SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MEHRNAZ NANCY HOMAPOUR, BALANCE PROPERTY, LLC, JAM REALTY NYC LLC, UNITED CHELSEA, LLC, UNITED EAST, LLC, UNITED FIFTH, LLC, UNITED FLATIRON LLC, UNITED GREENWICH, LLC, UNITED HAY, LLC, UNITED NATIONWIDE REALTY LLC, UNITED PRIME BROADWAY, LLC, UNITED PRIME LLC, UNITED SEED LLC, UNITED SQUARE LLC, UNITED VILLAGE, LLC, UNITED WEST, LLC,

Plaintiffs,

- v -

3M PROPERTIES, LLC, BALANCE PROPERTY, LLC, JAM REALTY NYC LLC, UNITED CHELSEA, LLC, UNITED EAST, LLC, UNITED FIFTH, LLC, UNITED FLATIRON LLC, UNITED GREENWICH, LLC, UNITED HAY, LLC, UNITED NATIONWIDE REALTY LLC, UNITED PRIME BROADWAY, LLC, UNITED PRIME LLC, UNITED SEED LLC, UNITED SQUARE LLC, UNITED VILLAGE, LLC, UNITED WEST, LLC, JACOB NY HOLDINGS LLC, JACOB NY HOLDINGS LTD., 172 MULBERRY REALTY LLC, 1007 LEX AVE LLC, 69 CLINTON NPG LLC, 163 CHRYSTIE REALTY LLC, 427 EAST 77TH STREET LLC, 360 EAST 50TH STREET ASSOCIATES LLC, 356 EAST 50TH STREET ASSOCIATES LLC, ORANGE & BLUE LLC, ALEXANDER SELIGSON, SELIGSON ROTHMAN & ROTHMAN, GERARDINE T. DELLARATTA, AS EXECUTRIX FOR THE ESTATE OF HENRY DELLARATTA, NATALIE HAROUNIAN, MEHRNOSH PIROOZIAN, JACOB HAROUNIAN, MARK HAROUNIAN, JOHN DOES 1-100,

Defendants.

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INDEX NO. 653795/2015

MOTION DATE 09/27/2024, 09/27/2024, 09/27/2024, 09/27/2024, 01/21/2025

MOTION SEQ. NO. 021 022 023 024 026

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 1459, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1794, 1795, 1796, 1797, 1798, 1799, 1800

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987,

988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1460, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1786, 1801, 1802, 1803, 1804, 1805, 1806

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1461, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1787, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1853

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 024) 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1451, 1462, 1463, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1772, 1788, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 026) 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1855
were read on this motion to STRIKE JURY DEMAND.

This case involves a sprawling family-owned real estate business that has been beset by internal acrimony, conflict, and accusations of self-dealing and other misconduct. After many years of contentious litigation, Defendants Mark Harounian ("Mark"), 3M Properties, LLC, Balance Property, LLC, JAM Realty NYC, LLC, United Chelsea, LLC, United East, LLC, United Fifth, LLC, United Flatiron, LLC, United Greenwich, LLC, United Hay, LLC, United Nationwide Realty, LLC, United Prime Broadway, LLC, United Prime, LLC, United Seed, LLC, United Square, LLC, United Village, LLC and United West, LLC Jacob NY Holdings, LLC, Jacob NY Holdings Ltd., 172 Mulberry Realty, LLC, 1007 Lex Ave, LLC, and 163 Chrystie, LLC (collectively "Harounian Defendants") move for partial summary judgment dismissing certain claims brought against them, as well as to strike Plaintiff's jury demand. Defendant Orange & Blue, LLC also moves for summary judgment on all claims asserted against it. Defendants Alexander Seligson and Seligson Rothman & Rothman (collectively, "Seligson Defendants") move for the same.

Plaintiff Mehrnaz Nancy Homapour ("Mehrnaz"), individually and derivatively on behalf of Balance Property, LLC, Jam Realty NYC LLC, United Chelsea, LLC, United East, LLC, United Fifth, LLC, United Flatiron LLC, United Greenwich, LLC, United Hay, LLC, United Nationwide Realty LLC, United Prime Broadway, LLC, United Prime LLC, United Seed LLC, United Square LLC, United Village, LLC, and United West, LLC, moves for summary judgment

in her favor as to liability on her first through seventh and tenth through fifteenth causes of action.

For the reasons discussed below: (i) the summary judgment motions by Plaintiff, Harounian Defendants, and Seligson Defendants are **granted in part**; (ii) the summary judgment motion by Defendant Orange & Blue, LLC is **granted**; and (iii) the motion by Harounian Defendants to strike Plaintiff's jury demand is **granted**.

BACKGROUND

Plaintiff Mehrnaz Homapour, along with her sister Mehrnosh Piroozian and father Jacob Harounian ("Jacob"), is a minority member in a number of LLCs in which her brother, Mark Harounian ("Mark"), is a managing member (NYSCEF 1723 [Harounian Defendants' Response to Plaintiff's Statement of Material Facts] ¶¶ 5-8). These so-called "Family LLCs"[1] each hold one or more (typically residential) buildings in New York City, collectively worth hundreds of millions of dollars (NYSCEF 1769 [Plaintiff's Response to Harounian Defendants' Statement of Material Facts] ¶ 31).

According to Mehrnaz, Mark drew funds freely from the Family LLCs to fund a variety of personal expenses, including personal home improvements, luxury car payments, expensive paintings, and college tuition, rent, and expenses relating to his personal relationships (*id.* ¶¶ 30, 49, 52-54, 58-62, 82). On November 17, 2014, Mark invited Mehrnaz and her husband to a meeting at which he disclosed his use of Family LLC funds for personal expenses (*id.* ¶¶ 18-19;

[1] The "Family LLCs" are comprised of 3M Properties, LLC, Balance Property, LLC, JAM Realty NYC, LLC, United Chelsea, LLC, United East, LLC, United Fifth, LLC, United Flatiron, LLC, United Greenwich, LLC, United Hay, LLC, United Nationwide Realty, LLC, United Prime Broadway, LLC, United Prime, LLC, United Seed, LLC, United Square, LLC, United Village, LLC and United West, LLC.

