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UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS TITHING LITIGATION	No. 25-4068

Appeal from the United States District Court
for the District of Utah
(D.C. No. 2:24-MD-03102-RJS-DAO)

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Before **HARTZ**, **PHILLIPS**, and **MORITZ**, Circuit Judges.

HARTZ, Circuit Judge.

Plaintiffs brought this action against the Church of Jesus Christ of Latter-day Saints (the Church) and its subsidiary, Ensign Peak Advisors, Inc. (Defendants), alleging that Defendants engaged in fraudulent conduct to induce Plaintiffs to donate to the Church. They also brought claims for breach of fiduciary duty and unjust enrichment and sought to represent a class of all persons in the United States who donated money to the Church after 1997. The district court granted Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) on the ground that the complaints were untimely. It said that in light of news reports throughout the country Plaintiffs, had they exercised reasonable diligence, should have known of the scheme more than three years before they filed suit. We agree and affirm the dismissal.

I. BACKGROUND

In reviewing a motion to dismiss, courts may consider only the well-pleaded allegations of the complaint, documents that the complaint incorporates by reference, documents referred to in the complaint that are central to the plaintiffs' claims and whose authenticity is not challenged, and matters of which the court may take judicial notice. *See Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). We assume the truth of the well-pleaded factual allegations of the complaint so long as they are not contrary to documents that the court can consider.

The Church receives substantial funds from tithes and other donations. Much of this money finances significant religious outreach and charitable work. But the Church also operates several secular businesses, such as a general-goods store near its Salt Lake City headquarters. And, more relevant to this case, the Church has said that it sets aside a portion of donations to invest and build a "prudent reserve for the future." *In re Church of Jesus Christ of Latter-day Saints Tithing Litig.*, (*In re*

Tithing Litig.) 785 F. Supp. 3d 1009, 1019 (D. Utah 2025) (internal quotation marks omitted). In 1997 it formed Ensign as a § 501(c)(3) nonprofit corporation. Ensign now manages a portfolio worth over $100 billion.

A. The Alleged Scheme

We take our description of the alleged scheme from the allegations of the complaint.

Defendants concealed the size of Ensign's portfolio to make the Church more attractive to potential donors. These donors were misled into believing that the Church promptly used donations for charitable purposes. One deceptive tactic that Ensign employed was to submit misleading documents to the SEC. The SEC required Ensign to file certain forms listing all public securities (not including cash or bonds) under its management. But Ensign created 13 shell LLCs throughout the country and filed the forms in the names of those entities, obscuring the fact that Ensign retained discretion over all investment decisions by the LLCs. Also, the Church used a complex web of entities to transfer funds to Ensign. Once funds reached Ensign, they were continually reinvested, not used for Church organizations or efforts.

This scheme ran counter to the Church's public statements about how it used tithed funds. For example, the Church said it was not using tithes to pay for a Church effort to revitalize an area near the Church's Temple Square by developing the City Creek Mall. The Church-owned *Ensign* magazine, which is available online, reported on this promise in its December 2003 and December 2006 issues, as did a 2012 article in The Salt Lake Tribune. Yet, between 2010 and 2014, Ensign spent $1.4 billion in donated funds on the construction of the City Creek Mall.

B. The 2019 Whistleblower Report

In December 2019 a former Ensign employee and self-styled whistleblower published a "Letter to an IRS Director" (the Whistleblower Report) claiming that Defendants underreported the value of the Church's assets and improperly directed tithing funds toward nonreligious commercial ventures.

Between December 2019 and February 2020 news outlets including The Wall Street Journal, The Washington Post, Forbes, Fox News, CNN, The Salt Lake Tribune, and Deseret News ran stories on the Whistleblower Report. The Church responded publicly, acknowledging that it maintains a reserve fund but arguing that it "complies with all applicable law governing . . . donations, investments, taxes and reserves." Aplts. App., Vol. 1 at 64 (quoting The Church of Jesus Christ of Latter-day Saints, *First Presidency Statement on Church Finances* (Dec. 17, 2019), https://newsroom.churchofjesuschrist.org/article/first-presidency-statement-church-finances [https://perma.cc/A34K-ZQ2C]). According to Plaintiffs, "the IRS evidently found nothing of interest in the Whistleblower Report." Aplts. Br. at 23.

