

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

[REDACTED],

Plaintiffs,

-against-

[REDACTED],

Defendants.

[REDACTED]
**AFFIRMATION IN SUPPORT
OF DEFENDANT
[REDACTED] INC.'S
MOTION TO DISMISS**

I, [REDACTED], an attorney duly admitted to practice law in the state of New York, do hereby affirm and say, under penalties of perjury as follows:

1. I am an attorney with [REDACTED], and the attorney for Defendant, [REDACTED],¹ (“[REDACTED]” or “Defendant”), and as such, I am fully familiar with the facts of this matter, the source of my knowledge being a file maintained by me in the defense of this action. Facts that are not of my personal knowledge are based upon information and belief, with the source of that information and belief also being the file maintained by me in the defense of this action.

2. I submit this affirmation in support of Defendant’s Motion for an Order pursuant to CPLR § 3211(a)(7): (a) dismissing the Second, Third, and Fourth Causes of Action as to Plaintiff [REDACTED] for lack of standing, dismissing the Second, Third, and Fourth Causes of Action of Plaintiffs’ Complaint generally, and (b) dismissing the Second, Third, and Fourth Causes of Action as to Plaintiff [REDACTED] individually, and for such other and further relief as may be just and proper.

¹ [REDACTED], Inc. is improperly named as “[REDACTED], Inc.”

3. This is an action for money damages allegedly arising from Defendants [REDACTED] and [REDACTED] use of Plaintiff [REDACTED] credit card involving purchases made at certain Home Depot stores.

4. Plaintiffs sue Home Depot essentially claiming Home Depot is legally responsible for not preventing the two individual's alleged criminal activity.

PROCEDURAL HISTORY

5. In their Complaint, Plaintiffs allege as follows: First Cause of Action: Breach of Fiduciary Duty (against Defendants [REDACTED] and [REDACTED]); Second Cause Action: Fraud and Misrepresentation (against all Defendants); Third Cause of Action: Conversion (against all Defendants) and; Fourth Cause of Action: Unjust Enrichment (against [REDACTED]). NYSCEF Doc. No. 1 ("Compl.") On June 24, 2025, Defendant filed a Verified Answer with Affirmative Defenses. NYSCEF Doc. No. 9 ("Answer.")

6. On August 8, 2025, Plaintiffs filed a Notice of Discontinuance as to Defendants [REDACTED] and [REDACTED] NYSCEF Doc. No. 22.

ALLEGATIONS IN THE COMPLAINT

7. In the Complaint's **FACTUAL BACKGROUND**, Plaintiff [REDACTED] [REDACTED] alleges that Defendants [REDACTED] and [REDACTED] (" [REDACTED] and [REDACTED]"), independent contractors, were hired to "perform delivery services on behalf of the company"² and that [REDACTED] allowed them to use his corporate credit card for "business-related purchases." (Compl. ¶¶ 21-22.) [REDACTED] further

² [REDACTED] does not identify the name of the company that [REDACTED] and [REDACTED] are alleged to have worked for, nor does he identify the cardholder's name on the credit card, instead simply referring to it as "[REDACTED] corporate credit card."

alleges that [REDACTED] and [REDACTED] “engaged in a coordinated scheme” to make purchases at Home Depot, and then returned the purchased goods “for refunds issued as gift cards or store credits in their individual names.” (Compl. ¶ 23.) [REDACTED], [REDACTED] alleges, “concealed the fraudulent scheme by altering the login credentials for [REDACTED] corporate credit card account.” (Compl. ¶ 24.) [REDACTED] also alleges that the actions of [REDACTED] and [REDACTED] constituted “money laundering” and “unjust enrichment,” (Id.) and caused “significant financial losses to the Plaintiff.” (Compl. ¶ 27.)

8. [REDACTED] then alleges that [REDACTED] “enabled and facilitated the fraudulent activities . . . by failing to implement sufficient refund policies and verification protocols to ensure that refunds were directed to the rightful parties” and thus allowing “legitimate business expenses to be converted into laundered funds.” (Compl. ¶ 26.) [REDACTED] claims that [REDACTED] “issued refunds in the form of gift cards or store credits” to [REDACTED] and [REDACTED] “without ensuring the refunds were credited to the corporate account associated with the original payment method.” (Compl. ¶ 27.) [REDACTED] goes on to allege that “Home Depot’s repeated and systemic failure to prevent fraudulent refund practices demonstrates a pattern of intentional misconduct” and that this “is not an isolated incident, but rather a calculated scheme that has harmed countless customers” and a deliberate strategy to profit at the expense of innocent victims.” (Id.) [REDACTED] continues, contending that Home Depot, by “facilitating the improper diversion of funds . . . knowingly participated in and furthered the fraudulent scheme.” (Id.) Such actions “potentially facilitate fraudulent schemes, tax evasion, and money laundering by allowing corporate funds to be

redirected for personal use” and by doing so, “effectively enables money laundering and tax evasion, as the beneficiaries of such schemes often fail to report their ill-gotten gains to the IRS.” (Compl. ¶¶ 30-31.)³

