

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

CONGREGATION HAKSHIVAH, d/b/a/
GEMACH L'SIMCHOS

Plaintiffs,

- against -

HERSH DEUTSCH and
DEUTSCHE VENTURE CAPITAL LLC,

Defendants.

Index No.

Motion Sequence 001

**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF'S REQUEST FOR AN ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION WITH TEMPORARY RESTRAINING ORDER**

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PRELIMINARY STATEMENT

Plaintiff Congregation Hakshivah, d/b/a Gemach L'Simchos ("Hakshivah/GLS") respectfully submits this memorandum of law in support of its application for an Order to Show Cause for Preliminary Injunction with Temporary Restraining Order under CPLR 2214(d), 6301 and 6313(a), and Commercial Division Rule 19. Plaintiff seeks relief against defendant Hersch Deutsch ("Deutsch") and his company, defendant Deutsche Venture Capital LLC ("DVC"). Hakshivah/GLS make this application by an Order to Show Cause because it is emergent and imperative that defendants be immediately enjoined from continuing in their fraudulent course of conduct which is resulting in irreparable harm to plaintiff given its inability to continue to engage in business. For the reasons set forth below and in the accompanying affidavit of Arya Gottesman ("Gottesman"), Hakshivah/GLS's President, and the affidavit of Abraham Bernath, a principal in Transmedia Payment Services Ltd. ("Transmedia"), a company that assists individuals and businesses in the handling of chargeback disputes, we respectfully request that this Court grant the requested Order in its entirety.

STATEMENT OF FACTS

Congregation Hakshivah is a religious not-for-profit organization that runs various aid and assistance programs in both the United States and abroad. Gottesman Aff. ¶1. Among its many projects is a free loan society run under GLS that provides free loans to individuals and business primarily in Brooklyn. *Id.* GLS is funded through donations and loans it receives. A critical component of Hakshivah's and GLS's operation is its ability to transact via credit card. Among its community network of donors, is an individual named Joel Klein ("Klein"), known in the community as a successful real estate investor, and who was an active donor and participant in the various charitable projects undertaken by Hakshivah.

In July 2017, Hakshivah/GLS's President Gottesman was approached by Klein, who requested assistance in obtaining short-term loans from certain individuals who were willing to provide such loans via credit card. Gottesman Aff. ¶3. Klein requested that Hakshivah/GLS facilitate the processing of the loan card transactions, then advance those monies to his companies and that he would then repay the lender directly when the loan came due. *Id.* ¶4. Klein assured Hakshivah/GLS that it would pay any fees that Hakshivah/GLS incurred as a result of the expenses involved in facilitating the card processing and transfer transactions, and that it would ultimately make a donation to Hakshivah/GLS as it did in the past. *Id.* In other instances, not relevant here, Hakshivah/GLS sought out lenders for Klein in the hope that when the investments were successful Hakshivah/GLS would be the recipient of a donation from Klein and the satisfied investors. *Id.* ¶5.

In consideration of its ongoing relationship with Klein, Hakshivah/GLS facilitated these transactions on numerous occasions from on or about August 2017 through November 2018, and as soon as the credit card processor credited Hakshivah/GLS, these funds were transferred to the accounts directed by Klein. Gottesman Aff. ¶5. The credit cards used in these transactions were from several different individuals, and Klein always represented that he was authorized by the cardholder to use the card. *Id.* In other instances, Hakshivah/GLS would also advance interest free short-term loans to Klein, Klein would later repay these loans with credit cards from different individuals who authorized their credit cards to be charged to Hakshivah/GLS. *Id.* In these latter cases, Hakshivah/GLS would have advanced funds to Klein before any particular credit card transactions had taken place. *Id.*

As relevant here, in November 2017, among the card transactions submitted by Klein to Hakshivah/GLS, were card transactions that involved a cardholder named Hersh Deutsch.

Gottesman Aff. ¶6. Klein informed Hakshivah/GLS that Hersh Deutsch was extending him a short-term loan via his credit card, and that Deutsch had authorized Klein to charge Deutsch's credit card through Hakshivah/GLS. *Id.* On November 16, 2017, Hakshivah/GLS charged \$20,000 to Deutsch's American Express Card ending in 1002. *Id.* At that same time, Hakshivah/GLS also had other transactions with Klein not affiliated with Deutsch for another \$62,000. *Id.* Per the directions of Klein, on November 20, 2017 Hakshivah/GLS forwarded the credit for the total amount of \$82,000 to Klein's company Joel K Holding Company, LLC. *Id.* Deutsch told Klein that the monies for his \$20,000 loan had to be repaid by January 8, 2018. Bernath Aff. ¶8. And, true to his word, on January 8, 2018 Klein repaid Deutsch the \$20,000 charge with check#1796 payable to Deutsch Venture Capital. *Id.* and Bernath Exhibit B.¹