NYSCEF 1574 [Mark Deposition Transcript 6.26.2023] at 241:19-242:3). A few months later, Mehrnaz revoked the power of attorney that she had granted to her father Jacob in 2012 and asked to inspect the Family LLCs' books and records (NYSCEF 1723 ¶¶ 127-28; NYSCEF 1769 ¶¶ 58-61).

One year to the day after Mark and Mehrnaz's meeting, Mehrnaz filed the instant action alleging that Mark's expenditures of Family LLC funds—including to purchase properties held by entities in which only Mark and his children are members (the "Harounian LLCs")[2]—constituted breaches of fiduciary duty, waste, and conversion. Mark argues that these expenditures were a part of the family's common practice (purportedly following family patriarch Jacob's lead and guidance) of using company assets to support their lifestyle, and that his expenditures were reasonable compensation for his services as managing member as provided for in several of the Family LLCs' amended operating agreements.

Relatedly, Plaintiff asserts claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty against the Seligson Defendants, attorneys who represented the Family LLCs before representing Mark individually in drafting some of the amended operating agreements in ways that Plaintiff claims enabled Mark's "looting" of Family LLC assets (NYSCEF 1386 [Plaintiff's Memorandum of Law in Support] at 2-3).

Plaintiff also brings claims against Orange & Blue, LLC ("O&B"), an entity Mark employed in connection with renovating certain Family LLC buildings, alleging that it aided and abetted Mark's breaches of fiduciary duty by creating fraudulent invoices to support Mark's purportedly unlawful efforts to deregulate rent-controlled or rent-stabilized apartments.

[2] The Harounian LLCs are comprised of Jacob NY Holdings, LLC, Jacob NY Holdings Ltd., 172 Mulberry Realty LLC, 1007 Lex Ave, LLC and 163 Chrystie, LLC.

DISCUSSION

Summary judgment is a drastic remedy which will be granted only when the movant has established that there are no triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). To prevail, the party seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law based on evidentiary proof in admissible form (*id.*; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). If the moving party meets its burden, the opposing party "must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated or assertions are insufficient" (*Zuckerman*, 49 NY2d at 562).

I. Claims for which both Plaintiff and Harounian Defendants seek summary judgment

Mehrnaz and Harounian Defendants each seek summary judgment on the following claims brought by Mehrnaz (individually and derivatively on behalf of various LLC entities) against the Harounian Defendants:

a. Direct claim for fraud against Mark

In her fifth cause of action, Mehrnaz alleges that Mark fraudulently induced her to sign (without reading) certain amended Family LLC operating agreements. She claims that Mark, in accordance with his usual practice, told her that there were no material changes in the agreements, when in fact the agreements had been revised to permit Mark to compensate himself for his services as Manager and to establish a more lenient standard—and more limited remedies—for Manager misconduct. As a result, Mehrnaz seeks rescission of those operating

agreements. She claims that Mark's usual practice was to present only the signature pages of the operating agreements while misrepresenting that the amendments were not substantive and further misrepresenting that the signatures were needed for the bank or for Jacob's estate-planning purposes.

To prevail on her fraud claim, Mehrnaz must demonstrate by clear and convincing evidence that Mark (1) made an intentional misrepresentation of material fact (2) with scienter (3) upon which she justifiably relied (4) resulting in damages (*see Abrahami v UPC Constr. Co.*, 224 AD2d 231, 232–33 [1st Dept 1996]). Though generally a party cannot show justifiable reliance when she admittedly did not read the agreement that was purportedly induced by fraud, courts have found that reliance nevertheless may be justified when someone in a confidential/fiduciary relationship misrepresents the nature or contents of the documents signed (*Suttongate Holdings Ltd. v Laconm Mgt. N.V.*, 160 AD3d 464, 464-65 [1st Dept 2018]; *Sorenson*, 52 AD3d at 266 [noting that the general rule applies "in the absence of a confidential relationship"]).

Mehrnaz's evidence that Mark misrepresented the nature of the documents consists mainly of her own affidavits and deposition testimony. She testified that historically "with every operating agreement we had Mark's absolute words that everything is the same" (NYSCEF 1167 [Mehrnaz Deposition Transcript Vol. I] at 205:16-19) and that Mark often gave her signature pages without anything attached to them (*id.* at 242:16-18). She testified that whenever she did receive operating agreements in full, she would "quickly take a glance and go over them" (*id.* at 222:3-14).

However, when asked about the particular operating agreements she signed in 2012 and 2013, Mehrnaz generally could not remember if she had seen the entire agreement, who

presented her with the agreement, or what representations, if any, were made (*id.* at 282:17-284:17, 281:22-282:16, 284:20-286:11, 286:12-287:23, 293:3-294:4, 287:24-289:13, 274:18-276:9, 294:5-24, 289:16-291:4). With respect to one of those agreements, she speculated that she "must have" asked something, and that whoever showed it to her—she could not recall who—probably said "it was for the bank or something like that" (*id.* at 275:18-276:9). Mehrnaz testified regarding another agreement that she "may have" asked something but likewise does not recall actually asking anything or whether it was Mark who presented her the document (*id.* at 287:24-289:13). The only operating agreement she had specific recollections about was the November 2014 operating agreement for United Greenwich. As to that agreement, Mehrnaz testified that Mark asked her to review that document—something he had never asked of her before—and that when she did review it, she took issue with a number of material alterations, including adding Mark's wife as a member (*id.* at 297:7-306:11). Despite discussing these issues with Jacob, who insisted that she sign it before eventually signing it on her behalf through the power of attorney, Mehrnaz stated that the arrangement Mark and Jacob had made regarding that LLC was agreeable to her because "[i]t was a decision that father and son had made together" (*id.* at 288:22-289:13).

