

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

WATM LLC d/b/a Stevens & Associates/Stevens Management
Associates v. Payment Alliance International, Inc. v. Richard S.
Townley, an individual

WATM LLC d/b/a Stevens & Associates/Stevens Management Associates v. Payment Alliance International, Inc.
v. Richard S. Townley, Case No. 2:24-cv-00405-JHC · No. 2:24-cv-00405-JHC · Decided January 8, 2026

SUMMARY

The United States District Court for the Western District of Washington resolves the parties’ cross-motions for summary judgment in a dispute concerning the withholding of processing fees generated by scrip ATMs. The court grants WATM LLC and Richard Townley’s motion, grants in part and denies in part Payment Alliance International’s motion, dismissing PAI’s unjust enrichment claim and WATM’s accounting claim while allowing WATM’s unjust enrichment and conversion claims to proceed. The excerpt concludes during the discussion of PAI’s fraud counterclaim.

CASE DETAILS

COURT	United States District Court for the Western District of Washington
WRITING FOR THE COURT	John H. Chun
JURISDICTION	United States District Court for the Western District of Washington
DECIDED	January 8, 2026
DOCKET	2:24-cv-00405-JHC
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for summary judgment in an action involving WATM's claims for conversion, unjust enrichment, and an accounting, and Payment Alliance International's counterclaims for unjust enrichment and common-law fraud.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court views the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party's favor.

PRECEDENTIAL VALUE

Unknown; federal district court order with no reporter citation or stated precedential designation.

TOPICS

summary judgment

unjust enrichment

conversion

fraud

accounting

PRACTICE AREAS

commercial litigation

contracts

torts

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether PAI was entitled to summary judgment on its unjust-enrichment counterclaim based on the services, fees, and alleged business risk associated with WATM's scrip-terminal transactions.
2. Whether PAI was entitled to summary judgment against WATM's unjust-enrichment claim because WATM allegedly was a third-party beneficiary of the ISR Agreement.
3. Whether factual disputes concerning WATM's knowledge of and obligation to comply with the ISR Agreement's scrip-terminal prohibition precluded summary judgment on WATM's conversion claim.
4. Whether WATM could compel an accounting absent evidence of a fiduciary relationship with PAI.
5. Whether PAI's fraud counterclaim failed for lack of evidence of actual damages, and whether Townley could be held personally liable.

HOLDINGS

1. PAI could not establish unjust enrichment because it failed to show that WATM received a benefit at PAI's expense or that PAI provided WATM a compensable benefit by exposing it to legal or business risk.
2. PAI was not entitled to summary judgment on WATM's unjust-enrichment claim merely because WATM might be a third-party beneficiary of the ISR Agreement.
3. Summary judgment was improper on WATM's conversion claim because disputed facts existed concerning whether WATM was bound by the scrip-terminal prohibition and whether PAI's retention of the fees was wrongful.
4. WATM could not compel an accounting because it failed to establish a fiduciary relationship with PAI.
5. PAI's fraud claim failed because PAI presented no evidence of actual damages; unmaterialized legal or business risk was insufficient on this record to satisfy the damages element.

KEY QUOTATIONS

“Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it.” (Discussion § III.B.1)

“Whether money has been wrongfully received or retained is a question of fact” (Discussion § III.C)

“For the reasons above, the Court GRANTS WATM and Townley’s motion for summary judgment and DISMISSES PAI’s unjust enrichment and common law fraud claims with prejudice.” (Conclusion)

FACTUAL BACKGROUND

PAI processed debit, credit, and ATM transactions for WATM through a contractual network involving NYC ATM and Phazari, although WATM had no direct contract with PAI. WATM operated scrip terminals that generated vouchers rather than dispensing cash, and PAI's agreement with NYC ATM prohibited activation of such terminals. Beginning in December 2022, PAI withheld approximately \$1.897 million in surcharge and interchange fees associated with WATM's terminals after investigating the terminals' compliance with network rules. PAI had earned a profit on WATM's transactions, and no Visa or sponsoring-bank fine had materialized.

PROCEDURAL HISTORY

WATM sued Payment Alliance International for conversion and unjust enrichment and sought an accounting after PAI withheld approximately \$1.897 million in fees associated with WATM's scrip ATMs. PAI counterclaimed for unjust enrichment and later amended its counterclaim to assert common-law fraud against WATM and Richard Townley. The court granted WATM and Townley's motion for summary judgment, granted PAI's motion in part, and denied it in part.

DISPOSITION

other

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)
- Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 150–51 (2000)
- Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)
- Young v. Young, 164 Wash. 2d 477, 484, 191 P.3d 1258 (Wash. 2008)
- BOFI Fed. Bank v. Advance Funding LLC, 2015 WL 5008860, at *2 (W.D. Wash. Aug. 20, 2015)
- Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wash. App. 719, 731–32, 741 P.2d 58 (1987)
- Bort v. Parker, 110 Wash. App. 561, 579–80, 42 P.3d 980 (2002)
- Kersteter v. Concrete Sch. Dist., 2022 WL 766218, at *5 (Wash. Ct. App. Mar. 14, 2022)
- Key Dev. Inv., LLC v. Port of Tacoma, 173 Wash. App. 1, 27–31, 292 P.3d 833 (2013)
- Krefting v. Kaye-Smith Enters., Inc., 2023 WL 4846850, at *6–7 (W.D. Wash. July 28, 2023)
- Hold Sec. LLC v. Microsoft Corp., 705 F. Supp. 3d 1231, 1244 (W.D. Wash. 2023)
- Hurlbut v. Crines, 14 Wash. App. 660, 671, 472 P.3d 263 (2020)
- Lonsdale v. Chesterfield, 19 Wash. App. 27, 30, 573 P.2d 822 (Wash. Ct. App.), rev'd, aff'd on other grounds, 91 Wash. 3d 189, 588 P.3d 217 (1978)
- Burton v. Spokane, 16 Wash. App. 769, 773, 482 P.3d 968 (Wash. Ct. App. 2021)

