, THE AMENDED COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF

To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A complaint must include enough facts to "raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. A "formulaic recitation of the elements of a cause of action" is sufficient. Id. Rather, a "claim is facially plausible when its factual content 'allows the court to draw a reasonable inference that a defendant is liable for the [alleged] misconduct.'" Winstead v. EMC Mortg. Corp., 697 F. Supp. 2d 1, 3 (D.D.C. 2010) (quoting Iqbal, 129 S. Ct. at 1949). None of Plaintiff's claims meets this pleading standard, and Plaintiff's generalized allegations of wrongdoing by Defendants, many made "on information and belief," are too conclusory to constitute the basis for a claim. See Arencibia v. 2401 Rest. Corp., 699 F. Supp. 2d 318, 325 (D.D.C. 2010).

A. Counts One and Two Fail to State a Claim Under Taiwan Law

Plaintiff's first two causes of action are ostensibly brought under Articles 1030-1 and -3 of the Civil Code. Defendants allegedly "received distributions of property from Y.C., directly or indirectly . . . without [Plaintiff's consent] and for the purposes of reducing [Plaintiff's] share of the Marital Estate" (AC ¶¶ 156, 163) and that because these distributions "were not 'proper gifts for performing a moral obligation'" (id. ¶ 164), this property should be counted into the

Marital Estate for purposes of calculating Plaintiff's alleged 50% share. (Id. ¶ 156.) Plaintiff claims she is entitled to "damages including the return of the assets, monies and property wrongfully held or controlled by Defendants" (id. ¶¶ 159, 167), and "to restitution from Defendants in the amount of the shortness of her share." (Id. ¶ 166.)

These claims are factually and legally deficient. First, Plaintiff makes only vague, generic allegations that any of the named Defendants received such transfers (see, e.g., id. ¶¶ 2, 5, 6, 156, 163) and vaguely suggests that estate property transferred to Defendants includes property located in "New Jersey and the District of Columbia." (Id. ¶ 2.) These alleged assets, however, are not more specifically identified,[23] and there are also no allegations that Defendants actually possess specific marital property subject to return. (Prof. Jan Supp Decl. ¶ 7; id. Ex. A. ¶ 10.) Accordingly, Plaintiff has not asserted a valid claim under Articles 1030-1 or 1030-3 of the Civil Code. (Prof. Jan Supp. Decl. ¶¶ 5-6; id. Ex. A ¶¶ 10-13.)

Second, Plaintiff's claim for "restitution" under Article 1030-3 is completely meritless. A claim to invalidate an allegedly improper transfer of marital property must be brought under Article 1020-1 of the Civil Code, which permits a spouse to apply for an annulment of a transfer which "endangers the other's right to claim for distribution." (Prof. Jan Supp. Decl. ¶ 5; id. Ex. A ¶ 12.) Such a claim requires: (1) an alleged gratuitous or non-gratuitous property transfer; (2) the non-gratuitous property transfer was made by the spouse "with knowledge of the endangerment"; (3) the recipient of non-gratuitously transferred property knows upon receipt of the benefit that the spouse made the transfer "with knowledge of the endangerment"; and (4) the

[23] Though Plaintiff alleges the existence of "an account maintained by Credit Suisse containing substantial cash and securities of Y.C." and consisting of "distributions of property P.C. Lee and Vanessa received" that are supposedly part of the Marital Estate (AC ¶¶ 141-44), there conspicuously is no allegation as to the location of this supposed account or that it is in the possession of Defendants.

gratuitous property transfer was not a "proper gift for performing a moral obligation." (Prof. Jan Supp. Decl. ¶ 13.)

