

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

WAYFAIR LLC,
Plaintiff,

v.

LOC ASSOCIATES LLC d/b/a GENERIS
COLLECTIVE,
Defendant.

Civ. A. No.

COMPLAINT AND JURY DEMAND

Plaintiff Wayfair LLC (“Wayfair”) brings this Complaint and Jury Demand against LOC Associates LLC d/b/a Generis Collective (“Generis”) and states as follows:

INTRODUCTION

1. This is a case about defendant’s theft of money, fraud, unfair and deceptive trade practices, and breach of its contractual obligations to Wayfair.

2. Wayfair is a Massachusetts-based international furniture and home goods retailer. The majority of its sales have been traditionally made through its e-commerce store and website. In 2021, Wayfair began making plans to open its first Wayfair-branded store in Edens Plaza, a shopping center in Wilmette, Illinois.

3. The Edens Plaza store was a high-profile project for Wayfair and a significant step towards an omnichannel experience for its customers. Wayfair needed trustworthy business partners to help deliver on its promise. In addition to engaging a general contractor and other construction companies, Wayfair hired Generis, a construction management company that touted its experience with other household brand names such as Disney and Apple. Among the management services provided, Generis was contracted to play an important role in managing

certain of the subcontractors that were needed to fulfill Wayfair's vision of an innovative, immersive in-store shopping experience. Generis' obligations included negotiating and engaging with these subcontractors on Wayfair's behalf, developing and implementing procedures for reviewing and processing those subcontractors' invoices, collecting money from Wayfair to pay those subcontractors, and paying those subcontractors. In exchange for Generis' services, Wayfair paid Generis more than \$4 million in management fees.

4. In February 2024, just two months before the planned store opening, Wayfair discovered that Generis was not paying a number of the subcontractors working to complete the project, despite having billed Wayfair for those obligations and despite Wayfair having paid Generis the money to pass along to these vendors. Rather, Generis was using Wayfair's money to prop up its own business. This self-dealing was a breach of Generis's obligations under the parties' agreements, constituted conversion of Wayfair's money, unjustly enriched Generis, and was an unfair and deceptive trade practice in violation of Massachusetts and/or Illinois law. In order to ensure a timely store opening, and faced with the prospect of its key vendors walking off the job or putting liens on the newly completed store, Wayfair had no choice but to pay those vendors directly, often resulting in double payment for the services rendered. Wayfair brings this action to recover the double payments it made to Generis on behalf of the Edens Plaza subcontractors and management fees Wayfair paid to Generis for services Generis failed to perform, as well as the other damages it suffered as a result of Generis' fraud, conversion, and unfair and deceptive acts.

PARTIES

5. Wayfair is a limited liability company organized under the laws of the State of Delaware with a principal place of business at 4 Copley Place in Boston, Massachusetts. Wayfair sells furniture and home goods.

6. On information and belief, Generis is a limited liability company organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Newton, Massachusetts. Generis provides construction management services.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to M.G.L. c. 212, §§ 3-4 and M.G.L. c. 223A, § 3 because no other court has original exclusive jurisdiction and the amount in controversy exceeds \$50,000.

8. Venue is proper in Suffolk County pursuant to M.G.L. c. 223, § 8.

FACTUAL ALLEGATIONS

9. Wayfair was founded in 2002 as an exclusively online home furnishings retailer. It began as a collection of websites known as CSN Stores before merging the websites into Wayfair in 2011. For most of its history, Wayfair focused exclusively on e-commerce.

10. However, Wayfair recognized an opportunity to expand into brick-and-mortar stores to offer both online and offline ways to shop, allowing customers to shop the way they want, when they want, and to further lock in Wayfair's position as a leader in the home goods market. Beginning in or around 2021, Wayfair began planning for the opening of its first large format physical retail store. The physical retail presence provided an opportunity for Wayfair to leverage its existing distribution network and established brand recognition to expand customer knowledge and deepen customer loyalty.

The Master Services Agreement

11. Wayfair's first planned large-format physical retail store involved the conversion of a 154,500 rentable square foot department store into a Wayfair store at Edens Plaza in Wilmette,

Illinois (the “Edens Plaza Project”). As part of this project, Wayfair needed to hire a general contractor, a construction manager, and other contractors, subcontractors, and advisors.

