

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

MICHAEL C. GRIDLEY, an individual and an)
attorney-at-law,)

Plaintiff,)

vs.)

NORTH IDAHO COLLEGE, an Idaho)
Community College, GREG MCKENZIE, in)
his capacity as Trustee and Chair of the North)
Idaho College Board of Trustees; and, MIKE)
WAGGONER, in his capacity as Trustee and as)
Vice-Chair of the North Idaho College Board of)
Trustees; and, TODD BANDUCCI, in his)
capacity as Trustee of the North Idaho College)
Board of Trustees; and, ARTHUR B.)
MACOMBER, an attorney-at-law; and, the)
LAW OFFICE OF ARTHUR B. MACOMBER,)
and, GREGORY SOUTH, an individual,)

Defendants.)

Case No. **CV28-22-7707**

**MEMORANDUM DECISION ON
NORTH IDAHO COLLEGE,
TRUSTEE, AND SOUTH'S MOTION
TO DISMISS AND DEFENDANT
MACOMBER'S MOTION TO
DISMISS**

These matters are before the Court on two Motions to Dismiss: one brought by Defendants North Idaho College ("NIC"), Gregory South ("South"), Greg McKenzie ("McKenzie"), Mike Waggoner ("Waggoner"), and Todd Banducci ("Banducci") (McKenzie, Waggoner, and Banducci collectively referred to as "Trustees"), and one brought by Defendant Arthur Macomber ("Macomber"). Plaintiff Michael C. Gridley ("Gridley") is represented by Attorney Kinzo H. Mihara. Defendant Macomber is represented by Attorney Bradley Smith. Defendants NIC, Trustee, and South are represented by Attorneys Brittney Adams and Kelley Drew.

This Court heard argument on the Motions to Dismiss on July 21, 2023. For the foregoing reasons, both motions are GRANTED in part and DENIED in part.

I. PROCEDURAL HISTORY AND FACTUAL BACKGORUND

Gridley filed his initial Complaint in this matter on December 20, 2022, which was subsequently amended as a matter of right on January 10, 2023, and his Second Amended Complaint was filed with leave of the Court on May 11, 2023. On June 2, 2023, Defendant Macomber filed a Motion to Dismiss and Motion for Judgment on the Pleadings regarding certain claims from Gridley's Second Amended Complaint. On the same day, Defendants NIC, Trustees, and South filed a separate Motion to Dismiss certain claims from Gridley's Second Amended Complaint. Both motions request this Court dismiss Gridley's claims for Fraud and Illegal Acts, Unjust Enrichment, Breach of Fiduciary Duties, Aiding and Abetting Breach of Fiduciary Duties, and the Declaratory Relief regarding these claims.

On June 11, 2023, Gridley filed his Response to the parties' Motions to Dismiss, wherein he treated these motions to dismiss as if they were motions for summary judgment. Separate Reply Briefs were filed by the defendants, both on June 14, 2023. For reasons set forth on the record, NIC, Trustees, and South's Motion to Strike and Macomber's Motion to Strike Gridley's Supplemental Response were granted as it related to all matters outside of the pleadings considered by the Court, consistent with Idaho Rules of Civil Procedure 12(b)(6) and 12(c). The Court, for purposes of this motion, considered no information beyond the plaintiff's complaint(s). At the June 16, 2023, hearing, Counsel for Plaintiff asked for a continuance to properly respond to Defendants' motions. This Court granted the request.

Thereafter, on July 7, 2023, Plaintiff filed a Supplemental Brief in Opposition to Defendants' Motions for Judgment on the Pleadings and Motions to Dismiss. On July 14, 2023, the defendants filed separate Reply Briefs. On July 21, 2023, the defendants Motions to Dismiss came for hearing. Thereafter, the Court took these matters under advisement. Because the Court accepts the facts alleged in the complaint as true, it makes no findings of fact. (see *Bissett v. State*, 111 Idaho 865, 727 P.2d 1293 (Ct. App. 1986) (findings of fact are not required for dismissal of a complaint pursuant to IRCP 12(b)(6)). The issues dismissed pursuant to I.R.C.P. 12(b)(6), were not analyzed under I.R.C.P. 12(c). Additionally, in Gridley's Supplemental Response to the defendants' Motions to Dismiss, he moves this court to either expand or create

new law to allow for redress if this Court finds the current law does not allow for recovery. Suppl. Resp. to Defs.’ Mot. to Dismiss. 17. The Court declines to do so.