But three suits by current and former Church members soon followed, incorporating allegations based on the Whistleblower Report. *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 2021 WL 4296208, at *3 (C.D. Cal. Sept. 10, 2021), filed in March 2021, raised a fraud claim based on misuse of tithing funds and alleged that the plaintiff discovered the fraud in

December 2019 after learning of the Whistleblower Report. *See* Compl. at 5, *Huntsman*, 2021 WL 4296208 (No. 2:21-cv-2504) (hereinafter *Huntsman* Compl.). *Cook v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, No. 2:20-cv-80 (D. Utah Feb. 10, 2020), filed in February 2020, asserted a fraud claim against the Church for failing to abide by the teachings of the Book of Mormon, and cited a December 2019 Washington Post article about the Whistleblower Report. Compl. at 5–6, 8, *Cook*, No. 20-cv-80 (hereinafter *Cook* Compl.). And *Gaddy v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 665 F. Supp. 3d 1263, 1272–73 (D. Utah 2023), filed before the Whistleblower Report's publication, alleged a scheme to conceal facts about Mormon history from lay members and was amended soon after publication of the Report to allege misuse of tithing funds. *See* Proposed Am. Class Action Compl. at 2–3, *Gaddy*, 665 F. Supp. 3d 1263 (No. 19-cv-554) (hereinafter *Gaddy* Proposed Am. Compl.).

C. The 2023 SEC Order

In February 2023 the SEC issued a stipulated order initiating cease-and-desist proceedings against Defendants and agreeing to a settlement. *See Ensign Peak Advisors, Inc. & The Church of Jesus Christ of Latter-day Saints*, Exchange Act Release No. 96951, 2023 WL 2160756, at *1 (Feb. 21, 2023) (order instituting proceedings). The order directed Defendants to refrain "from committing or causing any violations" of the statutory provision requiring proper filing of the forms filed by

Ensign's 13 LLCs. *Id.* at *7. Defendants did not admit any legal violations but paid $5 million in civil penalties.

D. This Action

In October 2023 Plaintiffs Daniel Chappell, John Oaks, and Masen Christensen filed a proposed class-action complaint in the United States District Court for the District of Utah. The other Plaintiffs then filed similar cases in federal courts in California, Tennessee, and Washington, and the Judicial Panel on Multidistrict Litigation ordered that the four cases be centralized in Utah federal court for "coordinated or consolidated pretrial proceedings." Aplts. App., Vol. 1 at 58 (transfer order). Plaintiffs filed a consolidated class-action complaint containing five causes of action: (1) breach of fiduciary duty for the misuse of donations and failure to disclose that misuse, (2) fraudulently inducing donations, (3) fraudulently concealing the misuse of donated funds, (4) fraudulently misrepresenting that tithing funds would be used only for Church purposes, and (5) unjust enrichment through the continued retention of donated funds.

In April 2025 the district court dismissed the Appellants' consolidated complaint with prejudice. The court took judicial notice of news coverage of the Whistleblower Report and of the earlier suits—*Gaddy*, *Cook*, and *Huntsman*. Based on these records, the court ruled that Plaintiffs' claims were barred by Utah's three-year statute of limitations for fraud claims, because persons in their situations should have discovered their claims through reasonable diligence more than three years before Plaintiffs filed suit.[1]

II. DISCUSSION

"We review *de novo* the dismissal of a complaint for failure to state a claim under Rule 12(b)(6)." *Bistline v. Parker*, 918 F.3d 849, 862 (10th Cir. 2019). This court's role in this diversity action is to predict whether the Utah Supreme Court would hold on this record that Plaintiffs' claims are barred by the state statute of limitations. *See Wade v. EMCASCO Ins. Co.*, 483 F.3d 657, 666 (10th Cir. 2007).