Regarding the December 2012 signing ceremony when the operating agreements containing bars to equitable relief were executed, Mehrnaz did not recall anything other than that signature pages were presented (*id.* at 309:9-11), and she testified that she did not ask any questions about what she was signing (*id.* at 310:10-12), that nothing was explained or presented to her (*id.* at 310:6-9), and that there was no discussion among the family members about what was being signed (*id.* at 310:21-24). When Mark was asked at his deposition if he made any representations regarding the documents at that signing, he responded, "This was Operating

Agreement and this was allowing the trust to come in and those other trusts" (NYSCEF 1162 [Mark Deposition Transcript 6.23.2023] at 285:2-6).

Given that Mehrnaz's proffered evidence of fraudulent inducement consists only of self-serving assertions about alleged misrepresentations—none of which she recalled at her deposition (*see* NYSCEF 1167 at 309:9-310:24)—she cannot meet her burden in support of her summary judgment motion to demonstrate conclusively her justifiable reliance under the general rule because she admittedly did not read or ask to read the relevant OAs (NYSCEF 1769 ¶¶ 86-89; *see Sofio v Hughes,* 162 AD2d 518, 521 [2d Dept 1990] [reversing judgment after finding "no proof that an agent of the defendant … misrepresented the nature of the document signed by the plaintiffs" other than the plaintiffs' own, self-serving testimony]). More than just being unable to recall any representations at the December 2012 signing, she specifically testified that none were made at all (NYSCEF 1167 at 310:21-24). Thus, Mehrnaz's motion for summary judgment in her favor on this claim must be denied.

Instead, based on the summary judgment record presented, the Houranian Defendants' motion for summary judgment on this claim must be granted because they have demonstrated as a matter of law that Plaintiff did not justifiably rely on any misrepresentations by Mark as required to maintain a claim for fraudulent inducement (*Abrahami,* 224 AD2d at 232–33). One who signs but declines to read a document cannot claim to have justifiably relied on any misrepresentations regarding its contents (*see e.g. Vulcan Power Co. v Munson,* 89 AD3d 494, 495 [1st Dept 2011] [affirming summary judgment dismissal of fraud claim where parties signed stockholder's agreement "without reading it" and without having "requested a copy of the agreement" to read, and rejecting argument that rule should "not apply to signers of loose

signature pages" because "[a] signer's duty to read and understand that which it signed is not 'diminished merely because [the signer] was provided with only a signature page"]).

In opposition to Mark's motion for summary judgment, Mehrnaz's self-serving and conclusory statements as to fraudulent inducement are not sufficient to create a disputed issue of fact for trial. Having acknowledged that she did not read the agreements that she signed, the burden was on Plaintiff to submit admissible evidence that Mark abused a confidential relationship to fraudulently induce her not to review the document. But given ample opportunity to support her allegations under oath at her deposition, she failed to do so. As such, she has not rebutted the prima facie case that a person who declines to read a document cannot later complain about having been harmed by signing it.

Accordingly, summary judgment is granted to the Harounian Defendants on Mehrnaz's fraud claim, and the latest operating agreements—with their attendant limitations on remedies—govern. Whether those agreements permitted Mark to engage in conduct detrimental to the Family LLCs is a different question, discussed *infra*.

b. Derivative claim for unjust enrichment against Mark and the Harounian LLCs

To prevail on this claim, Mehrnaz must demonstrate that (1) the Harounian Defendants were enriched, (2) at Plaintiff's expense, and (3) that it is against equity and good conscience to permit the Harounian Defendants to retain what Plaintiff seeks to recover (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]). Whether Mehrnaz has satisfied the third element depends upon disputed facts underlying her breach of fiduciary duty claim (*see* Section II, *infra*). Accordingly, Mehrnaz's motion for summary judgment on this claim is denied.

Instead, the Harounian Defendants' motion is granted in part on Mehrnaz's unjust enrichment claim as against Mark. Mark's personal use of Family LLC funds is governed by contract and by principles of fiduciary duty. As the Court of Appeals has observed: "[U]njust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, *though the defendant has not breached a contract nor committed a recognized tort*, circumstances create an equitable obligation running from the defendant to the plaintiff. Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled. *An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim*" (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012] [emphasis added]). Here, Plaintiff's allegations against Mark, if true, are covered by her contract and fiduciary duty claims. Accordingly, her unjust enrichment claims against Mark are dismissed as duplicative.

The analysis differs for the Harounian LLCs, as they are not party to any of the Family LLC operating agreements. To the extent those entities received benefits at Plaintiff's expense, and there are no corresponding contract or traditional tort claims asserted against them with respect to such benefits, a claim for unjust enrichment cannot be conclusively refuted. As such, the Harounian Defendants' motion is denied on Plaintiff's unjust enrichment claim as against the Harounian LLCs.

c. Direct claims for a constructive trust against Mark and certain Harounian LLCs

Plaintiff's tenth cause of action seeks the imposition of a constructive trust over the assets of the Harounian LLCs. A constructive trust claim has four elements: "(1) a confidential or fiduciary relationship, (2) a promise, express or implied, (3) a transfer in reliance thereon, and

(4) unjust enrichment" (*Panetta v Kelly*, 17 AD3d 163, 165 [1st Dept 2005]). These elements are not "rigidly limited," and a "constructive trust will be erected whenever necessary to satisfy the demands of justice" (*Simonds v Simonds*, 45 NY2d 233, 241 [1978]). Here, there are disputes of fact as to the scope and existence of any promise made by Mark not to compete (through the Harounian LLCs) with the Family LLCs in Manhattan (NYSCEF 1723 ¶ 14). Further, inasmuch as this claim is brought against the Harounian LLCs themselves, there are no allegations of a confidential relationship or promise running between Plaintiff and those entities. Accordingly, Plaintiff's motion is denied as to this claim.