- *Judkins v. Sadler-MacNeil*, 61 Wash. 2d 1, 3, 376 P.2d 837 (1962)
- *Repin v. State*, 198 Wash. App. 243, 271, 392 P.3d 1174 (2017)
- *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1039 (9th Cir. 2010)
- *Public Utility Dist. No. 1 of Lewis County v. Wash. Pub. Power Supply Sys.*, 104 Wash. 2d 353, 378, 705 P.2d 1195 (1985)
- *Taie v. Ten Bridges LLC*, 704 F. Supp. 3d 1147, 1156 (W.D. Wash. 2023)
- *Davenport v. Wash. Educ. Ass'n*, 147 Wash. App. 704, 722, 197 P.3d 686, 695 (2008)
- *Brown ex rel. Richards v. Brown*, 157 Wash. App. 803, 818, 820, 239 P.3d 602 (2010)
- *Vaughn v. Montague*, 924 F. Supp. 2d 1256, 1268 (W.D. Wash. 2013)
- *State v. Taylor*, 58 Wash. 2d 252, 262 (1961)
- *Liebergesell v. Evans*, 93 Wash. 2d 881, 889–90, 362 P.2d 247 (1980)
- *Pope v. Univ. of Wash.*, 121 Wash. 2d 479, 492, 852 P.2d 1055 (1993)
- *Alexander v. Sanford*, 181 Wash. App. 135, 173, 325 P.3d 341 (2014)
- *Adams v. King County*, 164 Wash. 2d 640, 662, 192 P.3d 891 (2008)
- *Stiley v. Block*, 130 Wash. 2d 486, 505, 925 P.2d 194 (1996)
- *Dent v. Nat'l Football League*, 902 F.3d 1109, 1124 (9th Cir. 2018)
- *Guy Mitchell & Betty J. Mitchell Fam. Tr. v. Artists Rts. Enf't Corp.*, 2013 WL 890478, at *7 (E.D. Wash. Mar. 8, 2013)
- *Brewer v. Lake Easton Homeowners Ass'n*, 2 Wash. App. 2d 770, 780–81, 413 P.3d 16 (2018)
- *Gazija v. Nicholas Jerns Co.*, 86 Wash. 2d 215, 219, 543 P.2d 338 (1975)
- *Walston v. Boeing Co.*, 173 Wash. App. 271, 287, 294 P.3d 759 (2013), *aff'd*, 181 Wash. 2d 391, 334 P.3d 519 (2014)
- *Cockrum v. C.H. Murphy/Clark-Ullman, Inc.*, 4 Wash. 3d 873, 891, 569 P.3d 287 (2025)
- *Ortiz v. Perkins & Co.*, 2022 WL 16637993, at *4 (N.D. Cal. Nov. 2, 2022)
- *Inteum Co., LLC v. Nat'l Univ. of Singapore*, 371 F. Supp. 3d 864, 884 (W.D. Wash. 2019)
- *JB Carter Enters., LLC v. Elavon, Inc.*, 854 Fed. Appx. 144, 148 (9th Cir. 2021)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE 7 WATM LLC d/b/a STEVENS & CASE NO. 2:24-cv-00405-JHC 8
 ASSOCIATES/STEVENS MANAGEMENT ASSOCIATES, ORDER 9 Plaintiff-Counterclaim
 Defendant, 10 v. 11 PAYMENT ALLIANCE 12 INTERNATIONAL, INC., 13 Defendant-
 Counterclaim Plaintiff, 14 v. 15 RICHARD S. TOWNLEY, an individual, 16 Counterclaim
 Defendant.

17 18 I 19 INTRODUCTION 20 This matter comes before the Court on the parties' motions for
 summary judgment. See 21 Dkt. ## 94, 100. The Court has considered the materials filed in
 support of and in opposition to 22 the motions, the rest of the file, and the governing law.

The Court finds oral argument unnecessary. Being fully advised, for the reasons below, the Court GRANTS WATM LLC and 24 1 Richard Townley's motion and GRANTS in part and DENIES in part Payment Alliance 2 International's motion. 3 II BACKGROUND 4 These facts are undisputed except where noted. 5 A. The Parties' Relationship 6 Defendant Payment Alliance International (PAI) provides ATM management tools and 7 services across the United States.

Dkt. # 33-2 at 2 ¶ 2. Plaintiff WATM LLC provides ATM 8 and payment-related services to about 300 merchants. Dkt. # 1-2 at 2 ¶ 2. PAI provides 9 processing services to WATM for their debit, credit, and ATM terminals. Dkt. # 33-2 at 2 ¶ 3. 10 This matter concerns PAI's seizure of funds that it alleges WATM generated by 11 operating so-called "scrip" or "script" ATMs, also known as "cashless payment terminals." Dkt.

12 # 100 at 15–16. PAI says that it does not permit the use of scrip terminals in its ATM network, 13 which WATM used. Id. 14 Scrip ATMs work differently than traditional ATMs. While they look like any other 15 ATM terminal, they do not dispense cash: WATM says that they "generate a voucher (aka, the 16 'scrip') that the customer redeems for the product from the merchant." Dkt. # 96 at 58:6–23.

17 PAI says that when a cardholder transacts using a scrip ATM, they enter their debit card and PIN 18 and enter the amount of the sale from the merchant. This figure is "booked as an ATM 19 withdrawal from the customer's account, though no cash is ever dispensed to the customer." 20 Dkt. # 4 at ¶ 10. 21 PAI and WATM do not have a contract. Rather, PAI has a contract, called the ISR 22 Agreement, with a nonparty entity called NYC ATM Corp. See Dkt. # 102 at 2, ¶ 5.

