SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CENTENE CORPORATION, a Delaware corporation, Plaintiff, v. JAL EQUITY CORPORATION, a Nevada corporation, and ERAN SALU, an individual, Defendants.	Index No. 656704/2025 Motion Seq. No. 2

PLAINTIFF CENTENE CORPORATION'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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Plaintiff Centene Corporation ("Centene"), by and through its undersigned counsel, respectfully submits this memorandum of law in opposition to Defendants JAL Equity Corporation ("JAL") and Eran Salu ("Salu") (collectively "Defendants") motion to dismiss Centene's Complaint (NYSCEF Doc. 6) (the "Motion").

INTRODUCTION

Defendants ask this Court to accept a fiction: that this case is merely a straightforward contractual dispute between Centene and ColorArt, LLC ("ColorArt"), and that JAL and Salu are uninvolved parties who have been unfairly hauled into court only because ColorArt declared bankruptcy. In doing so, Defendants miss the forest for the trees. This action arises because Defendants, through their complete control of ColorArt, orchestrated a scheme in which millions of dollars that Centene entrusted to ColorArt were misappropriated and retained for Defendants' benefit. Centene brings this action to hold the real decision-makers responsible.

This is the quintessential case where piercing the corporate veil is justified. Centene plausibly pleads that JAL and Salu dominated and controlled ColorArt's business practices. Salu wholly owns JAL, and JAL in turn wholly owns ColorArt, along with a sprawling network of more than twenty affiliated entities. JAL executives and Salu together held all key management positions at ColorArt, giving them complete control over its day-to-day operations—including its decisions concerning the handling of Centene's funds. JAL and Salu deliberately undercapitalized ColorArt and excessively fragmented operations across affiliated entities, using that structure to move money and evade obligations. JAL and Salu now attempt to hide behind ColorArt's corporate form to escape responsibility for their own conduct.

Defendants' Motion attempts to sidestep these allegations by downplaying JAL's and Salu's involvement, mischaracterizing the Complaint, and demanding proof that can only be obtained through discovery into Defendants' financial arrangements and organizational structure.

But that impermissibly transforms the pleading standard into a merits inquiry. At this stage, the only question is whether Centene's allegations, taken together and construed in Centene's favor, plausibly state a claim for relief. They do.

Defendants' remaining arguments fare no better. ColorArt's bankruptcy does not shield JAL and Salu from liability for their own conduct, and the automatic stay does not convert Centene's personal claims against JAL and Salu into property of the bankruptcy estate. Nor are Centene's fraud, conversion, and unjust enrichment claims improperly duplicative. The Complaint adequately pleads each of those claims based on Defendants' control over ColorArt and their wrongful retention and misuse of Centene's funds, with each claim grounded in independent legal duties and distinct elements.

Because Centene has plausibly alleged facts sufficient to support each of its causes of action, Defendants' motion should be denied in its entirety.

FACTUAL BACKGROUND

This case arises out of the disappearance of millions of dollars that Centene placed with ColorArt to be held in prepaid escrow accounts for Centene's exclusive benefit. Compl. ¶¶ 1–4. Those funds always remained Centene's property and were held under an explicit obligation to be returned upon demand. *Id.* ¶¶ 23–25. Over several years, ColorArt provided regular reports confirming the amounts held in escrow and expressly assured Centene that they were accurate. *Id.* ¶¶ 22–23, 27–28. Centene relied on those representations each time it continued to fund and replenish the accounts with millions of dollars. *Id.* ¶¶ 26–28.

In January 2025, Centene formally requested ColorArt issue a refund for the millions of dollars in unused funds held in escrow. *Id.* ¶¶ 32, 56. ColorArt never returned this money. *Id.* ¶¶ 33–51, 57. At Defendants' direction, ColorArt repeatedly represented that refunds were "in process" and imminent, only to reverse course, refuse payment, and provide shifting explanations

while retaining Centene's money. *Id.* ¶¶ 33–39. Centene alleges Defendants concealed that escrow funds were being drained and instructed ColorArt to misrepresent present facts concerning the availability of those funds and delay repayment until ColorArt entered bankruptcy. *Id.* ¶¶ 57, 95–99.

Centene alleges that this misconduct flowed directly from Defendants' complete domination and control of ColorArt. *Id.* ¶¶ 3, 57, 60, 72. Salu wholly owns JAL, and JAL wholly owns ColorArt, along with dozens of affiliated entities in a highly fragmented enterprise. *Id.* ¶¶ 16–17, 62, 69. Salu has held every officer and director position at JAL, and many at ColorArt (including President, Treasurer, and Secretary), while JAL executives filled key leadership and financial roles across ColorArt and related companies. *Id.* ¶¶ 63–68. ColorArt did not make material decisions independently. JAL and Salu controlled ColorArt's capitalization and financial decisions, including any decision over whether Centene's escrow funds would be returned. *Id.* ¶¶ 60, 72–73.