RELEVANT CAUSES OF ACTION

9. In the **Second Cause of Action** (Fraud and Misrepresentation), [REDACTED] alleges that [REDACTED] “facilitated” [REDACTED] and [REDACTED] “fraudulent scheme” by issuing refunds to the Defendants instead of issuing a credit to Plaintiff’s credit card. Doing so allegedly constituted “gross negligence.” (Compl. ¶¶ 46-47.)

10. In the **Third Cause of Action** (Conversion), [REDACTED] alleges that [REDACTED], “enabled” [REDACTED] and [REDACTED] “unauthorized control” of the credit card refunds “in a manner that deprived Plaintiff of its rightful property, constituting conversion under New York law.” (Compl. ¶¶ 50-51.)

11. In his **Fourth Cause of Action** (Unjust Enrichment), [REDACTED] alleges that [REDACTED], “was unjustly enriched by retaining Plaintiff’s funds, depriving Plaintiff of its rightful property and directly benefiting from Plaintiff’s financial harm.” And “[p]ursuant to CPLR § 3016(f),”⁴ Home Depot’s conduct “constitutes unjust enrichment and the aiding and abetting of money laundering and tax evasion” by “misdirecting the flow of funds, diverting credits from the rightful corporate credit

³ Additionally, [REDACTED] alleges [REDACTED] actions “created an environment conducive to financial misconduct by failing to monitor, report, or prevent the issuance of fraudulent refunds” (Compl. ¶ 32); [REDACTED] “has engaged in refund practices that are not merely negligent but demonstrate a systematic exploitation of its customers” and that “this is not a single oversight but a repeated offense, carried out with impunity.” (*Id.*); “[REDACTED] has positioned itself as a corporate predator, repeatedly engaging in unjust enrichment at the expense of its customers.” (*Id.*) and has “violated established principles of equity and good conscience.” (Compl. ¶ 34)

⁴ CPLR 3016(f) enumerates the specificity requirements for pleading in an action “involving the sale and delivery of goods, or the performing of labor or services, or the furnishing of materials,” and is unrelated to establishing a claim for unjust enrichment.

card accounts to unjustly enrich the Defendants named herein.” (Compl. ¶¶ 55-56.)

STANDARD OF REVIEW

12. On a motion to dismiss, we accept the allegations of the Complaint as true, together with every reasonable inference therefrom. [REDACTED], 18 N.Y.3d 846, 848 (2011). Under CPLR 3211(a)(7), “the sole criterion” for a motion to dismiss “is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail.” [REDACTED] v. [REDACTED], 43 N.Y.2d 268, 275 (1977). “Although pleadings should be liberally construed and a complaint not dismissed when a cause of action may be discerned no matter how poorly stated, explanation for the absence of essential facts supporting a cause of action must be furnished.” [REDACTED] v. [REDACTED], 88 A.D.2d 677, 678, 451 N.Y.S.2d 455, 456 (1982) (internal citations omitted). “Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” CPLR 3013. “Pursuant to CPLR 3013, a complaint must allege facts that are sufficiently particular to give the court and the defendants proper notice of the “transactions occurrences, or series of transactions [and] occurrences” intended to be proved.” [REDACTED], [REDACTED] v. [REDACTED] LLC, 194 A.D.3d 490, 492, 149 N.Y.S.3d 16,18 (1st Dept. 2021); [REDACTED] v. [REDACTED], 155 A.D.3d 419, 419–420, 63 N.Y.S.3d 380 (1st Dept. 2017). Lastly, a plaintiff “cannot rely upon mere ‘buzz words’ or vague or conclusory allegations, but must instead set forth facts that truly address the

underlying transactions and occurrences and the material elements of the claim.”

██████████ v. ██████████ *Inc.*, 66 AD3d 122, 131 (2d Dept. 2009), *aff'd* 16 NY3d 775 (2011).

