ADAM P. HANEY (New Jersey Bar #035372012)
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203

B. KEVIN BURKE, JR. (Admitted *Pro Hac Vice*)
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203

Counsel for Defendant SCMC, LLC
d/b/a Seneca SCMC, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PRIVATE SOLUTIONS, INC.	:	
Plaintiff,	:	Civil Action No. 3:15-cv-03241
v.	:	
SCMC, LLC d/b/a Seneca SCMC, LLC	:	**MOTION DAY: MARCH 21, 2016**
Defendant.	:	

DEFENDANT'S BRIEF IN OPPOSITION OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND ITS COMPLAINT

Defendant SCMC, LLC ("SCMC") respectfully submits this brief in opposition to Plaintiff Private Solutions, Inc. ("PSI") motion to amend its complaint pursuant to Rules 15(a) of the Federal Rules of Civil Procedure. For the reasons set forth below, this motion should be denied in its entirety.

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PRELIMINARY STATEMENT

This matter was originally by PSI on October 3, 2014 and has been pending for nearly 18 months. Three scheduling orders have now been issued, two in the District of South Carolina (Case No.: 8:14-cv-03874, Dkt. Nos. 9 and 16) and one in this matter's current iteration in the District of New Jersey. Indeed, motions to Amend the Pleadings were ordered due in South Carolina on or before December 29, 2014 and subsequently January 26, 2015. Motions to Amend the Pleadings were due in the District of New Jersey were due on or before February 15, 2016. Thus, three deadlines to file motions to amend the pleadings expired before PSI filed its instant motion.

Plaintiff's pending motion to amend is therefore untimely, seeks to continue a cause of action that is not recognized in the State of New Jersey, and attempts to add an additional party to the lawsuit that is in no manner culpable for any of allegations of the complaint and otherwise maintains sovereign immunity as an arm of the Seneca Nation of Indians.

Therefore, the reasons stated below, this Court should deny Plaintiff's Motion to Amend in its Entirety.

FACTUAL BACKGROUND OF CASE IN CHIEF

This instant matter stems from work that was contemplated and partially completed by SCMC in response to the Superstorm Sandy. On or around October

29, 2012, Sandy, hit the coast of New Jersey causing economic losses to businesses and residential properties of approximately $30 Billion. Multiple news sources estimate that nearly 350,000 homes were damaged or destroyed. In response to this damage, the State of New Jersey's Department of Community Affairs launched the New Jersey Reconstruction, Rehabilitation, Elevation, and Mitigation Program ("RREM"). RREM provided up to $150,000 in grant funding to eligible homeowners to repair or rebuild their primary residency that was damaged as a result of the storm.

As this Court is likely aware, the RREM program provided various remediation and/or rebuilding pathways for homeowners affected by Sandy, including, Pathway: "A," for reimbursement only; "B," where the homeowner selects the contractor; or "C," involving RREM Contractors. Contractors for Pathway C were vetted by the State of New Jersey and only a limited number of contractors were approved. However, Defendant SCMC and its team were approved by the State of New Jersey as a General Contractor under RREM. In fact, SCMC entered into a Teaming Agreement with other entities to obtain house assignments and conduct the requisite rebuilding/rehabilitation as approved by RREM.

While not a requirement of the RREM program, SCMC searched for possible security companies to provide surveillance and protection related to the

assigned homes due to a number of reasons including, without limitation, the risk of theft of building materials. Steve Martin, the then president of SCMC in early 2014, negotiated with and ultimately engaged the services of Plaintiff Private Solutions, Inc. ("PSI") to provide security services related to the RREM project. A contract was drafted by PSI and executed by both parties on or around March 4, 2014 (the "Agreement").[1]

The instant lawsuit relates to a contract that was entered into by Stanley Heath Davis on behalf of PSI and Steve Martin, the then President of SCMC, LLC. The individual with the most knowledge regarding the negotiation of this contract and the factual background of the instant dispute is and remains Steve Martin. Steve Martin left the employ of SCMC on or around January 31, 2015. As PSJ's counsel is well aware, Mr. Martin is not cooperating with SCMC in this action and is hostile toward SCMC.