Centene further alleges classic hallmarks of alter-ego abuse. Defendants undercapitalized ColorArt. *Id.* ¶ 70. They fragmented operations across dozens of entities while centralizing control with JAL and Salu. *Id.* ¶¶ 62, 69. They disregarded corporate separateness through overlapping officers, shared offices, and enterprise-wide control. *Id.* ¶¶ 63–68. They siphoned funds from ColorArt that were held to satisfy obligations to Centene. *Id.* ¶¶ 72–76.

Together, these facts describe a controlled corporate structure used to misappropriate Centene's escrow funds, conceal the diversion through false reporting and assurances, and shield JAL and Salu from liability. At the pleading stage, the Court must accept these facts as true and construe them in Centene's favor. This is more than sufficient to survive a motion to dismiss.

STANDARD OF REVIEW

On a motion to dismiss pursuant to CPLR 3211(a)(7), "the pleading is to be afforded a liberal construction." *Eccles v. Shamrock Cap. Advisors, LLC*, 42 N.Y.3d 321, 342 (2024) (internal citation omitted). The Court "must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within *any cognizable legal theory*." *Behler v. Tao*, 43 N.Y.3d 343, 348 (2025) (emphasis added) (internal citation omitted). At this stage, "[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus." *Druger v. Syracuse Univ.*, 207 A.D.3d 1153, 1154 (2022) (cleaned up). The inquiry is therefore "whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one." *Chanko v. Am. Broad. Companies, Inc.*, 27 N.Y.3d 46, 52 (2016) (internal citation omitted).

A motion to dismiss for lack of standing under CPLR 3211(a)(3) is likewise subject to a demanding standard. "[T]he burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law." *U.S. Bank Nat'l Ass'n v. Trulli*, 179 A.D.3d 740, 741–42 (2020) (cleaned up). The "motion will be defeated if the plaintiff's submissions raise a question of fact as to its standing." *Id.* at 742 (internal citations omitted).

While CPLR 3016(b) requires that claims for fraud be plead with particularity, that requirement "should not be so strictly interpreted as to prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud." *HSH Nordbank AG v. Barclays Bank PLC*, 42 Misc. 3d 1231(A), at *9–10 (Sup. Ct. N.Y. Cnty. 2014) (quoting *Pludeman v. N. Leasing Sys., Inc.*, 10 N.Y.3d 486, 491 (2008)). Accordingly, CPLR 3016(b) is satisfied where the pleaded allegations are sufficient to permit a reasonable inference of the alleged fraudulent conduct. *Id.* at *10.

"A cause of action under the doctrine of piercing the corporate veil is not required to meet any heightened level of particularity in its allegations." *HLI Rail & Rigging, LLC v. Franklin Exhibit Mgmt. Grp., LLC*, 237 A.D.3d 1071, 1073 (2025) (internal citation omitted). As with all claims challenged at the pleading stage, veil-piercing allegations need only plausibly allege facts that, if accepted as true, support the requested relief.

ARGUMENT

I. The Automatic Stay in ColorArt's Bankruptcy Proceedings Does Not Bar Centene's Personal Actions Against JAL and Salu Because Centene's Claims Are Not Property of the Bankruptcy Estate.

Defendants assert that Centene does not have standing to pursue its alter-ego claims against JAL and Salu because those claims are "considered the bankruptcy estate's property and are subject to the automatic stay." Motion at 5.[1] That argument rests on a fundamental misunderstanding of North Carolina law[2] and the nature of Centene's veil-piercing claim.

Under North Carolina law, "[w]hen a corporation enters bankruptcy, any legal claims that could be maintained *by the corporation* against other parties become part of the bankruptcy estate," and therefore "may only be brought by the trustee in the bankruptcy proceeding." *Newton v. Barth*, 248 N.C. App. 331, 336 (2016) (emphasis in original) (cleaned up). But critically, "the trustee's authority to bring suit on behalf of the bankruptcy estate *does not extend* to state law claims by the estate's *creditors against third parties*." *Id.* (emphasis added).

The controlling inquiry is whether the alleged injury is "personal to [the creditor] and distinct from the injury sustained by the corporation itself." *Id.* at 338 (cleaned up).

[1] At best, the automatic stay in ColorArt's bankruptcy proceedings could only implicate Centene's breach of contract claim (Count 1). Centene has separately alleged several Counts (Counts 2–4) *specific* to JAL's and Salu's actions, which do not hinge on piercing the corporate veil, and thus obviously would not be property of ColorArt's bankruptcy estate.

[2] Centene agrees that North Carolina law governs who has standing to assert an alter-ego claim.

A cause of action "belongs to, and is properly maintained by" a creditor if it is "founded on injuries peculiar or personal" to that individual creditor, such that "any recovery would not pass to the corporation and indirectly to other creditors." *Keener Lumber Co., Inc. v. Perry*, 149 N.C. App. 19, 26 (2002) (cleaned up); *see also Angell v. Kelly*, 336 F. Supp. 2d 540, 547 (M.D.N.C. 2004) (reasoning that where alleged misrepresentations were "factually unique to Plaintiffs as among [the debtor's] other creditors," the resulting injuries were "peculiar and personal" and could be pursued "separate and apart from claims reserved for the trustee in the bankruptcy proceeding"). By contrast, a cause of action is "property of the bankruptcy estate" if it "could also have been pursued by any of [the debtor corporation]'s creditors." *Associated Hardwoods, Inc. v. Lail*, No. 18 CVS 329, 2018 WL 3747439, at *6 (N.C. Super. Aug. 6, 2018) (cleaned up).

Centene's claims against JAL and Salu are unequivocally personal. They are not based on the generalized mismanagement of ColorArt or on breaches of duties ColorArt broadly owed to all creditors. Instead, Centene alleges that Defendants engaged in targeted and fraudulent conduct arising out of Centene's specific relationship with ColorArt, resulting in the misappropriating of millions of dollars held exclusively for Centene's benefit. That is an injury to Centene alone, not to ColorArt or all of ColorArt's creditors equally. If Defendants were correct and only the ColorArt's trustee in bankruptcy could pursue these claims, then any recovery would be swept into the bankruptcy estate and distributed to *other creditors*, leaving Centene unable to fully recover its stolen funds.

Defendants' broad assertion that all alter-ego or veil-piercing claims necessarily belong to the bankruptcy trustee misstates the law. Setting aside the fact that the cases Defendants cite are non-precedential and/or apply different governing law (e.g., Texas, New Jersey, and New York law), they are inapposite because they concern *general* claims—not a creditor's personal or

particular alter ego claims against a third-party. *See, e.g.*, *Kalb, Voorhis & Co. v. Am. Fin. Corp.*, 8 F.3d 130, 133 (2d Cir. 1993) ("Because Appellant's alter ego claim alleges acts by [the Debtor] that were *not directed at Appellant specifically and that harmed all creditors equally*, such claims are property of the bankruptcy estate and are not assertable by individual creditors." (emphasis added)); *In re Keene Corp.*, 164 B.R. 844, 852 (Bankr. S.D.N.Y. 1994) (recognizing that the trustee is the "proper person" to assert an alter ego claim only "[i]f a claim is a *general one*, with *no particularized injury* arising from it, and if that claim could be brought by any creditor of the debtor" (cleaned up)); *In re Emoral, Inc.*, 740 F.3d 875, 879 (3d Cir. 2014) ("In order for a cause of action to be considered 'property of the estate,' the claim must be a 'general one, with no particularized injury arising from it.' On the other hand, if the claim is specific to the creditor, it is a 'personal' one and is a legal or equitable interest only of the creditor." (cleaned up)).[3]

North Carolina law is clear that Plaintiffs have standing to pierce the corporate veil of a bankrupt entity as long as "some misconduct was directed specifically at plaintiff or the directors were alleged to have misappropriated funds that were earmarked for plaintiff." *Associated Hardwoods*, 2018 WL 3747439, at *6 (reaching this conclusion after conducting a "review of North Carolina cases and federal cases applying North Carolina law"); *see also Tart v. Prescott's Pharmacies, Inc.*, 118 N.C. App. 516, 520–21 (1995) (holding creditor claims against alter egos were "not a property of the bankrupt estate" because "the bankruptcy trustee does not have standing to assert claims of creditors of the bankrupt" (cleaned up)); *In re Transcolor*, 296 B.R. at

[3] One of the cases Defendants cite, *In re Kingston Tobacco Co., Inc.*, No. 12-05532-8-RDD, 2012 WL 6721090, at *3 (Bankr. E.D.N.C. Dec. 27, 2012), relies on the Fourth Circuit's decision in *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132 (4th Cir. 1998). This is distinguishable: "*Steyr–Daimler* was not a veil-piercing case, but a case of a bankruptcy trustee's suit and settlement with corporate insiders on behalf of the debtor's estate for corporate mismanagement and its preclusive effect of barring a later veil-piercing suit by a creditor." *In re Transcolor Corp.*, 296 B.R. 343, 365 (Bankr. D. Md. 2003).

365 (reasoning that in the Fourth Circuit "causes of action against corporate alter egos who defraud the corporation's creditors belong exclusively to parties injured by the corporation, including defrauded creditors, and not to the corporation itself").

At bottom, Centene brings its veil-piercing claims to hold JAL and Salu liable for fraudulent conduct that caused Centene direct and particularized injury. It is not an action on behalf of all creditors. It is not a derivative suit on behalf of ColorArt. And it is not a claim ColorArt itself could assert. Because these claims belong to Centene—not the bankruptcy estate—the automatic stay does not apply, and Centene has standing to pursue them.

II. Centene Has Adequately Pleaded Facts Supporting Piercing the Corporate Veil Because JAL and Salu Exercised Complete Control Over ColorArt and Used That Control to Fraudulently Misappropriate Millions from Centene.

Centene alleges that JAL and Salu orchestrated a fraudulent scheme through their wholly owned and dominated subsidiary, ColorArt, using their complete control over the company to misappropriate millions of dollars belonging to Centene. Defendants now attempt to evade responsibility by pretending they had nothing to do with ColorArt's conduct. This is the quintessential circumstance in which piercing the corporate veil is both appropriate and necessary to prevent abuse of the corporate form.

