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A.J. WILLIAMS
COMMON PLEAS COURT
GREENE COUNTY, OHIO

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
GENERAL DIVISION

ANTIOCH UNIVERSITY ADVISORY BOARD OF GOVERNORS,	:	**Case No. 2026CV0911**
Plaintiff,	:	**Judge Adolfo A. Tornichio** **Judge Stephanie R. Hayden**
v.	:	
COALITION FOR THE COMMON GOOD,	:	
Defendant.	:	

THERESE CANNON, Individually and on behalf of the Coalition for the Common Good and the Antioch University Advisory Board of Governors,	:	**Case No. 2026CV1048** **Consolidated with Case No. 2026CV0911**
Plaintiff,	:	
v.	:	
COALITION FOR THE COMMON GOOD,	:	
Defendant.	:	

DEFENDANT COALITION FOR THE COMMON GOOD'S MOTION TO DISMISS WITH PREJUDICE PLAINTIFF ANTIOCH UNIVERSITY ADVISORY BOARD OF GOVERNORS' VERIFIED COMPLAINT

Pursuant to Ohio Rules of Civil Procedure 12(B)(1) and (6), Defendant Coalition for the Common Good ("CCG") respectfully moves this Court to dismiss with prejudice Plaintiff Antioch

University Advisory Board of Governors' ("Plaintiff," or "Former Advisory Board") Verified Complaint. CCG submits that the Former Advisory Board lacks both standing and capacity to assert the claims at issue and cannot otherwise sustain cognizable claims upon which relief could be granted. Accordingly, CCG asks this Court to dismiss with prejudice the Former Advisory Board's Verified Complaint ("Complaint"). A memorandum in support and proposed order are attached hereto.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Through its Complaint, the Former Advisory Board seeks to enjoin the fiduciary CCG Board from taking duly-authorized board actions and a court declaration that the non-fiduciary Former Advisory Board has non-extinguishable approval rights over CCG Board actions. In denying the Former Advisory Board's Preliminary Injunction Motion, this Court correctly concluded that the Former Advisory Board lacks standing to assert its contractual and quasi-contractual claims. The Court's standing analysis and conclusions apply equally to this motion to dismiss (the "Motion") and all causes of action in the Complaint. Consequently, this Court should grant the Motion and dismiss with prejudice the Complaint because the Former Advisory Board lacks standing and capacity to sue, and has failed to state a claim upon which relief can be granted.

II. FACTUAL ALLEGATIONS IN THE VERIFIED COMPLAINT

A. Antioch University, Otterbein University, and the Coalition for Common Good

CCG, a corporation formerly known as "Antioch University" and still doing business in the name of "Antioch University," is an Ohio nonprofit organization. Compl. ¶¶ 5, 7; Exh. A, 1.[1] In June 2023, the then-Antioch University ("Antioch") entered into a joint venture with Otterbein University ("Otterbein") and the two formed the Coalition for the Common Good. Compl. ¶ 76. The two schools executed an Affiliation Agreement that created a shared governance model for the CCG. Compl. ¶¶ 7, 79, 80, 81. Under the Affiliation Agreement, Antioch and Otterbein were identified as the "Founding Members." Exh. A, 1. The parties also agreed to complete various transition steps:

[1] Referenced exhibits are those attached to the Former Advisory Board's Verified Complaint.

- The legal entity previously known as "Antioch University" would be renamed "Coalition for the Common Good";
- CCG's Board of Directors would be structured such that it had equal representation from Antioch and Otterbein;
- The educational operations of Antioch would continue as an operating division of CCG under the name "Antioch University" (i.e., no longer a distinct legal entity);
- CCG would become the sole member of Otterbein, but Otterbein's status as a distinct legal entity would remain;
- Otterbein would contribute cash to CCG; and
- The parties would enter into certain agreements described further in the Affiliation Agreement setting forth their ongoing relationship

Compl. ¶¶ 77–82; Exh. A at 1. Simultaneously, the then-Antioch University Board of Governors approved its Amended and Restated Articles of Incorporation ("Amended Articles"), wherein Antioch University changed its corporate name to the Coalition for the Common Good, effective upon the filing of the Amended Articles on June 30, 2023. Compl. ¶ 13. The then-Antioch Board of Governors resigned from their roles as that Board ceased to exist and became the members of the newly formed Antioch University Advisory Board of Governors. Compl. ¶13. The CCG Board became the governing board for the CCG. Compl. ¶ 16. On June 30, 2023, the Amended Articles were filed, Antioch University became CCG, and CCG began operating an "Antioch Division" of CCG, doing business as "Antioch University." Compl. ¶ 81.

1. CCG Board of Directors

Under the CCG's Amended and Restated By-laws ("CCG By-laws," effective July 1, 2023), the CCG Board enjoys equal representation from the Antioch Division and Otterbein. Compl. ¶ 25. The nine-member CCG Board is comprised of four Antioch Directors, four Otterbein Directors, and one jointly nominated and appointed independent Director. Compl. ¶ 25–26. These Directors are the CCG Board members nominated and elected according to the CCG By-laws. *See* Exh. C, Art. II. Sec. 3.3. And, although the CCG Board has several committees, including one

comprised of the Antioch Division Directors (also known as, the "Antioch Standing Committee") and another comprised of the Otterbein Directors (the "Otterbein Standing Committee"), the Former Advisory Board is ***not*** a CCG Board committee. Exh. C, Art. VI., Sec. 6.1, 6.4, and 6.5.