ARGUMENT

██████████ LACKS STANDING TO SUE ON BEHALF OF HIS UNNAMED CORPORATION AND THEREFORE HIS CLAIMS MUST BE DISMISSED

13. Generally, corporations have an existence separate from that of their shareholders and “an individual shareholder cannot secure a personal recovery for an alleged wrong done to a corporation.” ██████████ LLC v. ██████████ ██████████, 87 A.D.3d 836, 840, 929 N.Y.S.2d 571 (1st Dept. 2011); ██████████ ██████████, *Inc. v. ██████████* 97 A.D.2d 501, 502 (2d Dept. 1983), *aff'd* 63 N.Y.2d 782 [1984]. The mere fact that “an individual closely affiliated with a corporation . . . is incidentally injured by an injury to the corporation does not confer” standing on the individual to sue on the basis of injury to the corporation. ██████████ ██████████ at 840. In short, a shareholder or officer lacks standing to enforce the rights and obligations of a business entity (see ██████████ v. ██████████, 123 A.D.3d 34, 39, 994 N.Y.S.2d 64 (1st Dept. 2014), and there is no merit to an argument that a corporation could appear through an authorized officer. ██████████ *Inc. v. ██████████* 281 A.D.2d 176, 176, 721 N.Y.S.2d 524 (1st Dept. 2001).

14. Here, ██████████ states he has the “full legal right and privilege” to appear pro se on behalf of his unnamed corporation because General Obligations Law § 13-101⁵ “permits the assignment of causes of action” which allows “an individual

⁵ Other than for certain enumerated exceptions, GOL § 13-101 states in relevant part: “Any claim or demand can be transferred.”

assignee to “circumvent the requirements” of CPLR 321(a)⁶ and appear pro se and not by counsel. (Compl. ¶¶15-16.)

15. While GOL § 13-101 does allow a corporation to assign its claims to an individual [REDACTED] v. [REDACTED], 57 AD3d 219, 220, 868 N.Y.S.2d 62, 63 (1st Dept. 2008), [REDACTED] does not allege his unnamed corporation actually assigned its claims to him. Nor has he identified the corporation that was allegedly harmed and that assigned its rights to him. While in a motion to dismiss, the facts alleged are presumed to be true and afforded every favorable inference, “allegations consisting of bare legal conclusions . . . are not entitled to such consideration.” ([REDACTED], Inc. [REDACTED], 173 A.D.2d 220, 220, 570 N.Y.S.2d 799 (1st Dept. 1991).

16. By failing to plead a valid assignment of claims, [REDACTED] lacks standing to enforce the rights and obligations of the unnamed business entity. [REDACTED] v. [REDACTED], 123 A.D.3d 34 at 39. Without standing to sue, [REDACTED] claims should be dismissed.

**PLAINTIFFS’ COMPLAINT FAILS TO STATE A COGNIZABLE
CLAIM AGAINST HOME DEPOT**

17. Plaintiffs’ Complaint fails to adequately plead claims against [REDACTED] [REDACTED]. [REDACTED] admits that he authorized [REDACTED] and [REDACTED] to use his unidentified corporate credit card for “business-related purchases.” (Compl. ¶¶ 21-22.) [REDACTED] and [REDACTED], as authorized users of [REDACTED] credit card, allegedly made purchases at [REDACTED] with [REDACTED] credit card, and then allegedly returned the purchases for refunds—gift cards or store credits—in their names. (Compl. ¶ 23.) [REDACTED] also claims that [REDACTED] allegedly “[altered] the login credentials” for

⁶ CPLR 321(a) reads in part: “A party, other than one specified in section 1201 of this chapter, may prosecute or defend a civil action in person or by attorney, except that a corporation or voluntary association shall appear by attorney, except as otherwise provided.”

the credit card account, preventing [REDACTED] from noticing the activity. (Compl. ¶ 24.) [REDACTED] concludes that [REDACTED] and [REDACTED] “knowingly and willfully misrepresented unauthorized credit card transactions as legitimate business expenses.” (Compl. ¶¶ 44-45.) In short, [REDACTED] claims that he authorized [REDACTED] and [REDACTED] to use his corporate credit card to conduct company business at [REDACTED], but that when they did so, they stole from him (or the corporation) by taking the refunds for returned goods for themselves.

18. Based on these same alleged facts, [REDACTED] claims, without any further factual support, that [REDACTED] engaged in fraud (or enabled or facilitated fraud) and misrepresentation, conversion (or enabled or allowed conversion) and was unjustly enriched, when it failed “to implement sufficient refund policies and verification protocols to ensure that refunds were directed to the rightful parties” (Compl. ¶ 26) by “ensuring the refunds were credited to the corporate account associated with the original payment method.” (Compl. ¶ 27.)