PAI refers 23 to NYC ATM as a "market partner." Dkt. # 101 at 20, 44:20–17. In the ISR Agreement, NYC 24 1 ATM is referred to as the "Independent Sales Representative" or ISR. Dkt. # 102 at 5. In turn, 2 NYC ATM has an agreement with another nonparty called Phazari, which PAI refers to as a "sub 3 partner" of NYC ATM. Dkt. # 101 at 20, 44:20–17. Phazari, then, has an agreement with 4 WATM, making WATM a "sub partner" of Phazari.

Id. PAI also refers to NYC ATM as a 5 "parent partner." Id. at 45:6–7. PAI has no communication with the sub partners and relies on 6 NYC ATM for any communications. Dkt. # 101 at 38:25–39:22. The ISR Agreement permits 7 NYC ATM to connect sub partners to the network provided they have agreements with NYC 8 ATM and abide by certain conditions in the ISR Agreement.

Dkt. # 102 at 9–10, §§ 3.1, 3.5. 9 The way the money exchanges hands, and how these entities make their profit, follows 10 these contractual relationships. When a person uses their debit card on a scrip ATM, the ATM's 11 screen asks notifies the cardholder that they will be charged a fee. Dkt. # 1-2 at 4, ¶ 20. This fee 12 is known as the "surcharge fee," which the cardholder pays.

Id. ¶¶ 19–20. When the cardholder 13 accepts, PAI sends a signal to their bank, which, assuming a balance is available, sends a signal 14 back (via PAI) to dispense the cash, debiting from that

person's account the cash amount as well 15 as the listed (surcharge) fee. Id. ¶ 21; Dkt. # 101 at 39:25–40:8. But the cardholder's bank also 16 pays to a fee, called the "interchange fee," which goes to PAI.

Id. at 40:10–13. PAI, now in 17 possession of the surcharge and interchange fees, subtracts what it calls its "buy-rate." Id. at 18 44:7–45:20 (filed under seal).¹ This buy-rate becomes PAI's profit after it sends a portion of it 19 to PAI's sponsoring bank and pays for overhead. Id. Per the ISR Agreement it has with NYC 20 ATM, PAI then passes the remainder of the fees to NYC ATM, Phazari, and WATM, in separate 21 amounts, according to a split communicated by NYC ATM.

See Dkt. # 102 at 3, ¶ 11; id. at 13, 22 § 7.2. 23 24 1 The unredacted version is located at Dkt. # 106. 1 The ISR Agreement, in a section titled "Covenants of [NYC ATM]," states that "Scrip 2 Terminals will not be activated." Dkt. # 102 at 11, art. V(e).

The ISR Agreement also contains 3 indemnification provisions. One of these provisions states that NYC ATM "shall indemnify and 4 hold [PAI] harmless from any and all liability or Expenses or claims of third parties relating 5 thereto." Id. at 15, § 8.5.

In another provision, NYC ATM agrees to indemnify PAI "against any 6 losses or Expenses arising from any legal action... brought against [PAI] as a result of any 7 misrepresentation, breach of warranty, or failure to fulfill a covenant of this Agreement on the 8 part of ISR, any act or omission of ISR or its providers which violations any law,... or any 9 claim relating to obligations owed to or by ISR or any third party retained by it." Id. at 18, 10 § 12.1(a).

11 WATM says that it learned from another company that PAI supported scrip terminals. 12 See Dkt. # 95 at 3, ¶ 8. After so learning, in 2019, WATM onboarded its business with Phazari, 13 with the understanding that Phazari was a "sub agent" of NYC ATM, itself connected to PAI. 14 See id. ¶¶ 8–12. PAI denies that it ever represented that it supports scrip terminals, pointing to 15 its ISR Agreement.

Dkt. # 102 at 11, art. V(e). 16 B. Facts Giving Rise to Suit 17 Starting in February 2022, apparently spurred on by the risk of liability to Visa and its 18 sponsoring bank MetaBank (both nonparties), PAI began actively searching its network for 19 connected scrip terminals. See Dkt. # 132 at 90–91, 97:23–98:17. Visa does not permit the use 20 of scrip terminals in its network.

See id. at 26–27. PAI undertook a significant effort, which it 21 internally called "Project Up in Smoke" or "Project Smoke," to identify and disconnect from its 22 network suspected scrip terminals. See id. at 81–82, 46:1–47:7 (filed under seal).² This effort 23 24 2 Sealed unredacted: Dkt. # 119 at 21–22, 46:9–47:7. 1 involved developing a method to identify suspected scrip terminals, see id., as well as physically 2 inspecting several.

See Dkt. # 122 (filed under seal).³ 3 Though the coordinated effort appears to have begun in February 2022, PAI appears to ⁴ have known by December 2020 that at least some of the terminals that WATM had connected to ⁵ its network via the sub partners were scrip terminals.

In December 2020, a PAI employee told a ⁶ senior vice president that he was “95% sure” that a list of terminals circulated internally through ⁷ PAI were scrip terminals. See Dkt. # 130 at 69–70. That vice-president felt certain enough in ⁸ the identification (despite the lack of 100% certainty) that he instructed the first employee to shut ⁹ down eight of the suspected terminals.

See *id.* at 71–72. By July 2021, PAI had identified ¹⁰ hundreds more WATM terminals that it believed were scrip machines. See *id.* at 75–88. ¹¹ Another PAI employee stated, of these hundred terminals, that it was “CLEAR as DAY” that ¹² many of these were scrip terminals. See Dkt. # 96-1 at 147. But at that time, PAI did not shut ¹³ down or disconnect the terminals, as senior PAI employees testified in depositions.