Hakshivah/GLS was again approached by Klein throughout January and February 2018 to run similar charges on Deutsch's cards. Gottesman Aff. ¶7. For example, from January 18 to February 16 the following charges totaling \$445,000 were made through Hakshivah/GLS using the Deutsch credit cards:²

Credit Card	Charge Date	Amount
Mastercard ending 8498	Jan 18, 2018	\$50,000
American Express ending 1006	Jan 18, 2018	\$50,000
Visa ending 9813	Jan 30, 2018	\$100,000
American Express ending 2000	Feb. 1, 2018	\$80,000
American Express ending 2000	Feb. 2, 2018	\$20,000

¹ Deutsch authorized another charge for \$50,000 using his Mastercard ending 8498 on November 24, 2017. Deutsch has not disputed this charge – nor should he – since WhatsApp chat messages reveal that it was completely authorized. We note it here for the sake of completeness.

² Deutsch authorized other charges on January 16, February 18 and February 22, which have not been disputed to date, and which the chat messages confirm were completely authorized.

American Express ending 2000	Feb. 16, 2018	\$75,000
American Express ending 2000	Feb. 16, 2018	\$25,000
American Express ending 2000	Feb. 17, 2018	\$20,000
American Express ending 2000	Feb. 17, 2018	\$25,000

After receiving payment on the foregoing charges from the credit card processing companies, based on the arrangement between Deutsch and Klein, Hakshivah/GLS issued wire transfers to Joel K Holding Company, LLC. Gottesman Aff. ¶8. For example, on February 2 and 5, 2018, Hakshivah/GLS sent wires for \$100,000 and \$200,000 respectively, i.e., the proceeds from the January 18, January 30, February 1 and February 2 charges. *Id.*

Deutsch notified Klein that from the five charges on January 18 - February 2, 2018, he would have to be paid by February 13, 2018. Bernath Aff. ¶¶12-13. On February 13, 2018, Klein deposited checks totaling \$200,000 into Deutsch's account, and on February 16, 2018, Klein deposited an additional \$100,000. *Id.* ¶14 and Bernath Exhibit B.

With respect to the \$145,000 in charges occurring in mid-February, Deutsch informed Klein that the monies did not need to be paid back until April 1, 2018. And, on April 1, 2018, Klein issued a check for \$145,000 to Deutsch. Bernath Aff. at ¶16

In August 2018, Hakshivah/GLS was again approached by Klein to facilitate transactions using the Deutsch credit cards. Gottesman Aff. ¶9. On August 21, 2018, Hakshivah/GLS made three charges on the Deutsch cards, for \$40,000, \$60,000, and \$36,000. *Id.* Hakshivah/GLS forwarded these amounts to Klein. *Id.* On October 4, 2018, Deutsch texted Klein informing him that he had to repay the charges to Hakshivah by October 14, 2018. Bernath Aff. ¶19 and

Bernath Exhibit A. Over the course of October 15 to October 19, 2018, Klein wired or deposited checks totaling \$135,800 in Deutsch's account. Bernath Aff. ¶20.

Prior to November 2018, Deutsch never complained to Hakshivah/GLS about the charges on his card (Gottesman Aff. ¶10), and for good reason: he not only had authorized the charges originally, he was also repaid for the amounts charged, and also earned considerable cash value rewards points from the credit card issuer. Nevertheless, in November 2018, despite the fact that Deutsch had not only authorized Klein to use his cards, and that by then he had been repaid for all of the charges made by Hakshivah/GLS, without any legitimate basis, Deutsch executed a scheme to chargeback and dispute the credit card charges, and in the process to defraud Hakshivah/GLS. *Id.*

A "chargeback" is a reversal of a transaction between a merchant and a cardholder resulting from a dispute between the cardholder and the merchant. Bernath Aff. ¶23. Once a dispute is submitted, a chargeback results in a debit to the merchant account for the disputed amount, which is then credited to the cardholder. *Id.* Chargebacks typically occur for reasons having to do with an allegation by the cardholder that the transaction at issue was unknown to them, or that the cardholder's card was lost or stolen, or due to a merchant's alleged failure to render purchased goods or services as agreed upon between it and its customer credit card holder. *Id.* In the absence of a true and valid dispute on a transaction, a cardholder would not be entitled to a chargeback credit, and no chargeback can technically be initiated without the submission of some claim by the cardholder giving rise to justify a chargeback. *Id.*

On or about November 20, 2018, Deutsch submitted a series of chargebacks and falsely claimed that all of the charges were not only unauthorized but unknown to him. Bernath Aff.