Like the Amended Articles, the CCG By-laws vest the CCG Board with the broad authority to "oversee the management and governance" of CCG, of which Antioch Division, as explained above, is an operating division. *See* Exh. C, at Art. I., Sec. 1.2. Specifically, "**[CCG], including the Antioch Division, shall be governed by the Board,** whose members shall act as the Corporation's 'directors' as defined under the Ohio Nonprofit Corporation Law." *Id.* at Art. II., Sec. 2.1 (emphasis added). Regarding CCG policies such as governance policies, the CCG Board may retain or delegate responsibility for such policies, **including those of the Antioch Division**:

> **2.4 Policies**. The Board is ultimately responsible for the Corporation's policies and those of the Antioch Division, including but not limited to general policies, Board governance policies, business and financial management policies, human resources policies, academic policies, student policies, institutional advancement policies, and information technology policies. Certain authority may be delegated by the Board to the President, other administrative and management personnel and, with respect to the Antioch Division, to the Antioch Advisory Board (defined below).

Id. at Art. II., Sec. 2.4. As to further delegations of CCG Board authority, the By-laws state:

> **ARTICLE III. BOARD OF DIRECTORS**
>
> **3.1 Authority of the Board.** As the Corporation's governing board, the Board shall have broad and sole authority over the affairs of the Corporation to the fullest extent permitted by these By-Laws, the Ohio Nonprofit Corporation Law and other applicable law, except to the extent such authority is delegated pursuant to these By-Laws or Board action to the Antioch Standing Committee, the Otterbein Standing Committee or another authorized committee of the Board.

Id. at Art. III, Sec. 3.1; Compl. ¶ 18. The CCG By-laws state that the CCG Chief Executive Officer is the "President," and "[g]eneral administrative responsibility is delegated to the President, who

may in turn, delegate management responsibility to appropriate [CCG] personnel, including, but not limited to, the President of the Antioch Division." *See* Exh. C, at Art. II., Sec. 2.3.

2. Antioch Standing Committee

The CCG By-laws delegate certain authority to the Antioch Standing Committee—a subset of the CCG Board and distinct body from the Former Advisory Board. Compl. ¶¶ 101, 103, 105; *see* Exh. C, at Art. VI., Sec. 6.4. On its own initiative, the Antioch Standing Committee is authorized to act exclusively on, among other delineated matters: (i) appointment, removal, and promotion of Antioch Division faculty; (ii) changes to curricular requirements; and (iii) the acquisition, sale, or lease of assets or entry into any contract of $1 million or less. Compl. ¶ 29. Its delegated authority to initiate and act upon other specified matters (e.g., Amendments to CCG's By-laws or Articles of Incorporation), however, is, "also subject to a Majority Vote or Supermajority Vote of [CCG's] Board under Article IV hereof." Compl. ¶¶ 29, 105.

3. The Former Advisory Board

The Former Advisory Board was ***not*** a CCG Board committee. It was a non-fiduciary body created by resolution of the pre-affiliation Antioch University Board of Governors to "***advise*** the [CCG Board] on certain matters related to the Antioch Division (as defined in the Antioch Advisory Board Charter)." Compl. ¶ 13; *see* Exh. D, Sec. I, II. (emphasis added). With one exception, the CCG By-laws granted no independent authority to the Former Advisory Board. *See* Exh. C. Indeed, the CCG By-laws referenced the Former Advisory Board just four times. *Id.* The first mention, under "Policies," stated that the CCG Board is responsible for all CCG policies and may delegate certain authority "with respect to the Antioch Division, to the Antioch Advisory Board (defined below)." *See* Exh. C, at Art. II., Sec. 2.4. Two other mentions relate to the Former Advisory Board's role in nominating or removing Antioch Directors. *Id.* at Art. III, Sec. 3.3.1.A. and 3.4.2; Compl. ¶ 94. The final mention, under "Board Committees - Antioch Standing

Committee," states that "[t]he Antioch Standing Committee shall consist, *ex officio*, of all the Antioch Directors, who shall oversee, *in consultation with the Antioch Advisory Board*, matters generally related to the Antioch Division." *See* Exh. C, at Art. VI, Sec. 6.4. (emphasis added). In other words, besides granting the Former Advisory Board (with the Antioch Standing Committee) the limited authority to nominate the four Antioch Directors to the Board, the CCG By-laws delegated no decision-making authority to the Former Advisory Board.

Before closing with Otterbein on June 30, 2023, the then-Antioch University Board of Governors delegated certain authority to the Former Advisory Board via the Antioch Advisory Board Charter. Compl. ¶ 109. The Former Advisory Board Charter acknowledges in Article I that the Former Advisory Board is a "***non-fiduciary advisory board*** of the [CCG] Board of Directors (the 'Board') and the Antioch Standing Committee (the 'Committee') thereof." Exh. D at Art. I (emphasis added). Article II states that the Former Advisory Board's purposes are "subject to limitations imposed by applicable law, accreditation standards and certain approval rights of [the Antioch Standing Committee] and the [CCG Board] pursuant to the [CCG By-laws]." *Id.* at Art. II. Article III then lists twenty-one delegated Advisory Board "authorities," the exercise of most of which requires the additional approval of the Antioch Standing Committee or both the Antioch Standing Committee and CCG Board. *Id.* at Art. III (listing delegated authorities requiring fiduciary approval, including "any other matters related to the operations of the Antioch Division that, from time to time, require the action of a fiduciary board of the Antioch Division.").

B. The Governance Disputes

Over the last several months, there has been an ongoing dispute over governance matters between the non-fiduciary Former Advisory Board and the fiduciary CCG Board. Compl. ¶¶ 129, 132.

In May 2026, to address the repeated governance disputes, the CCG Board notified its members that it would consider a resolution to abolish the Former Advisory Board and its Charter altogether at the June 30, 2026 meeting. *See* Compl. ¶¶ 140–41. When that meeting came, in lieu of passing the resolution, the CCG Board passed a voluntary mediation resolution, directing CCG and the Former Advisory Board to attempt to mediate the dispute. Compl. at ¶ 152. In mid-August 2026, just weeks before the planned mediation, the Former Advisory Board notified CCG that the Former Advisory Board would not authorize the CCG to pay obligations that the Former Advisory Board deemed non-"Antioch" expenses (e.g., the fees of CCG's counsel for mediation, among other CCG-related expenses) as those expenses did not align with the new Accounts Payable policy that the Former Advisory Board had adopted. Compl. ¶¶ 165–68; *see* Exh. G.

On August 28, 2026, the CCG Board held an emergency board meeting to re-consider abolishing the Former Advisory Board. Compl. ¶ 169. At the meeting, six of the eight CCG Board Directors present voted for and passed a resolution abolishing the Former Advisory Board, cancelling its Charter, and making related operational changes. Magistrate's Decision Denying Preliminary Injunction and Interim Order of Adoption at 3, [*hereinafter* Magistrate's Decision].

III. RELEVANT PROCEDURAL HISTORY[2]

That same day, the Former Advisory Board filed a complaint against CCG asserting nine separate causes of action and a Motion for a Temporary Restraining Order (the "TRO Motion") and Application for Preliminary Injunction (the "PI Application"). Compl. 1. On September 1, 2026, before having the benefit of CCG's position on the TRO Motion, Judge Adolfo Tornichio

[2] CCG respectfully asks this Court to take judicial notice of this Court's own Orders and the parties' briefing filed during the preliminary injunction phase of this case. *See Union Loc. Assn. of Classroom Tchrs. of OEA/NEA v. Ohio Bd. of Edn.*, 2007-Ohio-5053, ¶¶ 11–12 (reviewing trial court decision on a motion to dismiss and finding "[a] trial court 'may only take judicial notice of prior proceedings in the immediate case,'" but cannot take judicial notice of proceedings in a different case).

granted the motion and issued a TRO that restrained CCG's corporate operations in numerous ways. Order Granting TRO. CCG subsequently filed its Opposition to the TRO Motion and the Former Advisory Board filed a Reply. Def.'s Opp'n to Pl.'s Mot. For Prelim. Inj; Pl.'s Reply to Def.'s Opp'n to Pl.'s Mot. For Prelim. Inj.

On September 14, 2026, the parties appeared before Magistrate Stephanie Hayden for a scheduled hearing on the PI Application. Magistrate Hayden took the matter under advisement and issued an Order Regulating Proceedings (i) extending the TRO for another fourteen (14) days, and (ii) consistent with the parties' representations at the hearing, stating that "modifications requested related to data and financial account access are taken under advisement and will be addressed in a separate entry." Magistrate's Order Regulating Proceedings.

On September 24 and 28, 2026, upon consideration of a joint motion of the parties and a motion by the Former Advisory Board to modify the TRO, respectively, Magistrate Hayden ordered that the TRO be modified in two respects. *First*, Magistrate Hayden ordered that CCG be provided copies of corporate records saved in several specified locations on the Antioch Division's network. *See* September 24, 2026 Magistrate's Order. *Second*, Magistrate Hayden ordered that CCG funds held in CCG accounts be used to pay all unpaid invoices against CCG, as identified in an exhibit to the relevant motion. *See* September 28, 2026 Magistrate's Order.

On September 28, 2026, the Court issued a Magistrate's Decision Denying Preliminary Injunction and Interim Order of Adoption in the Earlier Assigned Case. Magistrate's Decision. In recommending denial of PI Application, Magistrate Hayden found the following:

- On June 11, 2023, the then-Antioch University Board of Governors passed a resolution approving the Amended and Re-Stated By-laws;
- The June 11, 2023 resolution also formed the Antioch University Advisory Board and approved the Antioch University Advisory Board Charter;

- As of the effective date of the Affiliation Agreement, the then-members of the Antioch University Board of Governors resigned their board positions and were replaced by the new CCG Board of Directors;
- The former members of the Antioch University Board of Governors became the members of the newly created Antioch University Advisory Board;
- According to its Charter, the Antioch University Advisory Board is a non-fiduciary advisory board of the CCG Board of Directors and the CCG Board's Antioch Standing Committee.;
- The stated purpose of the Antioch University Advisory Board (subject to limitations imposed by law, accreditation standards, and approval rights of the CCG Board's Antioch Standing Committee and CCG Board of Directors) falls into three categories: (1) general oversight of the operations of the Antioch Division, (2) approval of certain matters related to the overall operations of CCG, and (3) the nomination of representatives to the CCG Board.

Magistrate's Decision at 2–3. Magistrate Hayden also found that Plaintiff "AU Advisory Board lacks standing to bring its breach of contract and its quasi-contractual claims against CCG. As a result, the undersigned further finds the AU Advisory Board does not have a substantial likelihood of success on the merits of its contract and quasi-contractual claims against CCG" (upon which the PI Application was based). *Id.* In entering the Judgment Entry Approving and Interim Order of Adoption of Magistrate's Decision, Judge Tornichio "approve[d], confirm[ed], and adopt[ed] the above Magistrate's Decision as an Order of this Court" and ordered that Former Advisory Board's PI Application was denied. *Id.*[3]

IV. STANDARD OF REVIEW

A court may dismiss a complaint under Civ. R. 12(B)(1) for a lack of subject matter jurisdiction. *Eichenberger v. Woodlands Assisted Living Residence, L.L.C.*, 2013-Ohio-4057, ¶ 12.

[3] Under Civ. R. 53, the Former Advisory Board had until October 12 to file objections to Magistrate Hayden's Decision. Because it did not, any objections are waived. Additionally, on September 29, 2026, Therese Cannon, individually and "on behalf of the Coalition for the Common Good and the Antioch University Advisory Board of Governors" filed a complaint against CCG asserting nearly identical causes of action, except that she included a tenth cause of action for breach of fiduciary duty. Case No. 2026 CV 1048. On October 9, 2026, this Court consolidated the two cases. October 9, 2026 Judgment Entry. This Motion seeks to dismiss only the Former Advisory Board's Complaint. CCG's response to Cannon's complaint will be filed in due course.

In assessing whether it has subject matter jurisdiction, a court tests "whether any cause of action cognizable by the forum has been raised in the complaint." *Id.* The "court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction under Civ.R. 12(B)(1), and it may consider pertinent material without converting the motion into one for summary judgment." *Id.*

On the other hand, a "motion to dismiss under Civ. R. 12 (B)(6) for failure to state a claim is procedural and tests the sufficiency of the complaint." *Modern Off. Methods, Inc. v. Ohio State Univ.*, 2012-Ohio-3587, ¶ 9. "In ruling on a Rule 12(B)(6) motion, a court inquires whether the allegations constitute a statement of claim under Civil Rule 8(A)." *Slife v. Kundtz Prop., Inc.*, 40 Ohio App. 2d 179, 182 (Ct. 1974). Although the court takes the complaint's factual allegations as true, drawing only those reasonable inferences in favor of the plaintiff, "the court does not have to presume the truth of conclusions unsupported by factual allegations. " *Nicolazzo v. Yoingco*, 2007-Ohio-7269, ¶ 5. Indeed while "the complaint does not need detailed factual allegations, it requires more than mere conclusions or a recitation of the elements of the claim." *Abramezyk v. City of Willowick*, 2017-Ohio-9336, ¶ 33. Lastly, materials "incorporated in a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12(B)(6) motion to dismiss." *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 673 N.E.2d 1281, 1283 n.1 (Ohio App. Ct. 1997).

V. THE FORMER ADVISORY BOARD LACKS CAPACITY TO SUE, FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, AND THIS COURT LACKS SUBJECT MATTER JURISDICTION

A. The Former Advisory Board, a Non-legal entity, Lacks the Capacity to Sue the CCG

Initially, the Former Advisory Board cannot maintain its action against the CCG because it is not a recognized legal entity. "It is well established that both plaintiff and defendant in a lawsuit

must be legal entities with the capacity to be sued." *Patterson v. V & M Auto Body*, 589 N.E.2d 1306, 1308 (Ohio 1992). A party lacking the legal capacity to sue or be sued is one that is not *sui juris*. *Huffman v. Cleveland, Parking Violations Bur.*, 2016-Ohio-496, ¶ 23. Ohio courts have recognized various parties as not *sui juris*. *See Patterson*, 589 N.E.2d at 1308 (sole proprietorship); *see also Mollette v. Portsmouth City Council*, 2006-Ohio-6289, ¶ 15 (city council); *see also Ohio Dep't of Hum. Serv. v. Ohio Dep't of Transp.*, 605 N.E.2d 1007 (Ohio App. Ct. 1992) (state department); *see also State ex rel. Smith v. Hamilton Cnty. Ct. of Common Pleas*, 2024-Ohio-2779 (court of common pleas).

Of relevance here, even a corporation's board of directors is not *sui juris* under Ohio law. This is because a board of directors "cannot own property or sue in its own name." *Flarey v. Youngstown Osteopathic Hosp.*, 2002-Ohio-6899, ¶ 4. Rather, that board is the "collection of individuals with the ultimate responsibility of making decisions on behalf of the corporation." *Id.* at ¶ 11. Because a board of directors cannot sue in its own name, it cannot delegate the authority to sue in its own name. *Health Care Equalization Comm. of Iowa Chiropractic Soc. v. Iowa Med. Soc.*, 501 F. Supp. 970, 976 (S.D. Iowa 1980) (highlighting how, although board of directors may delegate authority to a committee, board cannot delegate authority it does not have such as authority to sue in its own name).