As for Harounian Defendants' motion, the 11 Family LLC operating agreements drafted by Alan Winters ("Winters OAs")[3] provide that the "sole remedy of the Company or any Member for an act or omission to act for which a Manager is liable under Section 8.6(b), shall be the recovery of money damages from the Manager…" (NYSCEF 1769 ¶ 97). Because imposition of a constructive trust is an equitable remedy (*Sharp v Kosmalski*, 40 NY2d 119, 123 [1976]), the Harounian Defendants' motion is granted to the extent Plaintiff's tenth cause of action relates to funds removed from Winters-OA-governed Family LLCs. Further, summary judgment is granted to the Harounian Defendants dismissing these claims inasmuch as they are asserted against the Harounian LLCs themselves for the reasons stated above.

Plaintiff's fourteenth cause of action seeks a constructive trust over certain real property owned by a Harounian LLC. This claim is also based in part on allegations that Mark purchased

[3] Alan Winters, Jacob's estate planning attorney, drafted the controlling operating agreements for United East, LLC, United Chelsea, LLC, 3M Properties, LLC, United Hay, LLC, United Village, LLC, United West, LLC, United Seed, LLC, United Square, LLC, United Nationwide Realty, LLC, United Flatiron, LLC, and JAM Realty NYC, LLC (NYSCEF 1758 [Plaintiff's Response to Seligson Defendants' Statement of Material Facts] ¶¶ 12-14).

the "Family Headquarters" at 29 East 32nd Street through his solely-owned entity using Family LLC funds in 2003. The limitations period for a cause of action seeking to impose a constructive trust is six years from the "occurrence of the wrongful act giving rise to a duty of restitution, and not from the time when the facts constituting the fraud are discovered" (*Knobel v Shaw*, 90 AD3d 493, 493 [1st Dept 2011] [citation omitted]). Accordingly, the Harounian Defendants' motion is granted dismissing Plaintiff's fourteenth cause of action, as it is time barred. Plaintiff's corresponding motion is denied.

d. Derivative claim for a permanent injunction removing Mark as Manager

Whether an injunction removing Mark as Manager is warranted depends on disputed facts underlying Mehrnaz's breach of fiduciary duty claim (*see* Section II, *infra*). Accordingly, Plaintiff's motion for summary judgment removing Mark as Manager is denied.

As for the Harounian Defendants' motion, the Winters-OA-governed Family LLCs' operating agreements limit the available remedies against Mark to money damages, precluding an injunction removing Mark (NYSCEF 1769 ¶ 97). The remaining Family LLC OAs name Mark as Manager and are silent on the issue of his removal. In those circumstances, the default removal provision in LLC Law § 414 ("Except as provided in the operating agreement, any or all managers of a limited liability company may be removed or replaced with or without cause by a vote of a majority in interest of the members entitled to vote thereon") is generally unavailable (NYSCEF 1057, 1059-62; *see Goldstein v Pikus*, 2015 NY Slip Op 31483[U] at *14 [Sup Ct, NY County 2015]). Plaintiff's suggestion that the Court is nonetheless permitted to remove Mark pursuant to its broad equitable powers is unavailing. In that regard, the Court finds the reasoning in *Fakiris v Gusmar Enterprises, LLC* (53 Misc 3d 1215[A] [Sup Ct, Queens County 2016]) to be persuasive. There, the court found no basis to order the removal of an LLC's manager absent

a removal provision in the operating agreement, noting that the LLC Law, unlike the Business Corporation Law, does not provide a statutory basis for removing managers without regard to the entity's governing documents (*id.* at *6, citing BCL § 706). Accordingly, the Harounian Defendants' motion to dismiss this claim on summary judgment is granted.

e. Direct claim for a permanent injunction against Mark and the Family LLCs regarding tax filings

Plaintiff seeks an order directing Mark and the Family LLCs "to correct and/or amend the [Family LLCs'] tax returns, including Plaintiff's K-1s, to accurately reflect the Family LLC's [sic] true financial condition, including to accurately reflect [Mark's] theft and usurpation of Family LLC assets" (NYSCEF 899 [Third Amended Complaint] ¶ 263).

While the parties were in mediation, Mark had the tax returns of certain Family LLCs restated through the IRS's Voluntary Disclosure Program to reflect money he received from the Family LLCs as income to Mark, rather than deductible business expenses (NYSCEF 1723 ¶ 131). This included changes to the Form K-1s for Mehrnaz, reflecting upwards of $5 million in distributions from the Family LLCs that she never received (*see* NYSCEF 1273-1380 [Original and Amended Tax Returns]; NYSCEF 1273 ¶¶ 133-34). Mark sent Mehrnaz checks for her increased tax liability, but Mehrnaz contends she returned the checks—though she was unsure about that at her deposition (NYSCEF 1273 ¶ 138; NYSCEF 1676; NYSCEF 1567 at 150:11-25).

The Harounian Defendants seek summary judgment on this claim regarding all Family LLCs on the ground that the proposed injunction is too vague, citing *Xerox Corp. v Neises* (31 AD2d 195, 198 [1st Dept 1968] ["[A]n injunction should plainly indicate to the defendant specifically all the acts which he is thereby restrained from doing without calling upon him for

inferences…"]). This is not persuasive. The *Xerox* court did not dismiss the claim for injunctive relief on this basis; rather, it directed that the underlying fact issues that made the injunction unclear be determined at trial (*id.* at 199). The proposed relief here is not improperly vague.

