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

CENTENE CORPORATION, Plaintiff, v. JAL EQUITY CORPORATION and ERAN SALU, Defendants.	Index No. 656704/2025 Motion Seq. No. 1 ORAL ARGUMENT REQUESTED

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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Defendants JAL Equity Corporation ("JAL Equity") and Eran Salu, by and through their undersigned counsel, respectfully submit this memorandum of law in support of their motion to dismiss the Complaint (NYSCEF Doc. 1) filed by plaintiff Centene Corporation ("Centene").

PRELIMINARY STATEMENT

This action grows out of a contract between Centene and nonparty ColorArt, LLC ("ColorArt"), an entity that is in an active bankruptcy proceeding. *See* Compl., ¶ 53; *In re: ColorArt, LLC*, Case No. 25-16701-NMC (D. Nev. 2025). Centene alleges that amounts that it prepaid to ColorArt for certain postage, printing, and mailing services should have been returned to it.

JAL Equity (ColorArt's sole member) and Mr. Salu (JAL Equity's sole shareholder) were not parties to that contract. So Centene tries to reroute its dispute with ColorArt and assert a claim under its contract with ColorArt against JAL Equity and Mr. Salu via an alter-ego theory. But Centene's pleading never gets out of the first gear.

Because ColorArt is in an active bankruptcy proceeding, Centene has no standing to bypass the automatic stay and bring a claim for breach of contract (by piercing the corporate veil) against JAL Equity and Mr. Salu. Any alter-ego claim belongs to the bankruptcy estate. And even if it had standing to assert such a claim in this Court, piercing the corporate veil is an extreme remedy, for which Centene does not plead sufficient facts. Instead, Centene pleads only conclusions and labels in support of its effort to toss aside the corporate form. It says JAL Equity and Mr. Salu "controlled" ColorArt and "orchestrated" a scheme to divert Centene's funds. But the Complaint pleads zero facts detailing that alleged control or orchestration. Indeed, Centene's own chronology of its extensive dealings with ColorArt references only communications that it had with ColorArt personnel other than Mr. Salu. Centene says nothing about any of JAL Equity's or Mr. Salu's actions or statements at any time.

Centene also purports to assert three claims against JAL Equity and Mr. Salu—claims for fraud, unjust enrichment, and conversion—that are not based on an alter-ego theory. Those claims all fail too. The fraud claim fails (1) because Centene does not allege that JAL Equity or Mr. Salu communicated with Centene, made any representations to Centene, or actively concealed anything from Centene; and (2) because Centene cannot hold JAL Equity or Mr. Salu liable for (otherwise nonactionable) representations made by others. And the unjust-enrichment and conversion claims fail because they impermissibly duplicate Centene's breach-of-contract claim.

This Court should therefore dismiss Centene's Complaint in its entirety, with prejudice.

STATEMENT OF FACTS[1]

A. *Centene's Contractual Dealings with ColorArt*

In 2020, Centene entered into a Master Services Agreement ("MSA") with Cenveo Worldwide Limited ("Cenveo"). Compl., ¶ 12. The MSA—which incorporated a Master Statement of Work ("MSW")—governed Cenveo's provision of printing and mailing services for Centene. *Id.*, ¶ 13. The next year, ColorArt acquired Cenveo's assets and became Cenveo's successor in interest under the MSA. *Id.*, ¶ 15.

Centene alleges that under the MSA, Centene and ColorArt established several escrow accounts to ensure that sufficient funds were available to cover the postage expenses associated with mailing materials to Centene's members. *Id.*, ¶ 18. Centene alleges that it deposited money into the escrow accounts and that the MSW required ColorArt to provide monthly reports regarding the funds in those accounts along with detailed invoices for services rendered. *Id.*, ¶¶ 22–23.

[1] The facts stated herein are taken from the Complaint and are assumed true only for purposes of this motion.

According to Centene, in late 2024, a former ColorArt employee raised issues regarding ColorArt's accounting associated with Centene's funds held in the escrow accounts. *Id.*, ¶ 29. After that, Centene alleges that it conducted an internal audit of all relevant invoices, account statements, and supporting documentation. *Id.*, ¶ 30. That audit, Centene claims, showed that millions of dollars that Centene deposited into the escrow accounts were not used for postage costs. *Id.*, ¶¶ 31–32.

Centene alleges that it requested a refund of those supposed unused amounts. *Id.*, ¶ 32. ColorArt responded and—through executives Nicole Williams (SVP of Strategic Accounts) and Steve Paley (EVP Vendor Relations & Supply Chain)—said the refund was "on track," "in process," and would be wired by early May 2025. *Id.*, ¶¶ 33–38. But according to Centene, the refund never materialized because ColorArt said that—after a review by its CEO Victor Susman—it could not "validate that [ColorArt] actually received these funds when [ColorArt] acquired the business in June 2021." *Id.*, ¶ 39.

On November 5, 2025, ColorArt filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the District of Nevada. *Id.*, ¶ 53.

