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

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Defendants JAL Equity Corporation and Eran Salu respectfully submit this reply brief in further support of their motion to dismiss Centene's Complaint (NYSCEF Doc. 1).

PRELIMINARY STATEMENT

Centene's opposition to JAL Equity and Mr. Salu's motion to dismiss confirms that the Complaint is a transparent effort to bypass the automatic stay, jump ahead of ColorArt's secured creditors, and proceed directly to collect on ColorArt's alleged contract debt from JAL Equity and Mr. Salu. The law forecloses that move. Centene says that it can get around the automatic stay because its alter-ego theory is unique. It is not. The Complaint alleges—in the most general terms possible—that JAL Equity and Mr. Salu "dominated" and "controlled" ColorArt to the detriment of ColorArt's "creditors," plural. Any creditor could make those allegations. Centene thus lacks standing to pursue a breach-of-contract claim on an alter-ego theory against JAL Equity and Mr. Salu.

Centene's opposition also confirms that even if it had standing to assert an alter-ego claim, it alleges only conclusions in support of its effort to cast aside the corporate form. So in its opposition, Centene asks for discovery to fill the gaps in its pleading. But New York law requires a plaintiff to allege "particularized facts" at the pleading stage first. The First Department has explicitly rejected the approach that Centene takes here: plead conclusions (not facts) and argue in response to a motion to dismiss that discovery is needed to plead facts supporting those conclusions.

Centene's quasi-contract and tort claims (which Centene asserts directly against JAL Equity and Mr. Salu) fare no better. The fraud claim is duplicative of the contract claim, seeks the same damages, and is not based on any independent duty. The quasi-contract claim and the conversion claim fail for similar reasons.

ARGUMENT

I. Centene Cannot Bypass the Automatic Stay

Centene contracted with ColorArt, a North Carolina entity that has filed a Chapter 11 bankruptcy petition. Once an entity files a bankruptcy petition, a bankruptcy estate is created. *See* 11 U.S.C. § 541(a). The bankruptcy estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1).

Under North Carolina law, "a corporation has an interest in the assets of its alter ego, and, thus, an alter ego claim is the property of the estate for purposes of Section 541(a)(1)." *Alvarez v. Ward*, No. 1:11CV03, 2011 WL 7025906, at *3 (W.D.N.C. Oct. 17, 2011), *report and recommendation adopted*, No. 1:11cv03, 2012 WL 113567 (W.D.N.C. Jan. 13, 2012); *In re Adair Realty Grp., LLC*, No. 25-00597-5-PWM, 2025 WL 2856853, at *6 (Bankr. E.D.N.C. Oct. 8, 2025). Centene's claim against JAL Equity and Mr. Salu (ColorArt's alleged alter egos) thus belongs to the bankruptcy estate.

In its opposition, Centene tries to sidestep that rule by arguing that its alter-ego claim against JAL Equity and Mr. Salu is personal to Centene. Opp. at 12. But that is not so. A cause of action is "personal" to a claimant only "if the claimant himself is harmed and no other claimant or creditor has an interest in the cause." *HBC Ventures, LLC v. Holt MD Consulting, Inc.*, No. 5:06-CV-190-F, 2011 WL 13233177, at *9 (E.D.N.C. Apr. 15, 2011) (quoting *Koch Refin. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1348 (7th Cir. 1987)).

In *Alvarez*, the court held that alter-ego claims based on allegations that an entity's owners "exercised complete control and dominion" over an entity and "operated it as a sham corporation" belonged to the bankruptcy estate and had to be asserted by the trustee. 2011 WL 7025906, at *4. So did claims based on the owners' "alleged siphoning of funds" from the entity. *Id.* Likewise, in *HBC Ventures*, the plaintiff alleged that two entities were their owner's "mere

instrumentalities"; that the entities "failed to maintain the most basic of corporate formalities"; that the owner "intermingled his personal and family finances" with the entities' finances; that the owner paid his personal expenses from the entities' bank account; and that the entities operated out of the same office space and had identical employees. 2011 WL 13233177, at *11. Those allegations "amount[ed] to general allegations" that any of the entities' creditors could make. *Id.* The court therefore concluded that the bankruptcy trustee had exclusive standing to pursue the alter-ego claims. *See id.*

Those are exactly the type of allegations that Centene makes here. Nothing about Centene's allegations that JAL Equity and Mr. Salu dominated ColorArt and abused the corporate form are specific to Centene. Any ColorArt contract creditor could make those allegations. Indeed, Centene alleges that *other entities* were also harmed by JAL Equity and Mr. Salu's alleged domination and control of ColorArt. *See* Compl., ¶ 72 (alleging that JAL Equity and Mr. Salu "exercised complete domination over ColorArt/Marketing.com *and its affiliates*, using them as mere instrumentalities to further their own interests and to perpetrate a fraud *on creditors*" (emphasis added)). Centene's own allegations thus close the door on Centene's argument that the allegations supporting its alter-ego claim are personal to it.