12. Wayfair interviewed a number of potential construction managers. It ultimately selected Generis. Generis represented that it had the skills, experience, and wherewithal to serve as the construction manager for a large-scope construction project like the Edens Plaza Project. Generis touted work that it had done for other large companies, including Disney and Apple, as proof.

13. Wayfair and Generis entered into an AIA Standard Form of Agreement Between Owner and Construction Manager as Adviser Agreement (the “Master Services Agreement” or “MSA”), as of April 25, 2022. Under the Master Services Agreement, Generis agreed to provide Wayfair with program management advisory services in connection with the Edens Plaza Project.

14. Generis was only to serve as the Construction Manager for the project, not as the general contractor. Wayfair separately hired a general contractor, J.T. Magen (“JTM”), which was responsible for the overall construction of the Edens Plaza Project, including the supervision, hiring, and payment of the majority of the subcontractors providing services for the Edens Plaza Project. Generis’ role was to be Wayfair’s on-site representative, to work with Wayfair, JTM, and its architect to manage the project costs, and to hire and oversee certain contractors which were not hired by JTM.

15. The scope of Generis’ responsibilities as Construction Manager were specified in Articles 2, 3, and 4 of the MSA. Exhibits A-1, A-2, and A-3 set forth in further detail Generis’ responsibilities and obligations under the Master Services Agreement.

16. Among those responsibilities under the Master Services Agreement, Generis was obligated to “[e]stablish, negotiate, and contract with all new consultants, contractors, fabricators,

and all other service providers on behalf of [Wayfair]” for the Edens Plaza Project. MSA at Ex. A-1, § C.

17. The Master Services Agreement also required Generis to “develop and implement procedures for the review and processing of Applications for Payment by Contractors for progress and final payments.” *Id.* at § 3.3.12.1. Within seven days of receiving a Contractor’s Application for Payment,¹ the Master Services Agreement required Generis to (i) review the Applications to certify the amount Generis determines is due to each Contractor; (ii) prepare a Summary of Contractors’ Application for Payment; (iii) certify the total amount Generis determines is due to all Contractors collectively, and (iv) invoice Wayfair for amounts owed to the Contractors. *See id.* at § 3.3.12.2.2. Generis’ issuance of a Certificate for Payment “shall [] constitute a recommendation to [Wayfair] that the Contractor be paid the amount certified.” *Id.* at § 3.3.12.3.

18. In exchange for Generis’ services performed on the Edens Plaza Project, the Master Services Agreement provided for Generis to be paid \$2,160,100. Those payments were to be made pursuant to a schedule of payments set forth in Exhibit A-1, § F(3), of the Master Services Agreement. The schedule of payments provided for the payment of an initial fee in the amount of \$242,028 at the outset of the engagement and a \$113,451 monthly fee between July 2022 and October 2023. Wayfair made each of these payments.

The Edens Plaza Project Work Authorizations

19. The Master Services Agreement contemplated that Wayfair could issue a “Statement of Work” or a “Work Authorization” for specific work to be performed under the MSA.

20. Over the course of the Edens Plaza Project, Wayfair and Generis agreed to seven different Work Authorizations related to that project.

¹ All terms not defined herein bear the meanings ascribed to them in the Master Services Agreement.

21. Wayfair and Generis entered into Work Authorization No. 7 effective March 1, 2023, which extended the term of the Master Services Agreement with respect to the Edens Plaza Project from October 2023 to April 2024 and increased the amount of Generis' management fee by \$1,810,267 (from \$2,160,100 to \$3,970,366). Effective August 15, 2023, Wayfair and Generis entered into Work Authorization No. 8, which increased the amount of Generis' management fee by \$368,014 (from \$3,970,366 to \$4,338,381). Wayfair made each payment required by Work Authorization No. 7 and Work Authorization No. 8 through February 2024.

