



even though he was acting for the benefit of the corporation.” *Id.* (quoting *A & M Records, Inc. v. M.V.C. Distributing Corp.*, 574 F.2d 312 (6th Cir. 1978)).

Defendant Company in its reply repeats its argument that Plaintiff’s contract was with the Defendant Company and so the individual defendants cannot be held liable for the acts arising out of the contract. (Doc No. ■■■, Defendants’ Reply, Page ID ■■■). Defendant Company again alleges that Plaintiff’s claims for relief arising out of its contention that “■■■■ failed to pay for work performed by Plaintiff in anticipation of future sales under the Agreement.” (*Id.*, Page ID ■■■). This is not true. As specifically stated in Plaintiff’s response, the cause of action against individual defendants is in no way related to the contractual obligations with Defendant Company. (Doc No. ■■■, Plaintiff’s Response, Page ID ■■■). Even if the individual members are officers of Defendant Company, they cannot escape from the liability for the torts committed by them. Here, Plaintiff in its Amended Complaint has specifically alleged and has established definite tort claims against the individual defendants ■■■■■ and ■■■■■, thus the claims against the individual defendants cannot be dismissed.

## **II. Defendants are not entitled to judgment in their favor.**

### **A. Plaintiff has Pled a Viable Claim of Conversion**

“When conversion is committed by a corporation, the agents and officers of the corporation may also be found personally liable for their active participation in the tort, even though they do not personally benefit thereby.” *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 434 (6th Cir. 2012) (internal quotation and citation omitted).

Defendants in its reply argue that Plaintiff has failed to identify plausible allegations sufficient to support its conversion claim. (Doc No. ■■■, Defendants’ Reply, Page ID ■■■). This is not true as Plaintiff has clearly stated in its response that the parties’ obligation was not completely dependent on the Confidential Purchase/Manufacturing Agreement (“Agreement”).

(Doc No. ■, Plaintiff's Response, Page ID ■). Apart from Defendant Company's non-payment of the outstanding invoices, Plaintiff in its amended complaint has also identified acts outside the contract that sufficiently establishes the conversion claim. (Doc No. ■, Am. Compl., Page ID ■ & ■, ¶¶ ■; ¶¶ ■). Plaintiff replicated and argued these facts in its response to judgment on pleadings. (Doc No. ■, Plaintiff's Response, Page ID ■).

Defendants further state that Plaintiff has not identified any part of the Agreement that creates a personal obligation on the individual defendants. However, officers of a corporation will be liable for their participation in the conversion by a corporation even if they are not personally benefited. So, a personal obligation doesn't need to be created on the three individual defendants to impose liability on them. Defendants further try to distinguish *Vienna Beauty Prods. Co. v. Cook*, 2015-Ohio-5017, 53 N.E.3d 808, ¶ 12 (2d Dist.) cited by Plaintiff. However, *Vienna* is different from the instant case. Contrary to *Vienna* all three individual defendants here directly participated in the dealings with Plaintiff. Moreover, Plaintiff used the Minnesota case *Universal Lending Corp. v. Wirth Cos.*, 392 N.W.2d 322 (Minn.App.1986) only as a citing reference to show the liability of an officer of a corporation. Therefore, contrary to the Defendants' argument, Plaintiff has sufficiently established facts in its amended complaint as well as strongly argued in its Response to Defendant's Motion for Judgment on Pleadings that Defendants intentionally exercised dominion and control over Plaintiff's property outside the Agreement.

**B. Plaintiff's Fraud and Misrepresentation Claim is not Deficient**

In fraud claims, "While th[e] particularity requirements must be considered, the ultimate question is whether the complaint puts the defendant on 'sufficient notice of the misrepresentation,' enabling them to respond to the allegations of fraud in an informed manner."