Centene cannot backtrack from those allegations. Nor can Centene bypass the automatic stay by arguing that it alleges an *injury* specific to Centene. *See* Opp. at 12 (arguing that JAL Equity and Mr. Salu's alleged conduct caused "an injury to Centene alone, not to ColorArt or all of ColorArt's creditors equally"). An argument "that the underlying harm is personal to [Centene]" is "unavailing." *HBC Ventures, LLC*, 2011 WL 13233177, at *11. "By such logic, all creditors' claims would be personal to a specific creditor." *Id.* (quoting *In re Teknek*, 563 F.3d 639, 644 (7th Cir. 2009)). "[A] supplier's claim for payment on supplies would," for example,

"be deemed personal because no other creditor could claim payment for the same supplies." *Id.* Because any of ColorArt's contract creditors could make the same allegations supporting Centene's alter-ego claim, Centene lacks standing assert an alter-ego claim against JAL Equity and Mr. Salu.

II. Centene Misstates Its Pleading Burden

Piercing the corporate veil is an extreme remedy. *See 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). In its opposition, Centene glosses over the strict standard that North Carolina law and Nevada law apply to veil-piercing claims. Centene says that looking to that standard "puts the cart before the horse." Opp. at 16. Centene believes that all it needs to do is allege the basic elements of an alter-ego claim—without supporting facts—to defeat a motion to dismiss and proceed to discovery. *See id.* To Centene, dismissing an alter-ego claim at the pleading stage is "premature." *Id.*

Centene misstates its pleading burden. New York law governs pleading standards even if North Carolina law and Nevada law govern what a plaintiff must show to pierce the corporate veil. *See Reid v. Ernst & Young Glob. Ltd.*, 13 Misc. 3d 1242(A), at *6 (Sup. Ct. N.Y. Cnty. 2006). And New York courts have made plain that the heavy burden a plaintiff faces in seeking to pierce the corporate veil applies at the pleading stage. *See Max Markus Katz, P.C. v. Sterling Nat'l Bank*, 206 A.D.3d 533, 534 (1st Dep't 2022) ("[D]efendant incorrectly claims that the 'heavy burden' standard does not apply on a CPLR 3211 motion.").

That burden required Centene to allege "particularized facts" that warrant piercing the corporate veil. *See, e.g., Cedar Cap. Mgmt. Grp. Inc. v. Lillie*, 236 A.D.3d 508, 509 (1st Dep't 2025); *Art Cap. Berm. Ltd. v. Bank of N.T. Butterfield & Son Ltd.*, 169 A.D.3d 426, 427 (1st Dep't 2019); *Siegel Consultants, Ltd. v. Nokia, Inc.*, 85 A.D.3d 654, 657 (1st Dep't 2011), *leave to appeal denied*, 18 N.Y.3d 809 (2012); *Andejo Corp. v. S. St. Seaport Ltd. P'ship*, 40 A.D.3d 407, 407 (1st

Dep't 2007). And the fact that a plaintiff seeking to pierce the corporate veil has not taken discovery at the time of the motion "does not excuse its failure" to plead only conclusory allegations. *Art Cap. Berm. Ltd.*, 169 A.D.3d at 427; *Yovich v. Montefiore Nyack Hosp.*, 212 A.D.3d 425, 426 (1st Dep't 2023). Alter-ego claims are thus routinely dismissed on CPLR 3211 motions. *See S.M. v. Madura*, 223 A.D.3d 486, 487 (1st Dep't 2024).

III. Centene's Conclusory Veil-Piercing Allegations Are Deficient

Under North Carolina law, 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). The instrumentality test requires a plaintiff to show (1) that the dominant shareholder exercised complete control and domination over the entity in all respects such that the entity had no separate existence of its own, (2) that the control must have been used to perpetrate a fraud or breach of some other legal duty, and (3) that the control and breach must have proximately caused the complained-of loss. *Est. of Rivas by & through Soto v. Fred Smith Constr., Inc*., 812 S.E.2d 867, 870 (N.C. Ct. App. 2018).