While Plaintiff does not cite Article 1020-1 in the Amended Complaint, as Prof. Jan explains, under Taiwan law Plaintiff's claim can be based only under Article 1020-1 because she seeks, among other things, to restore parties "to the status quo that existed prior to" any transfers; to void any "transfers of the assets, monies and property"; and to compel Defendants "to returns the assets, monies and property" received by Defendants. (AC, Prayer for Relief ¶¶ (E)-(G); Prof. Jan Supp. Decl. ¶ 5; id. Ex. A ¶ 14.) However, Plaintiff has not alleged any specific transfers that could be subject to a claim for annulment under Article 1020-1; nor has she sufficiently alleged the requisite elements of such a claim. (Prof. Jan Supp. Decl. Ex. A ¶ 14.) The conclusory, wholly unsupported allegation that "[t]he value of the property in the Marital Estate is presently known to be greater than double the value of the property paid to [Plaintiff] from Y.C.'s Taiwan Assets" does not suffice to plead an endangerment. (AC ¶¶ 157, 165; Prof. Jan Supp. Decl. Ex. A ¶ 14.) As mentioned, Plaintiff has failed to identify assets belonging to the Marital Estate subject to return. Moreover, the legal conclusion stated by Plaintiff that the distributions "were not 'proper gifts for performing a moral obligation'" (AC ¶¶ 6, 164), is insufficient to bring the claim within the scope of Article 1030-3 of the Civil Code. Apart from being a legal conclusion, the allegation says nothing about the other elements of such a claim (which need to be brought against all interested parties, not just Defendants, but also non-parties, e.g., the Trusts, who allegedly received the transferred assets and "benefited from an obviously uneven payment." (Prof. Jan Supp. Decl. ¶ 6.)

Third, such a claim is clearly time barred under Article 1020-2 because any such claim for annulment is extinguished if it is not exercised within six months from the time when the

husband or wife knows the reason for an annulment, or if one year has elapsed from the time the act has been committed. (Prof. Jan Supp. Decl. ¶ 5; id. Ex. A ¶ 12.) Plaintiff vaguely alleges conduct that occurred at some unspecified point during a five-year period commencing October 2003 and ending on October 15, 2008. Even using this outside date, the claim is well outside the limitations period of Article 1020-1. Plaintiff cannot avoid this limitations period by invoking a different inapplicable Civil Code Article (Article 1030-3). (Prof. Jan Supp. Decl. Ex. A ¶ 15.) Plaintiff's doing so would ignore the legislative intent of Article 1020-2, i.e., that requires the spouse to apply for annulment of the transfer no later than one year after the act. (Id.)

B. Count Three Fails to State a Claim Under Taiwan Law

Plaintiff contends in her third cause of action under Article 1146 that she "is entitled to restitution" from Defendants because they allegedly "infringed upon [her] right of inheritance by, among other things, . . . asserting that Plaintiff is not the only spouse of Y.C." (AC ¶¶ 170-72.) Plaintiff's claim is legally deficient because Article 1146 has been construed as applying only to an interference with the marital share that involves a challenge to one's status as an heir. (Prof. Jan Supp. Decl. ¶ 9.) Additionally, Winston and Plaintiff have previously acknowledged in the settlements that P.C. Lee is a wife entitled to a share of the martial estate and thus Plaintiff cannot be entitled to the full 50% spousal share. (Muscato Decl. Ex. E ¶ 9; Muscato Decl. Ex. J.)[24] Thus, Plaintiff's claim to 50% of the "Marital Estate" is without plausible factual support and her prior settlement agreements prevent her from now taking a different position. (Prof. Jan Supp. Decl. Ex. A. ¶ 18.) As noted above, see n.8 supra, the allegations that P.C. Lee has never

[24] Y.C.'s multiple marriages remained valid under Taiwan law. Under Article 992 of the then-applicable Civil Code (pre-June 3, 1985), multiple marriages remain valid unless annulled by a court and all spouses are each entitled to share in marital property. (Prof. Jan Supp. Decl. ¶ 11.) There is no allegation that any of Y.C.'s marriages were annulled.

been legally adjudicated a wife of Y.C., that the TNTA recognized Plaintiff as Y.C.'s only spouse, and that Defendants warranted not to challenge the TNTA's determination or Winston's authority do not alter the fact, as explained by Prof. Jan and as agreed to by Plaintiff and Winston, that P.C. Lee was, under Taiwan law, legally one of Y.C.'s wives. (Muscato Decl. Ex. E ¶ 9; Muscato Decl. Ex. J; Prof Jan Supp. Decl. ¶¶ 11-12; id. Ex. A ¶ 17.)

C. Count Four Fails to State a Claim Under Taiwan Law

The fourth cause of action under Article 767 of the Civil Code "demands the return of the property distributed or transferred from Y.C. to Defendants from Y.C.'s Estate." (AC ¶ 176.) As with Plaintiff's other Civil Code claims, this claim is barred by Article 1020's limitation period. Moreover, Plaintiff's putative interest in unspecified marital property does not confer on her any ownership interest or make her an "owner" under Article 767 entitled to demand the return of property. (Prof. Jan Supp. Decl. ¶ 8.) For these reasons, this claim fails as a matter of Taiwan law.

D. Counts Five to Nine Depend Upon Plaintiff Pleading Valid Claims Under Taiwan Law and, Thus, Likewise Fail to State a Claim for Relief

Because Plaintiff has failed to state a claim for interference or infringement of her marital share under the Taiwan Civil Code, her remaining claims, which are all derivative of those claims, must also fail. Articles 767, 1020-1, 1030-1, 1030-3 and 1146 of the Civil Code do not provide for claims for "conversion," "constructive trust" or "accounting" as alleged here. (Prof. Jan Supp. Decl. ¶ 8; id. Ex. A ¶ 16.) Additionally, the remedies claimed by Plaintiff, including punitive damages, are not available under Taiwan law. (Prof. Jan Supp. Decl. ¶ 8; id. Ex. A ¶ 16.) A claim for unjust enrichment, which is a disguised Article 179 claim (which Plaintiff fails to cite), also fails because Plaintiff does not specify any interest supposedly acquired by Defendants "without legal ground," a requirement under Taiwan law. (Prof. Jan Supp. Decl. ¶ 10.)

Plaintiff cannot avoid this result by asserting that these claims are governed by laws outside of Taiwan. Under the District of Columbia choice-of-law principles, Taiwan law applies to Counts Five through Nine of the Amended Complaint.[25] Plaintiff, a citizen of Taiwan (AC ¶ 10), through her alleged "attorney-in-fact" Winston, a resident of Taiwan (Muscato Decl. Ex. A, Preamble), purports to brings this action to recover alleged marital assets from her marriage with Y.C., a deceased citizen and domiciliary of Taiwan, on the basis of their marriage that is inarguably governed by Taiwan law. (See AC ¶¶ 1, 3-5, 7, 10, 21, 26.) Plaintiff's relationship as a widow of Y.C. is centered in Taiwan, where the Verified Complaint alleges that Dr. Wong formed the so-called "Heirs Committee." (See Muscato Decl. Ex. A ¶ 16.) Accordingly, the Amended Complaint fundamentally arises out of the application of the marital law of Taiwan.

Under the governmental interest analysis that the District of Columbia applies to choice-of-law issues, actions relating to marital relationships are routinely held to be governed by the law of the married parties' domicile based on the obvious interest in regulating the legal rights of