19. Plaintiffs’ claims of fraud and misrepresentation and aiding and abetting fraud, are not plead with particularity and further fail to allege facts to support the necessary elements of their claims. Plaintiffs’ claims of conversion, aiding and abetting conversion, and unjust enrichment, also fail to allege facts to support the necessary elements of these claims. In short, Plaintiffs’ Complaint fails to “manifest any cause of action cognizable at law . . .” [REDACTED] v. [REDACTED], 43 N.Y.2d 268 at 275.

**PLAINTIFFS' COMPLAINT FAILS TO STATE
A CAUSE OF ACTION FOR FRAUD**

20. It is well settled that, pursuant to CPLR 3016(b)⁷, the party alleging fraud must plead the circumstances constituting the fraud or misrepresentation in sufficient detail to give adequate notice of the transaction. [REDACTED] v. [REDACTED], 12 NY3d 527, 881 NYS2d 651, 909 NE2d 573 (2009); [REDACTED] v. [REDACTED] [REDACTED] Inc., 10 NY3d 486, 860 NYS2d 422, 890 NE2d 184 (2008). "The purpose of section 3016(b)'s pleading requirement is to inform a defendant with respect to the incidents complained of." [REDACTED] v. [REDACTED], 890 N.E.2d 184 at 187. What is "[c]ritical to a fraud claim is that a complaint allege the basic facts to establish the elements of the cause of action." *Id.* "The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." [REDACTED] [REDACTED], [REDACTED] & [REDACTED], LLP, 12 N.Y.3d 553, 559, 883 N.Y.S.2d 147, 910 N.E.2d 976; *SL 4000* [REDACTED] v. [REDACTED], 219 A.D.3d 417, 418, 195 N.Y.S.3d 183, 185 (1st Dept. 2023). "To establish a fraud claim, a plaintiff must demonstrate that a defendant's misrepresentations were the direct and proximate cause of the claimed losses." [REDACTED] v. [REDACTED], 23 A.D.3d 163, 167, 803 N.Y.S.2d 514, 517 (1st Dept. 2005); [REDACTED] v. [REDACTED], 82 A.D.3d 515, 518, 918 N.Y.S.2d 438, 441 (1st Dept. 2011).

21. Here, Plaintiffs fail to even allege that there was any contact, directly or indirectly, between themselves and [REDACTED], let alone allege material

⁷ CPLR § 3016(b) states: "Where a cause of action or defense is based upon misrepresentation, fraud, mistake, wilful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail."

misrepresentations by [REDACTED] or its Associates to Plaintiffs and Plaintiffs' reliance on those misrepresentations, as required by [REDACTED], 12 N.Y.3d 553 at 559. A lack of contact between the parties can be fatal to a claim of fraud. See, [REDACTED] v. [REDACTED], 139 A.D.2d 811, 812, 527 N.Y.S.2d 115, 117 (3d Dept.1988); [REDACTED] v. [REDACTED]. *Tr.* of 1997, 21 Misc. 3d 1112(A), 873 N.Y.S.2d 514 (Sup. Ct. 2008).

22. Rather than allege any of the elements of fraud against [REDACTED] the Complaint affirmatively alleges that [REDACTED] and [REDACTED] deceived [REDACTED] and thereby stole from the Plaintiffs. (Compl. ¶¶ 23, 44-45.)

23. Plaintiffs' bare and conclusory claims of fraud against [REDACTED] scattered throughout the 57-paragraph Complaint, allege that [REDACTED] "participated in and furthered" [REDACTED] and [REDACTED] fraud (Compl. ¶ 28); "facilitated" and "enabled" [REDACTED] and [REDACTED] fraud (Compl. ¶¶ 1, 10, 26, 30, 31, 46); and "knowingly and willfully engaged in fraud. (Compl. ¶ 32.) These claims lack the specificity required under CPLR 3016(b) and [REDACTED]. In short, Plaintiffs' allegations of fraud fail to "inform [the Defendant] with respect to the incidents complained of." [REDACTED] v. [REDACTED], 890 N.E.2d 184 at 187. The Court should dismiss Plaintiffs' Second Cause of Action for fraud and misrepresentation.