A. *Element One: Centene Does Not Allege Particularized Facts Showing Complete Control and Domination*

As JAL Equity and Mr. Salu detailed in their opening brief, apart from conclusory labels, Centene alleges only three specific facts in support of its allegation that JAL Equity and Mr. Salu dominated and controlled ColorArt and abused the corporate form: (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) that ColorArt and related entities were undercapitalized. Compl., ¶¶ 63, 68, 70.

Centene has abandoned reliance on one of those facts, and the other two are insufficient to allege complete domination and control.

First, as JAL Equity and Mr. Salu explained in their moving brief, the documents that Centene references in its Complaint upend its main allegation that JAL Equity and Mr. Salu abused corporate formalities. Centene alleges that "[i]n the 2022 Articles of Organization for Marketing.com, [Mr.] Salu is . . . the only member, not JAL, disregarding the corporate form." *Id.*, ¶ 65. But the document says otherwise. As JAL Equity and Mr. Salu showed, Mr. Salu is listed as the *organizer*. *See* NYSCEF Doc. Nos. 9, 10. And an "organizer" is not the same as a "member." *See* Mo. Ann. Stat. § 347.015(11), (14); *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)). Centene does not respond to JAL Equity and Mr. Salu's argument on this point, does not discuss the document that it references in its own Complaint, and does not otherwise defend its allegation. That does away with Centene's argument that JAL Equity and Mr. Salu somehow abused the corporate form.

Second, Centene's allegations about overlapping officers and office space do not support its effort to pierce the corporate veil. In their moving brief, JAL Equity and Mr. Salu pointed to case law showing that there is nothing unusual about different entities sharing officers or office space. *See, e.g., Harris v. Ten Oaks Mgmt., LLC*, No. 21 CVS 13907, 2022 WL 2198888, at *4 (N.C. Super. Ct. June 20, 2022). Centene does not mention or try to distinguish that case law. All Centene says is that "shared offices and overlapping governance are relevant indicia that JAL and [Mr.] Salu disregarded corporate formalities." Opp. at 18. Thus, Centene believes that it "has clearly raised a plausible inferenced that JAL and [Mr.] Salu disregarded corporate formalities and should be afforded the opportunity to conduct discovery into Defendants' corporate records." *Id.*

Centene cites zero case law in support of that assertion. That is because such thin allegations are insufficient to show complete domination. *See Vitamin Realty Assocs. LLC v. Time Rec. Storage, LLC*, 193 A.D.3d 491, 492 (1st Dep't 2021) ("[P]laintiff's allegations that defendant TRS and defendant 225 Long Avenue share offices, officers, and ownership, along with conclusory allegations of 'domination,' are insufficient to allege alter ego liability." (internal citation omitted)).

And third, Centene does not dispute that its Complaint lacks allegations suggesting that ColorArt was set up to be insolvent from the start. All it can say is that "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." Opp. at 18. But Centene's "hope that something will turn up in discovery is an insufficient basis to deny the motion to dismiss." *Yovich*, 212 A.D.3d at 426 (internal citation omitted).

B. *Element Two: Centene Does Not Allege a Breach of a Legal Duty*

North Carolina courts "rarely pierce the veil in contract cases." *Harris*, 2022 WL 2198888, at *4. Unhappy with that baseline rule, Centene takes issue with the high bar that North Carolina courts have created for veil-piercing efforts in contract cases. *See* Opp. at 20–21. But the standard that JAL Equity and Mr. Salu set out in their moving brief was taken word-for-word from a North Carolina federal court: "where the claim is based on contract, North Carolina courts have required that the Plaintiff 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)). Centene may not like that standard, but that does not change the fact that it applies here.

There are no allegations that ColorArt was a shell entity, that ColorArt was formed for the purpose of contracting with Centene, or that ColorArt's business dealings were focused solely on Centene.

* * * *

In sum, Centene must do more than list the factors that courts in consider in deciding whether a shareholder exercised complete control over an entity and say that it alleges that each factor is present. The First Department has repeatedly held that such conclusory allegations are insufficient. In *Stewart Title Insurance Co. v. New York Title Research Corp.*, the court rejected "allegations that [an entity's principal] exercised dominion and control over [an entity], that he abused the privilege of doing business in the corporate form and failed to adhere to LLC formalities." 178 A.D.3d 618, 620 (1st Dep't 2019). And in *Springut Law PC v. Rates Technology Inc.*, the court said that "nonspecific allegations that [the corporate defendants' president] 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." 157 A.D.3d 645, 646 (1st Dep't 2018) (internal citation omitted).