II. STANDARD OF REVIEW

I.R.C.P. 12(b)(6) provides that a party may assert certain defenses by motion; one such defense is “failure to state a claim upon which relief can be granted.” A motion pursuant to Idaho Rules of Civil Procedure 12(b)(6) looks only at the pleadings to determine whether a claim for relief has been stated. *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). A pleading that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief ...” I.R.C.P. 8(a)(2). *Parkinson v. Bevis*, 165 Idaho 599, 604, 448 P.3d 1027, 1032 (2019). “The issue is not whether the plaintiff will ultimately prevail, but whether the party is ‘entitled to offer evidence to support the claims.’ ” *Dengler v. Hazel Blessinger Fam. Tr.*, 141 Idaho 123, 127, 106 P.3d 449, 453 (2005) (quoting *BHA Investments, Inc. v. State*, 138 Idaho 348, 350, 63 P.3d 474, 476 (2003)). The court makes every intendment to sustain the complaint against a motion to dismiss pursuant IRCP 12(b)(6). *Harper v. Harper*, 122 Idaho 535, 835 P.2d 1346 (Ct. App. 1992). Thus, the question is “whether the non-movant has alleged sufficient facts in support of his claim, which if true, would entitle him to relief. In doing so, the Court draws all reasonable inferences in favor of the non-moving party.” *Savage v. Scandit Inc.*, 163 Idaho 637, 640, 417 P.3d 234, 237 (2018).

Further, “[a]fter the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.” I.R.C.P. 12(c). “A judgment on the pleadings is reviewed under the same standard as a ruling on summary judgment.” *Elsaesser v. Gibson*, 168 Idaho 585, 590, 484 P.3d 866, 871 (2021) (quoting *State v. Yzaguirre*, 144 Idaho 471, 474, 163 P.3d 1183, 1186 (2007)). A grant of summary judgment is proper where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” I.R.C.P. 56(a). “For purposes of a motion for judgment on the pleadings, the moving party admits all the allegations of the opposing party's pleadings and also admits the untruth of its own allegations to the extent they have been denied.” *Yzaguirre*, 144 Idaho at 474, 163 P.3d at 1186 (citation omitted). Where there are no disputed issues of material fact, the remaining question is one of law, over which this Court exercises free review. *Elsaesser*, 168 Idaho at 590, 484 P.3d at 871.

III. ANALYSIS

All defendants move this Court to dismiss Plaintiff Gridley's first claim for Fraud and Illegal Action; second claim for Breach of Fiduciary Duties; third claim for Aiding and Abetting Breach of Fiduciary Duties; fourth claim for Declaratory Relief; and fifth claim for Unjust Enrichment. Defs.' Mot. to Dismiss 2; Def. Macomber's Mot. to Dismiss. 2, ¶¶ 1-4. In addition, Defendant Macomber requests that this Court dismiss the claim against him regarding his Ability to Practice Law in Kootenai County. *Id.* The Court will address each request in turn.

1. Fraud and Illegal Acts

Macomber asserts that Gridley's first cause of action, for Fraud and Illegal Acts, fails as a matter of law. Similarly, NIC, Trustees, and South argue that Gridley's Second Amended Complaint fails to "adequately plead *a single element of fraud* with particularity as it pertains to the defendants' alleged misrepresentations *and Plaintiff Gridley*;" (Defs.' Mem. of Law in Supp. of Mot. to Dismiss 9. (emphasis in original)). In response, Gridley points mainly to paragraph 41 of his Second Amended Complaint for the assertion that he pled each element with particularity.¹

In alleging fraud, a party must state with particularity the circumstances constituting the fraud; however malice, intent, knowledge, and other conditions of a person's mind may be alleged generally. I.R.C.P. 9(b); *see also Dengler v. Hazel Blessinger Fam. Tr.*, 141 Idaho 123, 127, 106 P.3d 449, 453 (2005). "This rule requires the alleging party to specify what factual circumstances constitute fraud or mistake." *Alexander v. Stibal*, 161 Idaho 253, 261, 385 P.3d 431, 439 (2016)(quoting *Brown v. Greenheart*, 157 Idaho 156, 164, 335 P.3d 1, 9 (2014)).

The *prima facie* case of fraud consists of: (1) a statement or representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge about its falsity or ignorance of its truth; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury. *Budget Truck Sales*, 163 Idaho at 847, 419 P.3d at 1145 (2018). "Rule 9(b) clearly exists to put defendants on fair notice of the precise nature of the fraud alleged." *Choice Feed, Inc. v. Montierth*, 168 Idaho 124, 139, 481 P.3d 78, 93 (2021).

¹ Plaintiff also compiled a chart in his response to the motions to dismiss the fraud allegation. Defendants took issue with the chart during argument, arguing it was information beyond the complaint. The Court does not find that the chart contains information beyond the complaint, merely information from the complaint re-arranged. The Court therefore considered Plaintiff's chart.