ARGUMENT

I. THERE IS NO GOOD CAUSE SHOWN FOR PSI'S PROPOSED PLEADING UNDER FED. R. CIV. P. 16

A. F.R.C.P. 16(b), not F.R.C.P. 15(a), Governs PSI's Application

PSI relies solely on Fed. R. Civ. P. 15(a) in support of their motion to amend its complaint and add an additional party to this litigation. However, because three

[1] It should be noted that SCMC was the only member of the RREM Seneca Team to execute the Agreement with PSI.

separate court orders required that any motions to amend the pleadings or join new parties have expired—including the February 15, 2016 date that was self-selected by PSI—the heightened "good cause" standard of Feb. R. Civ. P. 16(b) controls the disposition of PSI's motion to amend, not the laxer "freely given when justice so requires" standard of Fed. R. Civ. P. 15(a). *See, e.g.*, *Eastern Minerals & Chemicals Co. v. Mahan*, 225 F.3d 330, 339-340 (3d Cir. 2000); *Dimensional Communications, Inc. v. OZ Optics, Ltd.*, 148 Fed. Appx. 82, 84-85 (2d Cir. 2005) (*citing Eastern Minerals*, 225 F.3d at 340); *Kuchinsky v. Pressler & Pressler, LLP*, 2014 WL 1679760, *1, *2-4 (D.N.J. 2014); *Velto v. Reliance Standard Life Ins. Co.*, 2011 WL 810550, *4 (D.N.J. 2011); *Harbor Laundry Sales, Inc. v. Mayflower Textile Services Co.*, 2011 WL 6303258, *2-5 (D.N.J. 2011).

B. PSI Cannot Satisfy "Good Cause" Under Fed. R. Civ. P. 16(b)

Foremost, PSI cannot establish "good cause" under *Fed. R. Civ. P. 16(b)* for moving to file additional pleadings after allowing three separate deadlines pass because their papers neglect to even discuss the requirement. In *Kuchinsky*, 2014 WL 1679760 at *1, 3, the movant's failure to address "good cause" under Rule 16 was grounds for denial of a proposed amendment sought after the amendment deadline. Likewise, in *Harbor Laundry*, 2011 WL 6303258 at *3-5, the movant's failure to address "good cause" under Rule 16 was grounds for denial of a motion to amend.

Further, PSI's reliance on the lack of prejudice to SCMC and/or Seneca Holdings is of no help to them here because such consideration are irrelevant to the Rule 16(b) "good cause" analysis. *See, e.g.*, *Harbor Laundry*, 2011 WL 6303258 at *5 (such Rule 15(a) factors "correctly excluded" from "Rule 16 analysis since they were not relevant"); *Kuchinsky*, 2014 WL 1679760 at *3 (alleged lack of prejudice to non-movant does not constitute "good cause" under Rule 16).

Similarly, nor can their explanation for why they for the first time seek to first bring claims against Seneca Holdings, LLC despite missing three court ordered deadlines to do so satisfy "good cause." "Good cause" requires demonstrable diligence; a showing that the scheduling order deadline "c[ould not] reasonable [have] be[en] met *despite the due diligence of the party seeking the extension*." *Kuchinsky*, 2014 WL 1679760 at *2 (emphasis added); *see also Harbor Laundry*, 2011 WL 6303258 at *5. PSI, as movants, bears the burden of adducing "sufficient explanation of [its] diligence" to establish good cause. *Harbor Laundry*, 2011 WL 6303258 at *3, 5.

Yet, all PSI has to say—and only in their brief and unsupported by any sworn statement—is that its proposed amendment seeks to add SCMC's parent company based on information through the modest discovery conducted to date and information obtained from its Rule 30(b)(6) deposition. This position is unconvincing and should be unavailing. Indeed, on or around March 3, 2015,

SCMC disclosed that it was a wholly owned subsidiary of Seneca Holdings, LLC in its response to the interrogatories propounded by PSI. Furthermore, as previously disclosed by PSI itself in its motion that remain pending before the Court, the Rule 30(b)(6) deposition in question occurred on April 30, 2015. Thus, PSI has unreasonably delayed in making its motion to add Seneca Holdings, LLC for nearly one year after learning of its status vis-à-vis SCMC and approximately nine months after the Rule 30(b)(6) deposition.