Under North Carolina law, a "corporation which exercises actual control over another, operating the latter as a mere instrumentality or tool, is liable for the torts of the corporation thus controlled." *Glenn v. Wagner*, 313 N.C. 450, 453 (1985) (cleaned up). A plaintiff must establish three elements to pierce the corporate veil:

> (1) "Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and

> (2) Such control must have been used . . . to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of plaintiff's legal rights; and
>
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of."

Id. at 454–55.

The test under Nevada law is substantively identical: "(1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice." *Certain v. Sunridge Builders, Inc.*, 134 Nev. 923, at *1–2 (2018) (cleaned up).[4]

Critically, the "purpose" of veil piercing is "to place the burden of the loss upon the party who should be responsible." *Glenn*, 313 N.C. at 458. Therefore, courts should focus "upon reality, not form," and "not the presence or absence of any particular factor." *Id.* Because the touchstone of the doctrine is equity, it is "well recognized that courts will disregard the corporate form" and "extend liability for corporate obligations beyond the confines of a corporation's separate entity, *whenever necessary* to prevent fraud or to achieve equity." *Id.* at 454 (emphasis added) (cleaned up); *see also Ene v. Graham*, 546 P.3d 1232, 1236 (2024) ("[T]he essence of the alter ego doctrine is to do justice whenever it appears that the protections provided by the corporate form are being abused." (cleaned up)).

[4] Centene agrees that North Carolina and Nevada law govern its alter-ego claims against JAL and Salu, respectively.

A. Defendants' Attempt to Impose a Merits-Stage Burden at the Pleading Stage Is Improper.

In an effort to avoid these settled principles, Defendants emphasize that piercing the corporate veil is a remedy courts do not undertake lightly. Motion at 7. That argument puts the cart before the horse.

At the motion to dismiss stage, a plaintiff is "not required to touch on every factor or to prove its theory," but need only provide "sufficient notice of the events that produced the claim" and demonstrate there is no "insurmountable bar to recovery." *Kerry Bodenhamer Farms, LLC v. Nature's Pearl Corp.*, No. 16 CVS 217, 2017 WL 1148793, at *5 (N.C. Super. Mar. 27, 2017) (cleaned up). This is particularly so because veil-piercing is an inherently fact-laden inquiry, and the facts necessary to establish domination, undercapitalization, disregard of the corporate form, and financial control reside largely—if not exclusively—with Defendants.

Courts therefore routinely deny motions to dismiss alter-ego claims as premature. *See, e.g.*, *Bear Hollow, L.L.C. v. Moberk, L.L.C.*, No. 5:05CV210, 2006 WL 1642126, at *17 (W.D.N.C. June 5, 2006) ("Since piercing the corporate veil depends upon facts that Plaintiffs must obtain through discovery, Defendants' Motion to Dismiss is premature and is denied."); *Crown Equip. Corp. v. Brady*, No. 5:23-CV-059-KDB-DCK, 2024 WL 1481068, at *10 (W.D.N.C. Feb. 23, 2024), *adopted*, 2024 WL 1224238 (W.D.N.C. Mar. 21, 2024) (reasoning dismissal of alter ego claim at the motion to dismiss stage "would be premature" because "development of the record will assist a determination on the merits"); *Valencia v. Midnite Rodeo, LLC*, No. 3:22-CV-665-RJC-DCK, 2023 WL 7031561, at *7 (W.D.N.C. Sept. 13, 2023), *adopted in relevant part*, 2024 WL 4274695 (W.D.N.C. Sept. 24, 2024) (reasoning allegations for alter ego claim need only be "minimally sufficient to survive dismissal pursuant to Rule 12(b)(6)" given "the early stage of the litigation"); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 303–

04 (2015) (recognizing that "the alter ego doctrine could only be determined after significant discovery regarding [] corporate practices"); *Windisch v. Hometown Health Plan, Inc.*, No. 3:08-CV-00664-RJC-RAM, 2010 WL 786518, at *8 (D. Nev. Mar. 5, 2010) (recognizing that even bare allegations of piercing should "survive[] dismissal" because all inferences must be drawn in Plaintiff's favor and "[f]urther discovery may establish alter ego liability").

B. Centene Has Adequately Plead Control, Domination, and Unity of Interest Sufficient to Pierce the Corporate Veil.

In considering whether defendants exercised such control and domination over the corporation that it had "no separate mind, will or existence of its own," *Glenn*, 313 N.C. at 455, courts considers a non-exhaustive set of factors, including (1) inadequate capitalization; (2) non-compliance with corporate formalities; (3) complete domination and control of finances, policy, and business practices; and (4) excessive fragmentation of a single enterprise into multiple corporations. *Id.* Courts also recognize additional relevant factors, such as (5) insolvency of the debtor corporation; (6) siphoning or diversion of funds by the dominant shareholder; (7) non-functioning of officers or directors; and (8) the absence of corporate records. *Id.* at 458. Nevada courts consider similar factors in assessing unity of interest and the risk of fraud or injustice.[5]

No single factor is dispositive. Rather, courts should consider whether the "combination of factors," when "taken together with an element of injustice or abuse of corporate privilege," demonstrate that the entity functioned as a "mere instrumentality or tool." *Glenn*, 313 N.C. at 458;

[5] Nevada courts likewise consider factors such as (1) co-mingling of funds, (2) undercapitalization, (3) unauthorized diversion of corporate funds, (4) treatment of corporate assets as the individual's own, and (5) failure to observe corporate formalities. *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601–02 (1987).

see Ene, 546 P.3d at 1236–37 ("[T]here is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case.").