An allegation of fraud is somewhat unique due to I.R.C.P. 9(b) and its requirement that fraud be pled with specificity. In his Second Amended Complaint, Gridley alleges the following:

One or more of the Defendants made false representations of material fact, or intentionally failed to disclose material facts, to wit: (1) that Defendant Banducci prepared one or more of the resolutions noted above; and, (2) that Defendant Macomber was qualified to provide competent legal representation and advice to the NIC Board.

2nd Am. Compl. 13, ¶ 41 a. Making every intendment not to dismiss this cause of action, this Court can find facts pled with particularity that could satisfy elements 1 (statement), 2 (its falsity), 4 (speaker's knowledge of its falsity), 5 (the speaker's intent), and 6 (hearer's ignorance).

Elements 3 (materiality), 7 (reliance by the hearer), and 8 (justifiable reliance) are intertwined. As to the materiality element, Gridley states that:

The representations and/or misrepresentations alleged above were material to the relationship between Defendant NIC, its Board of Trustees, and Defendant Macomber in that they were governed by, *inter alia*, Idaho Rule of Professional Conduct 1.17 in regard to the sales contract selling Defendant Macomber's prior law practice.

2nd Am. Compl. 13, ¶¶ 41. c. "Materiality refers to the importance of the misrepresentation in determining the plaintiff's course of action." *Choice Feed, Inc.*, 168 Idaho at 142, 481 P.3d at 96 (quoting *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 521, 808 P.2d 851, 858 (1991)).

In *Dengler*, the Court found:

The complaint fails to allege anything other than the elements of the prima facie case of fraud. Liberally construing all facts in favor of the Denglers and drawing all reasonable inferences in their favor, the complaint fails to state with particularity a claim based on fraud. This is insufficient under the mandate of I.R.C.P. 9(b) and the district court did not err in dismissing the claim under I.R.C.P. 12(b)(6).

141 Idaho at 128, 106 P.3d at 454. The manner in which fraud was pled in *Dengler* was discussed in *Choice Feed*. 168 Idaho at 139, 481 P. 2d at 93. In *Choice Feed*, all elements of fraud were pled with specificity. *Id.* Gridley, of all people, is in the best position to allege facts pertaining to his own course of action. Gridley has not alleged facts specific to materiality. How did the statements affect his course of conduct? The complaint is devoid of an answer to that question. Nor has Gridley specifically alleged what he did in reliance to the statements made. Gridley makes the bare assertion that he "amongst other interested persons and taxpayers, relied upon the false and fraudulent statements of Banducci and Macomber," but he goes no further. 2nd

Am. Compl. 14, ¶ 41.g. His factual assertions regarding materiality and reliance more closely resemble the bare assertions from *Dengler* than the specific facts alleged in *Choice Feed*. Neither element has been pled with specificity. Because the complaint is deficient as it pertains to reliance, it is necessarily deficient as it pertains to reasonable reliance.

The final pleading requirement necessary to show fraud is resulting injury; the Idaho Supreme Court has stated that “[i]n order to secure relief on a basis of fraud, the party seeking redress must have been damaged, injured or harmed as a result of the asserted fraud. A false representation which causes no loss is not actionable.” *Choice Feed, Inc.*, 168 Idaho at 144, 481 P.3d at 98. (quoting *Rammell*, 156 Idaho at 510, 328 P.3d at 490.) Gridley claims that:

Plaintiff Gridley and other tax paying members of the public were injured by the actions of Defendants McKenzie, Waggoner, Banducci, and Macomber in that they were denied proper notice of the hiring of Defendants Macomber and/or Law Office of Arthur B. Macomber as well as other actions related to Exhibit 6, Exhibit 7, and Exhibit 8, and as a result of the lack of proper notice required by the Idaho Open Meeting Act they were denied the ability to offer meaningful public input on the qualification of Defendant Macomber, the legality of his hiring, the reasonableness of the terms of his self-prepared fee agreement, the breach of trustee fiduciary duties and the inappropriate expenditure of public tax dollars paid by Plaintiff Gridley and others.

2nd Am. Compl. 14 ¶ 41, h.

Gridley appears to claim that he was injured by lack of proper notice, yet the alleged fraud is not related to notice or lack thereof. The alleged misrepresentations, as stated above, are that certain resolutions were purported to be drafted by Banducci, yet were not, and that Gridley was purported to be able to practice law, yet was not. The fraud alleged, thus, would not be a proximate cause of the injury alleged. An “underlying principle is that the victim of fraud is entitled to compensation for every wrong which is the natural and proximate result of the fraud.” *Watts v. Krebs*, 131 Idaho 616, 621, 962 P.2d 387, 392 (1998). Gridley fails to allege that fraud is a proximate cause of his injury.