See, e.g., ¹⁴ Dkt. # 98 at 43, 162:20–23 (filed under seal); *id.* at 122, 147:19–24 (filed under seal). Thus, PAI ¹⁵ was aware by July 2021 that WATM had connected many scrip terminals to their network, but it ¹⁶ was not until the first half of 2022 that PAI undertook a concerted effort to remove them from ¹⁷ the network. ¹⁸ In December 2022, having identified connected scrip ATMs belonging to WATM, PAI ¹⁹ began to withhold the fees from NYC ATM and WATM.

See Dkt. # 1-2, ¶ 35; Dkt. # 4, ¶ 35. ²⁰ PAI notified NYC ATM that the activation of scrip terminals contravened their contract. Dkt. # 21 101 at 90. PAI did not notify WATM or Phazari. The total amount of fees withheld by PAI at ²² ²³ ²⁴ 3 Sealed unredacted: Dkt. # 119 at 122, 25:17–22. ¹ that time was \$1,897,003.37, Dkt. # 130 at 3, and PAI indicates that this figure includes amounts ² that PAI would have passed on to NYC ATM, Phazari, and WATM.

Dkt. # 100 at 9, n. 8. ³ C. Procedural Background ⁴ In March 2024, WATM sued PAI, claiming conversion and unjust enrichment and ⁵ seeking an accounting. See Dkt. # 1-2. PAI counterclaimed for unjust enrichment. See Dkt. # 4. ⁶ PAI later amended its counterclaim to add a common law fraud claim against both WATM and ⁷ its manager, Steven Townley, in his personal capacity.

See Dkt. # 84. The parties now cross- ⁸ move for summary judgment, seeking dismissal of the other parties’ claims. See Dkt. # 94 ⁹ (WATM and Townley’s motion seeking dismissal of PAI’s counterclaims); Dkt. # 100 (PAI’s ¹⁰ motion seeking dismissal of WATM’s claims). ¹¹ III DISCUSSION ¹² A. Summary Judgment Standard ¹³ Summary judgment is appropriate if there is no genuine dispute as to any material fact ¹⁴ and the moving party is entitled to judgment as a matter of law.

See Fed. R. Civ. P. 56(a). The ¹⁵ moving party bears the initial burden of demonstrating the absence of a genuine issue of material ¹⁶ fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323

(1986). If the moving party meets the 17 initial burden, the opposing party must set forth specific facts showing that there is a genuine 18 issue of fact for trial to defeat the motion.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 19 (1986). The court must view the evidence in the light most favorable to the nonmoving party 20 and draw all reasonable inferences in that party's favor. *Reeves v. Sanderson Plumbing Prods.*, 21 530 U.S. 133, 150-51 (2000). But a court will not "scour the record in search of a genuine issue 22 of triable fact." *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir.

1996). 23 24 1 B. Unjust Enrichment 2 To prevail on an unjust enrichment claim, a plaintiff must show that (1) it conferred a 3 benefit on the defendant, which came at its own expense; (2) the defendant knew and appreciated 4 the benefit; and (3) this occurred under such circumstances as to make it inequitable for the 5 defendant to retain the benefit without the payment of its value.

Young v. Young, 164 Wash. 2d 6 477, 484, 191 P.3d 1258 (Wash. 2008) (citation omitted). "Unjust enrichment is the method of 7 recovery for the value of the benefit retained absent any contractual relationship because notions 8 of fairness and justice require it." *Id.* "The core of unjust enrichment is the notion that a 9 defendant has received a right or benefit that belonged to the plaintiff." BOFI Fed.

Bank v. 10 Advance Funding LLC, 2015 WL 5008860, at *2 (W.D. Wash. Aug. 20, 2015) (citing *Young*, 11 164 Wash. 2d at 484); see also *Farwest Steel Corp. v. Mainline Metal Works, Inc.*, 48 Wash. 12 App. 719, 731–32, 741 P.2d 58 (1987) (requiring the defendant's enrichment to be "at the 13 expense of another contrary to equity"). 14 1. PAI's unjust enrichment claim 15 PAI's pleading and briefing do not make clear what set of funds is at issue with respect to 16 its unjust enrichment claim.

There appear to be three potential pots. In its amended 17 counterclaim, PAI states that it seeks recovery in unjust enrichment for the "services and 18 resources relating to ATM terminals" that it provided to WATM. See Dkt. # 84 at ¶¶ 30–32. 19 But it also appears to consider the fees that it did distribute to WATM, and would have 20 distributed to WATM if not for its seizure, as the funds at issue.

See *id.* ¶ 31. PAI contends that 21 because WATM's conduct (operating scrip terminals) was illegal under the ISR Agreement (to 22 which WATM is not a party), it has "superior possession rights" to the fees it withheld from 23 WATM. Dkt. # 115 at 20.

The ISR Agreement states that PAI has the "sole and exclusive right, 24 title and interest in and to all Processing Fees," and that any disbursement of those fees is 1 "[s]ubject to the terms and conditions" of the ISR Agreement, which includes a prohibition on 2 the activation of scrip terminals. See Dkt. # 102 at 13–14, §§ 7.2(a), 7.3. PAI also states that the 3 risk of fines that Visa could have imposed constitutes a basis for recovery in unjust enrichment.

4 See Dkt. # 115 at 21–23. 5 WATM says that PAI profited off WATM’s transactions, which undermines the latter’s 6 unjust enrichment claim. See Dkt. # 94 at 22–25. WATM says it is undisputed that PAI 7 received the expected buy rate from every transaction in processed.

Thus, it cannot be said that 8 any of the benefits WATM received were “at PAI’s expense,” and PAI cannot sustain an unjust 9 enrichment claim. 10 WATM’s argument prevails for two reasons. First, with respect to the fees, PAI’s 11 claimed “superior possession rights” does not align with any of the three elements of the unjust 12 enrichment standard.