**PLAINTIFFS' UNENUMERATED CLAIM OF AIDING AND ABBETTING
FRAUD ALSO FAILS TO STATE A CAUSE OF ACTION**

24. "In order to plead properly a claim for aiding and abetting fraud, a plaintiff must allege: "(1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in achievement of the fraud." [REDACTED] *Ltd.*

v. [REDACTED] *Ins. Co.*, 64 AD3d 472, 476 (1st Dept. 2009); [REDACTED] v. [REDACTED], 77 A.D.3d 51, 55, 905 N.Y.S.2d 69 (1st Dept. 2010); [REDACTED], *Inc. v. [REDACTED]*, 167 A.D.3d 501, 503, 91 N.Y.S.3d 13, 17 (1st Dept. 2018). And, as with pleading a claim of fraud, pleading a claim of aiding and abetting fraud “must be pleaded with the specificity sufficient to satisfy CPLR 3016(b).” [REDACTED] v. [REDACTED], 111 AD3d 783, 792-793 (2d Dept. 2013); [REDACTED], 167 A.D.3d 501 at 510.

25. Plaintiffs, of course, cannot get past the first prong of [REDACTED], the existence of an underlying fraud. The fraud allegations against [REDACTED] and [REDACTED], like those against [REDACTED], are conclusory and without the required specificity under CPLR 3016(b). Plaintiffs allege that “[u]pon information and belief, [REDACTED] . . . engaged in a coordinated scheme to misuse the corporate credit cards by purchasing merchandise from . . . [REDACTED]” and then returned the goods for “gift cards or store credits in their individual names” (Compl. ¶ 23); and that Defendant [REDACTED] “concealed the fraudulent scheme by altering the login credentials for [REDACTED] . . . corporate credit card account” (Compl. ¶ 24); and that [REDACTED] and [REDACTED] “knowingly and willfully misrepresented unauthorized credit card transactions as legitimate business expenses.” (Compl. ¶¶ 44-45.)

26. In an effort to support their allegations, Plaintiffs refer to Exhibit A (NYSCEF Doc. No. 2) which purports to show “the return of items purchased using [REDACTED] credit card.” (Compl. ¶ 24.) While Exhibit A appears to reference certain purchases and certain refunds, it fails to show anything regarding [REDACTED]

and [REDACTED] alleged use of [REDACTED] credit card and receiving refunds personally. See Exhibit A.

27. Plaintiffs have not alleged any facts showing that [REDACTED] and [REDACTED] made misrepresentations to them, let alone that Plaintiffs relied on those misrepresentations that resulted in their claimed losses. [REDACTED] 12 N.Y.3d 553 at 559.

28. By failing to allege a prima facie case of fraud against Defendants [REDACTED] and [REDACTED], Plaintiffs cannot satisfy the first prong of [REDACTED] and therefore fail to state a claim of aiding and abetting fraud against [REDACTED]

29. Assuming, [REDACTED], that Plaintiffs have stated a cause of action of fraud against [REDACTED] and [REDACTED], Plaintiffs still cannot satisfy either of the remaining prongs of [REDACTED], namely that [REDACTED] had knowledge of the fraud, and provided substantial assistance to the individual Defendants in achieving the fraud. [REDACTED], 64 AD3d 472 at 476.

30. As to knowledge of the fraud, Plaintiffs allege no facts to suggest that [REDACTED] knew of—or even had any reason to suspect—any misconduct. The Complaint affirmatively alleges that Plaintiff authorized [REDACTED] and [REDACTED] to use the corporate credit card to purchase goods. And thus, there is no allegation that [REDACTED] should not have allowed them to do so. Plaintiffs' conclusory allegations that, “[b]y facilitating the improper diversion of funds, [REDACTED] knowingly participated in and furthered the fraudulent scheme” (Compl. ¶ 28) and [REDACTED] “knowingly and willfully engaged in fraudulent practices” (Compl. ¶ 32), do not approach the factual specificity required under CPLR 3016(b).

31. As to providing substantial assistance in achieving the fraud, Plaintiffs' conclusory allegations that [REDACTED] "facilitated" the "fraudulent scheme" of [REDACTED] and [REDACTED] by "issuing refunds as gift cards or store credits" to the two Defendants (Compl. ¶ 46), and that [REDACTED] "enabled and facilitated the Defendants' fraudulent activities "by failing to implement sufficient refund policies" (Compl. ¶ 26), hardly show substantial assistance to [REDACTED] and [REDACTED] alleged fraudulent scheme. These general and conclusory allegations lack the specificity required under CPLR 3016(b) and fail to satisfy the last two prongs of *Stanfield* (knowledge and substantial assistance) that courts require to establish a claim for aiding and abetting fraud. [REDACTED] 64 AD3d 472 at 476. The Court should dismiss Plaintiffs' unenumerated claim of aiding and abetting fraud.