Additionally, the *Watts* case further discussed the nature of relief in a fraud case. The Court found the measure of damages which should be adopted under the facts of a case is the one which will provide compensation for every wrong which is the proximate result of the fraud. *Id.* It went on to say “Idaho courts have applied the ‘out-of-pocket’ rule in measuring damages in fraud claims, but have also recognized the existence of a different measure of damages referred to as the ‘benefit of the bargain’ rule.” *Watts v. Krebs*, 131 Idaho 616, 621, 962 P.2d 387, 392

(1998). This discussion shows that relief in the fraud context is primarily focused on monetary redress. Gridley claims no monetary redress nor monetary damage resulting from the alleged fraud. He asks this Court to undo an action of the NIC Board. He has not pointed to any authority that would lead this Court to find that this fraud claim could support the relief sought.

Defendants' motions to dismiss Plaintiff's fraud claims under I.R.C.P. 12(b)(6) are granted.

2. The Defendants' Motions to Dismiss Gridley's Cause of Action for Breach of Fiduciary Duties are Granted.

"To establish a claim for breach of fiduciary duty, [a] plaintiff must establish that defendant owed plaintiff a fiduciary duty and that the fiduciary duty was breached." *Parkinson v. Bevis*, 165 Idaho 599, 605, 448 P.3d 1027, 1033 (2019) (quoting *Tolley v. THI Co.*, 140 Idaho 253, 261, 92 P.3d 503, 511 (2004)). Further, "[t]o establish a claim for breach of fiduciary duty, the plaintiff must first establish that a fiduciary relationship existed at the time of the breach." *Beaudoin v. Davidson Tr. Co.*, 151 Idaho 701, 705, 263 P.3d 755, 759 (2011); *Sorensen v. St. Alphonsus Reg'l Med. Ctr., Inc.*, 141 Idaho 754, 760, 118 P.3d 86, 92 (2005). Whether a fiduciary relationship exists is a matter of law. *Bliss v. Minidoka Irrigation Dist.*, 167 Idaho 141, 150, 468 P.3d 271, 280 (2020) (quoting *Skinner v. U.S. Bank Home Mortg.*, 159 Idaho 642, 647, 365 P.3d 398, 403 (2016)). Generally speaking, a fiduciary relationship exists when one party is "under a duty to act or to give advice for the benefit of the other upon a matter within the scope of the relation." *City of Meridian*, 154 Idaho at 442, 299 P.3d at 249 (citing *Beaudoin v. Davidson Trust Co.*, 151 Idaho 701, 705, 263 P.3d 755, 759 (2011)). "Fiduciary relationships are commonly characterized by one party placing property or authority in the hands of another, or being authorized to act on behalf of the other." *Country Cove Dev., Inc. v. May*, 143 Idaho 595, 603, 150 P.3d 288, 296 (2006); *see also High Valley Concrete, L.L.C. v. Sargent*, 149 Idaho 423, 428, 234 P.3d 747, 752 (2010).

The Idaho Supreme Court has provided that a fiduciary relationship "arises from a settled category of fiduciary obligation. Some fiduciary relationships are between the donor and a hired professional." *Gestner v. Divine*, 171 Idaho 159, 519 P.3d 439, 450 (2022) (citing to Restatement (Third) of Property (Wills & Don. Trans.) § 8.3 cmt. g (2003)). "Examples of such a relationship are that between an attorney and client, between an institutional trustee and the beneficiaries of the trust. . ." *Id.*

Here, the institutional trustees, or North Idaho College's board of Trustees, would be in a fiduciary relationship with the beneficiaries of the trust, which Gridley claims would include the students of North Idaho College. *See Suppl. Resp. 16*. However, Idaho Code § 33-2117(h) defines the term "students" as "persons duly enrolled as students in a junior college." In Gridley's Second Amended Complaint, filed May 11, 2023, Gridley provides:

1. Plaintiff, Michael C. Gridley ("Gridley"), is an individual taxpayer who lives, resides, and is domiciled in the City of Coeur d'Alene, Kootenai County, Idaho. Plaintiff Gridley is a property owner within the City of Coeur d'Alene. Plaintiff Gridley is acting in his capacity as an individual taxpayer; and, cumulatively and/or in the alternative, Plaintiff Gridley is acting in the capacity as a private attorney general as the Private Attorney General doctrine is understood by Idaho law in furtherance of a general interest and concern in the community. *In addition, Plaintiff Gridley has been accepted to become an enrolled student at North Idaho College (referred herein as either "North Idaho College" and/or "NIC"). As such, Plaintiff Gridley has a vested interest in the fiscal integrity and fiduciary duties of the Trustees of NIC and its staff, to include NIC's attorney.*