As applied here, the CCG Board created the Former Advisory Board and its Charter via Board resolution and delegated it with certain enumerated authorities. The CCG Board did not delegate (nor could it) any authority to the Former Advisory Board to sue in its own name, much less sue the very corporate entity that formed it. *Id.* Therefore, the Former Advisory Board lacks the capacity to sue CCG.

B. The Former Advisory Board Fails to State a Claim in Count I for Injunctive Relief Because Injunctive Relief Is a Remedy Not a Claim for Relief

In Count I, the Former Advisory Board asserts a claim for "Injunctive Relief." Compl. at 28. But in Ohio, "injunctive relief is a remedy, not a cause of action." *Bresler v. Rock*, 2018-Ohio-5138, ¶ 45; *see also Premier Health Care Servs., Inc. v. Schneiderman*, No. 18795, 2001 WL 1479241, at *4 (Ohio Ct. App. Aug. 21, 2001) (preliminary injunction is a remedy). Indeed, Ohio courts recognize that injunctive relief is "defined as a provisional remedy, both by statute and by the Ohio Rules of Civil Procedure." *Id.*; Ohio Rev. Code Ann. § 2505.02 (West) (defining preliminary injunction as provisional remedy); Civ. R. 65 (titled "Provisional and final remedies").

Here, Count I is styled as an action for "Injunctive Relief." Compl. at 28. Because such a claim is a remedy rather than a cause of action, Count I fails to state a claim for which relief can be granted, and the Court should dismiss it. *See Woods v. Sharkin*, 2022-Ohio-1949, ¶ 70–71, 192 N.E.3d 1174, 1195 (affirming dismissal for failure to state a claim for injunctive relief because injunctive relief is a remedy not a cause of action).

C. The Former Advisory Board Lacks Standing To Sue the CCG and Otherwise Fails To State Cognizable Claims For *Ultra Vires*, Breach of Contract, Promissory Estoppel, Unjust Enrichment, Tortious Interference, and Declaratory Judgment

The Former Advisory Board asserts various claims purporting to assert a legal interest in those claims. As this Court has already correctly recognized, however, "[t]he AU Advisory Board's claims are premised on the assertion that CCG did not comply with its by-laws and/or the AU Advisory Board Charter and that CCG's actions constituted an *ultra vires* attempt to amend the AU Advisory Board's Charter." Magistrate's Decision at 4. Because the Former Advisory Board lacks standing to assert *ultra vires* claims and otherwise fails to assert cognizable legal claims, its claims necessarily fail as a matter of law.

1. The Former Advisory Board lacks standing to assert ultra vires claims

In denying the Former Advisory Board's motion for a preliminary injunction, the Court correctly stated that, "R.C. 1702.12(I)(1) limits the class of litigants that may bring an ultra vires action against a corporation to the State of Ohio, the corporation itself, or a member of the corporation." Magistrate's Decision at 4; *see also Starkey v. Am. Legion Post 401*, 2010-Ohio-2166 at ¶ 31–32 (upholding summary judgment for non-profit corporation that terminated appellant in violation of its by-laws because appellant had no standing to bring *ultra vires* claim and appellant's action was not for "an injury suffered by the corporation or by reason of some derivative membership interest"). This Court found that: "The AU Advisory Board is clearly not the State of Ohio, nor is it CCG. The uncontroverted evidence establishes that the AU Advisory Board is not a member of CCG." *See* Ohio Rev. Code Ann. § 1702.01 (defining member as "one having membership rights and privileges in a corporation in accordance with its articles or regulations"); *see also* Exh. C Sec. 2.2 (not identifying the Former Advisory Board as a member of the CCG Board). Thus, the Court properly concluded that "the AU Advisory Board lacks standing to assert its *ultra vires* claims against CCG." *See* Magistrate's Decision at 4.

The Court's legal conclusions in denying the PI Application apply with equal force to this Motion. To the extent that any of the Former Advisory Board's causes of action are premised upon assertions that CCG acted *ultra vires*, those claims must be dismissed due to lack of standing. To the extent that the Former Advisory Board asserts *ultra vires* claims based on alleged CCG By-law violations, such causes of action also fail because by-law violations do not give rise to *ultra vires* claims. *Carr v. Acacia Country Club Co.*, 2012-Ohio-1940 ¶ 44 ("[T]he notion of *ultra vires* acts by a corporation does not encompass a corporation's violation of its own regulations or by-laws.").

2. *Because the Former Advisory Board was not a party to any operative contract nor the recipient of any enforceable promise, it lacks standing to assert cognizable claims for breach of contract, promissory estoppel, and unjust enrichment*

The Former Advisory Board asserts three contract and quasi-contractual causes of action that fail as a matter of law: breach of contract (Count III), promissory estoppel (Count IV), and unjust enrichment (Count V). But because the Former Advisory Board was not a party to the alleged governing agreements and did not exist when those agreements were negotiated and executed, it fails to state cognizable contractual or quasi-contractual claims.