B. ***Centene's Alter-Ego Allegations***

JAL Equity is an investment holding company. *Id.*, ¶ 6. JAL Equity owns 100% of ColorArt, and Mr. Salu in turn owns 100% of JAL Equity. *Id.*, ¶ 62. Centene alleges that JAL Equity and Mr. Salu dominated ColorArt, directed the diversion of escrow funds, and used a network of affiliated entities to shield themselves from liability. *Id.*, ¶ 72. All that Centene offers to support those conclusions are allegations that JAL Equity and ColorArt shared common office space in Missouri, that various JAL Equity representatives held roles at companies in its portfolio, and that ColorArt otherwise failed to observe unspecified corporate formalities. *Id.*, ¶¶ 63–68. On the last point, Centene references corporate filings associated with a different entity,

Marketing.com. *Id.*, ¶¶ 63, 65. Centene alleges that "[p]ublic filings show that [Mr.] Salu is listed as the sole member of Marketing.com," not JAL Equity, which, Centene alleges, in fact owns Marketing.com. *Id.*

ARGUMENT

II. LEGAL STANDARD

When evaluating a motion to dismiss under CPLR 3211(a)(7), courts look to "whether the pleading states a cause of action" and whether the facts alleged "fit within any cognizable legal theory." *Butler v. Magnet Sports & Ent. Lounge, Inc.*, 135 A.D.3d 680, 681 (2d Dep't 2016) (quoting *Thaw v. N. Shore Univ. Hosp.*, 129 A.D.3d 937, 938 (2d Dep't 2015)). Although a plaintiff's allegations are taken as true, the court need not consider allegations that are nothing more than mere legal conclusions or factual claims that are inherently implausible. *See Summit Solomon & Feldesman v. Lacher*, 212 A.D.2d 487, 487 (1st Dep't 1995). In short, a claim must be dismissed if the necessary elements of a cause of action are not adequately alleged within the complaint's four corners. *See Campaign v. Esterhay,* 61 Misc. 3d 662, 663 (Sup. Ct. N.Y. Cnty. 2018) (citing *Andre Strishak & Assocs., P.C. v. Hewlett Packard Co.*, 300 A.D.2d 608 (2d Dep't 2002)). In deciding a motion to dismiss, the court may consider documents referenced in but not attached to the complaint. *See Donoso v. N.Y. Univ.*, 160 A.D.3d 522, 524 (1st Dep't 2018).

And when a claim sounds in fraud, "the circumstances constituting the wrong shall be stated in detail." CPLR 3016(b). That means that a plaintiff must set out who made the allegedly fraudulent representations, when the representations were made, and what was said with specificity. *See Orange Orchestra Props. LLC v. Gentry Unlimited, Inc.*, 191 A.D.3d 609, 609 (1st Dep't 2021) (citing *INTL FCStone Mkts., LLC v. Corrib Oil Co. Ltd.*, 172 A.D.3d 492, 493 (1st Dep't 2019)). The failure to do so requires dismissal. *See Manik v. Citimortgage, Inc.*, 102 A.D.3d 929, 930 (2d Dep't 2013).

Dismissal is also appropriate under CPLR 3211(a)(1) when "documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law." *Seaman v. Schulte Roth & Zabel LLP*, 176 A.D.3d 538, 538–39 (1st Dep't 2019) (quoting *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 (2002)).

III. CENTENE'S COMPLAINT ATTEMPTS AN END-RUN AROUND THE AUTOMATIC STAY

Piercing the corporate veil is not a theory of liability or a standalone cause of action. Rather, it is a form of equitable relief that provides an avenue to pursue legal claims against corporate owners who would otherwise be shielded by the corporate form from corporate debts. *See Matter of Morris v. N.Y. State Dep't of Tax'n & Fin.*, 82 N.Y.2d 135, 141 (1993). Outside of the bankruptcy context, "any creditor can invoke veil-piercing to collect on a corporate debt from a parent corporation or shareholder." *Jackson v. Corporategear, LLC*, No. 04 Civ. 10132(DC), 2005 WL 3527148, at *3 (S.D.N.Y. Dec. 21, 2005). But that is not so when the debtor has filed for bankruptcy. *See id.* Then, if the debtor itself has standing to pierce its own corporate veil under state law, a veil-piercing claim is the bankruptcy estate's property. *See Kalb, Voorhis & Co. v. Am. Fin. Corp.*, 8 F.3d 130, 132 (2d Cir. 1993).

Centene alleges that ColorArt is in an active bankruptcy proceeding. *See* Compl., ¶ 53. Because ColorArt is a North Carolina entity, *see id.* ¶ 15, North Carolina law governs who can assert an alter-ego claim, *see Kalb, Voorhis & Co*, 8 F.3d at 132. And North Carolina law grants the bankruptcy trustee or debtor-in-possession standing to assert veil-piercing claims on behalf of a bankrupt entity. *See In re Kingston Tobacco Co., Inc.*, No. 12-05532-8-RDD, 2012 WL 6721090, at *3 (Bankr. E.D.N.C. Dec. 27, 2012). Veil-piercing claims seeking to disregard the corporate form of an entity in bankruptcy are thus considered the bankruptcy estate's property and are subject to the automatic stay. *See Advocare of N.C., Inc. v. Rhodes*, 327 B.R. 757, 759–60

(Bankr. M.D.N.C. 2005). As a result, creditors—like Centene—have no standing to piece the corporate veil of an entity in active bankruptcy. *See id.*; *see also Kalb, Voorhis & Co.*, 8 F.3d at 133 (applying Texas law and holding that individual creditor had "no standing" to assert an alter-ego claim); *In re Keene Corp.*, 164 B.R. 844, 851 (Bankr. S.D.N.Y. 1994) (applying New York law: "[T]he creditors are prevented from pursuing the piercing claim unless and until it has been abandoned by the estate or the creditor obtains relief from the automatic stay"); *In re Emoral, Inc.*, 740 F.3d 875, 882 (3d Cir.) (same under New Jersey law), *cert. denied*, 674 U.S. 974 (Nov. 3, 2014).