*Premier Bus. Grp., LLC v. Red Bull of N. Am., Inc.*, No. 08-CV-01453, 2009 U.S. Dist. LEXIS 91647, at \*23 (N.D. Ohio Sep. 30, 2009)

Defendant Company in its reply bases its arguments on the cases *Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506, 510–12 (2002) and *SEC v. Blackwell*, 291 F. Supp. 2d 673, 686 (S.D. Ohio 2003) cited by Plaintiff and argues that fraud claim must be pled with particularity. (Doc No. ■■■, Defendants' Reply, Page ID ■■■ & ■■■). Plaintiff does not argue that these cases state the contrary but emphasizes the observation in these cases that even though fraud must be pled with particularity a Plaintiff need not present facts and evidence in the complaint. (Doc No. ■■■, Plaintiff's Response, Page ID ■■■). Therefore, even while considering particularity, the ultimate question is whether the defendant has sufficient notice of the misrepresentation enabling them to respond. Plaintiff in its amended complaint has sufficiently met these requirements and has also cited the facts in its response. (Doc No. ■■■, Am. Compl., Page ID ■■■, ■■■, ■■■, & ■■■, ¶¶ ■■■, ■■■, ■■■, ■■■ & ■■■; Doc No. ■■■, Plaintiff's Response, Page ID ■■■). Plaintiff specifically identifies the individual defendants and the misrepresentations made by them. However, Defendant Company in its reply makes a baseless argument that Plaintiff has not alleged any identifiable misrepresentations or omissions.

Defendant Company also states that Plaintiff has admitted that “the question here is whether it met the heightened pleading standards of Rule 9 for its fraud claims.” (Doc No. ■■■, Defendants' Reply, Page ID ■■■). This is not true because Ganger has stated that “[t]he threshold test is whether the defendant is placed on ‘sufficient notice of the misrepresentation, allowing the defendants to answer, addressing in an informed way’ . . . .” (Doc No. ■■■, Plaintiff's Response, Page ID ■■■). Here, Plaintiff's amended complaint sufficiently notified Defendants of their misrepresentation.

**C. Plaintiff's Money Owed on Account Claim Does Not Fail**

Defendant Company repeats its argument that Plaintiff fails to allege a viable claim for money owed on the account. This argument is baseless and false. Plaintiff in its amended complaint has sufficiently alleged the money owed on account claim along with the invoices. Here, Plaintiff performed several services to Defendant Company outside the Agreement. The Agreement does not govern those services of Plaintiff. Defendants owe money to Plaintiff for those acts performed by Plaintiff outside the Agreement. Plaintiff specifically identify the services outside the Agreement in its amended complaint and has sufficiently stated its claims against Defendants. Defendant continues to make its baseless argument. Therefore, Plaintiff has a valid.

**D. Plaintiff's Claim for Unjust Enrichment Does Not Fail**

Under Ohio law, a Plaintiff may recover under the unjust enrichment theory if the subject under consideration is not governed by an express contract. *Wuliger v. Mfrs. Life Ins. Co. (USA)*, 567 F.3d 787, 799 (6th Cir. 2009).

In the instant case, Plaintiff's claim of unjust enrichment against Defendants is not just based on the express contract. Plaintiff has sufficient claims for unjust enrichment against Defendants that fall outside the terms of the express agreement with Defendant Company. Here, as alleged in the Amended complaint as well as repeated in the Response, Plaintiff has performed acts for Defendants outside the Agreement. Plaintiff in its Amended Complaint and the Response to Motion for Judgment on Pleadings has specifically identified the services that fell outside the contract with Defendant Company. The acts do not govern the contract between Plaintiff and Defendant Company. Therefore, Plaintiff's unjust enrichment claim should stand.

### **E. Plaintiff's Breach of Contract Claim Does Not Fail**

Defendant Company in its reply repeats and continues to make its baseless argument that "Plaintiff has not alleged facts sufficient to establish that it performed its contractual obligation or that Defendant Company failed to pay . . . ." (Doc No. ■■■, Defendants' Reply, Page ID ■■■). Plaintiff in its amended complaint has sufficiently alleged facts by establishing its performance of the contractual obligation. (Doc No. ■■■, Am. Compl., Page ID ■■■, ¶¶ ■■■). Plaintiff also replicated the same in its response by citing the same paragraphs. In addition, Plaintiff has also sufficiently established Defendant Company's failure to pay for the services performed by Plaintiff and also Defendant Company's failure to provide evidence of liability insurance including Plaintiff as additionally insured. Plaintiff in its response has further argued these facts again to demonstrate that it has established its breach of contract claim against Defendants.