Plaintiffs challenge the district court's conclusion that their claims are time-barred. Although three of the consolidated cases were originally filed in States other than Utah, Plaintiffs assert that "the relevant statute to examine for statute of limitations purposes is" a Utah statute. Aplts. Br. at 12. Utah's statutes of limitations "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Berenda v. Langford*, 914 P.2d 45, 52 (Utah 1996). The specific

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[1] The district court held in the alternative that Plaintiffs' breach-of-fiduciary-duty claim failed because the Church did not owe a fiduciary duty to its donors, Plaintiffs' fraudulent-inducement and fraudulent-misrepresentation claims failed because Plaintiffs failed to plead reliance on any allegedly false representations, Plaintiffs' fraudulent-concealment claims failed because Plaintiffs failed to plead that an objectively reasonable person in Plaintiffs' position would find the nondisclosed information material, and Plaintiffs' unjust-enrichment claims failed because they were predicated on the fraud allegations. We need not reach these alternative holdings because we affirm the court's conclusion on the statute of limitations.

statute identified by the parties here is Utah Code Ann. § 78B–2-305(3) (2019),[2] which provides a three-year limitations period for "relief on the grounds of fraud or mistake; except that the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake."[3] According to the Utah Supreme Court, the limitations period "begins to run from the time the person entitled to the property knows, *or by reasonable diligence and inquiry should know*, the relevant facts[,] . . . [and the] means of knowledge is equivalent to knowledge." *Baldwin v. Burton*, 850 P.2d 1188, 1196 (Utah 1993) (internal quotation marks omitted) (emphasis added). Thus, the claim must be filed within three years of the earlier of (1) when the plaintiff actually knew the factual basis of the claim (the subjective test) or (2) when a hypothetical person in the plaintiff's situation should have known those facts by the exercise of reasonable diligence (the objective test), *see O'Dea v. Olea*, 217 P.3d 704, 714 (Utah 2009) (the phrase "through the exercise of reasonable diligence should have known" in a different statute established "an objective standard" (internal quotation marks omitted)); *Patterson v. United States*,

[2] Since the parties and district court have agreed that this is the correct statute of limitations to apply to all Plaintiffs' claims, we will accept their choice of law. *See TMJ Implants, Inc. v. Aetna, Inc.*, 498 F.3d 1175, 1180–81 (10th Cir. 2007) ("The parties agree that the applicable substantive law is that of Colorado, although subject to any restrictions on the alleged torts that may be imposed by the United States Constitution. We therefore assume that this case is governed by Colorado substantive law (and, of course, the federal constitution)").

[3] Utah Code Ann. § 78B–2-305 was amended in 2026, reorganizing the contents of former subsection 3. *See* 2026 Utah Laws Ch. 307 (H.B. 260). The relevant statutory language was not changed at any time between the publication of the Whistleblower Report and when Plaintiffs filed their complaint.

451 F.3d 268, 271 (1st Cir. 2006) (describing the reason-to-know test for starting the limitations period in the Federal Tort Claims Act as "an objective one"). When the objective component is satisfied, we say that the plaintiff had constructive knowledge (or, sometimes, constructive notice) of the claim. *See Constructive Knowledge*, *Black's Law Dictionary* 1041 (12th ed. 2024) ("Knowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person").

The earliest of Plaintiffs' consolidated actions was filed October 2023. Thus, Plaintiffs' claims are untimely if the limitations period began to run before October 2020.

Plaintiffs argue that the district court committed several errors in deciding that their claims are time-barred. First, they argue that the statute of limitations is a question of fact that should not have been resolved on a motion to dismiss. Second, they contend that the district court wrongly took judicial notice of the Whistleblower Report and related news articles. Third, they say that the district court erred in ruling that the Whistleblower Report (and the resulting newspaper articles and other media attention) sufficed to start the running of the limitations period. And fourth, they claim that they should have been granted an opportunity to amend their pleadings to allege that they did not know of the Whistleblower Report or the media coverage of it. We reject each argument.

A. Resolution of Timeliness on Motion to Dismiss

Plaintiffs argue that the question of when exactly their claims accrued is a question of fact that should have been explored in discovery and then submitted to a jury rather than decided by the district court on a motion to dismiss.