Because Centene lacks standing to pierce ColorArt's corporate veil, this action should be dismissed or stayed pending resolution of ColorArt's bankruptcy proceeding.

IV. CENTENE DOES NOT ALLEGE NONCONCLUSORY FACTS SUPPORTING A VEIL-PIERCING CLAIM

Centene entered into the MSA with Cenveo, ColorArt's predecessor in interest. Neither JAL Equity nor Mr. Salu are parties to the MSA. Nor did either agree to be a guarantor of ColorArt's obligations under the MSA. Black-letter law holds that a nonparty to a contract cannot be liable for a breach of that contract. *See Victory State Bank v. EMBA Hylan, LLC*, 169 A.D.3d 963, 965 (2d Dep't 2019). So Centene seeks to pierce the corporate veil of ColorArt (a North Carolina entity) to reach JAL Equity and to pierce the corporate veil of JAL Equity (a Nevada entity) to reach Mr. Salu. There is no basis to do so.

The law of an entity's state of formation governs an attempt to pierce the entity's corporate veil. *See Sutton 58 Assocs. LLC v. Pilevsky*, 189 A.D.3d 726, 729 (1st Dep't 2020). North Carolina and Nevada law thus govern the veil-piercing analysis here. *See U.S. Bank N.A. v. EquiFirst Corp*, 80 Misc. 3d 1232(A), at *9 (Sup. Ct. N.Y. Cnty. 2023), *aff'd as modified*, 234 A.D.3d 463 (1st Dep't 2025).

Piercing the corporate veil is an extreme remedy. Under North Carolina law, "[p]iercing the veil is not done lightly." *GB Grp., LLC v. Bulldog Nat'l Risk Retention Grp., Inc.*, No. 5:23-CV-00029-BO, 2023 WL 9514088, at *4 (E.D.N.C. Dec. 27, 2023) (internal citation omitted). North Carolina courts have emphasized that disregarding the corporate form is a "strong step: Like lightening, it is rare and severe." *Comic Book Certification Serv. LLC v. CBCS Operations, LLC*, No. 24CV036339-910, 2025 WL 1898031, at *17 (N.C. Super. Ct. July 9, 2025) (quoting *Campbell Sales Grp., Inc. v. Niroflex by Jiufeng Furniture, LLC*, No. 19 CVS 865, 2022 WL 17413381, at *17 (N.C. Super. Ct. Dec. 5, 2022)).

In deciding whether to disregard the corporate form, North Carolina courts use the "instrumentality" test. A plaintiff can pierce the corporate veil only when an entity is a "mere instrumentality" of the dominant shareholder. *See Becker v. Graber Builders, Inc*., 561 S.E.2d 905, 908 (N.C. Ct. App. 2002).

Under the instrumentality rule, a plaintiff "must" show three elements:

> (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 by the defendant 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 [a] plaintiff's legal rights; and
>
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Est. of Rivas by & through Soto v. Fred Smith Constr., Inc., 812 S.E.2d 867, 870 (N.C. Ct. App. 2018).

Nevada law is equally stringent. *See* Nev. Rev. Stat. Ann. § 78.747(2)(b) (requiring there be "such unity of interest and ownership that the corporation and the person are inseparable from each other"). In that state too, "the corporate cloak is not lightly thrown aside." *LFC Mktg. Grp., Inc. v. Loomis*, 8 P.3d 841, 846 (Nev. 2000) (internal citation omitted). New York law reflects similar considerations. *See E. Hampton Union Free Sch. Dist. v. Sandpebble Builders, Inc*., 16 N.Y.3d 775, 776 (2011).

Piercing the corporate veil is particularly difficult in contract cases because "the other contracting party has agreed to look to the corporation, and thus only to the assets that have been contributed to it." *Statesville Stained Glass, Inc. v. T.E. Lane Constr. & Supply Co., Inc.*, 430 S.E.2d 437, 440 (N.C. Ct. App. 1993) (internal citation omitted). To allow a contracting party to reach noncorporate assets absent a contractual guarantee would "remake the bargain." *Id.* (internal citation omitted). North Carolina courts thus "*rarely* pierce the veil in contract cases." *Harris v. Ten Oaks Mgmt., LLC*, No. 21 CVS 13907, 2022 WL 2198888, at *4 (N.C. Super. Ct. June 20, 2022) (emphasis added); *see also Paul Steelman, Ltd. v. Omni Realty Partners*, 885 P.2d 549, 551 (Nev. 1994) (contract creditor "alone is responsible for not protecting against the eventuality that occurred by insisting on individual guarantees from shareholders who were financially capable of satisfying its claims against [debtor]"); *Secon Serv. Sys., Inc. v. St. Joseph Bank & Tr. Co*., 855 F.2d 406, 413–14 (7th Cir. 1988) (Easterbrook, J.) (explaining that "it is a lot harder to hold investors personally liable in contract disputes than for tort judgments" because contract creditors had "an opportunity to negotiate terms reflecting any enhanced risk to which doing business with an entity enjoying limited liability exposed them").