22. Wayfair and Generis also entered into Work Authorization No. 4 with an effective date of February 15, 2023. Under the terms of Work Authorization No. 4, Generis agreed to "continue provid[ing] Program Management Services for the [Edens Plaza Project]" Work Authorization No. 4 at § 1. In addition, Generis agreed to "oversee, adjudicate, administer, and directly manage the provided services for" certain subcontractors Generis would engage directly on behalf of Wayfair to perform services for the Edens Plaza Project. In exchange, Wayfair agreed to pay Generis "5% of the managed services for Specialty Items, as well as specific Owner-furnished items." *Id.* at § 3. Specialty Items were estimated to be \$9,391,015, of which \$8,891,015 was included in the request under Work Authorization No. 4. Owner-Provided Items were estimated to be \$3,569,372, of which there was no amount included in the request under Work Authorization No. 4. The total contract sum of Work Authorization No. 4 was \$10,185,202. Pursuant to Work Authorization No. 4, Generis engaged a number of subcontractors, including DGS Retail, LLC ("DGS"); Design Productions, Inc., Mudd Studios, Inc.; REDYREF Interactive Kiosks; Seven Fields, Inc.; Pittwater LLC; REB Storage Systems International; and CREO Industrial Arts (collectively, the "Subcontractors").

23. Because of the nature of their work, the Subcontractors were not overseen by JTM, the general contractor. Instead, pursuant to Work Authorization No. 4, Generis was responsible for overseeing and supervising the Subcontractors.

Generis Collects Money from Wayfair to Pay the Subcontractors and Converts Those Funds

24. Under the terms of the Master Services Agreement and the related Work Authorizations, Generis sent Wayfair 85 invoices, three of which were voided, between May 26, 2022, and March 29, 2024, for direct costs of subcontractors and professionals engaged by Generis for services performed on the Edens Plaza Project and Generis' professional service fees. Wayfair paid all invoices it received from Generis through February 8, 2024, paying a total of \$15,172,571.00. That amount was attributable to \$10,269,215.00 in payments for Generis to pass through to subcontractors, \$3,499,027.88 in fixed-fee construction management work, and \$1,404,328.12 in additional construction management fees and reimbursable expenses. The additional construction management fees paid to Generis was calculated by Generis and invoiced to Wayfair as "5% of the managed services" pursuant to Work Authorization No. 4.

25. In or around February 2024, DGS (a millwork contractor) reached out to Wayfair to inform Wayfair that DGS had not been paid for work performed on the Edens Plaza Project. This raised concerns because Generis had invoiced Wayfair for services performed by DGS for the Edens Plaza Project and Wayfair had paid \$3,675,372.27 to Generis over ten payments dating from December 27, 2022 to February 8, 2024 on account of those invoices. Wayfair immediately reached out to Generis to determine why DGS had not yet been paid. Generis informed Wayfair that Generis was experiencing cash flow issues and had been unable to pay certain subcontractors, including DGS, notwithstanding the fact that Wayfair had paid Generis monies earmarked for the Subcontractors on a timely basis.

26. During these February 2024 conversations, Generis never mentioned that it believed it was owed any outstanding amounts by Wayfair and never invoiced Wayfair for additional amounts.

27. As a result of the DGS information, Wayfair undertook a further investigation and learned that a number of other subcontractors, as well as a portion of the funds invoiced and paid for transfer to JTM under Work Authorization No. 6, had not been paid by Generis to the affected subcontractors and JTM on account of their work. At the same time, however, Generis had sent invoices to Wayfair to pay these subcontractors and Wayfair had paid Generis on account of those invoices.

28. Generis' failure to pay the Subcontractors put the opening of the Edens Plaza store, which was scheduled for May 2024, in jeopardy. Those unpaid subcontractors might terminate their contracts for non-payment and walk off the job, and/or file liens against the Edens Plaza property. In particular, at least one subcontractor told Wayfair that it would not supply materials to the Edens Plaza Project site or otherwise continue its work until it was paid. This delay would have put the on-time opening of Wayfair's first, flagship large-format physical retail store – strategically planned around Memorial Day weekend and a grand opening event to be attended by local government officials and Wayfair's Board of Directors – at risk. Further, Wayfair's reputation of paying its subcontractors, which would be needed again for future store builds, was being significantly compromised.

29. In order to ensure that none of these damaging events would take place, Wayfair took steps to protect the Edens Plaza Project. On or about April 5, 2024, Wayfair sent an e-mail to Generis, seeking confirmation that (i) Wayfair could offset present and future sums owed to Generis under the terms of the Master Services Agreement and the related Work Authorizations

against outstanding sums Generis owed to the Subcontractors; (ii) Generis would permit the Subcontractors to share invoices, contracts, and other project information with Wayfair; and (iii) Generis would authorize the Subcontractors to work directly with Wayfair to close out any open invoices. On or about April 8, 2024, Generis confirmed each of these actions.