As it relates to the Winters-OA-governed Family LLCs, the Harounian Defendants argue that the OAs' limitations on remedies for Manager misconduct preclude these injunctions. While those OAs limit the available remedies "for an act or omission to act for which a Manager is liable"—in this instance, tax filings—to money damages (NYSCEF 1769 ¶ 97), those provisions do not bar equitable relief against the entities themselves, even if the Manager's involvement is required to effect the injunction sought as a practical matter. The Court has considered the Harounian Defendants' remaining arguments for summary judgment in their favor on this claim and finds them unavailing. The Harounian Defendants' motion for summary judgment dismissing the claims for injunctive relief regarding the Winters-OA-governed Family LLC tax returns is granted as against Mark, but denied as against the Family LLCs.

As for Plaintiff's motion, the scope (and issuance) of any injunction here depends upon disputed facts underlying Plaintiffs' breach of fiduciary duty claim (*see* Section II, *infra*). Accordingly, summary judgment in Plaintiff's favor is also denied.

f. Derivative claim for conversion against Mark

Plaintiff's motion for summary judgment on her derivative claim for conversion is denied, as whether Mark had the right to use Family LLC funds in the manner alleged depends on disputed facts underlying Plaintiff's breach of fiduciary duty claim (*see* Section II, *infra*).

The Harounian Defendants seek dismissal of this claim on the basis that Mark deposited the funds in unsegregated accounts and/or spent them already. To maintain a conversion claim with respect to money, the funds at issue are required to be "specifically identifiable and []

subject to an obligation to be returned or otherwise treated in a particular manner" (*Republic of Haiti v Duvalier*, 211 AD2d 379, 384 [1995]). The Harounian Defendants rely on *SH575 Holdings, LLC v Reliable Abstract Co., LLC* (195 AD3d 429, 430 [1st Dept 2021]) for the proposition that converted funds are not specifically identifiable if they have been commingled in unsegregated accounts and then paid out. The First Department, however, subsequently clarified that its decision in *SH575 Holdings* "should not be read to preclude a cause of action for conversion when funds at issue have been commingled to any extent" (*Family Health Mgt., LLC v Rohan Developments, LLC*, 207 AD3d 136, 146-47 [1st Dept 2022]). Rather, "when the funds at issue in an action for the conversion of money constitute a specific sum, one that is determinate, and reflects an ascertained amount, the money is specifically identifiable" (*id.* at 145 [citations and quotations omitted]). This argument is unavailing.

Nonetheless, the Court agrees with the Harounian Defendants that the conversion claim is duplicative of the breach of fiduciary duty claim, as it is premised on the same conduct and does not seek distinct damages (*Perez v Violence Intervention Program*, 116 AD3d 601, 602 [1st Dept 2014]). Accordingly, the Harounian Defendants' motion is granted dismissing this claim.

g. Direct claim for an accounting against Mark and the Family LLCs

Because the right to an equitable accounting requires a fiduciary relationship between the parties, and because LLCs do not owe fiduciary duties to their members, the Harounian Defendants' motion is granted dismissing this claim against the Family LLCs (*see Metro. Bank & Tr. Co. v Lopez*, 189 AD3d 443, 446 [1st Dept 2020]; *Brunetti v Sergeev*, 2017 NY Slip Op 32054[U], 18 [Sup Ct, NY County 2017]).

However, the claim demanding an accounting from Mark, as fiduciary, is sustained. Initially, the Harounian Defendants' argument that the accounting claim is moot due to extensive

information exchanged in discovery is unavailing (*see Koppel v Wien, Lane & Malkin*, 125 AD2d 230, 234 [1st Dept 1986] ["whenever there is a fiduciary relationship between the parties, as is the situation here, there is an absolute right to an accounting" even if the "plaintiffs are already in possession of all the detailed financial information relating to the sale and to this litigation"]). Further, the limitations on remedies in the Winters-OAs do not preclude Plaintiff's accounting claim. The Winters-OAs provide that the "sole remedy of the Company or any Member for an act or omission to act for which a Manager is liable under Section 8.6(b), shall be the recovery of money damages from the Manager…" (NYSCEF 1769 ¶ 97). The right to an accounting flows from the fiduciary relationship itself—it is not something that Mark is "liable" for (*Koppel*, 125 AD2d at 234). As such, the Harounian Defendants' motion for summary judgment dismissing this claim as against Mark is denied.

Indeed, because an accounting is a right flowing from the fiduciary relationship between Mark (as managing member) and the members of the Family LLCs, Plaintiff's motion for summary judgment requiring such an accounting is granted.

h. Derivative claim for breach of fiduciary duty against Mark concerning Orange and Blue

Summary judgment is granted to the Harounian Defendants dismissing this claim without prejudice, as it is nonjusticiable for the reasons set forth in Section IV [a], *infra*. Plaintiff's corresponding motion for summary judgment on this claim is accordingly denied.

II. Plaintiff's motion for summary judgment on her breach of fiduciary duty and waste claims against Mark is denied

Plaintiff's motion for summary judgment on her derivative claims for breach of fiduciary duty and waste against Mark is denied. While Mark admits to taking money freely from the

Family LLCs, he raises triable issues of fact as to whether such expenditures constituted "reasonable compensation"—as provided for in the Winters-OAs—or were otherwise part of a course of conduct approved or ratified by Jacob and the other members (*see* NYSCEF 1160 [Mark Deposition Transcript 6.21.2023] at 65:10-23; NYSCEF 1723 ¶¶ 52, 60, 61; NYSCEF 1613 [JAM Realty Resolution] [signed by Mehrnaz, Mehrnosh, Jacob, and Mark, providing that "Mark Harounian has access to the business funds account of Jam Realty Co…which may be used…for his personal use"];[4] NYSCEF 1028 at 93:3-19 [Mehrnaz stating that Mark should have "let us know" that he was taking Family LLC funds for personal use "just by telling us"]; NYSCEF 1019 [Jacob Deposition Transcript Excerpts] at 59:13-60:7 [Jacob noting that JAM Realty used funds from the rug business to purchase JAM properties, which funds were never returned, and that in doing so he was teaching Mark that this was the way to get the family to live "better than kings"]; NYSCEF 1174 [Jacob Deposition Transcript Experts] at 105:4-22 [Jacob stating that "whenever [Mark] needed he would take it" "with my approval or without…It's his own money"]). While the Court acknowledges that member "approval" of overt corporate waste for the personal advantage of an LLC manager would be unusual, it has seen enough unusual dealings in this rigidly patriarchal family business to find it a triable question in these circumstances.