The same is true here. Centene therefore cannot hold JAL Equity and Mr. Salu liable for an alleged breach of a contract to which they were not parties.

IV. Centene's Fraud Claim is Duplicative, Inadequately Pled, and Legally Deficient

Centene's opposition does not save its fraud claim (which is not based on an alter-ego theory). Centene does not respond to several arguments that JAL Equity and Mr. Salu made, ignores binding and dispositive case law, and does not explain how JAL Equity or Mr. Salu *themselves* defrauded Centene.

A. *Centene Does Not Dispute That Its Fraud Claim Seeks the Same Damages as Its Contract Claim*

As JAL Equity and Mr. Salu explained in their moving brief, a fraud claim is impermissibly duplicative when it seeks the same damages as a contract claim. *See* NYSCEF Doc. No. 7 at 19; *see also Fin. Guar. Ins. Co. v. Morgan Stanley ABS Cap. I Inc.*, 164 A.D.3d 1126, 1127 (1st Dep't 2018). Centene does not respond to that argument. Centene does not even try to argue that its fraud claim seeks different damages than its contract claim—because it cannot. The only mention of the word "damage" found in the section of Centene's brief dealing with its fraud claim comes in a sentence that sets out the elements of a fraud claim. *See* Opp. at 23. Failure to respond to an argument concedes it. *See Steffan v. Wilensky*, 150 A.D.3d 419, 420 (1st Dep't 2017). This Court should therefore dismiss Centene's fraud claim for this reason alone. *See Chowaiki & Co. Fine Art Ltd. v. Lacher*, 115 A.D.3d 600, 600–01 (1st Dep't 2014) (affirming dismissal of fraud claim when it seeks the same damages as a contract claim).

B. *Centene Does Not Otherwise Differentiate Its Fraud Claim from Its Contract Claim*

Centene alleges that ColorArt (not JAL Equity or Mr. Salu) made three categories of misrepresentations: (1) monthly reports that purported to accurately reflect escrow balances when they allegedly did not; (2) affirmations that the escrow balances were accurate; and (3) assurances that the unused escrow funds would be returned. Compl., ¶ 95. In their moving brief, JAL Equity and Mr. Salu went through each of the three categories of alleged misrepresentations and explained why none are actionable. In its opposition, Centene lumps them all together and says that it alleges misrepresentations of present facts that are collateral to the contract. *See* Opp. at 25.

In doing so, Centene does not deal with any of the First Department cases that JAL Equity and Mr. Salu cited rejecting fraud claims based on allegedly inaccurate reports contemplated by a contract, a party's alleged misrepresentations about its contractual performance, and a party's

alleged promises that it would meet contractual obligations in the future. *See Inspirit Dev. & Const., LLC v. GMF 157 LP*, 203 A.D.3d 430, 433 (1st Dep't 2022); *Ho v. Star Contractors, Inc.*, 226 A.D.3d 511, 512 (1st Dep't 2024); *Cedar Cap. Mgmt. Grp. Inc.*, 236 A.D.3d at 509.

Centene does not cite—let alone try to distinguish—*Inspirit Development*, *Ho*, *Cedar Capital*, or any of the other First Department cases that JAL Equity and Mr. Salu cited. Centene cannot get around binding and dispositive case law by ignoring it.

In the face of that case law, Centene cites two cases in support of its argument that the alleged fraud is collateral to the contract, one federal case and one Fourth Department case. Neither supports Centene's argument. In the federal case, the plaintiff did not allege a breach of contract. *See Minnie Rose LLC v. Yu*, 169 F. Supp. 3d 504, 521 (S.D.N.Y. 2016) ("Plaintiff does not allege that Defendants failed to perform under the above agreement."). And in the Fourth Department case, the plaintiff alleged "injurious consequences discrete from those underlying the breach of contract cause of action." *Eagle Comtronics, Inc. v. Pico Prods., Inc.*, 256 A.D.2d 1202, 1203 (4th Dep't 1998). Centene admittedly did not suffer a discrete injury because of the alleged fraud.

Because Centene's fraud claim is not based on a duty independent from the contract, it should be dismissed. *See Matter of Soames v. 2LS Consulting Eng'g, D.P.C.*, 187 A.D.3d 490, 491 (1st Dep't 2020).