**PLAINTIFFS' CLAIM OF CONVERSION ALSO FAILS TO STATE
A CAUSE OF ACTION AGAINST HOME DEPOT**

32. In Plaintiffs' Third Cause of Action, [REDACTED] alleges that [REDACTED] and [REDACTED] "unlawfully exercised control over Plaintiff's credit card funds by misusing corporate credit cards and retaining refunds issued as gift cards or store credits." (Compl. ¶ 50.) Plaintiffs go on to allege that [REDACTED] "enabled" [REDACTED] and [REDACTED] "unauthorized control" of the credit card refunds "in a manner that deprived Plaintiff of its rightful property, constituting conversion under New York law." (Compl. ¶ 51.)

33. "A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. [REDACTED] v. *New*

York Organ Donor Network, Inc., 8 N.Y.3d 43, 49–50, 860 N.E.2d 713, 717 (2006); *Fam. Health Mgmt., LLC v. Rohan Devs., LLC*, 207 A.D.3d 136, 138–39, 171 N.Y.S.3d 44, 46 (1st Dept. 2022). “Two key elements of conversion are (1) plaintiff’s possessory right or interest in the property and (2) defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights.” *Colavito v. New York*, 8 N.Y.3d 43 at 49–50 (citations omitted); *Komolov v. Segal*, 144 A.D.3d 487, 488, 42 N.Y.S.3d 94 (1st Dept. 2016); *Dobroshi v. Bank of Am., N.A.*, 65 A.D.3d 882, 885, 886 N.Y.S.2d 106, 109 (1st Dept. 2009). “The tort of conversion is established where one who owns and has a right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner.” *Dragons 516 Ltd. v. GDC 138 E 50 LLC*, 201 A.D.3d 463, 464, 162 N.Y.S.3d 6, 8 (1st Dept. 2022) (internal quotation marks omitted).

34. “It is well settled that an action will lie for the conversion of money where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question” *Fam. Health Mgmt.*, 207 A.D.3d 136 at 145 (quoting *Manufacturers Hanover Trust Co. v. Chemical Bank*, 160 A.D.2d 113, 124, 559 N.Y.S.2d 704 (1st Dept. 1990); *SH575 Holdings LLC v. Reliable Abstract Co.*, 195 A.D.3d 429, 430, 149 N.Y.S.3d 62, 63 (1st Dept. 2021). In determining whether the funds at issue are specifically identifiable, courts will consider whether the funds “constitute a specific sum, one that is determinate, and reflects an ascertained amount.” *Fam. Health Mgmt.*, 207 A.D.3d 136 at 145 (internal quotation marks omitted).

35. Plaintiffs' claim of conversion against [REDACTED] fails on its face because the Complaint never alleges that [REDACTED] took Plaintiffs' money. To the contrary, the Complaint alleges that [REDACTED] and [REDACTED] took their money. The worst Plaintiffs can say is that [REDACTED] "enabled" [REDACTED] and [REDACTED] abuse of their authorized use of [REDACTED] credit card, presumably by accepting the card as payment for goods. (Compl. ¶ 51.) Nowhere does [REDACTED] allege facts that show [REDACTED] "intentionally and without authority, assume[d] or exercise[d] control over" [REDACTED] credit card or the alleged refunds. *Colavito v. New York*, 8 N.Y.3d 43 at 49–50; *Dragons 516 Ltd.*, 201 A.D.3d 463 at 464.

36. Without that critical allegation, Plaintiffs have failed to allege a legally sufficient conversion claim. Moreover, the facts Plaintiffs allege to show that [REDACTED] and [REDACTED] took their money, confirm no such claim lies against [REDACTED] and the Court should dismiss Plaintiffs' Third Cause of Action.

PLAINTIFFS' UNENUMERATED CLAIM OF AIDING AND ABBETTING CONVERSION FAILS TO STATE A CAUSE OF ACTION FOR THE SAME REASONS THEIR CLAIM OF AIDING AND ABETTING FRAUD FAILS

37. "Aiding and abetting conversion requires the existence of a conversion by the primary tortfeasor, actual knowledge, and substantial assistance." *William Doyle*, 167 A.D.3d 501 at 505; *Dragons 516 Ltd.*, 201 A.D.3d 463 at 464.