30. Thereafter, Wayfair identified the Subcontractors as critical vendors necessary to complete the Edens Plaza Project on a timely basis, entered into work orders directly with the Subcontractors (collectively, the “Work Orders”), and paid the Subcontractors directly the outstanding sums Generis owed to the Subcontractors. Each of the Work Orders are entered into by and between Wayfair and the applicable Subcontractor. Generis also executed each of the Work Orders for the sole purpose of Generis acknowledging and agreeing, *inter alia*, “that Wayfair shall have no obligation to pay any amount to Generis in connection with the Work covered by this Work Order, including, without limitation, any project management fee.”

31. Wayfair to date has contracted for and has paid or is in the process of paying a total of \$1,996,642.20 to the Subcontractors to cover outstanding sums Generis owed to the Subcontractors, of which \$1,492,648.11 had already been paid by Wayfair to Generis for the benefit of the Subcontractors. To state it differently, to date Wayfair has “double paid” \$1,492,648.11 for the benefit of the Subcontractors. Additionally, in the absence of a cure from Generis, Wayfair will be making another double payment to cover the outstanding balance owed to JTM. The exact amount to be paid is to be determined by Wayfair and JTM’s final account reconciliation, but is likely to exceed \$500,000.00.

32. The Edens Plaza store was timely opened on May 23, 2024.

33. Because of the terms of the Master Services Agreement and Generis’ reluctance to cooperate with Wayfair as to the actual amounts of double payments Wayfair made for the benefit

of the Subcontractors, Wayfair’s investigation into this matter remains ongoing. Nevertheless, its preliminary investigation reveals that the following invoices submitted by Generis to Wayfair were fraudulent in whole or in part because Generis was obligated to – and represented that it would – remit payments to the Subcontractors and failed to do so.

<u>Invoice No.</u>	<u>Date of Invoice</u>	<u>Total Amount of Invoice</u>
3417	December 27, 2022	\$208,586.65
3498	January 25, 2023	\$213,407.56
3532	March 31, 2023	\$51,615.00
3538	April 28, 2023	\$11,762.94
3539	April 28, 2023	\$1,046,216.32
3561	May 31, 2023	\$82,271.70
3572	June 30, 2023	\$123,181.52
3582	July 31, 2023	\$937,936.62
3599	August 31, 2023	\$795,457.52
3610	September 29, 2023	\$125,585.36
3620.1	October 31, 2023	\$497,954.35
3628	November 15, 2023	\$600,976.34
3621	November 30, 2023	\$502,136.35
3629	November 30, 2023	\$125,534.11
3632	December 1, 2023	\$1,839,757.70
3632	December 1, 2023	\$1,839,757.70
3635	December 13, 2023	\$125,534.11
3643	January 15, 2024	\$136,493.66
3646	January 26, 2024	\$50,094.50
3647	January 29, 2024	\$125,534.11
3736	February 8, 2024	\$40,438.00

34. Each of the foregoing invoices (the “Fraudulent Invoices”) were submitted by Generis to Wayfair for work performed on the Edens Plaza Project and contained specified line items for (i) payment of Generis’ professional services fees, and (ii) payment of the direct costs of the Subcontractors. Each of the Fraudulent Invoices appended invoices submitted by the Subcontractors to Generis for work the Subcontractors performed on the Edens Plaza Project.

35. By submitting the Fraudulent Invoices to Wayfair, Generis was representing that certain monies were due to a Subcontractor and that upon receipt from Wayfair of the monies invoiced Generis would pay the Subcontractors the amounts specified in those invoices.

36. Wayfair made payment on each of the Fraudulent Invoices in reliance on Generis' representations that Generis would pay the Subcontractors the amounts specified in those invoices. Generis failed to pay the Subcontractors in accordance with its representations. Instead, Generis elected to use the monies earmarked for the Subcontractors for other purposes.

37. On information and belief, at the time that Generis submitted the Fraudulent Invoices it had no intention of paying the Subcontractors the monies owing, but instead intended to use the money received by Wayfair for other purposes, including alleviating cash flow problems at Generis.

38. Wayfair was damaged by Generis' fraudulent representations in that it was forced to pay the Subcontractors directly to ensure timely completion of the Edens Plaza Project, effectively paying the same obligations twice, and because it paid Generis for professional services that Generis did not ultimately perform (i.e., ensuring subcontractors were appropriately paid).