We disagree. Though not the common case, "on occasion it is proper to dismiss a claim on the pleadings based on an affirmative defense[, as] . . . when the complaint itself admits all the elements of the affirmative defense by alleging the factual basis for those elements." *Fernandez v. Clean House, LLC*, 883 F.3d 1296, 1299 (10th Cir. 2018). This is one such occasion. Utah's statute of limitations for fraud is triggered not just at the time of actual discovery of the fraud but also at the time "a plaintiff . . . should have discovered his or her cause of action." *Russell Packard Dev., Inc. v. Carson*, 108 P.3d 741, 746 (Utah 2005) (emphasis omitted). The facts from which the district court concluded that Plaintiffs should have discovered their claim—the date of publication of the Whistleblower Report and related news coverage—are either alleged in the complaint or are undisputed facts that can be considered in resolving a motion to dismiss. *See infra* at § B.1; *In re Tithing Litig.*, 785 F. Supp. 3d at 1032 ("[T]he overwhelming information in the public domain by early 2020 would have inspired (and in fact did inspire) similarly-situated individuals to learn about the facts underlying their claims and file suit").

In response, Plaintiffs cite *Bistline* for the proposition that "[t]he fraud statute of limitations involved here almost always presents a question of fact as to when plaintiff did discover or should have discovered the defendants' wrongdoing." 918

F.3d 849 at 881 (internal quotation marks omitted). But, as the district court pointed out, the reason that *Bistline* refused to conclude as a matter of law that the plaintiffs' suspicions should have led them to discover their claims was because the case involved "incredibly unique and extreme factual circumstances." *In re Tithing Litig.*, 785 F. Supp. 3d at 1031 (internal quotation marks omitted). In *Bistline* the plaintiffs were former members of the Fundamentalist Church of Jesus Christ of Latter-day Saints, who had been entrenched for generations in a community "insulated from the outside world," lacked "outside education that could alert them to their legal rights," and received "specialized schooling to indoctrinate them against recognizing their legal claims." *Bistline*, 918 F.3d at 882. Such plaintiffs could reasonably have been ignorant of their claims despite significant media attention "in the external world." *Id.* at 861.

Here, Plaintiffs' claims lack the essential feature of *Bistline*: an isolated, almost totalitarian, environment creating an issue of fact as to whether someone in those unique circumstances could reasonably discover fraudulent misconduct that could readily be discovered by someone in the "outside" world. Plaintiffs are more similarly situated to those *Bistline* plaintiffs who escaped their confinement and "were no longer immersed in the unique circumstances" for many years before filing their suit. *Id.* at 887. Those plaintiffs' claims were "barred by the applicable statutes of limitations as a matter of law," *id.* at 888, and the district court could properly determine the same with respect to Plaintiffs' claims here.

Plaintiffs also complain that "the district court did not find a date when notice was triggered, leaving a period of weeks or months between 2019 and 2020 of possible notice." Aplts. Br. at 25–26. We see no reversible error. True, in some cases the question of exactly when a plaintiff should have discovered enough facts to bring suit will control the statute-of-limitations analysis. *See, e.g.*, *Russell Packard Dev.*, 108 P.3d at 752 (declaring a "legitimate factual question" as to when in a five-month period the plaintiffs reasonably would have discovered the facts forming the basis for their causes of action, so that the trier of fact would need to decide whether the plaintiffs acted reasonably in failing to file their complaint within the limitations period). But when it is clear that the plaintiff should have learned of his or her claims early enough that the statute of limitations has lapsed, a court does not err in so holding without giving a precise date that the limitations period began to run. *See, e.g.*, *Robert L. Kroenlein Trust ex rel. Alden v. Kirchhefer*, 764 F.3d 1268, 1280 (10th Cir. 2014) (accrual began well before the critical date of August 31, 2007).

B. Should Plaintiffs Have Discovered Their Claims by October 2020?

The district court determined that with reasonable diligence Plaintiffs should have discovered their claims before October 2020. Plaintiffs challenge the facts and reasoning underlying that determination. They argue that the district court improperly took judicial notice of news stories about the Whistleblower Report because the court conflated the attention the Report received with its truthfulness. And they further contend that even if judicial notice was proper, the Report and articles about it would not establish that they should have discovered their claims.

1. *Judicial notice*

The challenge to the district court's judicial notice of the Whistleblower Report and news coverage can be readily rejected. Plaintiffs argue that courts should "'take[] judicial notice of contents of news articles'" only as "'proof that something is publicly known, not for the truth'" of the articles' assertions. Aplts. Br. at 19 (quoting *Est. of Lockett v. Fallin*, 841 F.3d 1098, 1111 (10th Cir. 2016)). But that is exactly what the court did here: the court considered the articles "not for their truth but only as evidence of the information in the public realm shortly following the release of the Whistleblower Report." *In re Tithing Litig.*, 785 F. Supp. 3d at 1026 n.127 (citing *Est. of Lockett*, 841 F.3d at 1111).