Faced with that uphill climb, Centene's allegations fall far short of alleging that ColorArt was a mere instrumentality of JAL Equity or Mr. Salu. Taking each element of the instrumentality test in turn:

A. *First Element: Complete Control and Domination*

In assessing the first element, courts look to noncompliance with corporate formalities; complete domination and control of the entity such that it has no independent identity; inadequate capitalization; and excessive fragmentation of a single enterprise into separate entities. *See Timber Integrated Invs., LLC v. Welch*, 737 S.E.2d 809, 817–18 (N.C. Ct. App. 2013); *Octaform Sys. Inc. v. Johnston*, No. 2:16-cv-02500-APG-VCF, 2018 WL 11304606, at *6 (D. Nev. Mar. 13, 2018) (detailing similar factors under Nevada law).

Centene broadly alleges that "JAL and its subsidiaries, including Marketing.com and ColorArt, have consistently failed to observe basic corporate formalities." Compl., ¶ 63. But alleged noncompliance with the corporate form is less important when the at-issue entity is an LLC because LLCs are subject to "far fewer formal statutory requirements" than corporations. *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, No. 14 CVS 1783, 2017 WL 806432, at *13 (N.C. Super. Ct. Feb. 24, 2017) (internal citation omitted). In any event, Centene alleges only three specific facts in support of its allegation that JAL Equity and Mr. Salu bypassed corporate formalities. Centene alleges (1) that "[p]ublic filings show that Eran Salu is listed as the sole member of Marketing.com, not JAL," (2) that various entities share common ownership and office space, and (3) ColorArt and related entities were undercapitalized. Compl., ¶¶ 63, 68, 70. None are sufficient.

First, according to Centene, "[i]n the 2022 Articles of Organization for Marketing.com, [Mr.] Salu is . . . the only member, not JAL, disregarding the corporate form." Compl., ¶ 65; *see also id.* ¶ 81. But the document that Centene references does not say that. In the Articles of

Organization for CAAC, LLC (which later became Marketing.com), Mr. Salu is listed as the *organizer*. *See* Affirmation of Robert I. Steiner, Exs. A and B. An "organizer" is not the same as a "member." Per Missouri's LLC Act, an "organizer" means "any of the signers of the articles of organization." Mo. Ann. Stat. § 347.015(14). The Act further provides that "[a]ny person, *whether or not a member or manager*, may form a limited liability company by signing and filing articles of organization for such limited liability company with the secretary." *Id.* § 347.037(1) (emphasis added). Information about an LLC's members is not found in the articles of organization, and the inclusion of an individual as "organizer" says nothing about whether that person is a member of the LLC. *See Watterson v. Wilson*, 628 S.W.3d 822, 829 (Mo. Ct. App. 2021) ("WHR's articles of organization lists only 'each organizer,' who need not be members or managers of the organization. Therefore, the organizer's names, or lack thereof, in WHR's articles of organization do not conclusively evince *any* membership interest in WHR—Watterson's *or Wilson's*." (emphasis in original)); *McKinley v. Hook*, No. WD 87683, 2026 WL 143993, at *1 (Mo. Ct. App. Jan. 20, 2026) ("The Articles did not identify the members of G&W, but Hook was listed as the registered agent and organizer of G&W."). Centene's main allegation supporting its claim that JAL Equity and its subsidiaries have disregarded the corporate form is thus rebutted completely by the document that Centene references in its Complaint.

Second, Centene's allegations about overlapping officers and office space do not support its effort to pierce the corporate veil. Centene only alleges that Mr. Salu has held multiple roles at JAL Equity, that other JAL Equity employees have held leadership roles at companies in JAL Equity's portfolio, and that JAL Equity and its portfolio companies share office space. *See* Compl., ¶¶ 64, 67, 68. Putting aside that Centene's own allegations show that ColorArt was run by individuals other than Mr. Salu, *see id.*, ¶¶ 33–39, what is alleged is facially insufficient.

The North Carolina Supreme Court has made clear that a parent entity remains "a distinct legal entity" from its subsidiaries even if they "have common officers" and "occupy common offices." *Huski-Bilt, Inc. v. First-Citizens Bank & Tr. Co.*, 157 S.E.2d 352, 358 (N.C. 1967) (internal citation omitted). Indeed, as the United States Supreme Court has recognized, "it is 'normal' for a parent and subsidiary to 'have identical directors and officers,'" and "directors and officers holding positions with a parent and its subsidiary can and do 'change hats' to represent the two corporations separately, despite their common ownership." *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) (internal citations omitted). The presence of overlapping officers or shared office space simply does not show the type of complete domination necessary for veil piercing. *See Richardson v. Bank of Am., N.A.*, 643 S.E.2d 410, 421 (N.C. Ct. App. 2007); *see also Harris*, No. 21 CVS 13907, 2022 WL 2198888, at *3 ("[C]ommon ownership and management, without more, do not equate to the kind of complete domination needed to show that one entity is another's puppet."); *Borini v. Inform Studios, Inc.*, 245 A.D.3d 587, 588 (1st Dep't 2026) (stating same).