The Harounian Defendants seek to limit the relevant time period for these claims to three years, rather than six as determined by the First Department (*see Homapour v Harounian*, 182 AD3d 426, 427 [1st Dept 2020]). Their reliance on the three-year statute of repose under LLC Law § 508(c) is misplaced, however, as that provision relates to challenging wrongful

[4] The parties dispute the authenticity of Jacob's signature on this document on behalf of himself and his daughters via his power of attorney (NYSCEF 1769 ¶ 70).

distributions to LLC members. Plaintiff's claims primarily sound in breach of fiduciary duty and waste, and the Harounian Defendants themselves characterize Mark's use of LLC funds as compensation for his role as Manager, not as distributions.

III. The Seligson Defendants' motion for summary judgment (Mot. Seq. 22) is granted, other than with respect to sanctions

The Seligson Defendants seek summary judgment on Plaintiff's derivative claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and a permanent injunction against them from acting as attorney for the Family LLCs, as well as sanctions against Plaintiff for pursuing claims against them based on operating agreements drafted by a different law firm. Plaintiff seeks summary judgment in her favor on each of these claims (Mot. Seq. 24).

The Seligson Defendants drafted operating agreements ("Seligson OAs") for five of the Family LLCs: United Fifth, LLC, United Prime, LLC, United Prime Broadway, LLC, Balance Property, LLC, and United Greenwich, LLC (NYSCEF 1758 [Plaintiff's Response to Seligson Defendants' Statement of Material Facts] ¶ 16). None of the Seligson OAs contained terms entitling Mark to "reasonable compensation"; in fact, three of the OAs had provisions *prohibiting* Mark from receiving compensation except as expressly provided for in those agreements (*id.* ¶¶ 21-22). Four of the operating agreements contain a "Promote" provision, under which Mark would be entitled to a greater percentage distribution of profit than his membership interest after all members received a return of capital according to their percentage interests (*id.* ¶ 66). Each of those four agreements[5] contained a notice provision stating that Mark

[5] The United Prime Broadway, LLC OA does not contain this provision. United Prime Broadway, LLC was formed as a wholly owned subsidiary of United Prime, LLC and signed by Mark on behalf of United Prime (NYSCEF 1758 ¶¶ 24, 84).

selected Seligson to draft the agreement, that Seligson was representing Mark and not representing "the interests of any [other] party[,]" and that Seligson shall owe no duties to any other party or the LLC in connection with the preparation of the agreements (*id.* ¶ 68). With those facts in mind, the Court turns to the specific claims asserted against the Seligson Defendants.

a. Breach of Fiduciary Duty

Plaintiff argues that the Seligson Defendants breached their fiduciary duties to the Family LLCs by (1) drafting these agreements and other documents, namely the JAM Realty Resolution,[6] to "nominally grant Mark authority to loot the Family LLCs," (2) changing representation from the Family LLCs to Mark individually, and (3) failing to obtain informed, written consent from the Family LLCs prior to doing so (NYSCEF 1744 [Plaintiffs' Combined Memorandum in Opposition] at 51). To succeed on a breach of fiduciary duty claim, Plaintiff must prove the existence of a fiduciary relationship and a breach thereof that caused damages (*Castellotti v Free,* 138 AD3d 198 [1st Dept 2016]). For a breach of fiduciary duty claim in the context of attorney liability, Plaintiff must satisfy the rigorous "but for" standard of causation (*Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 271 [1st Dept 2004]).

Inasmuch as the claim is premised on the Seligson Defendants engaging in a conflicted representation of Mark without the Family LLCs' consent, the agreements themselves provided

[6] This theory was not pleaded in the Third Amended Complaint (NYSCEF 899 ¶¶ 193-212). The JAM Resolution, prepared for Mark's mortgage lender, stated that Mark had access to JAM Realty funds for "personal use" (NYSCEF 1613; NYSCEF 1758 ¶ 95). Whether it was Jacob or Mark who signed on Mehrnaz's behalf is disputed, but Plaintiff does not allege—nor provide evidence—that the Seligson Defendants were at all involved in the execution of the JAM Resolution (NYSCEF 1758 ¶¶ 95-97).

Plaintiff notice of that fact (NYSCEF 1758 ¶ 68). Moreover, Mehrnaz acknowledged at her deposition that she reviewed the United Greenwich OA before it was executed and took specific issue with the Seligson notice provision (NYSCEF 1167 at 300:17-21). This cannot be the basis of a successful claim for breach of fiduciary duty (*see Magder v Lee*, 2015 NY Slip Op 32254[U], *20 [Sup Ct, NY County 2015] [dismissing LLC member's breach of fiduciary duty claim against attorney based on alleged conflicts of interest in drafting an operating agreement because the agreement itself expressly disclosed the attorney's representation of the other member]).

As it relates to particular changes in the operating agreements, none of the Seligson OAs provided for Mark to have compensation for his services as Manager. Accordingly, there is no basis in the record for a claim that the Seligson Defendants "enabled"—let alone were the cause of—Mark's alleged "looting," much of which took place prior to the execution of the Seligson OAs. Regarding the Promotes, those provisions affect the financial interests *as between members* in the event of certain yet-to-occur events.[7] As such, the Promotes cannot be the basis of harm to the Family LLCs themselves, and Plaintiff has not raised an issue of fact to the contrary. Accordingly, Plaintiff's motion is denied as she has failed to establish her prima facie case.