The phrase appears to gesture at the third element, that WATM’s receipt of 13 fees transmitted by PAI occurred “under such circumstances as to make it inequitable for 14 [WATM] to retain the benefit without the payment of its value.” See *Young*, 164 Wash. 2d at 15 484.

Moreover, this argument appears to make little sense considering that the source of the 16 funds to which PAI claims superior possession are the cardholders, banks, and card networks that 17 send it fees—not PAI. See Part II.A, above, at page 3.

Second, with respect to services and 18 resources as well as the fees, that PAI profited from its relationship with WATM vitiates its 19 argument that it would be unjust for WATM to retain any benefits it received. WATM has 20 adduced evidence, unrebutted by PAI, that PAI profited from WATM’s transactions. A senior 21 22 4 Indeed, unjust enrichment claims often concern the value of unpaid work and courts have noted their similarity to quantum meruit claims.

See, e.g., *Bort v. Parker*, 110 Wash. App. 561, 579–80, 42 23 P.3d 980 (Wash. Ct. App. 2002) (“[u]njust enrichment and quantum meruit are related doctrines” and reversing summary judgment that dismissed a contractor’s unjust enrichment and quantum meruit 24 claims). 1 vice-president at PAI testified under oath that PAI’s processing of WATM’s transactions were 2 always “net positive” and that they were “always in the black” for PAI.

See Dkt. # 96-1 at 17, 3 41:2–19. PAI’s 30(b)(6) representative testified under oath that he agreed with the statement that 4 “PAI made money off of all of WATM’s transactions” and that “every transaction of WATM’s 5 was profitable for PAI.” See *id.* at 110, 144:16–21. And PAI has presented no evidence to rebut 6 this testimony. While it asserts in its brief that “it is a question of fact whether PAI even did 7 ‘profit’ from WATM’s illicit transactions,” Dkt. # 115 at 21, at summary judgment, PAI must 8 point to evidence.

See *Celotex Corp.*, 477 U.S. at 322. 9 Nor can PAI sustain an unjust enrichment claim on the basis that the “risk” it faced 10 amounts to a benefit that it provided WATM for which it must be compensated. It identifies no 11 caselaw in which a court authorized recovery for “exposure to risk” through an unjust 12 enrichment claim, nor can the Court locate any.

The only authority PAI marshals supports the 13 proposition that intangible harms like an exposure to business risk may be factored as damages. 14 See Dkt. # 115 at 22 (citing *Inteum Co., LLC v. Nat’l Univ. of Singapore*, 371 F. Supp. 3d 864, 15 884 (W.D. Wash. 2019); *JB Carter Enters., LLC v. Elavon, Inc.*, 854 Fed. Appx. 144, 148 (9th 16 Cir. 2021)). This is true but beside the point: While exposure to risk may constitute damages, it 17 is not a “benefit” provided to WATM that could establish an unjust enrichment claim.

Summary 18 judgment dismissal must be granted with respect to PAI’s unjust enrichment claim. 19 2. WATM’s unjust enrichment claim 20 PAI contends that WATM cannot sustain an unjust enrichment claim because WATM is 21 an intended third-party beneficiary to the ISR Agreement. See Dkt. # 100 at 22–24.

Because it 22 is a third-party beneficiary, in PAI’s telling, it is subject to that contract and cannot bring an 23 unjust enrichment claim. *Id.* at 22 (citing *Kersteter v. Concrete Sch. Dist.*, 2022 WL 766218, at 24 *5 (Wash. Ct. App. Mar. 14, 2022)). PAI says that WATM must be considered a third-party 1 beneficiary because it will receive “direct benefits” from the ISR Agreement.

Id. at 23 (citing 2 *Key Dev. Inv., LLC v. Port of Tacoma*, 173 Wash. App. 1, 27–31, 292 P.3d 833 (Wash. Ct. App. 3 2013)); see also *Krefting v. Kaye-Smith Enterprises, Inc.*, 2023 WL 4846850, *7 (W.D. Wash. 4 July 28, 2023) (a party is a third-party beneficiary if performance of the contract will 5 “necessarily and directly benefit the party”). PAI says that the ISR Agreement envisions 6 benefiting third parties like WATM, since it states that PAI will provide services to ATMs either 7 owned or operated by NYC ATM or by a third-party “ATM Operator” with whom NYC ATM 8 contracts.

See *id.* at 23. 9 WATM says that it is not a third-party beneficiary. But even assuming WATM is a third- 10 party beneficiary, Washington law does not appear to preclude a party from asserting an unjust 11 enrichment claim where it could assert a third-party beneficiary claim but has chosen not to do 12 so. It is true that a “plaintiff who is party to a valid contract may not bring a claim for unjust 13 enrichment for issues arising under the contract’s subject matter.” See *Hold Sec. LLC v. 14 Microsoft Corp.*, 705 F. Supp. 3d 1231, 1244 (W.D.

Wash. 2023); see also *Hurlbut v. Crines*, 14 15 Wash. App. 660, 671, 472 P.3d 263 (Wash. Ct. App. 2020) (between parties subject to a disputed 16 easement, “the courts will not allow a claim for unjust enrichment in contravention of a provision 17 in a valid express contract.”). This accords with the proposition that a third-party beneficiary 18 may sue on a contract if that contract “is for his direct benefit,” but not if “his benefit under it is 19 merely incidental, indirect, or consequential.” *Lonsdale v. Chesterfield*, 19 Wash. App.