C. *Centene Cannot Hold JAL Equity and Mr. Salu Responsible for Others' Alleged Fraudulent Conduct*

Even if Centene could plead a viable fraud claim based on ColorArt's alleged misrepresentations, Centene cannot hold JAL Equity or Mr. Salu liable for statements that they did not make. JAL Equity or Mr. Salu cannot be liable for the allegedly fraudulent 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). In its opposition, Centene says that JAL Equity and Mr. Salu are responsible for others' conduct because it "alleges [that] [Mr.] Salu sat at the apex of the enterprise, exercised complete control over JAL and ColorArt, and directed the conduct at issue." Opp. at 24. But those allegations are legal conclusions unsupported by any facts. They do not plead fraud with particularity. *See N. Valley Partners, LLC v. Jenkins*, 23 Misc. 3d 1112(A), at *6–7 (Sup. Ct. N.Y. Cnty. 2009) (rejecting "bald, conclusory allegations that each of the Director Defendants collectively were 'aware' of the[] false representations and 'participated in, approved of and lent support to' the alleged fraud").

D. *Centene Does Not Allege a Duty to Disclose*

Apart from being duplicative, Centene's omission-based claim fails because Centene does not allege a duty to disclose. In its opposition, Centene contends that JAL Equity and Mr. Salu owed it a duty to disclose under the "special facts" doctrine. Opp. at 23. But that doctrine applies only when the defendant is a *party* to a *prospective* transaction with the plaintiff. *See, e.g.*, *Bay Towers Assocs. v. Lightstone Grp., LLC*, 235 A.D.3d 573, 574 (1st Dep't 2025); *Tatintsian v. Pryor Cashman LLP*, No. 152022/2017, 2018 WL 6505401, at *6 (Sup. Ct. N.Y. Cnty. Dec. 10, 2018) (special facts doctrine inapplicable where "[d]efendants were not parties to the transaction"); *Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC*, No. 12-CV-7372 (LJL), 2020 WL 5518146, at *88 (S.D.N.Y. Sept. 14, 2020) ("[T]he special facts doctrine applies only when the defendant is a party to a transaction with the plaintiff."). Because JAL Equity and Mr. Salu were not parties to any prospective transaction with Centene, the special facts doctrine does not apply to them.

V. Centene's Unjust-Enrichment Claim is Duplicative

If an express contract covers the subject matter of an unjust-enrichment claim, the contract bars an unjust enrichment claim. *See Clark-Fitzpatrick, Inc. v. Long Island R.R. Co.*, 70 N.Y.2d 382, 388 (1987). In its opposition, Centene tries to avoid that black-letter rule by arguing that

unjust enrichment has "distinct elements" from a breach-of-contract claim. Opp. at 26. But that is beside the point. Centene's unjust-enrichment claim treads the same ground as the contract claim and seeks the same damages. It is duplicative. *See Benham v. eCommission Sols., LLC*, 118 A.D.3d 605, 607 (1st Dep't 2014) (unjust-enrichment claim is duplicative when it seeks "the same damages" as a breach-of-contract claim (quoting *Martin H. Bauman Assocs. v. H & M Int'l Transp.*, 171 A.D.2d 479, 484 (1st Dep't 1991))).

The cases that Centene cites do not suggest otherwise. *Nuss v. Sabad* did not involve an express contract. *See* No. 7:10-CV-0279 (LEK/TWD), 2016 WL 4098606, at *11 (N.D.N.Y. July 28, 2016). Neither did *McCracken v. Verisma Systems, Inc.*, No. 6:14-cv-06248(MAT), 2017 WL 2080279 (W.D.N.Y. May 15, 2017). *See id.* at *8.

VI. Centene's Conversion Claim Mirrors its Contract Claim

In their opening brief, JAL Equity and Mr. Salu detailed how Centene's conversion claim—like its unjust-enrichment claim—is based on the same facts and seeks the same damages as the breach-of-contract claim. In response, Centene says that "the mere fact that two claims are supported by the same facts does not render them duplicative." Opp. at 27. There is no citation following that sentence because it not an accurate statement. *See 110 E. 138 Realty LLC v. Rydan Realty, Inc.*, 210 A.D.3d 513, 514 (1st Dep't 2022) (dismissing conversion claim because it was "based on the same facts that underlie the contract cause of action"); *Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162, 204 (S.D.N.Y. 2011) (dismissing a conversion claim because "the same facts make up the breach of contract and conversion claims").

CONCLUSION

For the foregoing reasons, JAL Equity and Mr. Salu's motion to dismiss should be granted.

Dated: March 30, 2026

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 3,914 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 30, 2026

By: 
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