¶22. The chargeback requests were based on Deutsch's word alone, with knowledge that they were untrue, a fact demonstrated by Deutsch's own text communications with Klein.

For example, in a WhatsApp chat communication dated November 12, 2017, prior to any charge by Hakshivah/GLS using Deutsch's card, Deutsch sent a picture of his card to Klein and agreed to Klein's use of the card at a charity. Bernath Exhibit A. On January 8, 2017, Deutsch send a WhatsApp text communication requesting payment for the November charge by Hakshivah/GLS. *Id.*

The WhatsApp text communications also show that on Jan 16, 2018, Klein advised Deutsch that he wished to charge Deutsch's card through *Hakshivah/GLS*, Klein repeated this request again on January 17, 2018, and again named GLS as the establishment at which he wanted to charge the cards at. Bernath Aff. ¶9. Deutsch responded by asking for the amounts to be charged. *Id.* On January 18, 2018, at 3:32 PM, Deutsch replied by asking Klein, "can it [be] paid by 13 of February?" and "how much?" Klein responded "yes." *Id.* Within two minutes, Deutsch providing Klein with pictures of two of his credit cards, and authorized Klein to charge \$50,000 on each. *Id.* At 3:41 PM, Klein informed Deutsch that he attempted to charge one of the cards but that it was declined. Deutsch responded to try the charge again, and, as noted above Hakshivah/GLS charged two of Deutsch's cards for \$50,000 each. *Id.*

On January 30, 2018, again in a WhatsApp chat, Deutsch sent Klein at 12:48 PM a picture of his credit card ending in 9813 with a written message "100 Straight." Klein responded at 1:54 PM that the charge had been "declined", and on 1:55 PM, Deutsch replied "try now." Bernath Aff. ¶10. As noted previously, on January 30, 2018, Hakshivah/GLS charged the card ending 9813 for \$100,000. *Id.* ¶11.

On February 1, 2018, the WhatsApp chat messages discussed additional charges by Klein for \$100,000. Bernath Aff. ¶12. Deutsch responded that the charge could be done so long as it was repaid before Feb 13. *Id.* At 9:47 PM Deutsch sent Klein a picture of his American Express credit card ending in 2000. *Id.* As noted above, on February 1 and 2, 2019, the foregoing Deutsch card was charged \$100,000 in two separate transactions.

On Feb 7, 2018, Deutsch advised Klein to prepare payments providing him with a list of four Hakshivah/GLS charges, Deutsch then clarified that there had been five charges and the total due was \$300,000. Bernath Aff. ¶13. On Feb 13, 2018, Klein repaid Deutsch \$200,000, and on February 16, 2018, he repaid the final \$100,000. *Id.* at ¶14.

Later at 2:58 pm, and again at 11:47 pm on February 7, 2018, Deutsch texted Klein via WhatsApp and informed him that he could charge the cards again on Feb 16, 2018 (“the 16th you can use it again” and “16 can be charged again”), Klein responded by asking whether he could “tell him [Hakshivah/GLS] *now* for 16” to which Deutsch responded “Sure” and that it could be on the same cards. Bernath Aff. ¶15.

On February 16, 2018, after an initial \$100,000 was successfully charged on Deutsch’s card ending 2000, and after some of the other cards ran declined, Klein communicated with Deutsch through audio chat messages time-stamped 12:59 pm through 1:07 pm, in which Deutsch directed Klein to charge an additional \$50,000 using his card ending 2000 and to split the charges into smaller increments if declined. Bernath Aff. ¶15. Two charges were then charged on for \$25,000 and a second for \$20,000. In other words, Hakshivah/GLS charges on card ending 2000 for Feb 16 and 17, totaled \$145,000. *Id.*

On March 8, 2018, WhatsApp communications between Klein and Deutsch indicate that Deutsch reminded Klein about payments that were soon to be due as a result of the Hakshivah

transactions. Bernath Aff. ¶16. Thus, at 4:40 PM, Deutsch texted Klein that “145k due on April 1” and that these charges were for the “Amex Platinum, HAKSHIVA February 15 and 16.” *Id.* On March 26, 2018, Deutsch again reminded Klein of the \$145,000 that needed to be paid on April 1. *Id.* On April 1, 2018, Klein issued check number 2302 in the amount of \$145,000 to Deutsch’s account. *Id.*