Rather, as discussed above, the Seligson Defendants have demonstrated based on undisputed facts that the amendments at issue could not have caused the harm alleged. Summary judgment is granted to the Seligson Defendants dismissing this claim.

[7] Mehrnaz stated at her deposition that these provisions have not harmed her yet (NYSCEF 1167 at 354:22-355:10).

b. Aiding and Abetting Breach of Fiduciary Duty

To establish a prima facie claim for aiding and abetting a breach of fiduciary duty, Plaintiff must demonstrate an underlying breach of fiduciary duty, that defendant knowingly induced or participated in the breach (i.e., provided substantial assistance), and damage proximately resulting from the breach (*see Global Mins. & Metals Corp. v Holme,* 35 AD3d 93 [1st Dept 2006]). Plaintiff has not made a prima facie showing on this claim because there is no evidence in the record that the Seligson Defendants were aware of Mark's conduct (assuming it constituted a breach of fiduciary duty) or that the Seligson Defendants played a role in the execution of the Seligson OAs. Rather, Plaintiff conclusorily states that Seligson must have been aware of Mark's conduct by virtue of having a close relationship with Mark and drafting the JAM Resolution (NYSCEF 1758 ¶ 116; NYSCEF 1168 [Mehrnaz Dep. Trn. Vol. 2] at 495:8-20). This is insufficient to state a prima facie case for summary judgment and Plaintiff's motion is accordingly denied.

The Seligson Defendants, on the other hand, have made a prima facie evidentiary showing that their conduct could not have been the proximate cause of damage to the Family LLCs, as discussed above, and Plaintiff does not raise an issue of fact to the contrary. Further, merely providing legal services that happen to help a purportedly tortfeasing client does not constitute substantial assistance for purposes of an aiding and abetting claim against counsel (*see e.g. Volpe v Munoz & Assoc., LLC*, 190 AD3d 661, 662 [1st Dept 2021]; *Roni LLC v Arfa*, 72 AD3d 413, 414 [1st Dept 2010] ["[T]he allegation that the [defendants] structured the transactions at issue does not, without more" state a claim for aiding and abetting breach of fiduciary duty]). Accordingly, the Seligson Defendants' motion for summary judgment is granted as to this claim.

c. **Permanent Injunction**

Plaintiff seeks an order permanently enjoining the Seligson Defendants from representing the Family LLCs. To obtain a permanent injunction, Mehrnaz must show "(1) the violation of a right that is presently occurring or imminent, (2) that [she] has no adequate remedy at law, (3) that serious and irreparable injury will result if the injunction is not granted, and (4) that the equities are balanced in [her] favor" (*Schwob v Bakers Dozen Assoc., LLC*, 2014 NY Slip Op 30007[U], *5-6 [Sup Ct, NY County 2014]).

It is undisputed that the Seligson Defendants have not performed legal services for the Family LLCs in nearly a decade (NYSCEF 1758 ¶ 119). As such, a violation of a right is not presently occurring or imminent. Plaintiff's motion is accordingly denied, and summary judgment is granted to the Seligson Defendants dismissing this claim as not presenting a live dispute (NYSCEF 1758 ¶ 119).

d. Sanctions

Plaintiff has withdrawn the claim that she or the Family LLCs are entitled to relief against the Seligson Defendants based on operating agreements drafted by a different attorney. The Court exercises its discretion to decline awarding sanctions for Plaintiff initially (and incorrectly) asserting those claims.

IV. Orange & Blue, LLC's motion for summary judgment (Mot. Seq. 21) is granted

Defendant Orange & Blue, LLC moves for summary judgment on all claims brought against it.

a. Aiding and Abetting Breach of Fiduciary Duty

Plaintiff argues that O&B aided and abetted breach of fiduciary duty by working with Mark to inflate apparent renovation costs for Family LLC apartment buildings in order to justify

deregulating rent stabilized or controlled apartments. Mark was open about this, testifying at his deposition that O&B was created to "support the true value" of renovations to Family LLC apartments, that is, to create invoices for work purportedly performed by O&B at union-labor rates, when in fact the renovations were performed by non-union laborers for cash at substantially lower prices than those listed on the invoices (NYSCEF 1164 [Mark Deposition Transcript 7.13.2023] at 9:22-14:12). When asked what the purpose of this was, Mark explained that it was done to take apartments out of the rent regulation system, and when asked how he came up with the amounts on the invoices, he stated "we also based it on what we really needed to take it out of rent stabilization" (*id.* at 14:13-15:4; 16:19-24). The testimony of O&B's principal is consistent with Mark's account (NYSCEF 1171 [Nazarian Deposition Transcript] at 88:2-90:13). Pursuant to this unscrupulous system, the Family LLCs would transfer funds to O&B to match the invoices, and then O&B would return the funds within a few days (NYSCEF 1747 [Plaintiff's Response to O&B's Statement of Material Facts] ¶ 6).

Putting aside whether this conduct is lawful, there is no viable claim that it has (yet) *harmed the Family LLCs*, which is the basis of Plaintiff's claim. Indeed, O&B contends that (assuming the allegations are proven) this practice actually *benefitted* the Family LLCs, and that any claim resulting from this conduct is nonjusticiable because the Family LLCs have not (yet) incurred liability to tenants or government agencies, and thus have not suffered an injury in fact (NYSCEF 1747 ¶ 8).