Third, Centene alleges that "[m]any of these entities are undercapitalized, as demonstrated by the bankruptcy filings of both ColorArt LLC and its wholly owned subsidiary, Las Vegas Color Graphics, Inc., in November 2025." Compl., ¶ 70. But the fact that these entities filed for bankruptcy protection does not mean they were undercapitalized. "'Inadequate capitalization' . . . generally means capitalization very small in relation to the nature of the business of the corporation and the risks attendant to such businesses." 1 Fletcher Cyc. Corp. § 41.33. And so, "[t]he adequacy of capital is to be measured as of the time of formation of a corporation." *Id.* "A corporation that was adequately capitalized when formed but subsequently suffers financial reverses is not undercapitalized." *Id.* There are no allegations that ColorArt was set up to be insolvent from the start. Post-formation insolvency—without evidence of initial

undercapitalization—cannot support veil piercing. Indeed, were it otherwise a bankruptcy filing by itself would routinely lead to veil piercing claims against related entities. More is required, however.

B. *Second Element: Using Complete Control to Violate a Positive Legal Duty*

When an alter-ego claim is "based on contract" (as it is here), "North Carolina courts have required that the [p]laintiff allege and show that the corporation was created 'for the sole purpose of entering the contract at issue and at the same time unjustly insulating the defendant from liability under the contract.'" *Hooker v. Citadel Salisbury LLC*, No. 1:21-cv-00384, 2022 WL 1663421, at *11 (M.D.N.C. May 25, 2022) (quoting *Best Cartage, Inc. v. Stonewall Packaging, LLC*, 727 S.E.2d 291, 300–01 (N.C. Ct. App. 2012)); *see also Estevez v. C&S Com., LLC*, No. 25CV001966-890, 2025 WL 3297747, at *5 (N.C. Super. Ct. Nov. 25, 2025) (stating same); *Dacat, Inc. v. Jones Legacy Transp., LLC*, 844 S.E.2d 625 (Table), at *1 (N.C. Ct. App. 2020) ("When a limited liability company . . . breaches a contract but was not created for the sole purpose of entering the agreement, a trial court does not err in refusing to disregard the corporate form to hold members of the LLC individually liable for the breach of contract."), *rev. denied*, 853 S.E.2d 154 (N.C. 2021). On the other hand, when an entity is engaged in "business transactions with other customers who were not plaintiffs," the second element is not satisfied. *Hooker*, No. 1:21-CV-00384, 2022 WL 1663421, at *11 (citing *Dacat*, 844 S.E.2d 625).

Centene does not allege that ColorArt was set up for the "sole purpose" of perpetuating a fraud on Centene or that ColorArt's business activities focused exclusively on Centene. Without doing so, Centene has "failed to sufficiently allege a wrongdoing to meet the second prong of the instrumentality test for piercing the corporate veil." *Dacat*, 884 S.E.2d at *3.

C. ***Third Element: The Control and Breach of Duty Must Cause the Injury***

Centene does not allege facts supporting the first two elements; it necessarily then cannot allege facts supporting the third element.

* * * *

At bottom, Centene alleges that JAL Equity and Mr. Salu exercised "complete dominion" over ColorArt. Compl., ¶¶ 72, 81. But Centene offers no specific facts to support that bare allegation. Paragraphs twelve to fifty-nine of Centene's Complaint detail Centene's relationship with ColorArt, the parties' course of dealing, and ColorArt's alleged breach. Those paragraphs make zero reference to either JAL Equity or Mr. Salu. And beyond that, the Complaint is devoid of allegations about anything that JAL Equity (through representatives acting on its behalf) or Mr. Salu did or said in connection with ColorArt's business operations. Centene therefore fails to allege sufficient facts to show how JAL Equity or Mr. Salu exercised complete dominion over ColorArt.

North Carolina, Nevada, and New York courts routinely dismiss claims based on an alter-ego theory when allegations of dominion or control are not backed up by specific facts.

In *Estevez v. C&S Commerce, LLC,* the plaintiffs alleged—like Centene does here—that an LLC's primary member and sole manager dominated the LLC, that the LLC "lack[ed] independence in decision-making and financial operations," that the sole manager "exercised complete control over the [LLC]," that the LLC "failed to observe corporate formalities," and that the sole manager used the LLC "to advance his own personal financial interests." No. 25CV001966-890, 2025 WL 3297747, at *5. But as the court explained, the plaintiffs did not either "plead facts to support these conclusory allegations" or "detail how [the sole manager] allegedly dominated [the LLC], operated the company as a mere instrumentality or alter ego, or otherwise failed to observe corporate formalities." *Id.* The court thus dismissed the alter-ego

claim. *See id.* at *6; *see also, e.g., M.D. Claims Grp., LLC v. Bagley,* No. 24 CVS 16516, 2025 WL 272283, at *11 (N.C. Super. Ct. Jan. 22, 2025) ("Plaintiff's proposed pleading uses key words ('mere instrumentality,' 'complete domination'), but those words are not supported with facts."); *W & W Partners, Inc. v. Ferrell Land Co., LLC*, No. 17-CVS-9998, 2018 WL 2339464, at *9 (N.C. Super. Ct. May 22, 2018) (dismissing request to pierce corporate veil when plaintiff failed to plead how owners "dominated" companies); *Johnson v. Cricket Council USA, Inc*., 658 F. Supp. 3d 276, 284 (E.D.N.C. 2023) (dismissing request to pierce corporate veil based on conclusory allegations); *Henderson v. Hughes,* No. 2:16-cv-01837-JAD-CWH, 2017 WL 1900981, at *4 (D. Nev. May 9, 2017) ("[Plaintiff] correctly pleads the elements of an alter-ego claim under Nevada law. But she does not allege sufficient facts to state a claim for alter-ego liability that is plausible on its face as to one or any of the alleged alter-ego defendants."); *Springut Law PC v. Rates Tech. Inc*., 157 A.D.3d 645, 646 (1st Dep't 2018) ("The nonspecific allegations that Weinberger ignored corporate formalities, 'completely dominated and controlled' the corporate defendants, and made the business decisions for the entities were not sufficient to pierce the corporate veil.").