The same scenario was played out again in August 2018. Thus, the WhatsApp messages dated August 21, 2018, between Klein and Deutsch confirmed that Deutsch was aware that Klein had charged his card ending 2000 on that same day for \$100,000 through *Hakshiva*. Bernath Exhibit A. After a series of messages by Deutsch to Klein to charge different amounts on different cards, and after his card ending 2000 had already been charged \$100,000 on same day through *Hakshiva*, at 2:01 PM, Klein informs Deutsch that “I can have *hakshiva* do 36 more?,” Klein goes on to question “How much went through?” and in response to Klein’s questioning, Deutsch informed him what had been charged already, and agreed to the additional \$36,000. Bernath Aff. ¶18. At 2:14 PM Deutsch tells Klein that the charges would be due to paid on October 1. *Id.* As noted previously, on August 21, 2018, Hakshivah/GLS charged the card ending 2000 for \$136,000 in three separate transactions, with the last transaction being \$36,000. On October 4, 2018, Deutsch reminds Klein that “I need to make a payment to AMEX”, and at 12:32 PM Deutsch provides him with a screenshot of all the Hakshivah transactions totaling the \$136,000, the same transactions that Deutsch has now falsely alleged were done without his knowledge and authorization. *Id.* ¶19.

The foregoing evidence conclusively establishes that Deutsch’s claims that the charges were unauthorized *and even unknown to him*, are blatantly false. Instead, the evidence shows: Deutsch expressly authorized the charges, had full knowledge that they would be charged to

Hakshiva, he had directed the exact dates and amounts, and at times unblocked his account seconds before the charges to allow the charges to be put through, and finally that he collected payment from Klein for each charge. So not only were the charges authorized, but Deutsch was also repaid, making these claims not only false, but also fraudulent in that he is seeking to get repaid for these monies twice.

As a result of Deutsch's fraudulent chargeback claims, on November 27, 2018, American Express immediately debited Hakshivah/GLS's account in the amount of \$136,000. Gottesman Aff. ¶14. American Express has also notified Hakshivah/GLS that there is an additional \$265,000 in pending disputes which are still being investigated due to the age of the transactions. *Id.* Hakshivah/GLS is concerned that if Deutsch is not restrained from pursuing these fraudulent chargebacks, American Express will further debit its account. *Id.* Hakshivah/GLS is also concerned that Deutsch will attempt to submit other fraudulent chargebacks to other credit card issuers. *Id.* ¶15. Indeed, a defense investigation has revealed that Deutsch has recently submitted other sham chargebacks for charges made by Klein at other merchants. Bernath Aff. ¶24. With respect to some of those chargebacks, Deutsch claimed that he did not receive the "goods or services" purportedly purchased from those merchants, despite the fact that Deutsch knew he never expected any goods or services by these transactions, but rather it was merely Klein initiating these transactions with the express authorization by Deutsch. *Id.*

In light of the debits by American Express, actions taken because of Deutsch's fraudulent chargeback requests, Hakshivah/GLS has been unable to process credit card transactions and has effectively been put out of business. Gottesman Aff. ¶15. Without injunctive relief even if Hakshivah/GLS is ultimately vindicated in the end --- and we have no doubt it will be --- the victory may well be a Pyrrhic one since by the time the dispute finally gets resolved,

Hakshivah/GLS may well be out of business given its inability to process credit card payments and thereby conduct its business. *Id.*

ARGUMENT

Plaintiff readily satisfies the standard for a TRO and a preliminary injunction. To obtain interim injunctive relief, a plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) irreparable injury absent granting of the preliminary injunction; and (3) a balancing of the equities in their favor. *See, e.g., Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Four Times Square Assocs., LLC v. CIGNA Invs., Inc.*, 306 A.D.2d 4, 5 (1st Dep't 2003); *see also* CPLR 6301 (“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do ... an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual ...”). The Court further may grant a TRO “pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” *Id.*

Plaintiff satisfies these standards. *First*, plaintiff can easily show a likelihood of success on the merits. By summons with notice, plaintiff seeks to assert at least four causes of action against Deutsch and DVC, based upon the information available to plaintiff at this time in light of Deutsch’s conduct: (i) Fraud; (ii) Conversion; (iii) Breach of Contract; and (iv) Unjust Enrichment. As reflected in Gottesman’s affidavit, Deutsch held out Klein to be his authorized user, thereby inducing plaintiff to charge Deutsch’s personal and business credit cards for a certain amount and then write checks in those amounts, to Klein or one his businesses. There is absolutely no basis for Deutsch to dispute any of his credit card charges with Hakshivah/GLS. In essence, Deutsch’s gripe --- to the extent one exists, and plaintiff believes that to the extent