First, the Former Advisory Board lacks standing to assert its breach of contract claim (Count III). A plaintiff asserting a breach of contract claim must prove these elements: "the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff." *Doner v. Snapp*, 649 N.E.2d 42, 44 (Ohio Ct. App. 1994). "To further prove the existence of a contract, the plaintiff must show the elements of mutual assent (generally, offer and acceptance) and consideration, that there was a 'meeting of the minds' and that the contract was definite as to its essential terms." *Nilavar v. Osborn*, 711 N.E.2d 726, 732 (Ohio Ct. App. 1998), modified on reconsideration (May 12, 1998) (citations omitted).

"It is generally recognized that a contract is binding only upon the parties to that contract." *TRINOVA Corp. v. Pilkington Bros., P.L.C.*, 638 N.E.2d 572, 575 (Ohio App. Ct. 1994). With regard to Ohio corporations, a corporation's rules and regulations have the force of contracts between the corporation and its members and between the members themselves. *Westbrook v. Swiatek*, 2012-Ohio-2451, ¶ 35. And yet "only an aggrieved shareholder—either derivatively or individually, depending on the injury—may base a cause of action against the directors on a violation of the code of regulations." *Carr*, 2012-Ohio-1940 ¶ 34. Thus, for corporations also, only a party to a contract can "prosecute an action for breach of contract." *Brook Park v. Cleveland*,

2023-Ohio-3365, ¶ 33 (quoting *Sutherland v. Gaylor*, 10th Dist. Franklin No. 20AP-257, 2021-Ohio-1941, 2021 WL 2343001, at ¶ 24).

Here, the Former Advisory Board fails to satisfy the first element for a breach of contract action because it was not a party to a contract with CCG. As to the CCG By-laws, the Former Advisory Board was not a member of the CCG Board. *See* Exh. C Sec. 2.2; *see also supra* Sec. V.B.i. Thus, as this Court properly recognized, the Former Advisory Board was not a party to the CCG By-laws. Magistrate's Decision at 4. Additionally, the Former Advisory Board was not a party to the Affiliation Agreement. *See* Exh. A at 1 (defining parties to agreement as then-Antioch University, Otterbein University, and Antioch SSO., Inc.). Moreover, the CCG was not a party to the Former Advisory Board's Charter. *See* Exh. D; *see also* Magistrate's Decision at 4 (finding same). Because the Former Advisory Board and CCG are not both parties to a contract at issue, Count III must be dismissed.[4]

Second, the Former Advisory Board's quasi-contractual claims—promissory estoppel (Count IV) and unjust enrichment (Count V)—fail for the same reason. Promissory estoppel requires "a promise, clear and unambiguous in its terms; reasonable reliance and foreseeable reliance; and injury resulting from that reliance." *Nilavar*, 711 N.E.2d at 736. The Former Advisory Board alleges that "Otterbein promised Antioch," that the "CCG continued making that promise to Antioch representatives," and that "Antioch negotiated for terms . . . ." Compl. ¶¶ 233–35. Even taken as true, such allegations do not state a claim for promissory estoppel because those alleged promises were not made to the Former Advisory Board, a body that did not exist at the time any

[4] Even were the Former Advisory Board a party to a contract with CCG (which it is not), the Former Advisory Board's breach of contract claim (like its unjust enrichment and promissory estoppel claims) are premised on assertions that CCG violated its By-laws and acted *ultra vires*. As this Court already recognized, By-laws violations do not constitute *ultra vires* violations and, by extension here, viable breach of contract claims. Magistrate's Decision at 4; *see also Carr*, 2012-Ohio-1940, ¶ 34.

alleged promises were made. Compl. ¶ 13. It follows that because the Former Advisory Board did not receive any clear and unambiguous promise, it could not reasonably and foreseeably rely on that promise. The Former Advisory Board lacks standing to state a claim for promissory estoppel.

Similarly, "[t]o establish unjust enrichment, a plaintiff must show the following: (1) a benefit conferred upon defendant by plaintiff, (2) knowledge by defendant of the benefit, and (3) acceptance or retention by defendant of the benefit under circumstances that make it inequitable for defendant to retain the benefit without payment of its value." *Chesnut v. Progressive Cas. Ins. Co.*, 2006-Ohio-2080, ¶ 29. It "includes not only loss on one side but gain on the other, with a tie of causation between them." *Fairfield Ready Mix v. Walnut Hills Assocs.*, 572 N.E.2d 114, 116 (Ohio App. Ct. 1988).

The Former Advisory Board claims that "Antioch conferred the benefit of its identity, reputation, image, campuses, faculty, and other resources, to CCG" and that "CCG seeks to retain the benefits derived from Antioch forming CCG as a joint venture without payment." Compl. ¶¶ 242, 246. Even taken as true, the Former Advisory Board (which did not then exist) did *not* confer any benefit to CCG. *See Fairfield Ready Mix*, 572 N.E.2d at 116 (reasoning that because plaintiff failed to show gain to defendant, unjust enrichment claim failed). Hence, the Former Advisory Board also lacks standing to state a claim for unjust enrichment.