38. As with the underlying claims of fraud against [REDACTED] and [REDACTED] the underlying claims of conversion against those individual Defendants fail to state a cause of action. As put forth above, a claim for the conversion of money, which is what Plaintiffs are claiming, requires that the funds to be "specifically identifiable," "determinate, and [reflect] an ascertained amount." *Fam. Health Mgmt.*, 207 A.D.3d

136 at 145. Plaintiffs simply refer to Exhibit A, which purports to show the returned items [REDACTED] and [REDACTED] purchased using [REDACTED] credit card. While Exhibit A appears to reference certain purchases and certain refunds, it fails to show a specific sum or ascertainable amount required by *Fam. Health Mgmt.* See Exhibit A. Without sufficiently pleading a conversion against [REDACTED] and [REDACTED], Plaintiffs' claim of aiding and abetting conversion fails. *William Doyle*, 167 A.D.3d 501 at 505.

39. Should the court find that Plaintiffs have stated a cause of action for conversion against [REDACTED] and [REDACTED], Plaintiffs still cannot satisfy the remaining elements required under [REDACTED], namely, that [REDACTED] had "actual knowledge" of the conversion and provided "substantial assistance" to [REDACTED] and [REDACTED] in carrying out the conversion. *William Doyle*, 167 A.D.3d 501 at 505.

40. Nowhere do Plaintiffs allege that [REDACTED] had actual knowledge of the alleged conversion. Plaintiffs' pleading of "substantial assistance" is fatally limited to their claims that "[REDACTED] contributed to [REDACTED] misappropriation of corporate funds by issuing refunds in a manner that deprived Plaintiff of its rightful property . . . [constituting] aiding and abetting liability under CPLR § 3014."⁸ (Compl. ¶ 51.)

41. Plaintiffs' conclusory language regarding their claims of aiding and abetting conversion fails to assert facts sufficient to provide [REDACTED] notice of the "transactions and occurrences intended to be proved." *Nationstar Mortg., LLC*, 194 A.D.3d 490 at 492.

⁸ As the Court is aware, CPLR § 3014 sets standards on how statements are to be presented in pleadings. The statute is unrelated to establishing a claim of aiding and abetting fraud.

**PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD A CLAIM
OF UNJUST ENRICHMENT AGAINST HOME DEPOT**

42. Plaintiffs' conclusory allegations in support of their unjust enrichment claims include: "[redacted]" [enabling] and [facilitating] the fraudulent activities of [redacted] by failing to implement sufficient refund policies . . . unjustly enriched [redacted], as statistics indicate that only 80–90% of gift cards are redeemed, with just 48% redeemed within the first six months of issuance" (Compl. ¶ 26); "[redacted] unjustly enriched itself by retaining the value of refunded amounts within its economic system, thereby causing financial harm to Plaintiff" (Compl. ¶ 29); "[redacted] has positioned itself as a corporate predator, repeatedly engaging in unjust enrichment at the expense of its customers" (Compl. ¶ 32); [redacted] "was unjustly enriched by retaining Plaintiff's funds, depriving Plaintiff of its rightful property and directly benefiting from Plaintiff's financial harm" (Compl. ¶ 55); and [redacted] "conduct in retaining funds improperly credited to gift cards or store credits constitutes unjust enrichment . . ." (Compl. ¶ 56.)

43. "The essential inquiry in any action for unjust enrichment . . . is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. A plaintiff must show that (1) the other party was enriched, (2) at that party's expense, and (3) that 'it is against equity and good conscience to permit the other party to retain what is sought to be recovered.'" *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182, 944 N.E.2d 1104, 1110 (2011) (internal quotation marks, brackets omitted); *Rios v. Sendowski*, 203 A.D.3d 588, 162 N.Y.S.3d 708, 709 (1st Dept 2022); *Georgia Malone & Co. v. Ralph Rieder*, 86 A.D.3d 406, 408, 926 N.Y.S.2d 494, 497 (1st Dept. 2011), *aff'd* 973 N.E.2d 743

(N.Y. 2012). “The theory of unjust enrichment lies as a quasi-contract claim.” *Goldman v. Metropolitan Life Ins. Co.*, 5 N.Y.3d 561, 572, 807 N.Y.S.2d 583, 841 N.E.2d 742 (2005); *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3d 132, 142, 907 N.E.2d 268, 274 (1st Dept. 2009). “It is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties.” *IDT Corp.*, 12 N.Y.3d 132 at 142. “Although privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated.” *Mandarin Trading*, 16 N.Y.3d 173 at 182; *Georgia Malone & Co.*, 19 N.Y.3d 511 at 516. Therefore, a plaintiff must plead facts showing a relationship between the parties, “or at least [a defendant’s awareness] of a plaintiff’s existence. *Mandarin Trading*, 16 N.Y.3d 173 at 182. Plaintiff must also plead facts showing that the relationship between the parties “could have caused reliance or inducement.” *Id.* at 183.