27, 30, 20 573 P.2d 822 (Wash. Ct. App.), *rev’d, aff’d* on other grounds, 91 Wash. 3d 189, 588 P.3d 217 21 (Wash. 1978). But it does not follow, from these propositions, that a third-party

beneficiary, 22 who is not a “party” to the contract, is similarly barred from asserting an unjust enrichment 23 claim. Unjust enrichment “is the method of recovery for the value of the benefit retained absent 24 any contractual relationship.” See *Young*, 164 Wash. 2d at 484.

This definition does not exclude 1 recovering in unjust enrichment even though the plaintiff may also be a third-party beneficiary. 2 PAI cites no Washington case law holding that a third-party beneficiary has no unjust enrichment 3 claim on subject matter covered by the contract benefitting them as a third party, nor has the 4 Court located any. 5 PAI’s only case is distinguishable.

In *Krefting v. Kaye-Smith Enterprises*, the plaintiff 6 sued his bank and its printing vendor, claiming unjust enrichment following a data breach 7 affecting the vendor that revealed the personally identifiable information of the bank’s 8 customers. See 2023 WL 4846850, at *1.

The plaintiff had a contract with the bank, but not 9 with the vendor. The court dismissed the plaintiff’s unjust enrichment claim because of the 10 existence of the contract, reasoning that it covered the subject matter of his unjust enrichment 11 claim, even though the vendor was not a party to it. *Id.* at *6–7. *Krefting* supports the 12 proposition that a plaintiff who is a party to an express contract may not assert an unjust 13 enrichment claim against a noncontractual defendant.

It does not follow, as PAI asserts, that the 14 inverse is true: that WATM may not assert an unjust enrichment claim because the ISR 15 Agreement covers the subject matter of the dispute. Put differently, WATM has signed no 16 contract covering the subject matter of their unjust enrichment claim, and so they may assert that 17 claim. 18 PAI raises no other arguments about the impropriety of WATM’s unjust enrichment 19 claim.

Accordingly, the Court must deny PAI’s motion for summary judgment. While perhaps 20 Washington law prevents a third-party beneficiary from asserting both an unjust enrichment 21 claim and a remedy on that contract, that is not the scenario presented here, where WATM does 22 not assert a contract claim. 23 24 1 C. WATM’s Conversion Claim 2 To demonstrate a claim for conversion, a plaintiff must show: (1) willful interference 3 with chattel belonging to the plaintiff; (2) by either taking or unlawful retention; (3) thereby 4 depriving the owner of possession.

Burton v. Spokane, 16 Wash. App. 769, 773, 482 P.3d 968 5 (Wash. App. 2021) (citing *Judkins v. Sadler-MacNeil*, 61 Wash. 2d 1, 3, 376 P.2d 837 (Wash. 6 1962)). The “essence” of conversion is the dispossession of property from its rightful owner. 7 *Repin v. State*, 198 Wash. App. 243, 271, 392 P.3d 1174 (Wash. App. 2017). Money can be the 8 subject of conversion “if the party charged with conversion wrongfully received the money or 9 had an obligation, which it failed to honor, to return the specific money to the party claiming it.” 10 See *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1039 (9th Cir.

2010) (citing *Public Utility Dist. 11 1 of Lewis Cnty. v. Wash. Pub. Power Supply Sys.*, 104 Wash. 2d 353, 378, 705 P.2d 1195 12 (Wash. 1995)). 13 PAI argues that WATM cannot maintain a claim

for conversion because it cannot 14 establish that PAI “wrongfully received” the funds (i.e., the surcharge and interchange fees) at 15 issue. Dkt. # 100 at 25–26 (citing *Taie v. Ten Bridges LLC*, 704 F. Supp. 3d 1147, 1156 (W.D.

16 Wash. 2023)). PAI says that for it to have “wrongfully received” the money, WATM would have 17 to establish “a right to possession of” that money, which it cannot do because it did not comply 18 with the ISR Agreement. *Id.* In any event, PAI says, it cannot be said to have “wrongfully 19 received” that money because all it did was retain the funds at issue: It did not wrongfully 20 receive the surcharge and interchange fees because it collected those fees in the performance of 21 the ISR Agreement.

Id. at 27–28. 22 WATM responds that the applicable legal standard permits conversion claims when the 23 accused party “had an obligation, which it failed to honor, to return the specific money to the 24 party claiming it.” Dkt. # 111 at 26 (citing *Taie*, 704 F. Supp. 3d at 1156). WATM has a 1 claimed property interest in the funds since the \$1.8 million in withheld fees were generated by 2 terminals that it managed.

Id. at 27. “Even if PAI was under the mistaken belief it could 3 withhold the funds,” WATM argues, “PAI’s willful interference with WATM’s possession of its 4 earned revenue is sufficient to establish a claim of conversion.” *Id.* at 27–28 (citing *Brown ex 5 rel. Richards v. Brown*, 157 Wash. App. 803, 820, 239 P.3d 602 (Wash. 2010)). Further, 6 WATM says, “[w]hether money has been wrongfully received or retained is a question of fact.” 7 *Id.* at 27 (citing *Brown*, 157 Wash. App.

803 at 818. 8 Whether WATM has a property interest in the funds at issue sufficient to maintain its 9 conversion claim depends on whether PAI “was under obligation to return the specific money to 10 the party claiming it.” *Davenport v. Wash. Educ. Ass’n*, 147 Wash. App. 704, 722, 197 P.3d 11 686, 695 (2008) (citing *Public Util. Dist. No. 1*, 104 Wash. 2d at 378).

Thus, the key question is 12 whether PAI’s retention of the funds was wrongful in some way. At the very least, there are 13 questions of fact as to whether WATM was bound by the prohibition on scrip terminals. To be 14 sure, WATM is not a party to the ISR Agreement. Nor is it clear that WATM knew of the ISR 15 Agreement’s prohibition on scrip terminals. WATM states that Phazari led it to believe that PAI 16 supported scrip terminals.