3. Because the Former Advisory Board does not allege an existing or prospective relationship with a financial institution and the accrediting body, it cannot assert a claim for tortious interference with business relationships

In Counts VI and VIII, the Former Advisory Board asserts tortious interference with business relationships claims arising from alleged relationships with financial institutions where "Antioch maintains a bank account" and the Higher Learning Commission, a higher education institution accrediting body, respectively. Compl. ¶¶ 249–256 and 266–274. The Former Advisory

Board fails to state cognizable claims, however, because CCG, doing business as "Antioch University"—not the Former Advisory Board—enjoys these business relationships, making it impossible for CCG to interfere with its own business relationships or for the Former Advisory Board to have suffered any cognizable injury.

"'The elements of tortious interference with a business relationship are (1) a business relationship; (2) the tortfeasor's knowledge thereof; (3) an intentional interference causing a breach or termination of the relationship; and (4) damages resulting therefrom.'" *Walter v. ADT Sec. Sys., Inc.*, 2007-Ohio-3324, ¶ 31 (quoting *Diamond Wine & Spirits v. Dayton Heidelberg Distrib. Co., Inc.*, 2002-Ohio-3932, ¶ 23). "'The basic principle of a "tortious interference" action is that one, who without privilege, induces or purposely causes a third party to discontinue a business relationship with another is liable to the other for the harm caused thereby.'" *Id.* at ¶ 33 (quoting *Wolf v. McCullough-Hyde Mem. Hosp.*, 67 Ohio App. 3d 349, 355 (1990)). A "vague assertion that a party interfered with certain unspecified business relationships is insufficient to state a claim for tortious interference with a business relationship." *Emanuel's LLC v. Restore Marietta, Inc.*, 2023-Ohio-147, ¶ 23. And, of course, a "party cannot tortiously interfere with his own business relationship." *Dolan v. Glouster*, 2007-Ohio-6275, ¶ 35.

In Count VI, the Former Advisory Board alleges that "Antioch [University] maintains a business relationship with many financial institutions." Compl. ¶ 250. But the Former Advisory Board also correctly alleges that the "educational operations of Antioch before closing [would] continue as an operating division of [CCG] after Closing under the name 'Antioch University.'" Compl. ¶ 79. As such, CCG, doing business as "Antioch University"—not the Former Advisory Board—enjoys business relationships with certain financial institutions, at which it maintains

certain CCG bank accounts.[5] Further, in Count VIII, the Former Advisory Board asserts that "Antioch [University] maintains a business relationship with HLC regarding Antioch [University]'s Accreditation." Compl. ¶ 267. But again, it is CCG doing business as "Antioch University"—not the Former Advisory Board—that enjoys a business relationship with HLC.

The Former Advisory Board cannot maintain claims for tortious interference with business relationships that only CCG enjoys. *First*, CCG cannot interfere with its own business relationships. *Dolan*, 2007-Ohio-6275, ¶ 35 ("[A] party cannot tortiously interfere with his own business relationship"). *Second*, because the Former Advisory Board does not allege (nor could it) that it also enjoys business relationships with CCG's financial institutions or HLC, the Former Advisory Board cannot allege any resulting harm from CCG's handling of those business relationships. *Walter*, 2007-Ohio-3324, ¶ 31 (identifying the first element of a tortious interference with a business relationship claim as "(1) a business relationship"). Accordingly, the Former Advisory Board fails to allege cognizable claims for tortious interference with business relationships, and the Court should dismiss Counts VI and VIII.

4. Because the Former Advisory Board does not allege that it is a party to any operative contract with a financial institution or HLC, it cannot maintain its claims for tortious interference with contract

In Counts VII and IX, the Former Advisory Board generally asserts tortious interference with contract claims arising from alleged contracts with financial institutions where "Antioch [University] maintains a bank account" and the HLC, respectively. Compl. ¶¶ 257–265 and 275–283. The Former Advisory Board fails to state cognizable claims, however, because CCG, doing business as "Antioch University"—not the Former Advisory Board—is the party to these alleged

[5] The Former Advisory Board has acknowledged and this Court has already determined that the bank accounts at issue are CCG bank accounts—not bank accounts of the Former Advisory Board. *See* Plaintiff's Motion to Modify TRO filed on September 18, 2026, and Magistrate's Order Modifying TRO filed on September 28, 2026.

contracts, making it impossible for CCG to interfere with its own contracts or for the Former Advisory Board to have suffered any cognizable injury.

A party alleging tortious interference with contracts must establish "(1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) the lack of justification, and (5) resulting damages." *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 707 N.E.2d 853, 855 (Ohio App. Ct. 1999). "This tort occurs when 'a person, without a privilege to do so, induces or otherwise purposely causes a third person not to enter into, or continue a business relation with, another, or not to perform a contract with another.'" *Castillo v. Associated Pathologists*, 6th Dist. No. L-06-1076, 2006-Ohio-645, at ¶ 28 (quoting *Cooper v. Jones*, 4th Dist. No. 05CA7, 2006-Ohio-1770, ¶ 18). That said, an "individual or entity cannot be held liable for inducing a breach of contract when that individual or entity is a party to the contract." *W. & S. Life Ins. Co. v. JPMorgan Chase Bank, N.A.*, 54 F. Supp. 3d 888, 913 (S.D. Ohio 2014).