39. At this time, Wayfair estimates that Generis' deception will cost Wayfair approximately \$2,159,083.61 in double payments to Subcontractors and/or JTM.

Wayfair Sends Generis a Demand and Generis Refuses to Mediate

40. On or about April 12, 2024, Wayfair sent Generis a demand letter putting Generis on notice of a claim, initiating the dispute resolution process under the Master Services Agreement, and notifying Generis to immediately forward the demand letter to Generis' general liability and professional liability insurance carriers and request that they open claims. Wayfair requested that Generis provide proof that claims had been filed against both insurance carriers. In the demand letter, Wayfair explained that Generis had breached the Master Services Agreement by invoicing Wayfair for services performed by the Subcontractors, receiving monies pursuant to those invoices, and failing to pay the Subcontractors monies earmarked for the Subcontractors. Wayfair

further explained that Generis' conduct constituted conversion, misappropriation of Wayfair's funds, and placed the timely completion of the Edens Plaza Project in jeopardy. Wayfair noted that as a result of Generis' actions, Wayfair would need to make duplicate payments to the Subcontractors to ensure timely completion of the Edens Plaza Project. Finally, Wayfair notified Generis that Wayfair had paid Generis professional services fees for its role as construction manager, and that Generis had failed to deliver the required services by failing to ensure timely payments to the Subcontractors. Wayfair concluded that it is entitled to the recoupment of any double payments made to the Subcontractors and fees paid to Generis for services Generis failed to perform, and requested that the parties initiate mediation in an attempt to resolve the dispute pursuant to the terms of the Master Services Agreement.

41. Generis provided its first substantive response to the demand letter on or about May 15, 2024, more than one month after Wayfair sent Generis the demand letter. Generis' substantive response failed to respond to Wayfair's allegations in the demand letter. Specifically, Generis failed to inform Wayfair why it had invoiced and accepted monies on behalf of the Subcontractors that it subsequently failed to remit to the Subcontractors. In that response, Generis acknowledged that it was experiencing a "cash flow issue" or "cash crunch" and it was unaware of the root cause of its cash flow difficulties.

42. Also in Generis' response, in direct contradiction to two years' worth of Generis invoicing practices, Generis claimed for the first time that it was owed additional professional services fees. On information and belief, Generis' claim for additional professional services fees is based on the 5% managed services fees in Work Authorization No. 4. Generis' claim is unsupported by the terms of the Master Services Agreement or any Work Authorization (including Work Authorization No. 4), and is contrary to its own course of dealing over the parties'

relationship. It therefore appears to be nothing more than an attempt to bolster Generis' own negotiating leverage, rather than a genuine claim with basis in law or fact.

43. Prior to Wayfair learning that Generis had not been paying the Subcontractors and Wayfair raising the issue with Generis, Generis never invoiced Wayfair for any other amounts related to a 5% managed services fee. Wayfair did not budget for any additional amounts related to a 5% fee internally. That is because no other amounts were owed to Generis under the Master Services Agreement or the related Work Authorizations.

44. The Master Services Agreement provides that the parties "shall endeavor to resolve claims, disputes and other matters in question between them by mediation ... administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on April 25, 2022." MSA at § 8.2.2. The Master Services Agreement also provides that the request for mediation "may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution" *Id.*

45. Wayfair made a request for mediation pursuant to section 8.2.2 of the Master Services Agreement on or about April 12, 2024.

46. Generis did not acknowledge, let alone accept, Wayfair's request for mediation until May 28, 2024, when Generis wrote that it "is certainly willing to schedule a mediation meeting with the American Arbitration Association for the week of June 24 as described in our agreement." Wayfair followed up with Generis on or about June 5, 2024 and June 11, 2024, to schedule the mediation the week Generis suggested. Generis did not provide a date for mediation the week of June 24, notwithstanding that it was Generis that initially suggested that week. Rather, on or about June 11, 2024, Generis informed Wayfair that it had "engaged legal counsel and tasked them with scheduling mediation in Boston." Finally, over two weeks later, on or about June 27,

2024, an outside law firm representing Generis contacted Wayfair to schedule a mediation. The parties discussed the prospect over the weeks of July 1 and July 8, but ultimately no meaningful progress was made towards resolution. Wayfair is prepared to consider a timely mediation, but given Generis's constant delays, it has informed Generis that it would not wait to initiate this litigation until the conclusion of that mediation.