PSI's failure to engage in additional research or conduct proper discovery before the three court ordered deadlines passed is not "good cause". *See 380544 Canada, Inc. v. Aspen Technology, Inc.*, 2011 WL 4089876, *5 (S.D.N.Y. 2011) ("Whatever additional research led counsel to realize the potential for relief . . . that work could have taken place before the initial complaint was filed . . . attorney oversight is no excuse for late amendment."). This is particularly true given that the matter has been filed for 18 months.

Said another way, PSI has no valid explanation for not making its motion earlier. Indeed, it fails to contend its proposed claims are justified in light of any "recently discovered" evidence. PSI also does not argue its proposed claims are justified because of information obtained only after each of the deadlines had passed. And they frankly cannot make such allegations because PSI had all relevant facts related to their proposed new claim long before the motion to amend

deadline. Therefore, in the end, this is just another instantiation of "the most common basis" for finding a lack of good cause under Rule 16: the movant's knowledge of the facts giving rise to the potential claim before the amendment deadline had elapsed. *Kuchinsky*, 2014 WL 1679760 at *1.

In sum, PSI has "made no effort to demonstrate good cause for its late application for amendment," *see id.* at *3, submitted no sworn statements explaining why they could not reasonably have complied with three court ordered deadlines that have expired to date; have failed to even address the "good cause" requirement of Rule 16; and, regardless, cannot show "good cause" for only now seeking to bring new claims 18 months of the original complaint was filed and after 3 court ordered deadlines to amend had passed based on facts admittedly in their possession long before the most recent deadline expired. Accordingly, PSI's motion to amend should be denied.

C. PSI's Application Also Fails Under Fed. R. Civ P. 15(a)

Notwithstanding the above, PSI's motion also fails even under the more lenient Rule 15(a) standard. Indeed, the Plaintiff had all facts pertinent to its proposed new claim for at least one year, if not longer. No litigation developments in the last nine months to a year have led PSI to seek any new claims. Nine months is a considerable delay, and the courts have already deemed conduct like PSI's here as "undue delay" under Rule 15(a). *See, e.g., Dimensional*, 148 Fed.

Appx. At 84-85 ("undue delay" and "dilatory motive" where movant possessed facts actuating proposed claim well before the amend deadline expired); *Kuchinsky*, 2014 WL 1679760 at *4 n.1 (finding lack of "good cause" under Rule 16 but expressing doubt that movant could satisfy even more generous Rule 15(a) standard where movant was aware of all facts underlying proposed amendment well before deadline to amend lapsed).

Therefore, Plaintiff fails to meet its burden pursuant to Federal Rules of Civil Procedures 15(a) and 16(b) and the motion should be denied.

II. PSI'S PROPOSED MOTION TO AMEND IS FUTILE AND SHOULD BE DENIED

For the reasons stated above, PSI's motion to amend the complaint is not only untimely but is also futile. Indeed, two of the three causes of action against SCMC must fail and Seneca Holdings, LLC has sovereign immunity as an arm of the Seneca Nation of Indians and the cause of action itself is legally insufficient on its face. *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir. 2000) (amendment futile where it fails to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6)); *Harrison Beverage Co. v. Dribeck Imps., Inc.*, 133 F.R.D. 463, 468 (D.N.J. 1990) (amendment futile if it is "frivolous or advances a claim or defense that is legally insufficient on its face").

To determine whether an amendment is insufficient on its face, the Court employs the standard applied to Rule 12(b)(6) motions to dismiss. *In re Burlington*

Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir.1997). Under this standard, the question before the Court is not whether the movant will ultimately prevail, but whether the complaint sets forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A two-part analysis determines whether this standard is met. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir.2009).

A. PSI's Proposed Amended Complaint Fails to State Causes of Action Under Which Relief Can be Granted Under New Jersey Law

PSI's proposed amended complaint seeks to continue its causes of action in breach of contract, promissory estoppel, and for breach of contract accompanied by fraud as against SCMC. Two of the three causes of action must fail as a matter of law.

Put simply, the cause of action for breach of contract accompanied by fraud is not a valid cause of action under New Jersey Law. PSI originally pled this cause of action when this matter was filed in District of South Carolina and it is explicitly allowed under South Carolina. *See, e.g, Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156 (2004). However, this flies in the face of the Agreement that explicitly states that the matter is governed by and construed under New Jersey Law. *See* Agreement at p. 17. Further, PSI has not even alleged that South Carolina should be applied despite the express terms of the Agreement. Therefore,

this cause of action fails a matter of law and must be excluded from the amended complaint.