Deutsch is out monies it is with respect to other transactions --- is with Klein because he may still be owed money (or exorbitant interest for the loans that Deutsch extended to Klein. Indeed, in similar circumstances, this Court has granted the requested relief preventing cardholders from disputing charges that were authorized but for which they did not receive payment in a timely manner. Order to Show Cause Granting TRO (Yurowitz Aff., Exhibit B) in *Grab It v. Moische Katz*, Index No. 502621/18, at 1- 2; Decision and Order (Yurowitz Aff., Exhibit C) in *Health Peak, Inc. v. Torim*, Index No. 501396/16, at 2 (“in regard to defendants disputing the charges on their credit cards made in connection with purchases for plaintiff’s stores as unauthorized, the injunction is granted. The affirmations of [defendants] essentially concede that these charges were authorized. Their justification is that plaintiff failed to pay the charges in a timely fashion.”). Here, like in *Grab It*, plaintiff carried out his obligations by forwarding the money to Klein who repaid Deutsch and is simply an innocent third-party caught up in a dispute between Klein and Deutsch. Indeed, even where the money had not been repaid, the court in *Health Peak* granted relief since the charges were authorized.

Second, plaintiff can establish a likelihood of irreparable injury. Indeed, because of Deutsch’s conduct, Hakshivah/GLS has had hundreds of thousands of dollars in its checking account restrained by its credit card processor pending the resolution of the chargebacks initiated by Deutsch. In addition, Hakshivah/GLS has been temporarily suspended from processing card transactions due to the enormous amounts disputed in these chargebacks, thereby preventing Hakshivah/GLS from transacting with cardholders. Thus, the immediate effect of these fraudulent chargebacks has been to frustrate and impede plaintiff’s operations, resulting in substantial economic harm to plaintiff and the potential for ruinous future losses. Hakshivah/GLS has effectively ceased operations since its credit card processor took these

actions. Moreover, Deutsch has indicated that he may fraudulently dispute other credit card charges, potentially resulting in additional hundreds of thousands of dollars in fraudulent chargebacks. Indeed, Deutsch has recently disputed some other Klein related transactions with other merchants. Without immediate judicial intervention, plaintiff will continue to suffer irreparable harm if Deutsch's conduct is not restrained. Therefore, the award of the requested restraints will maintain the status quo until this matter is resolved.

Third, the balance of equities strongly favors plaintiff. Plaintiff has shown the likelihood of success on the merits as well as the likelihood of immediate and irreparable injury absent an injunction. An injunction would merely preserve the status quo, and therefore would result in minimal, if any, harm to the legitimate interests of Deutsch and DVC.

Thus, plaintiff has met its burden of demonstrating, by competent proof, the likelihood of success on the merits, irreparable injury in the absence of injunctive relief and that the equities weigh in its favor.

Finally, plaintiff seeks a preliminary injunction with a TRO pending expedited discovery. To that end, plaintiff also respectfully requests expedited discovery be ordered and, specifically, plaintiff respectfully requests that the Court order Deutsch and DVC to produce the documents sought in the document requests annexed as Exhibit C to the Yurowitz Affirmation.

The decision whether to grant expedited discovery is within the discretion of this Court. *See J.G. v. Zachman*, 34 A.D.3d 1277, 1278 (4th Dep't 2006) ("A trial judge is vested with broad discretion to control discovery ..."). "Expedited discovery and the reversal of priority are warranted in light of defendants' unique possession of the information necessary to determine the extent of their unlawful conduct." *Sylmark Holdings Ltd. v. Silicone Zone Int'l Ltd.*, 5 Misc.3d 285, 302 (Sup. Ct. N.Y. Cty. 2004) (granting preliminary injunction and expedited

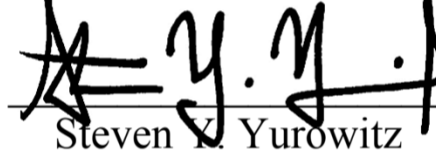
discovery). Plaintiff respectfully submits that expedited discovery in this case is particularly appropriate given the likelihood that Deutsch will alter or create forged documents, in a desperate effort to manufacture a false defense.

CONCLUSION

For these reasons, plaintiff respectfully requests that the Court grant the Order to Show Cause for a Preliminary Injunction with a Temporary Restraining Order. In addition, plaintiff requests that the Court order expedited discovery in advance of the preliminary injunction hearing to be set at a time convenient for the Court.

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January 16, 2019

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