2. *Reasonable diligence*

"A plaintiff is deemed to have discovered his action when he has actual knowledge of the fraud or by reasonable diligence and inquiry should know[] the relevant facts of the fraud perpetrated against him." *Colosimo v. Roman Cath. Bishop of Salt Lake City*, 156 P.3d 806, 811 (Utah 2007) (internal quotation marks omitted). Plaintiffs challenge the application of this law to their complaint. They make two arguments.

First, they contend that a reasonably diligent person in their position would not necessarily have known of the news articles about the Whistleblower Report, which were mostly local to Salt Lake City and behind paywalls. Second, they say, knowledge of the articles would not have caused a reasonable person to investigate the possibility of fraud by the Church since there was no reason to believe that the Whistleblower Report's allegations were true. In their view, the limitations period could not have started to run before May 2023, when the network TV show *60 Minutes* aired an exposé "on the [W]histleblower [R]eport and related matters," which made them "truly aware of Defendants' conduct." Aplts. App., Vol. 2 at 311–12 (opp'n to mot. to dismiss).

i. *Reason to know of the Whistleblower Report*

In support of their first argument, Plaintiffs contend that (1) the news coverage was much less widely available than the court believed, and (2) the court incorrectly imposed on Plaintiffs a heightened duty owed by sophisticated investors to follow the news.

We are not persuaded. Contrary to Plaintiffs' claim that "[t]he stories [about the Report] were largely local, Salt Lake news sources," Aplts. Br. at 19, the coverage cited by the district court included articles from The Wall Street Journal, The Washington Post, Forbes, Fox News, and CNN,[4] all sources that can hardly be

[4] The articles are: Ian Lovett & Rachael Levy, *The Mormon Church Amassed $100 Billion, It Was the Best-Kept Secret in the Investment World*, Wall St. J. (Feb. 8, 2020, 5:07 PM), https://perma.cc/578H-2SYV; Peggy Fletcher Stack, *LDS Church Kept the Lid on Its $100B Fund for Fear Tithing Receipts Would Fall, Account Boss Tells Wall Street Journal*, Salt Lake Trib. (Feb. 8, 2020, 1:40 PM), https://perma.cc/2Z7V-9TYV; Benjamin Wood, *Whistleblower Claims That LDS Church Stockpiled $100 Billion in Charitable Donations, Dodged Taxes*, Salt Lake Trib. (Dec. 16, 2019, 8:25 PM), https://perma.cc/3226-3FLK; Jon Swaine, Douglas MacMillan, & Michelle Boorstein, *Mormon Church Has Misled Members on $100*

described as parochial. Nor is it of much significance that, as Plaintiffs assert, some (unidentified) articles are behind paywalls. The issue is not whether Plaintiffs saw or should have seen any particular article. Rather, the national scope and quantity of sources illustrate that the Whistleblower Report was widely known and very likely appeared in multiple other news sources and in public conversation in general. *See In re Tithing Litig.*, 785 F. Supp. 3d at 1026 (the articles "demonstrate the extensive nationwide reporting on Defendants' alleged fraud that quickly followed publication of the Whistleblower Report" (footnotes omitted)). A reasonably informed person