2. Plaintiff Gridley is an active member of the Idaho State Bar; and is subject to and required to conform with the Idaho Rules of Professional Conduct. As such, Plaintiff Gridley has a vested interest in the integrity of the legal profession in Idaho. Plaintiff Gridley has recently retired from a long and distinguished career having practiced extensively in municipal law; which includes but is not limited to the application of Title 74 to public entities. *In his retirement, Plaintiff Gridley has been accepted to study at North Idaho College.*

2nd Am. Compl. 2, ¶¶ 1, 2. (emphasis added).²

At the time that the alleged actions in this matter took place, Gridley was not a student at North Idaho College. At the time of the filing of his original complaint, Gridley was not an accepted student. Therefore, at the time that the alleged breach occurred, there was not a fiduciary relationship between Gridley and the defendants as institutional trustees and a beneficiary of the trust. Even now, he is only "accepted to become" an enrolled student at NIC. Therefore, Gridley has not even alleged sufficient facts to establish that he is a duly enrolled student at NIC at this time.

Gridley relies on *Koch v. Canyon County* for the proposition that particularly situated taxpayers "like Gridley in this case" have standing to challenge government action "such as in this case." That case dealt with taxpayer standing to challenge governmental action which

² This claim differed from his First Amended Complaint, filed January 10, 2023, wherein he stated that he "would like to study at North Idaho College." 1st Am. Compl. 2, ¶ 2.

violated the Idaho Constitution. *Koch v. Canyon County*, 145 Idaho 158, 177 P.3d 372 (2008). This Court agrees that *Koch* and its analysis is relevant to this inquiry; the Court disagrees with the conclusion Gridley reaches. In *Young v. City of Ketchum*, the Court discussed standing in the context of I.R.C.P. 12(b)(6):

Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. *Van Valkenburgh* at 124, 15 P.3d at 1132; *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 375, 913 P.2d 1141, 1145 (1996) (quoting *Miles* at 639, 778 P.2d at 761). To satisfy the case or controversy requirement of standing, a litigant must “allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury.” *Id.* (citations omitted). This requires a showing of a “distinct palpable injury” and “fairly traceable causal connection between the claimed injury and the challenged conduct.” *Miles* at 639, 778 P.2d at 761 (internal quotations omitted). But even if a showing can be made of an injury in fact, standing may be denied when the asserted harm is a generalized grievance shared by all or a large class of citizens. *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)); *Miles*, 116 Idaho at 641, 778 P.2d at 763 (stating “a citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered by all citizens and taxpayers alike.”); *Bopp v. City of Sandpoint*, 110 Idaho 488, 716 P.2d 1260 (1986); *Greer v. Lewiston Golf & Country Club, Inc.*, 81 Idaho 393, 342 P.2d 719 (1959).

137 Idaho 102, 104–05, 44 P.3d 1157, 1159–60 (2002). As a general rule, a citizen or taxpayer, by reason of that status alone, does not have standing to challenge governmental action. *Koch*, 145 Idaho at 160, 177 P.3d at 374. In appropriate circumstances, however, taxpayers do have standing to challenge governmental action. *Id.* at 161, 177 P.3d at 375. “Taxpayers have been held qualified to maintain an action to test the validity of a statute or ordinance which increases the tax burden. Generally cases so holding involve an alleged illegal expenditure of public money.” *Id.* (citing *Greer v. Lewiston Golf & Country Club, Inc.*, 81 Idaho 393, 397, 342 P.2d 719, 722 (1959)).

Gridley has not alleged facts which would distinguish his status from that of a taxpayer and citizen. He has alleged that his status as a student puts him in a specialized class of citizen, yet, as noted above he was not a student at the time of the alleged conduct, nor is even a student now. Likewise, he has argued his membership in the state bar confers standing, the Court can find no justification for such a claim. He has alleged no other facts that would distinguish him in this case.

Koch involved a lease entered into by Canyon County which would incur indebtedness or liability beyond ordinary and necessary expenses in excess of their income and revenue for the year without voter approval, a violation of the Idaho Constitution Article VIII sec. 3. 145 Idaho at 162, 177 P.3d at 376. The Court stated: “this Court has never questioned the standing of a taxpayer to challenge expenditures that violate Article VIII sec. 3.” *Id.* This claim is not akin to *Koch*. This claim does not involve a constitutional issue. This Court is not saying that the defendants do not owe a fiduciary duty to certain individuals, especially given that several of them are designated as trustees. This Court is saying that Gridley himself cannot show specific harm to himself beyond his status as a taxpayer and therefore he cannot state a claim for which relief can be granted.