First, inadequate capitalization. Centene alleges that ColorArt was undercapitalized and, within a short period after its formation and acquisition, collapsed into insolvency while owing millions of dollars to creditors, including Centene. While insolvency alone is not dispositive, it is probative of thin capitalization, particularly at the pleading stage. At a minimum, whether Defendants adequately capitalized ColorArt at formation and thereafter is a fact-intensive question dependent on Defendants' financial records, making dismissal before an opportunity to conduct discovery premature.

Second, failure to observe corporate formalities. Centene alleges that JAL and ColorArt have overlapping officers and executives, shared office space, and centralized management. Defendants contend that these allegations, standing alone, do not *necessarily* require piercing the corporate veil. *See* Motion at 10–11. But that does not change the fact that shared offices and overlapping governance are relevant indicia that JAL and Salu disregarded corporate formalities, particularly when viewed in combination with the other pleaded facts. At this stage, Centene has clearly raised a plausible inference that JAL and Salu disregarded corporate formalities and should be afforded the opportunity to conduct discovery into Defendants' corporate records.

Third, complete domination and control. Centene alleges that Salu exercised total control over JAL, holding every officer and director position, and that both JAL and Salu exercised centralized control over ColorArt's finances and business operations. Centene alleges ColorArt did not make material decisions independently, including decisions concerning cash management and the handling of Centene's escrowed funds. These allegations go directly to whether ColorArt lacked an independent will with respect to the very transactions at issue.

Fourth, excessive fragmentation of a single enterprise. Centene alleges that JAL and Salu created and controlled dozens of affiliated entities, all wholly owned and centrally governed. Courts routinely recognize that such fragmentation, coupled with centralized control, supports an inference of alter-ego abuse.

Fifth, insolvency and siphoning of assets. Beyond general undercapitalization, Centene alleges that Defendants siphoned and diverted funds through the enterprise, including the misappropriation of millions of dollars held in escrow for Centene. That alleged diversion lies at the heart of this case and independently weighs strongly in favor of domination and misuse of the corporate form.

Taken together, these allegations more than suffice at the pleading stage. Courts applying North Carolina law routinely deny dismissal where plaintiffs allege the presence of similar factors, including undercapitalization, overlapping governance, centralized control, misuse of funds, and/or disregard of corporate formalities. *See, e.g.*, *Howe v. Links Club Condo. Ass'n, Inc.*, 263 N.C. App. 130, 152 (2018) (overturning the grant of a motion to dismiss where plaintiff alleged defendants were wholly undercapitalized and had identical governance structures); *Kerry Bodenhamer Farms*, 2017 WL 1148793, at *5 (denying motion for judgment on the pleadings where there were pleaded facts, such as comingling funds and common control, that "could support an inference" of domination); *JCG & Assocs., LLC v. Disaster Am. USA, LLC*, No. 19 CVS 746, 2022 WL 17586975, at *8 (N.C. Super. Dec. 12, 2022) (reasoning plaintiff "adequately pleaded a theory of liability based on veil piercing" where they alleged an entity "exercised complete domination and control" over the "policy and business practices" of another entity (cleaned up)); *Bear Hollow*, 2006 WL 1642126, at *17.

Construed as required in Centene's favor, the Complaint plainly pleads sufficient facts to satisfy the control and domination element.

C. Centene Has Adequately Pleaded an Improper Purpose Satisfying the Second Instrumentality Element.

Defendants contend that Centene cannot satisfy the second element of veil-piercing because, in their view, Centene has not alleged that ColorArt was created for the "sole purpose" of entering into its contract with Centene. Motion at 12. That argument misstates the law and sweeps far too broadly.

As an initial matter, the Nevada Supreme Court has explicitly rejected the notion that courts "may only pierce the corporate veil when the corporation is a sham, a clear shield for individual liability, and has no independent basis for existence." *House of Brussels Chocolates, Inc. v. Whittington*, 124 Nev. 1475, at *3 n.16 (2008) (declining to adopt "a new fraud requirement in breach of contract cases").

North Carolina courts have likewise rejected Defendants' proposed standard. Although courts often will not pierce the corporate veil where the sole wrong is a garden-variety breach of contract, they have "pierced the veil in a case for breach of contract" where "the evidence revealed other compelling factors apart from the breach itself." *Kerry Bodenhamer Farms, LLC v. Nature's Pearl Corp.*, No. 16 CVS 217, 2018 WL 3939848, at *4 (N.C. Super. Aug. 15, 2018). Put differently, there must be "some indicia of fraudulent or inequitable conduct," such as circumstances where the entity was "created for the purpose of entering into the relevant contract *or used as a means to unjustly insulate another from liability*." *Id.* (emphasis added) (cleaned up).