Similarly, PSI's cause of action for promissory estoppel must also be dismissed. Quasi-contractual liability such as promissory estoppel is based on the equitable principle that a person should not be allowed to unjustly enrich himself at the expense of another. *See Rodichok v. Limitorque Corp.*, 1997 WL 392535 (D.N.J.1997). Under New Jersey law, to recover on a theory of promissory estoppel, a plaintiff must allege and prove that:

> (1) there was a clear and definite promise; (2) the promise was made with the expectation that the promisee would rely upon it; (3) the promisee reasonably did rely on the promise; and (4) [the promisee] incurred a detriment in said reliance.

Swider v. Ha-Lo Indus., 134 F.Supp. 2d 607, 619 (D.N.J. 2001) (*citing Peck v. Imedia Inc.*, 293 N.J. Super. 151, 165 (App. Div.1996)).

However, promissory estoppel is quasi-contractual in nature or intended to be a replacement for a contract between the parties when they are not able to reach a mutual agreement. Under New Jersey law, a constructive or quasi-contractual remedy "to prevent unjust enrichment or unconscionable benefit . . . will not be imposed . . . if an express contract exists concerning the identical subject matter." *Suburban Transfer Service, Inc. v. Beech Holdings, Inc.*, 716 *F.*2d 220, 226–27 (3d Cir.1983). Here, there is no dispute that there is an express agreement between the

parties. *Compare* Complaint at ¶4 *with* Amended Answer at ¶4. Therefore, the cause of action for promissory estoppel fails as a matter of law and should be stricken from the amended complaint.

B. Seneca Holdings, LLC has Sovereign Immunity as an Arm of the Seneca Nation of Indians

Where, as here, a named entity in a lawsuit is bestowed with tribal sovereign immunity from suit, the United States Supreme Court has declared that the matter must be dismissed for lack of jurisdiction. Indeed, "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751, 754 (1998). Further, that immunity extends to both governmental and commercial activities, whether the activities occur on tribal lands or not. *Id.* at 754-755. This immunity also extends to entities that are divisions or "arms" of the tribe. *See, e.g.*, *Danka Funding Co., LLC v. Sky City Casino*, 329 N.J. Super. 357, 361 (Ch. Div. 1999) (“These principles of [tribal sovereignty] immunity are equally applicable to subordinate organizations of the tribe.”); *Somerlott* v. *Cherokee Nation Distribs., Inc.*, No. CIV-08-429-D, 2010 U.S. Dist. Lexis 38021, 2010 WL 1541574 (W.D. Okla. 2010); *Breakthrough Mgmt. Grp., Inc.* v. *Chukchansl Econ. Dev. Auth.*, 629 F.3d 1173 (10th Cir. 2010); *Gavle* v. *Little Six, Inc.*, 555 N.W.2d 284 (Minn. 1996).

Here, the proposed Defendant Seneca Holdings, LLC ("Seneca") was created by the Seneca Nation of Indians (the "Nation"), a sovereign nation, as a governmental instrumentality of the Nation that is wholly owned by the Nation. Attached hereto **Exhibit A** is a true and accurate copy of the Second Amended Charter of Seneca that was granted by the Nation's Council. Per that document, Seneca is a 100% wholly-owned corporate entity of the Nation with a principal place of business on the Cattaraugus Reservation, Irving New York 14081. *See* Ex. A. Seneca's limited purpose is to acquire and hold, or to invest in, non-gaming business enterprises as identified by the Nation for economic development or other purposes and to operate and manage such businesses as it may from time to time acquire. *See id.*

Thus, Seneca is bestowed with tribal sovereign immunity, and this Court lacks subject matter jurisdiction and the case should not be amended to add Seneca. *See Danka Funding Co., LLC, supra*, 329 N.J. Super, at 361; *see also Myers v. Seneca Niagara Casino*, 2006 U.S. Dist. LEXIS 73358 (N.D.N.Y.) (holding Seneca Niagara's sister corporation, Seneca Niagara Falls Gaming Corporation enjoys sovereign immunity). Fortunately for Plaintiff, it is not without a remedy and may pursue the party with whom it actually contracted SCMC.