Centene's bare conclusions that JAL Equity and Mr. Salu dominated ColorArt and abused the corporate form—unsupported by specific factual allegations—are insufficient and do not satisfy any prong of the instrumentality test. Centene therefore cannot hold JAL Equity and Mr. Salu liable for an alleged breach of contract that they were not parties to.

V. CENTENE'S FRAUD CLAIM AGAINST JAL EQUITY AND MR. SALU IS DEFICIENT

Fraud claims are subject to a heightened pleading standard pursuant to CPLR 3016(b). *See Ferro Fabricators, Inc. v. 1807-1811 Park Ave. Dev. Corp.*, 127 A.D.3d 479, 479–80 (1st Dep't 2015); *Gregor v. Rossi*, 120 A.D.3d 447, 447 (1st Dep't 2014). To plead fraud, the plaintiff must specify the who, what, where, and when of the fraud. *See Ferro*, 127 A.D.3d at 480; *Gregor*, 120

A.D.3d at 447. And a fraud claim lodged against multiple defendants must make specific and separate allegations against each defendant. *See Jonas v. Nat'l Life Ins. Co.*, 147 A.D.3d 610, 612 (1st Dep't 2017); *MP Cool Invs. Ltd. v. Forkosh*, 142 A.D.3d 286, 291 (1st Dep't 2016).

Centene cannot meet its heightened pleading burden.

A. *Centene Does Not Allege that JAL Equity or Mr. Salu Made Any Representations*

A misrepresentation is a foundational element of a fraud claim. Centene brings its fraud claim directly against JAL Equity and Mr. Salu (it does not assert its fraud claim on an alter-ego basis). *Compare* Compl., Count I (asserting a contract claim against JAL Equity and Mr. Salu as alter egos of ColorArt), *with* Count IV (asserting a fraud claim against JAL Equity and Mr. Salu). But Centene does not allege that JAL Equity or Mr. Salu *themselves* had any contact with Centene, made any representations to Centene, or actively concealed anything from Centene. Centene's fraud claim should be dismissed because Centene cannot allege the first element of a fraud claim: a misrepresentation. *See 2497 Realty Corp. v. Fuertes*, 232 A.D.3d 451, 452–53 (1st Dep't 2024) (complaint "fail[ed] to state a claim for fraud against the Individual Defendants 'because there is no allegation . . . that [they] made any representation, fraudulent or otherwise, to plaintiff'" (quoting *Nat'l Westminster Bank USA v. Weksel*, 124 A.D.2d 144, 147 (1st Dep't 1987)); *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 46 A.D.3d 400, 401 (1st Dep't 2007) ("[P]laintiffs do not allege that S & K made any representation, fraudulent or otherwise, to them"), *aff'd*, 2 N.Y.3d 553 (2009).

B. *Centene Cannot Plead Fraud Against JAL Equity and Mr. Salu via ColorArt's Conduct*

Centene nonetheless alleges that JAL Equity and Mr. Salu acting through and dominating ColorArt made three misrepresentations to it: (1) monthly reports that purported to accurately reflect escrow activity and balances when they allegedly did not; (2) explicit affirmations that the

escrow balances were accurate; and (3) assurances that the unused escrow funds would be promptly and fully returned. Compl., ¶ 95.

None of the alleged misrepresentations are actionable. Because JAL Equity or Mr. Salu did not make those alleged misrepresentations to Centene, they cannot be held liable for the allegedly tortious conduct of others at ColorArt unless they personally participated in the alleged fraud. *See Prudential-Bache Metal Co. v. Binder*, 121 A.D.2d 923, 926 (1st Dep't 1986). There are no specific allegations detailing how either JAL Equity or Mr. Salu participated in the claimed fraud. And Centene's conclusory allegations that JAL and Mr. Salu dominated and controlled ColorArt, are insufficient to attribute the others' conduct to them. *See RKA Film Fin., LLC v. Kavanaugh*, 162 A.D.3d 418, 419 (1st Dep't 2018).

Even if Centene could hold JAL Equity and Mr. Salu responsible for representations that they did not make (it cannot), the fraud claim still fails for several reasons.

i. *The Fraud Allegations Based on Inaccurate Reports and False Assurances Are Deficient*

A fraud claim can proceed alongside a contract claim only if the defendant breaches a duty to the plaintiff independent of the contract. *See E. Effects, Inc. v. 3911 Lemmon Ave. Assocs., LLC*, 223 A.D.3d 562, 563 (1st Dep't 2024).