Courts have repeatedly found that standard is satisfied where individuals structure and use entities to avoid contractual obligations or divert owed funds. *See, e.g.*, *S. Shores Realty Servs., Inc. v. Miller*, 251 N.C. App. 571, 584–87 (2017) (concluding plaintiff met second element where

individual defendant created dozens of LLCs to manage individual rental properties and "used his control over the LLCs to disregard the contractual obligation to return . . . rental deposits"); *E. Mkt. St. Square, Inc. v. Tycorp Pizza IV, Inc.*, 175 N.C. App. 628, 637 (2006) (concluding plaintiff met the second element for veil-piercing where defendant created a shell corporation to shield himself from liability under the contract at issue); *see also Insight Health Corp. v. Marquis Diagnostic Imaging of N. Carolina, LLC*, No. 14 CVS 1783, 2018 WL 2728782, at *13 (N.C. Super. June 5, 2018) ("[A] breach of contract may support a request to pierce the corporate veil.").[6]

That is precisely what Centene alleges here. This is not a claim based on nonperformance alone. Centene alleges a coordinated and fraudulent scheme in which JAL and Salu exercised complete domination over ColorArt and used it as a vehicle to misappropriate millions of dollars held in escrow for Centene's benefit, while using the corporate form to shield themselves from liability and then placing ColorArt into bankruptcy. Those allegations fall squarely within the kind of inequitable conduct the North Carolina Court of Appeals found sufficient in *S. Shores Realty* and similar cases. At the pleading stage, nothing more is required.

D. Centene Has Plausibly Pleaded Causation.

Centene has adequately pleaded the third element of the instrumentality rule: that Defendants' control and misuse of the corporate form proximately caused Centene's injury. Centene alleges that JAL and Salu exercised complete domination over ColorArt, used that control to divert and retain millions of dollars belonging to Centene, and caused ColorArt to withhold repayment and enter bankruptcy, leaving Centene unable to recover its funds. Those allegations

[6] Defendants only rely on non-precedential cases, including an unpublished state-court decision (*Dacat, Inc. v. Jones Legacy Transp., LLC*, 844 S.E.2d 625 (Table) (N.C. Ct. App. 2020)) that the issuing court flagged as non-precedential and disfavored for citation.

plausibly establish that Defendants' control and wrongful conduct directly caused Centene's loss. At the pleading stage, that is more than sufficient. Defendants' motion should therefore be denied.

III. Centene Has Adequately Pleaded Each of Its Claims.

A. Centene Had Pleaded Fraud with the Requisite Particularity.

Centene's allegations detail a coordinated scheme where Defendants misappropriated millions of dollars through specific misrepresentations and concealment, identifying who acted, what was taken, when it occurred, and how the conduct induced reliance and caused harm. *Compl.* ¶¶ 22–23, 27–28, 32–39, 95–99. At this stage, that is more than sufficient. Centene need only plead facts "sufficient to permit a reasonable inference of the alleged conduct." *HSH Nordbank*, 42 Misc. 3d 1231(A), at *10 (quoting *Pludeman*, 10 NY3d at 491). Centene is not required to plead facts "peculiarly within the knowledge of the party charged with the fraud." *Id.*

Defendants attempt to recast Centene's allegations as narrowly focused on a handful of affirmative statements made by ColorArt. Defendants then assert that JAL and Salu cannot be liable because Centene did not plead that they personally made each misrepresentation. Motion at 14–20. That ignores the core of the Complaint. Centene alleges that JAL and Salu exercised complete control over ColorArt and used that control to orchestrate and carry out the fraudulent scheme. Compl. ¶¶ 3, 60–62, 72–73, 95–99.

Therefore, Centene had adequately pled fraud against JAL and Salu on two separate bases: (1) fraudulent concealment, through JAL's and Salu's concealment of material facts about the status and availability of Centene's escrow funds; and (2) fraudulent misrepresentation, through ColorArt's reports and express written assurances.

1. Centene Adequately Pleaded Fraudulent Concealment Because Defendants Had a Duty to Disclose Material Facts Uniquely Within Their Knowledge.

To state fraud, a plaintiff must plead "[1] that the defendant made a material misrepresentation of fact; [2] that the misrepresentation was made intentionally in order to defraud or mislead the plaintiff; [3] that the plaintiff reasonably relied on the misrepresentation; and [4] that the plaintiff suffered damage as a result of its reliance on the defendant's misrepresentation." *P.T. Bank Cent. Asia v. ABN AMRO Bank N.V.*, 301 A.D.2d 373, 376 (1st Dep't 2003). For fraudulent concealment, a plaintiff must further allege that the "defendant had a duty to disclose material information and that it failed to do so." *Id.*

Centene does exactly that. The Complaint alleges Defendants concealed that millions of dollars held in escrow were being drained, that the balances ColorArt reported to Centene were not accurate, and that Defendants had no intent to return Centene's funds. Compl. ¶¶ 95–96.

Defendants respond with the bare assertion that Defendants had no duty to disclose. Motion at 20. But New York's "special facts" doctrine imposes a duty where "one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair." *P.T. Bank Cent. Asia*, 301 A.D.2d at 378 (cleaned up). Here, Centene has alleged Defendants controlled the escrow accounts and the reporting on those accounts. Compl. ¶¶ 18–23, 57, 95–99. Whether the funds were being diverted, whether balances were accurate, and whether refunds were actually available are precisely the kinds of facts uniquely within Defendants' knowledge and not readily discoverable by Centene through ordinary diligence.