Accordingly, this Court lacks subject matter jurisdiction over Seneca and the proposed cause of action as against same fails as a matter of law.

C. PSI Proposed Amended Complaint fails to State a Cause of Action to Pierce the Corporate Veil as Against Seneca Holdings, LLC

It is a fundamental proposition under New Jersey law that a corporation is a separate entity from its corporate principals. *State of New Jersey, Dep't of Environmental Protection v. Ventron Corp.*, 94 N.J. 473 (1983). Indeed, "a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise." *Id.* Thus, limited liability will normally not be abrogated, even in the case of a parent corporation and its wholly-owned subsidiary. *Id.*

Piercing the corporate veil is a "tool of equity," *Carpenters Health & Welfare Fund v. Kenneth R. Ambrose, Inc.*, 727 F.2d 279, 284 (3d Cir. 1983), a "remedy that is involved when [a subservient] corporation is acting as an alter ego of [a dominant corporation.]". In New Jersey, parent and subsidiary corporations are distinct legal entities and courts are extremely reluctant to pierce the veil between the two entities without **compelling** circumstances. *Gianfredi v. Hilton Hotels Corp.*, CIVA 08-5413 (PGS), 2010 WL 1381900, at *9 (D.N.J. Apr. 5, 2010), report and recommendation adopted, CIV.A. 08-5413 (PGS), 2010 WL 1655635 (D.N.J. Apr. 22, 2010) (*citing Ricoh Co. v. Honeywell*, 817 F.Supp. 473, 481 (D.N.J. 1993)). Significantly, a parent's domination or control of its subsidiary cannot be established by the mere fact that the corporations' boards of directors or officers overlap. *Seltzer v. I.C. Optics, Ltd.*, 339 F.Supp. 2d 601, 610 (D.N.J.

2004); *see United States v. Bestfoods*, 524 U.S. 51, 69 (1998) ("It is a well established principle [of corporate law] that directors and officers holding positions with a parent and its subsidiary can and do 'change hats' to represent the two corporations separately, despite their common ownership.").

In order to state a claim for piercing the corporate veil under New Jersey law, a plaintiff must show that: (1) one corporation is organized and operated as to make it a mere instrumentality of another corporation, and (2) the dominant corporation is using the subservient corporation to perpetrate fraud, to accomplish injustice, or to circumvent the law. *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 149 (3d Cir. 1988); *Major League Baseball Promotion Corp. v. Colour–Tex, Inc.*, 729 F.Supp. 1035, 1046 (D.N.J. 1990). Factors to be considered in determining whether to pierce the corporate veil include:

> gross undercapitalization . . . 'failure to observe corporate formalities, non-payment of dividends, the insolvency of the debtor corporation at the time, siphoning of funds of the corporation by the dominant stockholder, non-functioning of other officers or directors, absence of corporate records, and the fact that the corporation is merely a facade for the operations of the dominant stockholder or stockholders.'

Craig, 843 F.2d at 150 (further citation omitted).

Here, PSI's proposed cause of action to pierce the corporate veil fails as a matter of law. *See Premier Pork L.L.C. v. Westin, Inc.*, No. 07–1661, 2008 WL 724352, at *7 (D.N.J. Mar. 17, 2008) (finding that allegations that one corporation

was a subsidiary of another, that both corporations shared the same chief financial officer, and that one corporation had a controlling interest in the other to be insufficient to pierce the corporate veil); *see also Ramirez v. STi Prepaid LLC*, 644 F. Supp. 2d 496, 508 (D.N.J. 2009). Indeed, Plaintiff makes broad stroke alleged legal conclusions about the undercapitalization of SCMC and that Seneca Holdings "failed to observe corporate formalities in its operations" as the basis for its claim. As this Court is aware, legal conclusions devoid of actual facts are insufficient to state a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted) ("While a complaint . . . does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do."). Therefore, PSI's motion to amend the complaint to add a cause of action to pierce the corporate veil should be denied.

Furthermore, as stated in *Seltzer, supra*, the mere allegation that an officer of a parent company may have a role with the subsidiary company is insufficient as a matter of law to establish the first prong. The only true factual allegation in the proposed complaint related to piercing the corporate veil is that "Matt Jesinsky was president, chief operating officer, or otherwise employed in a position of control within Seneca Holdings. Seneca employees were, at times, directly controlled by Jesinsky or other members of Seneca Holdings." Therefore, PSI fails to establish

prong one of its proposed cause of action, whereby the allegations must show that Seneca Holdings "so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent." *Premier Pork L.L.C.*, 2008 WL 724352, at *5. Put simply, even if this allegation is true—which it is not—the allegation that SCMC was directly controlled "at times" is insufficient as a matter of law.