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Billion Tax-Exempt Investment Fund, Whistleblower Alleges, Wash. Post (Dec. 17, 2019), https://perma.cc/25ZZ-SQ5R; Tad Walch, *Church Responds to Allegations Made by Former Employee in IRS Complaint*, Deseret News (Dec. 17, 2019, 12:43 PM), https://perma.cc/4GP6-MJES; Jerad Giottonini, *Whistleblower Alleges Church Misused $100 Billion in Accounts Intended For Charitable Purposes*, ABC4 News (Dec. 17, 2019, 12:12 PM), https://perma.cc/YPT3-P52Y; Cristina Flores, *Will LDS Church Suffer Consequences After Whistleblower Claims It Sits on $100B?*, KUTV News (Dec. 17, 2019, 8:15 PM), https://perma.cc/GHX9-DLSE; Caleb Parke, *Mormon Church Misled Members on Tax-Exempt Investment Fund, Whistleblower Claims*, Fox News (Dec. 18, 2019, 1:28 PM), https://perma.cc/X9EN-63EL; Cheri Mossburg & Stephanie Becker, *Mormon Church Accused of Stockpiling Billions, Avoiding Taxes*, CNN (Dec. 18, 2019, 8:50 PM), https://perma.cc/RJ39-DBD7; Jack Jenkins, *LDS Church Fund Unlikely to Face IRS Backlash, Experts Say*, Salt Lake Trib. (Dec. 19, 2019, 6:03 PM), https://perma.cc/9X7C-V57K; Larry Curtis, *LDS Church Releases Explanation of Its Use of Tithes, Donations After $100B Fund Revealed*, KUTV News (Dec. 20, 2019, 5:39 PM), https://perma.cc/PH4F-WRCH; Peter J. Reilly, *More on the Mormon Ensigngate*, Forbes (Dec. 20, 2019, 2:35 PM), https://perma.cc/8DYY-T984; Nate Carlisle, *Excerpts Show How the LDS Church Tried to Keep a Lid on Its $100B Account, Even Freezing Out Apostle Boyd K. Packer*, Salt Lake Trib. (Dec. 22, 2019, 7:00 AM), https://perma.cc/MEB8-QZPM; Michelle Boorstein & Jon Swaine, *These Mormon Twins Worked Together on an IRS Whistleblower Over the Church's Billions—And It Tore Them Apart*, Wash. Post (Jan. 16, 2020), https://perma.cc/5YZ5-4TET; Samuel Brunson, *What's A Church? That Can Depend on The Eye of The Beholder or Papers Filed With the IRS*, Salt Lake Trib. (Feb. 6, 2020, 11:06 AM), https://perma.cc/N4HY-F3RW. *See In re Tithing Litig.*, 785 F. Supp. 3d at 1026–27.

may have been ill or on vacation and missed all the news one day. But the news of that day will still echo in follow-up news pieces and in discussion among members of the public interested in a particular issue. The courts cannot blind themselves to the realities of modern life. The strong public interest in repose that is reflected in statutes of limitations should not be thwarted by highly unlikely vicissitudes. That is the very purpose of having an objective (as well as a subjective) test for a discovery exception in a statute of limitations.

This view is reflected in several prior circuit opinions. In *Grynberg v. Total S.A.*, 538 F.3d 1336 (10th Cir. 2008), we held that an investor should have discovered his claim because of financial-news reporting on matters relevant to his multimillion-dollar investment abroad. To be sure, the investor was sophisticated (not everyone can be expected to follow the financial news), but we noted with approval that "more generally" other circuits had held that "where events receive widespread publicity, plaintiffs may be charged with knowledge of their occurrence." *Id.* at 1349 (brackets, ellipsis, and internal quotation marks omitted). In *Patterson v. United States* the First Circuit said that a plaintiff should have learned of the FBI's involvement in her father's death through nationally circulated reporting on the matter. *See* 451 F.3d 268, 271 (1st Cir. 2006). In *In re Briscoe* the Third Circuit held that "extensive publicity and notice campaigns" about the withdrawal of potentially dangerous diet drugs gave the plaintiffs a "reasonable opportunity to discover the alleged wrong and bring suit before the limitations period expired." 448 F.3d 201, 224 (3d Cir. 2006) (internal quotation marks omitted). In *United Klans of America v. McGovern*, 621

F.2d 152, 154 (5th Cir. 1980), one of the grounds supporting summary judgment was that "[w]here events receive . . . widespread publicity, plaintiffs may be charged with knowledge of their occurrence." The event in that case was a statement by the United States Attorney General at a nationally covered press conference. And *Hughes v. Vanderbilt University*, 215 F.3d 543, 548 (6th Cir. 2000), followed *United Klans* in charging a Nashville resident with knowledge of a matter reported three times by a local television station and highlighted in the local press.