3. The Defendants’ Motions to Dismiss Gridley’s Cause of Action Aiding and Abetting Fiduciary Duties are Granted.

Because the Court has granted the motions to dismiss Gridley’s cause of action for breach of fiduciary duties, Gridley’s cause of action for aiding and abetting breach of fiduciary duties is consequently dismissed.

4. The Defendants’ Motions to Dismiss Gridley’s Cause of Action for Unjust Enrichment are Granted.

To support his cause of action for unjust enrichment, Gridley claims that “the actions of Macomber, South, [and Trustees] have fleeced NIC of hundreds of thousands of dollars” and that “he is a specially-situated taxpayer with the ability to challenge governmental actions” and/or “he has special status as a student of NIC, a beneficiary of the community college trust under Title 33 of which the NIC Board Trustee Defendants (McKenzie, Banducci, and Waggoner) are ‘trustees.’ ” Suppl. Resp. 15.

NIC, Trustees, and South argue, in part, that Gridley’s claim for Unjust Enrichment fails because Gridley “failed to allege that he personally conferred any benefit onto Defendants, the retention of which would be unjust. See, e.g., SAC ¶ 103 (pleading that *Defendant NIC*—not Plaintiff—paid monies to Defendant South). Defs.’ Reply to Pl.’s Suppl. Br. 11. (emphasis in original).

Similarly, Macomber moves to dismiss Gridley’s claim for unjust enrichment because:

Gridley did not pay those fees and costs and has suffered no damage as result of the College payment of fees and costs authorized by the Board of Trustees and/or the College Administration, and validly performed and charged by Defendant Macomber. Idaho does not support claim for unjust enrichment by party who did

not provide nor pay benefits which equity requires to be returned because they were allegedly ‘unjustly retained’ by the Defendant.

Macomber’s Mot. to Dismiss. 8.

Unjust enrichment is the measure of recovery under a contract implied-in-law, which “is not a contract at all, but an obligation imposed by law for the purpose of bringing about justice and equity without reference to the intent of the agreement of the parties, and, in some cases, in spite of an agreement between the parties.” *Turcott v. Est. of Bates*, 165 Idaho 183, 190, 443 P.3d 197, 204 (2019). To establish a claim for unjust enrichment, a plaintiff must prove: “(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof.” *Id.* A “party seeking recovery under an unjust enrichment theory must present evidence not only of the value of the services it rendered, but also ‘*the amount of the benefit which, if retained by the [defendant], would result in [its] unjust enrichment.*’ ” *Id.* (quoting *Blaser v. Cameron*, 121 Idaho 1012, 1017, 829 P.2d 1361, 1366 (Ct. App. 1991) (italics added)).

Gridley claims that he is able to bring this claim for unjust enrichment as a student, and as a specially situated taxpayer. This cause of action is similar to his breach of fiduciary claim in that Gridley’s alleged injury is that of all taxpayers. This Court has already found that Gridley is not a student nor is he a specially situated taxpayer. There is not even a claim by Gridley that taxes have increased or will increase due to the defendants’ actions. It is not alleged that Gridley himself paid any money to Defendants Macomber or South. Making all intendments in favor of Gridley, this Court finds that Gridley has not alleged facts that show he conferred a benefit on the defendants, other than as a general taxpayer, which would be unjustly retained if relief was not given. He therefore has not stated a claim for which relief can be granted. The defendants’ motions to dismiss these claims are granted, and the cause of action for unjust enrichment is dismissed.

5. The Defendants’ Motions to Dismiss Gridley’s Cause of Action for Declaratory Relief are Granted in Part and Denied in Part.

In his Second Amended Complaint, Gridley seeks Declaratory Relief in regard to the following claims, “pursuant to the Idaho Constitution, Art. VIII sec. 3 and Idaho Code 10-1201”:

- a. Seeking the Court to declare whether the actions complained of above constitute actionable violations of open meeting laws;
- b. Seeking the Court to declare whether the actions complained of above constitute breaches of the Defendants' fiduciary duties, including but not limited to those expressed in this amended complaint;
- c. Seeking the Court to declare whether the contract between NIC and/or the NIC Board and Defendant Macomber and/or Defendant Law Office of Arthur B. Macomber is valid or is invalid based upon the cumulative ethical and legal breaches by all Defendants herein as well as the acts constituting violations of the open meeting laws set forth above;
- d. Seeking the Court to declare whether the contract between Defendant South and Defendants NIC and/or NIC's Board is valid based upon the violation of the Idaho Constitution Art. VIII, § 3; as well as Idaho Code § 33-2101, *et seq.*, Idaho Code § 74- 208, *et seq.* as well as possible other acts constituting violations of the open meeting laws as set forth above.