"[V]irtually every dispute over breach of contract involves an allegation that the breaching party has lied about its performance." *IKEA N. Am. Servs., Inc. v. Ne. Graphics, Inc.*, 56 F. Supp. 2d 340, 342 n.2 (S.D.N.Y. 1999). But New York law does not allow a plaintiff to—like Centene tries to do here—claim fraud based on allegedly false promises that contractual obligations were met when they were not. *See Ho v. Star Contractors, Inc.*, 226 A.D.3d 511, 512 (1st Dep't 2024) (fraud claim was not collateral to the contract when it was "based on allegations that defendants falsely misrepresented certain work to have been performed when it actually was not"). As the

First Department explained *MBW Advertising Network, Inc. v. Century Business Credit Corp*., there was no fraud when in performing under a contract, the defendant "misrepresented the services it was rendering in order to avoid or delay termination of the contract." 173 A.D.2d 306, 306 (1st Dep't 1991); *see also Frontier-Kemper Constructors, Inc. v. Am. Rock Salt Co.*, 224 F. Supp. 2d 520, 536–37 (W.D.N.Y. 2002) (plaintiff can only pursue a contract claim if "after the contract was signed, the defendant allegedly made fraudulent statements that it was performing the contract, when it allegedly had breached the contract").

Nor can Centene's allegations that ColorArt delivered inaccurate monthly reports relating to its escrow balances support a fraud claim. New York's state and federal court routinely dismiss fraud claims sounding in allegations that contractually required reports, invoices, or statements contained false information. In *Inspirit Development and Construction, LLC v. GMF 157 LP*, the First Department affirmed dismissal of a fraud claim because the third-party plaintiff did not allege a breach of a duty independent of the parties' contract; the "invoices and certifications on which [the third-party plaintiff's] fraud claim [was] based were clearly contemplated by the contract." 203 A.D.3d 430, 433 (1st Dep't 2022). And in *Ramus v. Bruwer*, the owner of an apartment sued a general contractor hired to perform renovations. *See* No. 23 Civ. 1770 (JPC), 2025 WL 831109, at *1 (S.D.N.Y. Mar. 17, 2025). The contract required the general contractor to "provide [the owner] with accurate statements of the project's expenses in order to receive progress payments." *Id.* at *7. The owner alleged that information contained in those reports was false. *Id.* But the fraud claim failed because the contractor's obligation to provide "accurate information" about its "expenses and payments to its subcontractors" went to the "very essence" of its contractual performance. *Id.*; *see also Banco de la Republica de Colombia v. Bank of N.Y. Mellon*, No. 10 Civ. 536(AKH), 2013 WL 3871419, at *10 (S.D.N.Y. July 26, 2013) (holding that false

certifications issued pursuant to a contract between the parties were not actionable through a fraud claim because the fraud claim would "necessarily require[] the same proof" as a breach of contract claim concerning the same subject matter).

That line of cases requires dismissal here. Centene alleges that JAL and Mr. Salu (acting through ColorArt) made material misrepresentations in "monthly reports that purported to accurately reflect escrow activity and balances" and by affirming that the escrow balances were accurate. Compl., ¶ 95. But Centene alleges that ColorArt was contractually required to provide those reports. *See id.* ¶ 22 (alleging the MSW further required ColorArt to provide a "monthly postage report" and "detailed monthly invoices and supporting documentation for all services rendered and charges incurred"). Because those monthly reports "were clearly contemplated by the contract," Centene cannot ground a fraud claim in them. *Inspirit Dev. & Constr., LLC,* 203 A.D.3d at 433.

ii. ***Centene Cannot Claim Fraud Based on ColorArt's Allegedly False Promises that a Refund was Forthcoming***

Nor can Centene anchor its fraud claim in ColorArt's alleged "assurances that the unused escrow funds would be promptly and fully returned." Compl., ¶ 95. In *Cedar Capital Management Group Inc. v. Lillie,* the First Department affirmed the dismissal of a fraud claim when the allegations underlying those claims "state[d] only that defendants made general promises to meet payment obligations." 236 A.D.3d 508, 509 (1st Dep't 2025). The plaintiff thus "allege[d] nothing more than an insincere promise to perform under a contract." *Id.* That allegation was insufficient as a matter of law. *See id*; *see also Springut Law*, 157 A.D.3d at 646 ("Plaintiff's allegations asserting defendants' general promises to meet their payment obligations were duplicative of its breach of contract claim."); *Carbures Eur., S.A. v. Emerging Mkts. Intrinsic Cayman Ltd.*, 148 A.D.3d 421, 422 (1st Dep't 2017) ("The fraud claim is duplicative of the breach

of contract claim, since it is based on allegations that EMI Cayman's promises to perform were not sincere. Moreover, the claim alleges expressions of future intent, not misrepresentations of present facts." (citations omitted)).

iii. *The Fraud Claim Seeks Duplicative Damages*

In addition to being substantively duplicative, Centene's fraud claim seeks redundant damages. Centene seeks to recover the same amounts via its fraud claim (the $5,064,268.33 in allegedly unused postage deposits) and its contract claim. *Compare* Compl. ¶ 83 (detailing claimed contract damages), *with id.* ¶ 99 (detailing claimed fraud damages). A fraud claim is impermissibly duplicative when it seeks damages that would be recoverable under a contract theory. *See Laurel Hill Advisory Grp., LLC v Am. Stock Transfer & Tr. Co.*, 112 A.D.3d 486, 487 (1st Dep't 2013).