See Dkt. # 95 at 3, ¶¶ 11–14. Further, NYC ATM also appears to 17 have believed that PAI supported scrip terminals. See Dkt. # 130 at 18 (Dar Reynolds, employee 18 of NYC ATM, stating that he “truly didn’t know” that scrip terminals were “not allowed”).

On 19 the other hand, WATM did receive what was described as an “auto-generated” email from PAI 20 in which PAI said that it did not permit scrip terminals on its network. See Dkt. # 118 at 94,

21 115:1–16 (30(b)(6) deposition). 22 The rest of the ISR Agreement suggests that the risk of connecting noncompliant ATMs, 23 like scrip terminals, to PAI’s network falls on NYC ATM.

In no provision of the ISR 24 Agreement does NYC ATM promise that its submarket partners like WATM will abide by the 1 provisions of the ISR Agreement. Section 8.3 provides that NYC ATM will be liable for any 2 claim by someone using an ATM “as a result of the failure of [NYC ATM] or any of [NYC 3 ATM’s] ATM Operator’s [sic] to comply with the Rules, Network or applicable Regulatory 4 Authority.” Id. § 8.3.

The ISR Agreement’s indemnification provision states that NYC ATM 5 “covenants and agrees to indemnify and hold harmless [PAI]... against any losses or Expenses 6 arising from any legal action, claim, demand or proceedings brought against any of them as a 7 result of any misrepresentation, breach of warranty or failure to fulfill a covenant of this 8 Agreement on the part of [NYC ATM], any act or omission of [NYC ATM] or its providers 9 which violates any law, By-laws or Governmental Requirements, or any claim relating to 10 obligations owed to or by [NYC ATM] or any third party retained by it.” Id. § 12.1(a).

These 11 provisions suggest that any harm befalling PAI for WATM’s use of scrip terminals is redressable 12 by NYC ATM, which does not permit PAI to withhold funds from WATM for using scrip 13 terminals. 14 As there are issues of fact as to whether WATM is bound by the prohibition on scrip 15 terminals, there are questions as to whether it was wrongful for PAI to withhold funds that 16 arguably belonged to WATM, because they were generated by WATM’s terminals.

Ultimately, 17 because “[w]hether money has been wrongfully received or retained is a question of fact,” 18 Brown, 157 Wash. App. at 818, and as those fact questions are disputed, the Court must deny 19 PAI’s motion as to WATM’s conversion claim. 20 D. WATM’s accounting claim 21 “To compel an accounting, a plaintiff must show (1) that a fiduciary relationship exists 22 between the parties; (2) that the plaintiff has demanded an accounting from the defendant; and 23 (3) that the defendant refused.” Vaughn v. Montague, 924 F. Supp. 2d 1256, 1268 (W.D.

Wash. 24 2013) (citing State v. Taylor, 58 Wash. 2d 252, 262 (1961)). 1 PAI argues that WATM cannot make the necessary showing to compel an accounting 2 because no fiduciary relationship exists between PAI and WATM, WATM never demanded that 3 accounting, and, in any event, discovery in the litigation has revealed to WATM the financial 4 information that an accounting would provide.

See Dkt. # 100 at 28–30. WATM says that the 5 facts of PAI and WATM’s relationship establish PAI’s fiduciary obligations to WATM, and that 6 in response to its discovery requests PAI has not provided a full accounting, preventing it from 7 determining its exact damages. See Dkt. # 111 at 28–30. 8 A “fiduciary relationship can [] arise in fact regardless of the relationship in law between 9 the parties.” Liebergesell v. Evans, 93 Wash. 2d 881, 890, 362 P.2d 247 (Wash.

1980). They may arise where “one party has superior knowledge and thereby induces reliance in the other party.” *Pope v. Univ. of Wash.*, 121 Wash. 2d 479, 492, 852 P.2d 1055 (Wash. 1993) (citing *Liebergessel*, 93 Wash. 2d at 891). “Generally, participants in a business transaction deal at arm’s length.” *Liebergessel*, 93 Wash. 2d at 889. A “fiduciary relationship arises in fact when there is something in the particular circumstances which approximates a business agency, a professional relationship, or a family tie, something which itself impels or induces the trusting party to relax the care and vigilance which he otherwise should, and ordinarily would, exercise.” *Alexander v. Sanford*, 181 Wash. App.

135, 173, 325 P.3d 341 (Wash. Ct. App. 2014) (citations omitted). The Court must dismiss WATM’s accounting claim because there is no fiduciary relationship between PAI and WATM. The record shows that the only relationship between the parties was PAI’s transmittal (until it stopped) of fees generated by WATM’s scrip terminals to WATM. WATM argues that PAI’s role as a “collector and distributor of WATM’s funds sufficiently establishes the fiduciary nature” of the parties’ relationship.

See Dkt. # 111 at 29. But PAI’s point that this relationship is more like that between a bank and its depositors is well-taken, and under Washington law, banks do not owe fiduciary duties to their deposit customers. See Dkt. # 121 at 12 (citing *Tokarz v. Frontier Fed. Sav. & Loan Ass’n*, 33 Wash. App. 456, 458–59, 656 P.2d 1089 (Wash. Ct. App. 1982) (“As a general rule, the relationship between a bank and a depositor or customer does not ordinarily impose a fiduciary duty of disclosure upon the bank.”)).

Nothing in the record shows that PAI made statements to WATM or otherwise induced WATM’s reliance on its advice such that a fiduciary relationship could exist between them. E. PAI’s Fraud Claim against WATM and Townley To demonstrate fraud, a plaintiff must establish each of these elements: “(1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker’s knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff’s ignorance of its falsity; (7) plaintiff’s reliance on the truth of the representation; (8) plaintiff’s right to rely upon it; and (9) damages suffered by the plaintiff.” *Adams v. King Cnty.*, 164 Wash. 2d 640, 662, 192 P.3d 891 (Wash.