2nd Am. Compl. 28-29, ¶¶ 101., a.– d. Idaho Code 10-1201 states:

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

In their respective Motions to Dismiss, Macomber claims, “[w]hile Gridley’s fourth cause of action for declaratory relief seeks to invalidate the contract between Macomber and the College, the claims supporting that claim for relief, alleged illegal conduct and open meeting act violations, are not directed against Macomber himself,” (Def. Macomber’s Mot. to Dismiss 14), and NIC, Trustees, and South claim simply that, “[s]ince Plaintiff’s Second Amended Complaint seeks Declaratory Relief of these claims, Plaintiff’s Request for Declaratory Relief must likewise be dismissed, specifically Paragraphs 101(b) and 101(d).” Defs.’ Mem. of Law in Supp. of Mot. to Dismiss. 2; *Id.* at 14.

Based on this Court’s finding that Gridley has not stated a claim for which relief can be granted for a cause of action of breach of fiduciary duties, the defendants’ motions to dismiss Gridley’s claim for declaratory relief, set forth above in paragraph 101(b) are granted.

On the other hand, no Defendant has moved to dismiss Gridley’s cause of action for breach of open meeting laws in their Motion to Dismiss. With every intentment to sustain the

complaint against a motion to dismiss pursuant IRCP 12(b)(6), the Court thus declines to dismiss the declaratory relief claim based upon this violation of open meeting law cause of action. The Court finds that Gridley has alleged sufficient facts in support of his claim, which if true, could entitle him to relief related to his open meeting law claim, and thus relief under paragraph 101(a). As such, Defendants' motions to dismiss paragraph 101(a), of Gridley's Second Amended Complaint are denied.

Paragraphs 101(c) and 101(d) of Gridley's Second Amended Complaint challenge the validity of the contracts of South and Macomber. The challenges are based on open meeting law violations, and pursuant to the legal authority found in Idaho Constitution, Art. VIII sec. 3, Idaho Codes secs. 10- 1201, 33-2101, *et seq.*, and 74- 208, *et seq.*

However, drawing all reasonable inferences in favor of Gridley, this Court finds that Gridley has alleged sufficient facts in support of his claim for open meeting law violations that, if true, could entitle him to the relief requested under paragraph 101(c). Macomber argues that he could not violate open meeting laws because he was not an elected official. That argument does not compel the Court to dismiss Gridley's request for declaratory judgment. The Court is being asked to invalidate Macomber's contract regardless of his ability to violate of open meeting laws himself. Gridley has alleged facts, which if true, could entitle him to the relief he seeks.

Gridley also requests relief in paragraphs 101(c) and 101(d), under Art. VIII, sec. 3, of the Idaho Constitution. With all reasonable inferences in favor of Gridley, this Court finds that he has stated a claim for which relief could be granted. This allegation does not suffer the same deficiencies as those causes of action dismissed in previous discussion. As discussed in *Koch v. Canyon County*, a taxpayer may challenge a governmental action which violates the Idaho Constitution Article VIII sec. 3. 145 Idaho 158, 177 P.3d 372. Nor does this allegation have the same rigid pleading requirements as fraud, which are imposed by I.R.C.P. 9(b).

In contrast, this Court already will discuss and dismiss Gridley's claims of cumulative ethical breaches of the defendants in the next section. Gridley's claims for breach of fiduciary duties and aiding and abetting breach of fiduciary duties have both been dismissed. As such, that basis for a claim under paragraph 101(c) is dismissed. The same holds true for the basis for a claim under paragraph 101(d) premised on Idaho Codes 33-2101. Gridley has not stated a claim for which relief can be granted, even with all reasonable inferences in his favor. As such, those allegations are dismissed.

Further, the Court finds that under I.R.C.P. 12(c), the Court could find a violation of the Idaho Constitution, Art. VIII, sec. 3 and Open meeting law violations. Under I.R.C.P. 12(c), the moving party, for purposes of a motion for judgment on the pleadings, admits all allegations of the opposing parties' pleadings.

Article VIII, sec. 3 of the Idaho Constitution, entitled Limitations on County and Municipal Indebtedness, "generally bars cities from incurring debts or liabilities without first conducting an election to secure voter approval for the proposed expenditure." *City of Boise v. Frazier*, 143 Idaho 1, 2, 137 P.3d 388, 389 (2006). "The section, however, contains a notable exception." *Id.* No public vote is required if the expenditure is for an "ordinary and necessary" expense "authorized by the general laws of the state..." "This exception is referred to as the 'proviso clause.'" 143 Idaho at 3, 137 P.3d at 390. (quoting *City of Pocatello v. Peterson*, 93 Idaho 774, 778, 473 P.2d 644, 648 (1970)). Gridley has alleged facts, which could support a finding that the defendants have incurred indebtedness beyond ordinary and necessary expenses.