Likewise, PSI also fails to allege the requisite facts to establish prong two of the analysis to pierce the corporate veil as against Seneca Holdings, which is that the dominant corporation is using the subservient corporation to perpetrate fraud, to accomplish injustice, or to circumvent the law. *See, e.g., Bd. of Trs. of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 171–72 (3d Cir. 2002). With regard to the second element, there must be some "wrong" beyond simply a judgment creditor's inability to collect (otherwise, the corporate veil would be pierced in virtually every case). *The Mall at IV Grp. Properties, LLC v. Roberts*, CIV.A. 02-4692(WHW), 2005 WL 3338369, at *3 (D.N.J. Dec. 8, 2005). To establish this prong, Plaintiff alleges that "[SCMC] was an instrumentality of Seneca Holdings, and was utilized by Seneca Holdings to perpetuate the fraud and to circumvent the liability described more fully in the preceding paragraphs."

To establish a fraud in New Jersey, generally statements as to events to occur in the future may not form the basis of an action for fraud. *Capano v.*

Borough of Stone Harbor, 530 F.Supp. 1254, 1264 (D.N.J. 1982). Indeed, the non-performance of a promise does not by itself make the promise fraudulent. *Barry ex rel. Ross v. New Jersey State Highway Auth.*, 245 N.J.Super. 302, 309–10 (Ch.Div.1990). For a broken promise to constitute a fraud, the promise must have been made with no intention of keeping it. *Capano*, 530 F.Supp. at 1264; *Van Dam Egg Co. v. Allendale Farms, Inc.*, 199 N.J. Super. 452, 457 (App. Div. 1985). The failure to perform itself will not suffice to show that the promisor had no intention of performing when the agreement was entered into. *Notch View Assocs. v. Smith*, 260 N.J. Super. 190, 203 (L. Div. 1992).

To support its allegation for a fraud, PSI appears to allege that SCMC breached its obligation under the implied covenant of good faith and fair dealing by "failing to pay per the terms of the Contract" and that SCMC read in a precondition for payment that PSI claims does not exist. *See* Proposed Complaint [Dkt. No. 53-2] at ¶¶25-26. PSI readily admits that SCMC made payments pursuant to the Contract in its reply to SCMC's counterclaims. *See* Reply [Dkt. No. 8] at ¶ 4. Thus, these allegations merely support PSI's claim for breach of contract and it fails to rise to the level of a fraud under New Jersey law as noted above.

In the alternative, PSI alleges that Seneca Holdings utilized SCMC as a means to circumvent the liability of the Agreement. This allegation also fails as a matter of law. The case law interpreting the second element indicates that the

parent corporation must use the subservient corporation to "circumvent the law" not liability as PSI alleges. *See Foodtown, Inc.*, 296 F.3d at 171–72 (3d Cir. 2002). Furthermore, as noted by the New Jersey Supreme Court, "a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise." Ventron Corp., 94 N.J. 473 (1983). As such, it is indeed proper for a parent corporation to create a subsidiary to shield itself from liability and therefore such conduct does not establish the second element to pierce the corporate veil.

Accordingly, PSI's proposed Amended Complaint fails to state a cause of action to pierce the corporate veil as against Seneca Holdings, LLC and its motion to amend related to same must be denied.

CONCLUSION

For the reasons set forth above SCMC respectfully requests that the Court deny PSI's motion in its entirety and order any such further relief as the Court deems just and proper.

Respectfully Submitted,

/s/ Adam P. Haney

Adam P. Haney (New Jersey Bar #035372012)
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203
E-mail: ahaney@lippes.com
Phone: (716) 853-5100
Fax: (716) 853-5199

B. Kevin Burke, Jr. (Admitted *Pro Hac Vice*)
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, New York 14203
E-mail: kburke@lippes.com
Phone: (716) 853-5100
Fax: (716) 853-5199

ATTORNEYS FOR DEFENDANT

March 7, 2016