As reprehensible as this purportedly fraudulent scheme may be, and notwithstanding any remedies that might be available to tenants or the New York State Division of Housing and Community Renewal's Tenant Protection Unit, the Court agrees that this claim is nonjusticiable in the context of a derivative claim on behalf of the Family LLCs (*see Greco v Syracuse ASC*,

LLC, 218 AD3d 1156, 1156-57 [4th Dept 2023] ["An alleged injury will not confer standing if it is based on speculation about what might occur in the future"]; *Matter of Town of Riverhead v Cent. Pine Barrens Joint Planning & Policy Commn.,* 71 AD3d 679, 681 [2d Dept 2010] [dismissing declaratory judgment claim as unripe where no fines had been imposed and no enforcement proceedings initiated]). Plaintiff's reliance on *Newman v Newman* (202 AD3d 442, 443 [1st Dept 2022]) for the proposition that "potential civil and criminal liability" is sufficient to demonstrate injury in fact is misplaced. In that case, the individual plaintiff alleged that he would be personally liable as an owner for federal payroll tax liabilities *that had already been assessed* against the entity plaintiff (*see* Case No. 2021-03238, NYSCEF 4 at A66). Here, no such assessment has been made against Plaintiff or the Family LLCs.

Accordingly, O&B's motion for summary judgment is granted, dismissing this claim *without* prejudice because it may be justiciable if and when Plaintiff or the Family LLCs are damaged. For the same reason, Plaintiff's corresponding motion for summary judgment is denied.

b. Unjust Enrichment & Constructive Trust

Plaintiff does not oppose O&B's motion insofar as it seeks dismissal of Plaintiffs' unjust enrichment and constructive trust claims. This constitutes abandonment of these claims, and they are accordingly dismissed as against O&B (*see Jamie Ng v NYU Langone Med. Ctr.*, 157 AD3d 549, 550 [1st Dept 2018]).

c. Crossclaim for Contribution

The Seligson Defendants bring a crossclaim against O&B for contribution. Because all claims against the Seligson Defendants and O&B have been dismissed, the crossclaim for contribution is dismissed as moot, consistent with the parties' stipulation (NYSCEF 1852).

V. Harounian Defendants' motion to strike the jury demand (Mot. Seq. 26) is granted

Finally, the Harounian Defendants move to strike Plaintiff's jury demand on a number of grounds, including that eleven of the Family LLC OAs contain broad jury waivers. For example, the JAM Realty NYC Operating Agreement provides that "[t]he parties each hereby waive trial by jury in any action or proceeding of any kind or nature in any court in which an action may be commenced arising out of this Agreement or by reason of any other cause or dispute whatsoever between them" (NYSCEF 1827 at JACOB_001021 Section 14.12). The same language appears in the OAs for 3M Properties, United Chelsea, United East, United Village, United West, United Hay, United Flatiron, United Seed, and United Square (*see generally id.*).

Jury waivers may waive claims other than those arising from the instrument containing the waiver (*Franklin Nat'l Bank of Long Island v Capobianco*, 25 AD2d 445, 445 [2d Dept 1966]). Such provisions are enforceable absent fraud, even where the party who seeks to avoid them did not read them before signing (*Barclays Bank of N.Y., N.A. v Heady Elec. Co., Inc.*, 174 AD2d, 963, 964-65 [3d Dept 1991]; *James Talcott, Inc. v Wilson Hosiery Co.*, 32 AD2d 524, 525 [1st Dept 1969]).

Any remaining claims against the Harounian LLCs or Family LLCs are equitable in nature and do not trigger a right to a jury trial. Indeed, Plaintiff's inclusion of these claims in her Complaint is an independent ground to strike the jury demand as to all Defendants (*see Phoenix Garden Rest., Inc. v Chu*, 234 AD2d 233, 234 [1st Dept 1996] ["By mingling claims for money damages with substantial and independent claims sounding in equity, plaintiffs have effectively waived their right to trial by jury"]). Thus the Harounian Defendants' motion is granted.

Accordingly, it is

ORDERED that Defendant Orange & Blue, LLC's motion for summary judgment (Mot. Seq. 21) is **granted**; it is further

ORDERED that the Seligson Defendants' motion for summary judgment (Mot. Seq. 22) is **granted in part** insofar as all claims brought against it are dismissed, and otherwise **denied**; it is further

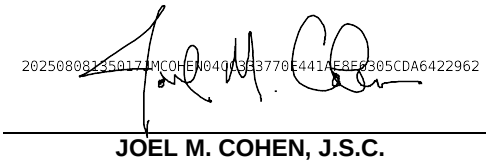
ORDERED that the Harounian Defendants' motion for partial summary judgment (Mot. Seq. 23) is **granted in part**, such that the first claim for breach of fiduciary duty against Mark is dismissed without prejudice insofar as it is premised on conduct concerning O&B, the third claim for conversion against Mark is dismissed, the fourth claim for unjust enrichment is dismissed as against Mark, the fifth claim for fraud/fraudulent inducement against Mark is dismissed, the tenth claim for a constructive trust is dismissed as against Mark regarding the Winters-OA-governed Family LLCs, the tenth claim for a constructive trust is dismissed as against the Harounian LLCs, the eleventh claim for a permanent injunction removing Mark as manager is dismissed, the twelfth claim for an accounting is dismissed as against the Family LLCs, the thirteenth claim for a mandatory injunction concerning the Family LLC tax returns is dismissed as against Mark regarding the Winters-OA-governed Family LLCs, and the fourteenth claim for a constructive trust is dismissed, and the motion is otherwise **denied**; it is further

ORDERED that Plaintiff's motion for summary judgment is **granted in part** as to her twelfth claim against Mark for an accounting with respect to the Family LLCs, and is otherwise **denied**; it is further

ORDERED that the Harounian Defendants' motion to strike the jury demand is **granted**; and it is further

ORDERED that the parties appear for an initial pretrial conference via Teams on September 10, 2025 at 11:00 a.m. to determine scheduling and logistics for trial.

This constitutes the decision and order of the Court.



8/8/2025
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**