Likewise, Defendants do not ask the Court to dismiss the claim of open meeting law violations. Gridley has alleged myriad facts that could support a finding that the defendants have violated open meeting laws. Judgment on the pleadings is therefore inappropriate.

Accordingly, the defendants' motions to dismiss related to Gridley's claim for declaratory relief are granted in part and denied in part. The motions to dismiss related to paragraph 101(a) of Gridley's Second Amended Complaint are denied in their entirety. The motions to dismiss related to paragraph 101(b) of Gridley's Second Amended Complaint are granted in their entirety. The motions to dismiss related to paragraph 101(c) of Gridley's Second Amended Complaint are granted as it relates to the cumulative ethical breaches by all Defendants, and denied as it relates to the alleged violations of open meeting law. The motions to dismiss paragraph 101(d) of Gridley's Second Amended Complaint are denied as it relates the alleged open meeting laws, and Art. VIII, sec. 3 of the Idaho Constitution, but granted as it relates to Idaho Codes 33-201, *et seq.*

6. Defendant Macomber's Motion to Dismiss Gridley's Cause of Action Related to his Ability to Practice Law in Kootenai County is Granted.

Macomber moves to dismiss Gridley's claim regarding Macomber's ability to practice law in Kootenai County.

Specifically, Gridley alleges that Defendant Macomber violated IRPC1.1, by failing to properly advise his client, NIC; 1.5, which prohibits charging or collecting an unreasonable fee; 1.7, which prohibits conflict of interest; 1.17, which prohibits an Idaho attorney from selling law practice and engaging in the practice of law in the geographical in which the law practice was sold; 4.1, which prohibits an attorney from representing client who knowingly makes false statement of material fact; 7.1, prohibiting lawyer from making false or misleading communications about the attorney or their services; 7.3, prohibiting the solicitation of professional services; 7.6, which prohibits an Idaho attorney from accepting governmental legal engagement if the lawyer makes political contributions for the purpose of obtaining or being considered for such employment; and 8.4, which prohibits an attorney from acting dishonestly or for committing fraud.

Def. Macomber's Mot. to Dismiss 10. Macomber alleges that "the professional conduct rules do not support private cause of action that is enforceable by an individual like Mr. Gridley in case filed against Defendant Macomber" and "[r]ather, those rules are to be enforced by, and any disciplinary proceedings pursued, solely by the Idaho State Bar Association. *Id.* 10-11 (citing *High Valley Concrete, LLC, v. Sargent*, 149 Idaho 423, 234 P.3d 747 (2010)).

The determination of whether an attorney has committed ethical violations is left to the State Bar. *Kosmann v. Dinius*, 165 Idaho 375, 446 P.3d 433 (2019). That determination was recited by the Court in 2021 when it restated that sanctioning a lawyer is characteristically a matter for the Idaho State Bar, not the trial courts. *Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 394, 496 P.3d 873, 880 (2021). That case did, however, draw a distinction where an ethical violation creates an actionable claim. *Id.* In that case the court held:

Here, the district court was asked to decide a motion to disqualify—that is, whether a conflict existed. Deciding such matters, even if those matters are grounded in the ethical rules, is a proper discretionary decision to be made by the trial courts of this state.

169 Idaho at 394, 496 P.3d at 880.

Gridley's claims against Macomber do not create an otherwise actionable claim. Rather, Gridley attempts to create a private cause of action for purported ethical violations, which have not directly impacted Gridley. The facts of this case are more similar to *Kosman* than *Hepworth Holzer*. The relief specifically sought by Plaintiff in this regard is for this Court to declare that Arthur Macomber cannot practice law in Kootenai County. This Court cannot grant such relief. Macomber's motion to dismiss this claim is granted, and Gridley's cause of action regarding Macomber's ability to practice law in Kootenai County is dismissed.

IV. CONCLUSION AND ORDER.

For the foregoing reasons, IT IS HEREBY ORDERED NORTH IDAHO COLLEGE, GREG MCKENZIE, MIKE WAGGONER, TODD BANDUCCI AND GREGORY SOUTH'S Motion to Dismiss is **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED ARTHUR MACMOBER'S Motion to Dismiss is **GRANTED** in part and **DENIED** in part.

Entered this 17th day of August, 2023.



Ross D. Pittman, Magistrate Judge

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