[25] To resolve choice-of-law issues, District of Columbia courts apply the "governmental interests analysis." Dist. of Columbia v. Coleman, 667 A.2d 811, 816 (D.C. 1995). Under this analysis, the court "evaluate[s] the governmental policies underlying the applicable laws and determine[s] which jurisdiction's policy would be more advanced by the application of its law to the facts of the case under review." Id. "As part of this analysis, [the court] also consider[s] the four factors enumerated in the Restatement (Second) of Conflict of Laws § 145: a) the place where the injury occurred; b) the place where the conduct causing the injury occurred; c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and d) the place where the relationship is centered." Coleman, 667 A.2d at 816. Application of the governmental interests test requires that the court "first look at each jurisdiction's policy to see what interests the policy is meant to protect, and then consider which jurisdiction's policy would be most advanced by applying the law of that jurisdiction," which requires, in part, "determining which jurisdiction has the most significant relationship to the dispute." Id. Thus, "'[w]hen the policy of one [jurisdiction] would be advanced by application of its law, and [the policy of the other jurisdiction] would not be advanced by application of its law, a false conflict appears and the law of the interested [jurisdiction] prevails." Id. (citations omitted; alterations in original).

married couples domiciled within a specific state or jurisdiction.[26] Indeed, as in Felch, Taiwan has significant governmental interest in the welfare of its married (and widowed) residents whereas the District of Columbia has only minimal, if any, interest in monitoring the conduct of foreign domiciliaries and their domestic affairs. Moreover, although the District of Columbia has an interest in deterring alleged wrongful conduct within in its borders, as in Felch, Taiwan's interest here regarding the welfare of married (and widowed) couples is more relevant to any claim arising out of a dispute over marital assets. Accordingly, under the governmental interests analysis, the Amended Complaint is governed by Taiwan law.

Moreover, the four factors enumerated in the Restatement (Second) of Conflicts, which the District of Columbia considers in its choice-of-law analysis, also favor application of Taiwan law. First, the Amended Complaint does not allege that the injury occurred in the District of Columbia. (AC ¶¶ 2, 7.) Rather, it occurred in Taiwan, where Plaintiff, a resident and citizen of Taiwan, was purportedly denied certain marital assets. (Second, the Amended Complaint does not allege that the conduct causing the injury occurred in the District of Columbia. Instead, the Amended Complaint alleges that purported transfers of unidentified assets were made from the Defendants to certain offshore trusts (id. ¶¶ 119-32) and includes many allegations not relating either to Defendants or to the District of Columbia. Third, the relationship is plainly centered on

[26] See Stutsman v. Kaiser Found. Health Plan of Mid-Atl. States, Inc., 546 A.2d 367, 373-76 (D.C. 1988) (holding that Virginia law applied to loss of consortium claim because, in part, Virginia "has an obvious interest in regulating the legal rights of married couples domiciled in Virginia"); see also Felch v. Air Florida, Inc., 562 F. Supp. 383, 386-87 & n.1 (D.D.C. 1983) (holding that Virginia law applied to loss of consortium claim brought by two married Virginia residents where the accident at issue occurred in D.C. because although "[t]he District does have a strong interest in punishment and deterrence of wrongful conduct causing harm to the plaintiffs within its borders . . . it has little, if not no, interest in the marital (or pre-marital) relationship of Virginia residents," whereas Virginia "is extremely interested in the welfare of its married residents" and "[a]s between these two interests, the latter is of course most relevant to a loss of consortium claim").

Taiwan as it involves an attempt by a citizen and resident of Taiwan to collect purported marital assets arising out of a Taiwan marriage to another, now deceased, citizen and resident of Taiwan. (Id. ¶¶ 1-5, 26-29.)

Because Counts Five though Nine are derivative of the defective Taiwan law causes of action, and because applicable Taiwan law does not recognize the remaining claims or remedies sought, the remainder of the Amended Complaint should be dismissed.

Even if D.C. law applied, and it does not, the Amended Complaint fails to adequately plead any of the causes of action asserted. Plaintiff's conversion claim fails because Plaintiff has not alleged, as required by D.C. law where money is the subject of a conversion claim, that she "has the right to a specific identifiable fund of money," but instead claims "a mere obligation to pay money." Curaflex Health Servs., Inc. v. Bruni, 877 F. Supp. 30, 32 (D.D.C. 1995). Rather, Plaintiff has alleged merely that her statutory right under Taiwan law to a share of unidentified property (which she has previously agreed to share pursuant to the terms of the settlement of the P.C. Lee Lawsuit) was "obstruct[ed]." (AC ¶ 183.) This is insufficient to state a plausible claim of conversion.