A duty to disclose further arose because Defendants "communicated a half truth or made a misleading partial disclosure." *MBIA Ins. Corp. v. Royal Bank of Canada*, 28 Misc. 3d 1225(A), at *32 (Sup. Ct. N.Y. Cnty. 2010). Centene alleges Defendants provided reports and assurances about escrow balances and refunds while withholding that the balances, in reality, were inaccurate

and the funds were being drained. Compl. ¶¶ 27–28, 57, 95–99. That suffices to plead concealment under CPLR 3016(b).

2. Centene Adequately Pleads Fraud as to JAL and Salu Based on Their Control Over ColorArt and Personal Participation in the Fraud.

Defendants assert Centene cannot plead fraudulent misrepresentation against JAL and Salu because Centene does not allege JAL or Salu personally communicated with Centene. Motion at 15–18. That argument improperly elevates form over substance. Centene alleges JAL and Salu controlled ColorArt and used it as the instrumentality through which the fraud was carried out. Compl. ¶¶ 60–73, 95–99. Those allegations support holding JAL and Salu responsible for ColorArt's fraudulent conduct under the same alter-ego theory pleaded throughout the Complaint. *Id.* ¶¶ 60–76.[7]

Separately, New York law permits personal liability for corporate officers who participate in the misrepresentation or have actual knowledge of it. *Marine Midland Bank v. John E. Russo Produce Co. Inc.*, 50 N.Y.2d 31, 44 (1980) (recognizing corporate officers and directors can be held liable for fraud if "they personally participate in the misrepresentation or have actual knowledge of it" (cleaned up)). Centene alleges Salu sat at the apex of the enterprise, exercised complete control over JAL and ColorArt, and directed the conduct at issue. Compl. ¶¶ 60–73, 95–98. At the motion to dismiss stage, that is enough.

3. Centene's Fraud Claim Is Not a Duplicative Contract Claim Because It Concerns Separate Misconduct.

Defendants make much of a line of cases that stand for the unremarkable proposition that a plaintiff cannot convert a contract claim into a fraud claim by alleging only that a defendant

[7] Centene requested any "further relief as the Court deems just and proper." *Id.* ¶ D.

promised to perform and did not, or that a defendant concealed its own breach. Motion at 16–19. Those cases are inapposite.

Centene does not plead fraud based on ColorArt's insincere promise to comply with the contract. It pleads a sustained course of deception involving misrepresentations and concealment of present facts about escrow balances, the availability of Centene's funds, and the status of repayment. Critically, many of these misrepresentations were made *before* Centene's allegation of breach, which only arose after Centene demanded the return of its funds. Compl. ¶¶ 32, 56–57, 80–83. Centene's fraud claim concerns repeated misrepresentations, including those *outside* of the escrow reports, *see* Compl. ¶ 28, and omissions over years that induced Centene to continue funding and maintaining escrow balances.

New York law recognizes that post-contract misrepresentations of present fact collateral to a contract are actionable in fraud. *See, e.g.*, *Minnie Rose LLC v. Yu*, 169 F. Supp. 3d 504, 520–21 (S.D.N.Y. 2016) (reasoning where defendants "actively misrepresented" what they did with plaintiff's money, such misrepresentations of present facts were "collateral to the contract," and thus not duplicative); *Eagle Comtronics, Inc. v. Pico Prod., Inc.*, 256 A.D.2d 1202, 1203 (4th Dep't 1998) ("Plaintiff does not allege merely that defendant entered into the contract while misrepresenting its intent to perform as agreed, but alleges that, after the contract was entered into, defendant repeatedly misrepresented or concealed existing facts." (cleaned up)). That is exactly what Centene alleges here: not merely nonperformance, but active misrepresentations and concealment about what happened to Centene's money. Compl. ¶¶ 57, 95–99. Centene therefore satisfies CPLR 3016(b) and states a viable fraud claim.

The motion to dismiss Count IV should be denied.

B. Centene's Claim for Unjust Enrichment (Count II) Should Not Be Dismissed as Duplicative Because It Is Independent of Its Breach of Contract Claim.

Defendants assert that Centene's unjust enrichment claim must be dismissed as duplicative because Centene's contract with ColorArt purportedly "covers the same subject matter" as its unjust enrichment claim against JAL and Salu. Motion at 21. Not so.

Unjust enrichment has distinct elements from a breach of contract claim. To state a claim, Centene must allege (1) the defendants were enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendants to retain what is sought to be recovered. *County of Nassau v. Expedia, Inc.*, 992 N.Y.S.2d 293, 296 (2d Dep't 2014). By contrast, Centene's breach of contract requires a valid contract, breach, damages, and critically, piercing the corporate veil to impose liability on JAL and Salu. As Defendants themselves aggressively insist, JAL and Salu cannot be held liable on a breach of contract theory absent veil piercing. That is precisely why unjust enrichment is not duplicative.