Plaintiffs attempt to distinguish these cases, but they rely on facts that were not considered by the courts in resolving the should-have-known issue. They contend that the plaintiffs in *Grynberg* (all closely related to Mr. Grynberg) admitted actual knowledge of a news article relating to their claims in 1993. But our holding charged the plaintiffs with constructive knowledge of the facts of the claims only by 1997, when several other news articles were published. *See Grynberg*, 538 F.3d at 1348. In *Patterson*, Plaintiffs argue, the statute of limitations was "strictly construed in the government's favor," and one plaintiff did have actual knowledge of the pertinent facts and presumably would have conveyed them to the other plaintiff, her sister. Aplts. Reply Br. at 14 n.5 (internal quotation marks omitted); *see also id.* at 14–15. But the First Circuit referenced neither the strict construction of the statute of limitations nor any alternative sources of the information when it said that the fact that the second plaintiff "resided in Georgia in December 2000-January 2001 is insufficient to vitiate a finding that she should have learned of the [nationally reported] news at that time." 451 F.3d at 271. Plaintiffs weakly attempt to distinguish

In re Briscoe, arguing only that "the relevant question before the court was whether the plaintiff had no 'reasonable opportunity to discover the alleged wrong.'" Aplts. Reply Br. at 13 (quoting *In re Briscoe*, 448 F.3d at 224). The question here—whether Plaintiffs should have known of the facts of their claims by the exercise of reasonable diligence—is substantially similar.

Plaintiffs further suggest that in *United Klans* "a combination of factors" established the plaintiffs' notice, and that in *Hughes* "the plaintiff alleged the date of accrual in her complaint independently of" the widespread publicity that gave rise to constructive notice. Aplts. Reply Br. at 13–14 (internal quotation marks omitted). But there is no denying that the *United Klans* court recognized as authoritative the proposition regarding widespread publicity for which we quote it. And in *Hughes*, that the plaintiff's complaint alleged that she "did not know or have reason to know of their claims" until the date that details of those claims were published in the press, *Hughes*, 215 F.3d at 546 (emphasis omitted), supports, not undermines, the holding that "[t]his publicity was sufficient to charge Hughes with constructive knowledge of the events underlying her cause of action," *id.* at 548. This is just an example of a party conceding the undeniable, which is presumably why the Sixth Circuit has continued to rely on *Hughes* for the proposition that "where events receive widespread publicity, plaintiffs may be charged with knowledge of their occurrence[] . . . even when [the plaintiffs] claim[] that [they] did not hear or read any of the media reports." *Ball v. Union Carbide Corp.*, 385 F.3d 713, 722 (6th Cir. 2004) (brackets and ellipsis omitted).

The only case that Plaintiffs put forward to support their view that ordinary citizens should not be held to follow the news, *Thompson v. 1-800 Contacts, Inc.*, 2018 WL 2271024 (D. Utah May 17, 2018), is not to the contrary. There, the plaintiffs were individual consumers who alleged that they paid inflated prices for contact lenses because the defendant, a retailer of contact lenses, had entered into a series of anticompetitive settlement agreements with other retailers. *See id.* at *1. Holding that the plaintiffs did not have constructive knowledge of their claims, the court said that cases where constructive knowledge was found based on "information [that] was widely disseminated through press releases, news reports, and multiple complaints" were "distinguishable on their facts"; it explained that the *Thompson* plaintiffs "had no reason to know about (much less understand) the antitrust implications of the settlement agreements." *Id.* at *13. Here, Plaintiffs should have known of the Whistleblower Report, and reasonable people would have understood its implications for potential fraud claims.

Moreover, there are particular features of this case that confirm the fairness of this analysis. First, as counsel for Defendants observed, in this case there is a market test for when a reasonably diligent person could be expected to discover the present claims against the Church and Ensign. At least three other groups of plaintiffs of varying levels of sophistication managed to bring claims against the Church long before Plaintiffs did.[5] At one end of the sophistication spectrum, James Huntsman alleged that he held "numerous" leadership and teaching assignments within the Church and had donated millions of dollars. *Huntsman* Compl. at 5. Toward the other end of the spectrum, Lynnette Cook, Rodney Vessels, and Julie Taggart filed a pro se complaint that described themselves simply as "members of the Church in good standing for many years." *Cook* Compl. at 7. In the middle, Laura Gaddy was involved in a Church women's organization and paid her full tithes, though she did not allege contributions as large as Huntsman's.