CLAIMS FOR RELIEF

COUNT I Breach of Contract

47. Wayfair realleges each allegation set forth in paragraphs 1 through 46 as if fully set forth herein.

48. Wayfair and Generis entered into the Master Services Agreement on or around April 25, 2022.

49. The Master Services Agreement is a binding contract.

50. Wayfair and Generis entered into Work Authorization No. 4 on or about February 15, 2023.

51. Work Authorization No. 4 is a binding contract.

52. Wayfair and Generis entered into Work Authorization Nos. 7 and 8 on or about March 1, 2023 and August 15, 2023, respectively.

53. Work Authorization Nos. 7 and 8 are each binding contracts.

54. Wayfair performed all of its obligations under the Master Services Agreement and Work Authorizations Nos. 4, 7, and 8.

55. Generis breached each of the Master Services Agreement and Work Authorization Nos. 4, 7, and 8 by, *inter alia*, failing to remit to the Subcontractors monies Wayfair paid to Generis for the benefit of the Subcontractors.

56. Generis' breaches were material.

57. As a result of Generis' breaches, Wayfair suffered damages, including the payment of professional services fees to Generis for services Generis failed to perform and double-paying the Subcontractors for work performed on the Edens Plaza Project.

COUNT II
Fraud

58. Wayfair realleges each allegation set forth in paragraphs 1 through 57 as if fully set forth herein.

59. Pursuant to the Master Services Agreement and the Work Authorizations, Generis sent Wayfair invoices between May 26, 2022, and March 29, 2024, for the direct costs of subcontractors and professionals directly engaged by Generis for services performed on the Edens Plaza Project and Generis' professional services fees.

60. Each invoice Generis sent Wayfair under the terms of the Master Services Agreement and the Work Authorizations constituted a representation that Generis would use monies paid under those invoices in accordance with those invoices, including but not limited to payment to the Subcontractors working on the Edens Plaza Project.

61. The Fraudulent Invoices described above were false in whole or in part because Generis failed to remit monies earmarked for the Subcontractors to the Subcontractors, instead electing to enrich itself.

62. The representations contained in the Fraudulent Invoices described above were material to Wayfair and to the completion of the Edens Plaza Project.

63. On information and belief, Generis had no intention to remit monies earmarked for the Subcontractors in the Fraudulent Invoices.

64. On information and belief, Generis' representations that it would remit the Subcontractors the monies earmarked for the Subcontractors was to induce Wayfair to make full payment on the Fraudulent Invoices.

65. Wayfair relied on Generis' representations that it would pay the Subcontractors the monies earmarked for the Subcontractors in the Fraudulent Invoices. Wayfair's reliance was reasonable.

66. As a result of Generis' misrepresentations, Wayfair suffered damages, including the payment of professional services fees to Generis for services Generis failed to perform and double-paying the Subcontractors for work performed on the Edens Plaza Project.

COUNT III
Violation of M.G.L. c. 93A, § 11

67. Wayfair realleges each allegation set forth in paragraphs 1 through 66 as if fully set forth herein.

68. Generis sent Wayfair invoices between May 26, 2022, and March 29, 2024, pursuant to the Master Services Agreement and the Work Authorizations for the direct costs of subcontractors directly engaged by Generis for services performed on the Edens Plaza Project.

69. Each invoice Generis sent Wayfair constituted a representation that Generis would remit monies earmarked for the Subcontractors to the Subcontractors.

70. The Fraudulent Invoices set forth above were false in whole or in part because Generis failed to remit monies earmarked for the Subcontractors to the Subcontractors, instead electing to enrich itself. Generis sent the Fraudulent Invoices knowing that it did not intend to pay the Subcontractors. Generis accepted money from Wayfair knowing that it did not intend to pay the Subcontractors. Generis retained the money paid by Wayfair and used it for purposes other than paying the Subcontractors.

71. The acts described herein were deceptive acts and/or practices within the meaning of M.G.L. c. 93A, § 11.

72. Generis' unfair and deceptive acts and/or practices occurred primarily and substantially in Massachusetts. Both Generis and Wayfair are located in Massachusetts. The invoices were sent to Wayfair in Massachusetts. Wayfair experienced the harm caused by Generis's acts and practices in Massachusetts.