### **F. Plaintiff's RICO Claims Does Not Fail**

Contrary to Defendants' argument, "[t]he corporate owner/employee, a natural person, is distinct from the corporation itself, a legal different entity with different rights and responsibilities due to its different legal status . . . ." *Compound Prop. Mgmt., LLC v. Build Realty, Inc.*, 462 F. Supp. 3d 839, 856 (S.D. Ohio 2020) (quoting *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001)). A party can claim a corporation as the enterprise and can name its officers as defendants in that action. *Id.* at 857. "[I]ndividual defendants are always distinct from corporate enterprises[.]" *Id.* (internal quotation and citation omitted).

In addition, "in proving a 'scheme to defraud' under mail and wire fraud, the plaintiff must assert a plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, reputation, or promises. *Prater v. Livingston Ave. Child Care, LLC*, No. 2:14-CV-490, 2015 U.S. Dist. LEXIS 39398, at \*10 (S.D. Ohio Mar.

27, 2015). The plaintiff must show that “the defendant acted with specific intent to defraud or acted with recklessness with respect to potentially misleading information.” *Id.*

Defendant Company makes a baseless argument that since Plaintiff has not alleged a valid enterprise, its RICO claim fails as a matter of law. (Doc No. ■■■, Defendants’ Reply, Page ID ■■■). This is not true because Plaintiff has alleged a valid enterprise. Plaintiff sufficiently alleges that individual defendants were involved in creating an enterprise with Defendant Company to defraud Plaintiff. Here, the individual defendants are distinct from the corporation and so Plaintiff sufficiently establishes its claim by alleging Defendant Company as the valid enterprise and its officers as the defendants in that action.

In addition, Plaintiff has also pled the scheme of predicate acts with particularity. Plaintiff in its Amended Complaint has specifically alleged the scheme of Defendants’ mail and wire fraud with particularity. Plaintiff in its amended complaint identifies the loss and the benefits to Defendant Company through the misrepresentation. Plaintiff in its response has also argued these facts. Defendants only rely to the Agreement between the parties as controlling the services provided by Plaintiff. But the Agreement does not govern all services provided by Plaintiff. Plaintiff provides several services that were outside the Agreement. Plaintiff’s Amended Complaint sufficiently states how Defendants’ racketeering activity affected them. (Doc No. ■■■, Am. Compl., Page ID ■■■ & ■■■, ¶¶ ■■■-■■■). Contrary to Defendants’ argument, Plaintiff in its amended complaint has also alleged the harm suffered to Plaintiff by relying on Defendant Company’s funding sources. (*Id.*, Page ID ■■■, ■■■ & ■■■, ¶¶ ■■■-■■■).

Finally, Defendant's argument that Plaintiff has not alleged any scheme or pattern of racketeering activity is false. This argument is false and without any base. Plaintiff has alleged the pattern of racketeering activity by citing the alleged trademark issue by Defendant Company

and establish the fraudulent conduct in interstate trade by Defendants. (Doc No. [REDACTED], Plaintiff's Response, Page ID [REDACTED]). Plaintiff's amended complaint also state about Defendants' defrauding of

[REDACTED] (Doc No. [REDACTED], Am. Compl., Page ID [REDACTED], ¶ [REDACTED]).

Therefore, Plaintiff has a valid RICO claim against Defendants.

**CONCLUSION**

WHEREFORE, Plaintiff-Counterclaim Defendant, respectfully requests that this Court deny Defendants' Motion for Judgment on Pleadings in its entirety.

Respectfully submitted,

[REDACTED]

/s/ [REDACTED]

[REDACTED], Trial Attorney for  
Plaintiff-Counterclaim Defendant  
Ohio Supreme Court Reg. # [REDACTED]

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Ohio

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