Centene references limited additional claimed damages in the fraud count: $522,760.05 for allegedly unsaleable mailers that it received from ColorArt, and $360,000 in additional costs that it allegedly incurred for temporary staffing projects to ensure continuity of service. Compl., ¶ 99. Neither category of damages differentiates its fraud claim. For consequential damages to differentiate a fraud claim, they must represent losses that flow specifically from reliance on the misrepresentation rather than from the breach itself. *See MBIA Ins. Corp. v. Credit Suisse Sec. (USA) LLC*, 165 A.D.3d 108, 114 (1st Dep't 2018). But Centene does not tie either of those categories of damages to the allegedly fraudulent representations. Indeed, Centene alleges that it suffered those damages because of "ColorArt's *failure to perform* and *refusal* to return Centene's funds," not because of justifiable reliance on any alleged misrepresentations. Compl., ¶ 59 (emphasis added). Centene's overlapping damages are an independent reason to dismiss the fraud claim. *See Chowaiki & Co. Fine Art Ltd. v. Lacher*, 115 A.D.3d 600, 600–01 (1st Dep't 2014).

iv. *Neither JAL Equity nor Mr. Salu Owed Centene a Duty to Disclose*

Centene vaguely alleges that JAL Equity and Mr. Salu owed it a duty to disclose certain material facts, including that the escrow funds were allegedly being diverted and that ColorArt had no intention to issue a refund, as it promised. *See* Compl., ¶ 96. But Centene does not say where that duty came from. "In the absence of a special relationship between two parties to a contract, no duty to disclose exists." *George Cohen Agency, Inc. v. Donald S. Perlman Agency, Inc.*, 114 A.D.2d 930, 931 (2d Dep't 1985), *appeal denied*, 68 N.Y.2d 603 (1986). There is no special relationship alleged here.

In any event, Centene's nondisclosure claim duplicates the contract claim in the same way as its misrepresentation claim does. Fraudulent concealment claims too must be based on "the breach of [a] duty separate and apart from the contractual obligations." *Greenman-Pedersen, Inc. v. Levine*, 37 A.D.3d 250, 250 (1st Dep't 2007) (internal citation omitted); *see also Music Royalty Consulting, Inc. v. Reservoir Media Mgmt., Inc.*, No. 18Civ.9480 (CM) (KNF), 2019 WL 1950137, at *7 (S.D.N.Y. Apr. 17, 2019). Hence, the alleged concealment of a breach does not transform a contract claim into a fraud claim. *See Reuben H. Donnelly Corp. v. Mark I Mktg. Corp.*, 893 F. Supp. 285, 290 (S.D.N.Y. 1995); *Ray Larsen Assocs., Inc. v. Nikko Am., Inc.*, No. 89 Civ. 2809 (BSJ), 1996 WL 442799, at *5 (S.D.N.Y. Aug. 6, 1996).

VI. CENTENE'S UNJUST-ENRICHMENT CLAIM IS IMPERMISSIBLY DUPLICATIVE

The Court of Appeals has stressed that unjust enrichment is "not a catchall cause of action to be used when others fail." *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 790 (2012). Limited to "unusual situations," unjust enrichment covers the rare situations in which a defendant has neither breached a contractual obligation nor committed a recognized tort. *Id.* In those cases, the "defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled"

and the law implies an equitable obligation. *Id.* So when a plaintiff alleges an "actionable wrong[]," an unjust enrichment claim is duplicative if those claims succeed; and, if those claims "are defective, an unjust enrichment claim cannot remedy the defects." *Id.* at 791.

For that reason, "[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter." *Clark-Fitzpatrick, Inc. v. Long Island R.R. Co*., 70 N.Y.2d 382, 388 (1987) (internal citation omitted). Centene's contract with ColorArt covers the same subject matter as its unjust enrichment claim against JAL Equity and Mr. Salu. The unjust-enrichment claim is thus impermissibly duplicative.

VII. CENTENE'S CONVERSION CLAIM IS IMPERMISSIBLY DUPLICATIVE

Centene's conversion claim is likewise duplicative of its contract claim. To sustain a conversion claim parallel to a breach-of-contract claim, a plaintiff "must allege acts that constitute unlawful or wrongful behavior separate from a violation of contractual rights." *Nissan Motor Acceptance Corp. v. Nemet Motors, LLC*, No. 19-CV-3284 (NGG) (CLP), 2020 WL 4207533, at *2 (E.D.N.Y. July 22, 2020) (internal citation omitted).

Centene's conversion claim fails because the facts that support its breach-of contract-claim mirror those supporting its conversion claim. *Compare* Compl., ¶ 82 (breach of contract) (alleging that "JAL and Salu used their domination and control over ColorArt/Marketing.com to wrongly orchestrate the misappropriation and diversion of escrow funds"), *with id.*, ¶ 92 (conversion) (alleging that "JAL and Salu directed and orchestrated the misappropriation and diversion of the escrow funds"). Dismissal should follow. *See Johnson v. Cestone*, 162 A.D.3d 526, 527 (1st Dep't 2018); *Fesseha v. TD Waterhouse Inv. Servs., Inc.*, 305 A.D.2d 268, 269 (1st Dep't 2003).

CONCLUSION

For the foregoing reasons, JAL Equity and Mr. Salu's motion to dismiss should be granted and Centene's Complaint should be dismissed in its entirety.

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Respectfully submitted,

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ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

I, Robert I. Steiner, 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 6,707 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 13, 2026

By: 
Robert I. Steiner