73. As a result of Generis' misconduct, Wayfair suffered damages, including the payment of professional services fees to Generis for services Generis failed to perform and double-paying the Subcontractors for work performed on the Edens Plaza Project.

COUNT IV
Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act

74. Wayfair realleges each allegation set forth in paragraphs 1 through 73 as if fully set forth herein.

75. Generis sent Wayfair invoices between May 26, 2022, and March 29, 2024, pursuant to the Master Services Agreement and the Work Authorizations for the direct costs of subcontractors directly engaged by Generis for services performed on the Edens Plaza Project.

76. Each invoice Generis sent Wayfair constituted a representation that Generis would remit monies earmarked for the Subcontractors to the Subcontractors.

77. The Fraudulent Invoices set forth above were false in whole or in part because Generis failed to remit monies earmarked for the Subcontractors to the Subcontractors, instead electing to enrich itself. Generis sent the Fraudulent Invoices knowing that it did not intend to pay the Subcontractors. Generis accepted money from Wayfair knowing that it did not intend to pay the Subcontractors. Generis retained the money paid by Wayfair and used it for purposes other than paying the Subcontractors.

78. The acts described herein were deceptive acts or practices within the meaning of 815 ILCS 505/1 *et seq.*

79. On information and belief, Generis intended to induce Wayfair to make payment on these invoices by representing that Generis would remit those monies to the Subcontractors, notwithstanding the fact that Generis never had any intention to remit those monies to the Subcontractors.

80. Generis' misconduct occurred in the course of Generis' and Wayfair's carrying out their contractual obligations as set forth in the Master Services Agreement and the Work Authorizations and during the development and consummation of the Edens Plaza Project. The services provided by the Subcontractors were provided in Illinois. At least some of the work performed by Generis with respect to the Subcontractors occurred in Illinois.

81. As a result of Generis' misconduct, Wayfair suffered damages, including the payment of professional services fees to Generis for services Generis failed to perform and double-paying the Subcontractors for work performed on the Edens Plaza Project.

COUNT V
Unjust Enrichment

82. Wayfair realleges each allegation set forth in paragraphs 1 through 81 as if fully set forth herein.

83. Wayfair paid monies to Generis for the benefit of the Subcontractors that Generis engaged directly on behalf of Wayfair for the purposes of providing services to the Edens Plaza Project.

84. Generis failed to remit those monies to the Subcontractors, instead electing to enrich itself.

85. Generis' was unjustly enriched by its failure to pay monies Generis received from Wayfair that were earmarked for the benefit of the Subcontractors. Generis' actions violated fundamental principles of justice, equity, and good conscience.

COUNT VI
Conversion

86. Wayfair realleges each allegation set forth in paragraphs 1 through 85 as if fully set forth herein.

87. Generis submitted invoices to Wayfair between May 26, 2022, and March 29, 2024, pursuant to the Master Services Agreement and the Work Authorizations for the direct costs of subcontractors directly engaged by Generis for services performed on the Edens Plaza Project.

88. Wayfair paid Generis those monies on behalf of the Subcontractors and on the express condition that Generis would remit those monies to the Subcontractors.

89. Generis failed to remit those monies to the Subcontractors.

90. On information and belief, Generis' failure to remit those monies to the Subcontractors (instead electing to enrich itself) constitutes an intentional and wrongful act of ownership, control, or dominion over Wayfair's personal property.

91. Between February 2024 and June 2024, Wayfair made several demands for possession of the money Wayfair paid to Generis on behalf of the Subcontractors but Generis failed to remit to the Subcontractors.

92. Generis wrongfully continues to assume control, dominion, or ownership over those monies.

PRAYER FOR RELIEF

WHEREFORE, Wayfair respectfully requests the following relief:

- i. That Generis be held liable for actual damages sustained by Wayfair as a result of the claims asserted herein;
- ii. That Wayfair be awarded multiple damages pursuant to M.G.L. c. 93A or 815 ILCS 505/1 *et seq.*;
- iii. That Generis be held liable for the costs of this suit, including reasonable attorneys' fees;
- iv. That Generis be held liable for pre- and post-judgment interest on the actual damages sustained by Wayfair as a result of the claims asserted herein; and
- v. Such other relief as the Court deems necessary and proper.

WAYFAIR DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Dated: July 12, 2024

WAYFAIR LLC, Plaintiff

By Its Attorneys,

/s/ Christian A. Garcia

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