Under New York law, an unjust enrichment claim is not duplicative where a "reasonable trier of fact could find unjust enrichment . . . without establishing all the elements for one of [the plaintiff's] claims sounding in law." *Nuss v. Sabad*, No. 7:10-CV-0279 (LEK/TWD), 2016 WL 4098606, at *11 (N.D.N.Y. July 28, 2016); *see, e.g.*, *Haraden Motorcar Corp. v. Bonarrigo*, No. 119CV01079BKSDJS, 2020 WL 1915125, at *10 (N.D.N.Y. Apr. 20, 2020) (denying motion to dismiss an unjust enrichment claim where it is possible that "Plaintiff's other claims could fail while Plaintiff still recovers for unjust enrichment"); *Busrel Inc. v. Dotton*, No. 1:20-CV-1767, 2021 WL 2980494, at *13 (W.D.N.Y. July 15, 2021) ("Where the possibility remains that the defendant has not . . . committed a recognized tort, but that circumstances create an equitable obligation running from the defendant[s] to the plaintiff[s,] a plaintiff may plead unjust enrichment

and a tort claim in the alternative." (cleaned up)); *McCracken v. Verisma Sys., Inc.*, No. 6:14-CV-06248(MAT), 2017 WL 2080279, at *8 (W.D.N.Y. May 15, 2017) (same).[8]

That is exactly the scenario pleaded here. Centene alleges that, through a corporate structure Defendants designed and controlled, JAL and Salu received and retained millions of dollars belonging to Centene without any lawful basis to keep it. If Centene ultimately fails to establish veil piercing or contractual liability against JAL and Salu, a jury could nevertheless conclude that Defendants were unjustly enriched at Centene's expense and must return what they wrongfully retained. Because unjust enrichment does not rise and fall with Centene's contract claim, it is not duplicative and should not be dismissed.

C. Centene's Claim for Conversion (Count III) Should Not Be Dismissed as Duplicative Because It Is Likewise Independent of Breach of Contract.

Defendants argue that Centene's conversion claim must be dismissed as duplicative because "the facts that support [Centene's] breach-of-contract claim mirror those supporting its conversion claim." Motion at 21. That argument has no support in New York law. The mere fact that two claims are supported by the same facts does not render them duplicative. Rather, the question is whether the conversion claim rests on conduct distinct from a simple failure to perform contractual obligations.

The elements of conversion differ fundamentally from breach of contract. The "key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights." *Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 50 (2006) (cleaned up).

[8] All of these cases distinguish *Corsello v. Verizon N.Y., Inc.*, 967 N.E.2d 1177, 1185 (N.Y. 2012). In *Corsello*, the court held that an unjust enrichment claim is duplicative because the rest of the claims "could not fail while still permitting an unjust enrichment claim." *Nuss*, 2016 WL 4098606, at *11. That is not the case here.

Conversion does not require a valid contract, breach, or, critically, veil piercing as a matter of law. Indeed, Defendants themselves aggressively insist that JAL and Salu cannot be held liable for breach of contract for reasons that have no bearing on conversion. Therefore, Centene "should be permitted to plead conversion in the alternative." *Dragons 516 Ltd. v. Knights Genesis Inv. Ltd.*, 77 Misc. 3d 1223(A), at *13 (Sup. Ct. 2023) (cleaned up).

While a conversion claim cannot be predicated on a "mere breach of contract," New York law is clear that a defendant may be liable for conversion where the conduct constituting the breach violates "a duty distinct from, or independent of, the breach of contract." *Connecticut New York Lighting Co. v. Manos Bus. Mgmt. Co., Inc.*, 171 A.D.3d 698, 699 (2019) (cleaned up). New York courts therefore routinely recognize conversion claims are not duplicative as long as they allege conduct "beyond the four corners of the contracts." *Schron v. Grunstein*, 39 Misc. 3d 1213(A), at *6–7 (Sup. Ct. 2013).

That is precisely what Centene pleads. Centene does not merely allege that Defendants failed to perform a contractual obligation. It alleges that Defendants exercised unauthorized dominion and control over Centene's escrowed funds—conduct independent of any contractual duty to return those funds. Indeed, Centene's conversion claim accrued *before* its breach of contract claim: when Defendants assumed control over Centene's money and diverted it for their own benefit. At that point, conversion was complete, regardless of whether a contract governed the parties' relationship. Because Centene alleges tortious misconduct independent of its breach of contract claim, the conversion claim is not duplicative and should not be dismissed.

CONCLUSION

Defendants' motion rests on a mischaracterization of both the facts and the governing law. Centene has plausibly alleged that Defendants exercised complete control over ColorArt, misappropriated Centene's funds, and engaged in actionable misconduct supporting claims for

piercing the corporate veil, fraud, unjust enrichment, and conversion. At the pleading stage, that is sufficient. For the foregoing reasons, Defendants' motion to dismiss should be denied in its entirety.

Dated: March 24, 2026.

Respectfully submitted,

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ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

I, Nathaniel L. Rice, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this memorandum of law complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because it contains 6,840 words, excluding those portions exempted by Rule 17. In preparing this certification, I have relied on the word count of the word processing system used to prepare this memorandum of law.

Dated: March 24, 2026

By: 

Nathaniel L. Rice