44. Plaintiffs’ generalized allegations about unidentified “industry data” regarding unused gift cards (Compl. ¶¶ 34, 54), fail to satisfy *Mandarin’s* requirements to successfully plead an unjust enrichment claim. Plaintiffs have not shown what funds [REDACTED] allegedly enriched itself with, at Plaintiffs’ “expense” or otherwise. What Plaintiffs have alleged, however, is that [REDACTED] and [REDACTED] authorized users of [REDACTED] corporate credit card, stole from the corporation when they returned earlier purchases and kept the refunds - store credits or gift cards - for themselves. Based on those alleged facts, [REDACTED] did not benefit because it paid full returns and kept none of the money. To imply that [REDACTED] might benefit if [REDACTED] and [REDACTED] do not fully utilize their store credits or gift cards

is nothing more than speculation.

45. Also, Plaintiffs have failed to show a relationship between [REDACTED] and Plaintiffs that is required as part of a claim of unjust enrichment within the meaning of *Mandarin*. The allegations are that [REDACTED] and [REDACTED] made several purchases at different [REDACTED] stores, and subsequently returned those purchases in exchange for refunds in the form of gift cards and store credits. It is difficult to imagine this strictly transactional relationship, “could have caused reliance or inducement.” *Mandarin Trading*, 16 N.Y.3d 173 at 182.

46. Pursuant to Pursuant to CPLR 3013 and *Mandarin Trading*, 16 N.Y.3d 173 at 182, Plaintiffs have failed to plead facts sufficient to establish a claim of unjust enrichment. As such, the Fourth Cause of Action must be dismissed.

PLAINTIFF [REDACTED] FAILS TO STATE A CAUSE OF ACTION AGAINST [REDACTED] AND THE COURT MUST DISMISS HIS CLAIMS AS A MATTER OF LAW

47. Although the Complaint and Verification page is signed by Plaintiff [REDACTED], NYSCEF Doc. No. 1 (“Compl.”), [REDACTED] alleges no wrongdoing by [REDACTED] (or Defendants [REDACTED] and [REDACTED] for that matter). The only allegation in the Complaint relating to [REDACTED] is that he resides at “[REDACTED] Street, [REDACTED], New York, NY 10038.” (Compl. ¶ 4.)

48. Plaintiff [REDACTED] exclusively, makes the allegations against [REDACTED], that [REDACTED] and [REDACTED] use of his corporate credit card for purchases made at [REDACTED] stores caused him harm. [REDACTED] alleges that the Court has jurisdiction “over this action . . . as the claims . . . involve conduct directly affecting Plaintiff’s property and business operations within the state.” (Compl. ¶ 13.)

49. Plaintiff [REDACTED] has failed to “manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268 at 275. Therefore, pursuant to CPLR 3211(a)(7), this court must dismiss the Second, Third, and Fourth Causes of Action as to Plaintiff Victor Sierra individually against [REDACTED]

WHEREFORE, the Defendant, [REDACTED] U.S.A., Inc., respectfully requests that this Court enter an Order pursuant to CPLR § 3211(a)(7): (a) dismissing the Second, Third, and Fourth Causes of Action of as to Plaintiff [REDACTED] for lack of standing, dismissing the Second, Third, and Fourth Causes of Action of Plaintiffs’ Complaint generally, and (b) dismissing the Second, Third, and Fourth Causes of Action as to Plaintiff [REDACTED] individually, and for such other and further relief as may be just and proper.

Dated: August 21, 2025

Yours, etc.,

[REDACTED]

TO:

By NYSCEF

[REDACTED]

[REDACTED]

CERTIFICATION OF COMPLIANCE WITH 22 NYCRR §202.8-b

I, [REDACTED], hereby certify that the within Affirmation in Support complies with the word count requirements of 22 NYCRR §202.8-b.

The total number of words contained in the Affirmation, according to the word count function of Microsoft Word, the word processing program used to prepare the Affirmation, excluding the caption, signature block and addressees, is 5,413.

Dated: August 21, 2025

By: _____

[REDACTED]