In addition, the complaint itself provides a baseline for the sources of information that Plaintiffs relied on. The core of Plaintiffs' claims is that they believed various statements made by the Church. How did they know about those statements? The complaint identifies only three sources of publicity about those statements: a press conference described in a Church-owned magazine, a later article in that same magazine, and a report in The Salt Lake Tribune (which later published at least five stories about the Whistleblower Report). Nothing in the complaint explains why someone who followed Church affairs closely enough to learn of the supposedly false statements about the use of tithed funds, could not be expected to

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[5] Plaintiffs misunderstand the significance of these other complaints, contending that "donors and former members" do not have a "duty to monitor case dockets for relevant filings" and that *Cook*, *Gaddy*, and *Huntsman* "do not involve the same allegations and are not reliable fonts of facts that are relevant to 'inquiry notice.'" Aplts. Br. at 21–22. The point is not that Plaintiffs were likely to learn of the facts giving rise to their claims from reading these complaints. Rather, it is that similarly situated plaintiffs did timely learn of those facts, underscoring that, with reasonable diligence, Plaintiffs should have done so as well.

learn, through reasonable diligence, about the Whistleblower Report, which was much more widely publicized. Plaintiffs have not suggested any reason why they would have been out of the loop.

In light of the authorities presented to us by the parties, we are confident that we are reaching the result that Utah's high court would come to.

ii. *Reason to investigate*

Plaintiffs argue, however, that the news reports about the Whistleblower Report would not be enough to cause a reasonable person to investigate the Church's fraud. After all, the Report may have been just the delusions of a disgruntled zealot. *See* Aplts. Br. at 21 (arguing that the whistleblower relayed unverified accusations and "may have been a crackpot"). Besides, they say, after the Report was released, Defendants "continued and expanded efforts to conceal their practices, including issuing statements that they comply with all applicable law governing our donations, investments, taxes and reserves." *Id.* at 20 (brackets, ellipsis, and internal quotation marks omitted). These "public denials give rise to competing inferences" that Plaintiffs believe create a question of fact as to when their claims accrued. *Id.* (internal quotation marks omitted).

But such reliability questions are not an excuse for ignoring the report, they are a call to action. The Whistleblower Report declared that the Church had funneled billions of dollars of donations into covert permanent investments. As the Utah Supreme Court has stated, "Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led." *Russell Packard Dev.*, 108 P.3d at 750 (internal quotation marks omitted). If nothing else, the Whistleblower Report would have excited the attention of anyone in Plaintiffs' position. And, as the district court observed, "No imprecise information, scientific uncertainty, or lack of expertise would have 'hampered' Plaintiffs' discovery of the key facts upon reasonably diligent investigation." *In re Tithing Litig.*, 785 F. Supp. 3d at 1026. Nor could they complain that they were misled by the Church's denials of the allegations in the Report, because their claim that they were not aware of the Report until the *60 Minutes* episode is inconsistent with their having heard of any denials.

Before we move on, we emphasize that it is incorrect to say, as Plaintiffs do, that our holding means that "ordinary donors to a charity are legally obliged to read the *Wall Street Journal* or *Washington Post* to ensure that their donations are being honestly and legally used." Aplts. Br. at 20. We merely affirm the well-recognized principle that a plaintiff can be charged with knowledge of events that are so widely reported that a plaintiff exercising reasonable diligence should have learned of them.

C. Leave To Amend

Finally, Plaintiffs argue that the district court erred by dismissing their consolidated complaint with prejudice. They claim that if granted leave to amend, they would add allegations that would overcome the statute-of-limitations bar.

This argument comes too late. If Plaintiffs thought that additional pleadings or evidence would be of assistance in resisting Defendants' motion to dismiss on statute-of-limitations grounds, it should have raised those matters in its response to the motion. But they did not do so. Nor did they seek relief in any motion after the district court entered its decision. Briefs on appeal are not a proper venue for initiating a request to amend the complaint. *See Switzer v. Coan*, 261 F.3d 985, 990 (10th Cir. 2001) ("it was incumbent upon [plaintiff] to seek leave [to amend] from the district court" and "[b]y not doing so, he has elected to appeal the case as it stood" (internal quotation marks omitted)). Because "curative amendment was not properly sought in district court," Plaintiffs "cannot object on appeal to lack of opportunity to cure defective pleading." *Id.*

III. CONCLUSION

We **AFFIRM** the judgment of the district court.