Plaintiff's unjust enrichment claim fails because she cannot establish, as required under D.C. law, that "the defendant[s'] retention of [any purported] benefit [conferred upon Defendants by her] is unjust." News World Commc'ns, Inc. v. Thompsen, 878 A.2d 1218, 1222 (D.C. 2005). As discussed above, Plaintiff cannot allege that Defendants are retaining any purported unidentified funds that were conferred by her on Defendants and rightfully belong to her under the relevant Taiwan law.

The claim for a constructive trust, which is more in the nature of an equitable remedy in any event, similarly fails. As explained above, Plaintiff has failed to state a claim under Taiwan

law for conversion and for unjust enrichment. In the absence of allegations that Defendants wrongfully converted any property belonging to Plaintiff or that Defendants have been unjustly enriched, the request for the imposition of a constructive trust fails as a matter of law. See Heck v. Adamson, 941 A.2d 1028, 1029 (D.C. 2008); Duggan v. Keto, 554 A.2d 1126, 1134 (D.C. 1989). When seeking the return of assets in an action for conversion or constructive trust, a plaintiff must articulate a "specific identifiable thing." See Knieriem v. Grp. Health Plan, Inc., 434 F.3d 1058, 1064 (8th Cir. 2006) ("'A constructive trust is imposed when a defendant has possession of particular funds or property that in good conscience belong to the plaintiff. The plaintiff must specifically identify the particular funds or property in order to obtain the constructive trust; it is not enough that the defendant merely owes the plaintiff some money.") (citation omitted) (emphasis added); Gateway Overseas, Inc. v. Nishat (Chunian) Ltd., No. 05 4260, 2006 WL 2015188, at *7 (S.D.N.Y. July 13, 2006) ("This conclusory allegation [of conversion] fails to specifically identify property that defendants allegedly converted. Plaintiff cannot articulate a 'specific identifiable thing.' To establish a cause of action for conversion, Gateway must allege an act of conversion consisting of an unauthorized assumption and exercise of the right of ownership or dominion over plaintiff's goods or personal chattel.").

Plaintiff's cause of action for an accounting fails because an essential element of an accounting claim is the existence of a fiduciary or trust relation. See, e.g., Tupling v. Britton, 411 A.2d 349, 351 n.4 (D.C. 1980) ("Equity has long had jurisdiction over suits for an accounting where a fiduciary relationship exists between the parties.") (emphasis added); see also George Gleason Bogert et al., The Law of Trusts & Trustees § 969 (3d ed. 2010). Plaintiff here makes no allegations whatsoever regarding any "fiduciary or trust" relation between her and any of the Defendants.

Finally, the claim for a civil conspiracy fails because the District of Columbia does not recognize civil conspiracy as an independent cause of action, but only as "'a means for establishing vicarious liability for an underlying tort.'" Murray v. Motorola, Inc., 982 A.2d 764, 771 n.8 (D.C. 2009) (citation omitted); see also Hill v. Medlantic Health Care Grp, 933 A.2d 314, 334 (D.C. 2007); Paul v. Howard Univ., 754 A.2d 297, 310 n.27 (D.C. 2000); Halberstam v. Welch, 705 F.2d 472, 479 (D.C. Cir. 1983). Since conspiracy liability depends on the presence of an underlying finding of tort liability, and all of Plaintiff's other tort claims fail, the civil conspiracy claim fails as well. See Exec. Sandwich Shoppe, Inc. v. Carr Realty Corp., 749 A.2d 724, 738 (D.C. 2000).

CONCLUSION

For the foregoing reasons, the Amended Complaint should be dismissed with prejudice.

Respectfully submitted,

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Date

/S/

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