In Count VII, the Former Advisory Board asserts that "Antioch [University] has entered into contracts with financial institutions related to its bank accounts." Compl. ¶ 258. But again, the Former Advisory Board acknowledges that the "educational operations of Antioch [University] before closing [would] continue as an operating division of [CCG] after Closing under the name 'Antioch University.'" Compl. ¶ 79. As such, CCG, doing business as "Antioch University"—not the Former Advisory Board—has entered into contracts with financial institutions related to CCG's—not the Former Advisory Board's—bank accounts. Additionally, in Count IX, the Former Advisory Board asserts that "Antioch [University] maintains a contractual relationship with HLC regarding Antioch [University]'s Accreditation." Compl. ¶ 276. Even assuming that the

relationship with HLC is a contractual relationship, it is CCG doing business as "Antioch University"—not the Former Advisory Board—that entered into the contract with HLC.

The Former Advisory Board cannot maintain claims for tortious interference with contracts to which CCG is a party and the Former Advisory Board is not. *First*, CCG cannot interfere with its own contractual relationships. *W. & S. Life Ins. Co.*, 54 F. Supp. 3d at 914 (dismissing tortious interference with contract claim because defendants could not be liable for inducing breach of contract to which defendants were parties). *Second*, because the Former Advisory Board does not allege (nor could it) that it has a contractual relationship with CCG's financial institutions or HLC, the Former Advisory Board cannot allege any resulting harm from CCG's handling of those contractual relationships. *Fred Siegel Co.*, 707 N.E.2d at 855 (identifying the first element of a tortious interference with contract claim as "(1) the existence of a contract [between the Plaintiff and another party]"). Accordingly, the Former Advisory Board fails to allege cognizable claims for tortious interference with contracts, and the Court should dismiss Counts VII and IX.

5. *Because the Former Advisory Board lacks standing to assert its claims, it lacks standing to assert a declaratory action claim*

"Not every case is appropriate for a declaratory judgment action." *Logan v. Champaign Cnty. Bd. of Elections*, 2023-Ohio-4688, ¶ 22 (citation modified). Before this Court can consider whether declaratory relief is appropriate, "the plaintiff must establish the following three elements: (1) that a real controversy exists between the parties; (2) that the controversy is justiciable in nature; and (3) that the particular situation is one in which speedy relief is necessary to preserve the rights of the parties." *Id.* at ¶ 21. "A real controversy exists where it is 'based upon legal rights and obligations.'" *Id.* "A party is legally affected by a cause of action if the party has a legal interest in rights that are the subject matter of the cause of action." *Id.* at ¶ 29. And a party's "'practical

interest in the outcome of a legal dispute does not necessarily require his or her inclusion in a declaratory judgment action.'" *Id.*

Here, because the Former Advisory Board lacks standing to assert its claims on the merits, its declaratory action (Count II) necessarily fails. Specifically, the Former Advisory Board seeks declaratory relief in the form of a legal interpretation of the CCG By-laws, the Affiliation Agreement, and the Former Advisory Board's Charter. Compl. ¶¶ 194–196. But as discussed, the CCG By-laws and the Affiliation Agreement were not contracts to which the Former Advisory Board was a party. As a result, the Former Advisory Board does not have a cognizable legal interest in the interpretation of those agreements. *See Haley v. Bank of Am. Corp.*, 2012-Ohio-4824, ¶¶ 15, 19 (affirming dismissal of declaratory action over agreement because defendant was not party to agreement). Further, the CCG was not a party to the Former Advisory Board's Charter (which is decidedly not a contract), making declaratory relief also inappropriate as to the interpretation of that document. *See* Magistrate's Decision at 4 ("[T]he CCG is not a 'party' to the AU Advisory Board Charter."); *see also Honeywell Int'l, Inc. v. Vanderlande Indus., Inc.*, 2022-Ohio-2986, ¶ 13 (affirming dismissal of declaratory action "'regarding contractual agreements to which both [plaintiff] and defendant are not parties'").

Finally, the CCG Board's dissolution of the Former Advisory Board did not confer a legal interest (and therefore standing) upon the Former Advisory Board under the governing documents (which do not include the non-contractual Charter). At most, the Former Advisory Board's dissolution resulted in its having a "practical interest" in the outcome of this Court's ultimate decision. *Logan*, 2023-Ohio-4688, ¶ 29.[6] Hence, this Court should dismiss the Former Advisory Board's declaratory action claim.

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[6] The Former Advisory Board also lacks associational standing to maintain any of its claims. "The United States Supreme Court has held that an association has standing on behalf of its members when '(a) its members would

Respectfully submitted,

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otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Ohio Contractors Assn. v. Bicking*, 643 N.E.2d 1088, 1089 (Ohio 1994) (quoting *Hunt v. WA. State Apple Advert. Comm'n*, 432 U.S. 333, 333 (1977)). None of the individual members of the Former Advisory Board have standing to assert these claims against CCG. Rather, *if* there is a proper party to assert what are essentially *ultra vires* claims, it would have to be a member of the CCG Board—not the non-fiduciary, Former Advisory Board.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2026 a copy of the foregoing was served via electronic mail on the following:

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