2008) (citing *Stiley v. Block*, 130 Wash. 2d 486, 505, 925 P.2d 15 194 (Wash. 1996)). Each element of fraud must be established by clear, cogent, and convincing evidence. *Stiley*, 130 Wash. 2d at 505. WATM and Townley seek summary judgment dismissal of PAI’s fraud claim. They contend that PAI cannot show two required elements. WATM says that, first, PAI cannot show damages, because it profited from the alleged fraud.

Dkt. # 94 at 26–27. Second, WATM says that, even assuming WATM made misrepresentations, PAI cannot show ignorance of this misrepresentation, because it knew that the terminals were cashless and continued processing them for years. *Id.* at 27–30. Last, WATM says that Townley

cannot be held liable because PAI 23 cannot demonstrate sufficient cause to pierce the corporate veil, since Townley acted as 24 1 WATM's manager and did not abuse "the corporate form" to "violate or evade a legal 2 obligation." Id. at 31 (citation omitted).

3 PAI responds that it suffered actual damages in the form of the fees it did transmit to 4 WATM, as well as the risk it faced when WATM connected scrip terminals. Dkt. # 115 at 24. 5 PAI also says that it relied on WATM's fraudulent misrepresentations, and that, in any event, the 6 question is one of fact that should go to a jury because its reliance on the alleged 7 misrepresentation was not "manifestly unreasonable in the light of [their] own intelligence or 8 information." Id. (citing *Dent v. Nat'l Football League*, 902 F.3d 1109, 1124 (9th Cir.

2018)). 9 PAI also says that the law allows Townley to be held personally liable because he "personally" 10 directed the alleged scheme to defraud PAI. Dkt. # 115 at 26–27. 11 Because PAI did not actually lose money on any of the transactions it processed from 12 WATM, as recounted above, PAI's fraud claim relies on the theory that its exposure to legal risk 13 could constitute damages that would satisfy the fraud standard.

Though a defrauded plaintiff is 14 entitled to recover damages "for losses proximately caused by the fraudulent conduct," *Guy 15 Mitchell & Betty J. Mitchell Fam. Tr. v. Artists Rts. Enf't Corp.*, 2013 WL 890478, at *7 (E.D. 16 Wash. Mar. 8, 2013), PAI identifies no cases in which courts have permitted a plaintiff to show 17 damages in a fraud claim by pointing to increased legal risk, or unmaterialized future risk at all.

18 As far as the record shows, neither Visa nor any other bank or network has fined PAI. In other 19 tort contexts, a plaintiff "must be able to point to more than a 'mere danger of future harm, 20 unaccompanied by present damage.'" *Brewer v. Lake Easton Homeowners Assoc.*, 2 Wash. 21 App. 2d 770, 780–81, 413 P.3d 16 (Wash. Ct. App. 2018) (citing *Gazija v. Nicholas Jerns Co.*, 22 86 Wash.2d 215, 219, 543 P.2d 338 (Wash.

1975); see also *Walston v. Boeing Co.*, 173 Wash. 23 App. 271, 287, 294 P.3d 759 (Wash. Ct. App. 2013) (in worker's compensation claim, the "[r]isk 24 of injury, even risk amounting to substantial certainty of injury, is not certain injury" sufficient to 1 show harm for damages), *aff'd*, 181 Wash. 2d 391, 334 P.3d 519 (Wash. 2014), overruled on 2 other grounds by, *Cockrum v. C.H.*

Murphy/Clark-Ullman, Inc., 4 Wash. 3d 873, 891, 569 P.3d 3 287 (Wash. 2025). 4 PAI points to persuasive authority that "the time spent dealing with the [future] harm' 5 and other, similarly intangible harms, are cognizable injuries, so long as the harm being avoided 6 is not speculative." Dkt. # 115 at 24 (citing *Ortiz v. Perkins & Co.*, 2022 WL 16637993, at *4 7 (N.D.

Cal. Nov. 2, 2022)). First, Ortiz discusses injury for standing purposes, not damages in a 8 fraud case. And in any event, the opinion is limited to the data breach context in which "the 9 information stolen could be used to commit identity theft." Id. Since, presumably, the point of a 10

data breach is to gather information with which to commit identity theft, the risk of such identity theft follows proximately from that data breach, which confers standing on those whose information was stolen.

PAI also says that intangible harms like lost profits, lost business opportunities, lost existing and new business, and reputational harm can satisfy the fraud standard's damages provision, see Dkt. # 115 at 22, but PAI has not alleged that any of these intangible harms actually occurred, much less presented any evidence. And the other cases that PAI relies on suggest that actual damages are required.

In *Inteum Co.*, a court in this District rejected an unjust enrichment claim because the plaintiff did not offer "evidence showing that it has suffered any actual loss from the alleged misappropriations, such as lost profits or business opportunities." 371 F. Supp. 3d at 884.

In *JB Carter Enterprises*, the Ninth Circuit evaluated Nevada law, and in any event only reinstated a negligent misrepresentation claim because the record "contain[ed] evidence showing that" the plaintiff "suffered some amount of reputational harm to its business." 854 Fed. Appx. at 148. Because PAI does not present evidence of damages, its fraud claim fails.

IV 5 CONCLUSION 3 For the reasons above, the Court GRANTS WATM and Townley's motion for summary judgment and DISMISSES PAI's unjust enrichment and common law fraud claims with 5 prejudice. The Court GRANTS in part and DENIES in part PAI's summary judgment motion and DISMISSES WATM's accounting claim with prejudice. 7 Dated this 8th day of January, 2026.

10 John H. Chun United States District Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24