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| <b>Homapour v 3M Props., LLC</b>                                                                                                                                                                                               |
| 2023 NY Slip Op 31700(U)                                                                                                                                                                                                       |
| May 19, 2023                                                                                                                                                                                                                   |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 653795/2015                                                                                                                                                                                           |
| Judge: Joel M. Cohen                                                                                                                                                                                                           |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

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, HENRY DELLARATTA, NATALIE HAROUNIAN, MEHRNOSH PIROOZIAN, JACOB HAROUNIAN, JOHN DOES 1-100,

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 639, 641, 746, 749, 750, 751, 772, 773, 774, 782

were read on this motion to

AMEND COMPLAINT

Plaintiff Nancy Mehrnaz Homapour's ("Plaintiff") motion pursuant to CPLR 3025(b) for leave for to file her proposed Second Amended and Supplemental Verified Complaint (NYSCEF 609) is **granted in part**. Plaintiff may file her amended pleading so long as it removes any

claims brought individually, as opposed to derivatively, against Defendants Alexander Seligson and Seligson Rothman & Rothman (“Seligson Defendants”). Defendant Orange & Blue LLC’s (“O&B”) cross-motion to dismiss Plaintiff’s proposed claims for a constructive trust and unjust enrichment is **denied** as premature.

### BACKGROUND

This long-running dispute concerns a closely held family real estate business. Specifically, Plaintiff contends that Defendants Mark Harounian (“Mark”) has mismanaged and misappropriated the assets of the “Family LLCs”<sup>1</sup> including by, among other things, diverting corporate opportunities to the “Harounian LLCs”<sup>2</sup> (collectively “Harounian Defendants”) and filing incorrect tax documents.

The parties filed multiple actions, including *Harounian v. Harounian* (Index No. 450615/2019) (the “Jacob Action”) and *United Hay, LLC v. Harounian* (657310/2017) (“United Hay Action”). The Jacob Action and Harounian Action are now consolidated with this action.

Extensive discovery and related proceedings have been ongoing in the consolidated actions before Special Referee Michael Cardello (NYSCEF 640). Those proceedings have resulted in additional litigation (e.g., *Homapour v Harounian*, 211 AD3d 508, 509 [1st Dept 2022]).

Based on discovery received, Plaintiff’s proposed Second Amended Complaint seeks (1) to amend the Fourth Cause of Action to include a derivative claim for unjust enrichment against

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<sup>1</sup> 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

<sup>2</sup> Jacob NY Holdings LLC, Jacob NY Holdings Ltd., 172 Mulberry Realty LLC, 1007 Lex Ave LLC, 163 Chrystie Realty LLC

the Harounian LLCs; (2) to convert the Tenth Cause of Action from a derivative claim to a direct claim for a constructive trust; (3) to convert the Thirteenth Cause of Action for an accounting into a claim for a mandatory injunction against Mark Harounian and the Family LLCs to correct certain tax filings; and (4) to add a Fourteenth Cause Action for a constructive trust over certain real property (NYSCEF 610 [Redline Second Amended Complaint]).

While this motion was pending, the First and Second Departments issued decisions relevant to this motion (*Homapour v. Harounian*, 182 A.D.3d 426, 122 N.Y.S.3d 282 [1st Dept 2020]; *Harounian v. Harounian*, 198 A.D. 3d 734, 156 N.Y.S. 3d 221 [2d Dept 2021]). Following the submission of several letters and multiple conferences, the Court authorized supplemental briefing on the effect of the appellate determinations (NYSCEF 772).

### DISCUSSION

CPLR 3025(b) provides that “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court.” “Motions for leave to amend should be freely granted, absent prejudice or surprise . . . unless the proposed amendment is palpably insufficient or patently devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010] [citations omitted]). The movant “need not establish the merit of its proposed new allegations” (*Id. citing Lucido v Mancuso*, 49 AD3d 220, 227 [2d Dept 2008]).

Prejudice “arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position” (*Valdes v Marbrose Realty*, 289 AD2d 28, 29 [1st Dept 2001]; *Anoun v City of New York*, 85 AD3d 694, 694 [1st Dept 2011]). A party opposing leave to amend “must overcome a

heavy presumption of validity in favor of [permitting amendment]” (*CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 65 [1st Dept 2010]).

Plaintiff agrees (NYSCEF 751) that it may not replead direct claims against the Seligson Defendants as a result of the First Department’s 2020 Order, which is the law of the case (*Park Union Condominium v 910 Union St., LLC*, 196 AD3d 427, 428 [1st Dept 2021]), and thus the motion for leave to amend is denied to that extent. However, there is no clear showing that the balance of Plaintiff’s proposed amendment is “duplicative of previously dismissed claims” or otherwise futile (*Wilder v Fresenius Med. Care Holdings, Inc.*, 2023 NY Slip Op 01978 [1st Dept Apr. 18, 2023]). Thus, the Court does not find that the proposed amendment is “legally insufficient” on its face (*Casanas v Casanas*, 215 AD3d 443 [1st Dept 2023] *citing Reyes v BSP Realty Corp.*, 171 AD3d 504, 504 [1st Dept 2019]).

Finally, the Court does not find that any prejudice will accrue as a result of the amendment (*Miah v Pipe Dreams Realty V Corp.*, 214 AD3d 575, 577 [1st Dept 2023] *citing MBIA Ins. Corp.* at 500).

\* \* \* \*

Accordingly, it is

**ORDERED** that Plaintiff’s motion to amend is **GRANTED IN PART**; it is further

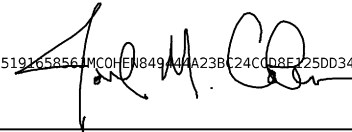
**ORDERED** that Defendant Orange & Blue LLC’s motion to dismiss Plaintiff’s proposed Second Amended Complaint is **DENIED** as premature; it is further

**ORDERED** that Plaintiff file her Second Amended Complaint within seven (7) days of this decision and order; it is further

**ORDERED** that Defendants respond to the Second Amended Complaint within twenty-one (21) days.

This constitutes the decision and order of the Court.

20230519165856 JMC0HEN849A4A23BC24C008E725DD3458E3F76



5/19/2023

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

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DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: