IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JACAM CHEMICAL COMPANY 2013, LLC and CES ENERGY SOLUTIONS CORP.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 2021-0659-SG
JACAM CHEMICAL CO. INC., JACAM CHEMICAL COMPANY, LLC, GENE ZAID, and JASON WEST,	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: November 30, 2023
Date Decided: March 1, 2024

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GLASSCOCK, Vice Chancellor

Old judges, like old folks in general, like to reminisce about the kingfisher days of their youth (largely, I acknowledge, confabulatory) when things were simpler. Along those lines, I suspect in Chancellor Brown's Chancery this motion would have merited a brief letter opinion. What follows is more expansive.

To speak with Brownian brevity, this action arises from alleged breaches of warranties and other contractual obligations relating to the purchase of assets of a Delaware LLC, Jacam Chemical Company ("Old Jacam") in 2013. The contractual obligations at issue were subject to a contractual limitation period of twelve months, and a statutory limitation period of three years.[1] The cause of action accrued when the contract was executed in 2013. This suit was filed in 2021. Plaintiffs contend that various tolling doctrines obtain. According to Plaintiffs, former Old Jacam employees became employees of the buyer and contrived to conceal the contractual defects from Plaintiffs. Whatever the merits of that argument, it is unavailing; even if the statutory limitations period did not commence until the former employees left the employment of the buyer, the suit is still time-barred.

What follows is a fuller consideration of the issues, reaching the same conclusion, more in accord with third-millennium fashion.

[1] 10 *Del. C.* § 8106.

I. BACKGROUND

A. Factual Background

1. The Parties

Plaintiff Jacam Chemical Company 2013, LLC ("Jacam 2013") is a Delaware limited liability company with its principal place of business in Sterling, Kansas.[2] Jacam 2013 manufactures, produces, markets, sells, and distributes specialty petrochemicals to customers in regions including Kansas and North Dakota.[3]

Plaintiff CES Energy Solutions Corp. ("CES") is a Canadian corporation with its principal place of business in Alberta, Canada.[4]

Defendant Jacam Chemical Co. Inc. is a Kansas corporation with its principal place of business in Sterling, Kansas.[5] Defendants Gene Zaid and Jason West are officers of Jacam Chemical Co. Inc.[6]

Defendant Jacam Chemical Company, LLC ("Old Jacam") is a Delaware limited company with its principal place of business in Sterling, Kansas.[7] Old Jacam's majority member is Jacam Chemical Co. Inc.[8] Zaid founded and is the

[2] First Am. Verified Compl. ¶ 8, Dkt. No. 11 ("Am. Compl.").
[3] *Id.* ¶ 17.
[4] *Id.* ¶ 9.
[5] *Id.* ¶ 10.
[6] *Id.*
[7] *Id.* ¶ 11.
[8] *Id.*

largest equity holder in Old Jacam and its affiliates (collectively, the "Seller Entities").[9]

2. The Parties Negotiate a Sale of Old Jacam's Assets

In 2012, CES and Jacam 2013 began negotiating with Old Jacam to purchase all of Old Jacam's assets.[10] West, in his role as President and/or Chief Operating Officer of the Seller Entities,[11] was primarily responsible for negotiating what would ultimately become the Asset Purchase Agreement (the "APA").[12] Tom Simons, CEO of CES, and Brad Vescarelli, CES's in-house legal counsel, were West's "main point[s] of contact" during the negotiations.[13]

During negotiations, both sides engaged in due diligence over a period of several months.[14] As part of this due diligence, the parties discussed Old Jacam's portfolio of products.[15] At that time, David Burroughs was the General Manager of CES's PureChem division.[16] Burroughs testified that, based on his experience in the oil and gas production chemical industry, in a "majority of cases" he could "identify the function of a product" and could "tell what a product is" by looking at the

[9] *Id.* ¶¶ 2, 17, 20.
[10] Transmittal Aff. of Kirsten A. Zeberkiewicz Supp. Defs.' Suppl. Opening Br. on Laches ("Zeberkiewicz Aff."), Ex. 2 at 11:7–12, Dkt. No. 78 ("Defs.' OB, Zaid Dep.").
[11] Am. Compl. ¶ 21.
[12] *Id.* ¶ 2.
[13] Zeberkiewicz Aff., Ex. 3 at 20:9–18, Dkt. No. 78 ("Defs.' OB, West Dep.").
[14] *Id.* at 18:13–18.
[15] *Id.* at 21:24–22:14.
[16] Defs.' Suppl. Opening Br. on Laches 5, Dkt. No. 78 ("Defs.' OB").

formula for that product.[17] While Burroughs was responsible for conducting the technical due diligence on behalf of CES,[18] he was not tasked with reviewing formulas for Old Jacam products as part of his due diligence, despite his stated desire to review them to "validate the technical uniqueness of the products."[19] This was, in part, because Old Jacam declined to provide any formulas to CES prior to the execution of the APA.[20]

In early 2013, the parties began sharing amongst themselves a list of chemical formulas that would ultimately be included in the APA as Schedule G.[21] Schedule G lists patented, trademarked, and/or trade secret formulas representing the complete list of all intellectual property used by the Seller Entities (the "Schedule G Formulas").[22] When West sent a PDF version of Schedule G to CES's counsel,[23] CES's counsel requested a Word copy so that CES could manipulate the list to assign the enumerated items to different entities for tax purposes.[24] Prior to signing the APA, the board of CES reviewed and approved the APA, including Schedule G.[25]

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[17] Zeberkiewicz Aff., Ex. 1 at 34:19–23, 35:5–10, Dkt. No. 78 ("Defs.' OB, Burroughs Dep.").
[18] Defs.' OB 5.
[19] Defs.' OB, Burroughs Dep. 67:14–68:3.
[20] Transmittal Aff. of Michele C. Spillman Supp. Pls.' Answering Br. to Defs.' Suppl. Br. on Laches ("Spillman Aff."), Ex. 10 at 147:7–21, 149:11–150:12, Dkt. No. 81 ("Pls.' AB, Zaid Dep."); Spillman Aff., Ex. 11 at 76:1–77:14, Dkt. No. 81 ("Pls.' AB, Burroughs Dep."); Spillman Aff., Ex. 8 at 69:16–22, Dkt. No. 81 ("Pls.' AB, Corp. Rep. Dep.").
[21] *See* Spillman Aff., Exs. 6–7, Dkt. No. 81; Defs.' OB, West Dep. 91:19–24, 86:10–24.
[22] Am. Compl. ¶ 25.
[23] Spillman Aff., Ex. 6.
[24] Spillman Aff., Ex. 7.
[25] Zeberkiewicz Aff., Ex. 4 at 10:24–11:14, Dkt. No. 78 ("Defs.' OB, Kitigawa Dep.").

Similarly, West reviewed the APA, including Schedule G, prior to approving its execution.[26]

Throughout the due diligence period, Old Jacam shared with CES examples of how Old Jacam protected its assets. For instance, Old Jacam shared with CES samples of its employment agreements with employees that included nondisclosure and confidentiality clauses.[27] As part of the assets that would be transferred to CES, Old Jacam assigned certain nondisclosure agreements to CES.[28] Collectively, CES understood these agreements to mean that Old Jacam protected the secrecy of its formulas and restricted its employees from disclosing those formulas.[29]

3. CES and Jacam 2013 Purchased Old Jacam

On March 1, 2013, CES and Jacam 2013 purchased substantially all the assets of Old Jacam and its affiliates for $240 million pursuant to the transaction memorialized in the APA.[30] Zaid and West continued in management roles at Jacam 2013 with Zaid serving as Jacam 2013's CEO and West serving as the President and Manager of Jacam 2013.[31] West also became a member of CES's board.[32]

[26] Zeberkiewicz Aff., Ex. 9 at 121:22–122:2, Dkt. No. 81 ("Pls.' AB, West Dep.").
[27] Spillman Aff., Ex. 8 at 147:7–148:10, Dkt. No. 81 ("Pls.' AB, Corp. Rep. Dep.").
[28] *Id.* at 138:18–141:4.
[29] [CORRECTED] Pls.' Answering Br. to Defs.' Suppl. Br. on Laches 6, Dkt. No. 83 ("Pls.' AB").
[30] Am. Compl. ¶ 18 (citing Am. Compl., Ex. 1, Dkt. No. 11 (the "APA")).
[31] *Id.* ¶ 33.
[32] *Id.*

4. West and Zaid's Time at Jacam 2013

Within a few months of the APA's execution, Zaid shared books of formulas from Old Jacam with Simons, CEO of CES.[33] As of April 1, 2015, Simons believed that he had "all the formulations" previously owned by Old Jacam.[34] While working for Jacam 2013, West described Jacam 2013 as a "black box from a technical perspective"[35] because Zaid was known for restricting access to the Schedule G Formulas even after joining Jacam 2013.[36] Even Dave Horton, Chief Technology Officer of CES, did not have complete access to Jacam 2013's formulas as of early 2015; rather, Horton's access was limited to asking Zaid for formulations "on a one off basis."[37] The lack of access to Jacam 2013's formulas caused Horton great

[33] Defs.' OB, Zaid Dep. 59:10–18, 57:1–9.
[34] Zeberkiewicz Aff., Ex. 15 at -1176, Dkt. No. 78.
[35] Transmittal Aff. of Michele C. Spillman Supp. Pls.' Answering Br. to Defs.' Suppl. Br. on Laches, Ex. 18, Dkt. No. 81.
[36] Pls.' AB, Burroughs Dep. 93:22–95:1 (formulas would not be released without "very specific kind of okays from [Zaid]" as Zaid was the "roadblock" to accessing the formulas); Spillman Aff., Ex. 26 at 54:13–2, 55:15–22, Dkt. No. 81 ("Pls.' AB, Kitigawa Dep.") (perceiving Zaid's continued zealous secrecy over the fomulas as "underscore[ing] the fact that" the formulas were trade secrets); Spillman Aff., Ex. 27 at 64:3–65:5, Dkt. No. 81 ("Pls.' AB, Hanes Dep.") (Zaid indicated to her that the formulas were confidential and that she was not to "give formulas to anybody or discuss any part of a formula"); Spillman Aff., Ex. 28 at 54:2–23, Dkt. No. 81 ("Pls.' AB, Spicer Dep.") (Zaid was "protective of the formulas" and limited access to them); Spillman Aff., Ex. 29 at 54:5–59:3, Dkt. No. 81 ("Pls.' AB, Lackey Dep.") (formulas were not kept on the computer server because Zaid was concerned someone would steal them); Spillman, Ex. 32 ¶ 7, Dkt. No. 81 ("Vern Disney 2021 Aff.") (formulas were at all times treated as "highly confidential and proprietary").
[37] Spillman Aff., Ex. 15 at -1175, Dkt. No. 81.

concern throughout Zaid's time at Jacam 2013.[38] Burroughs was surprised by this lack of access to the Schedule G Formulas and also found it concerning.[39]

Based on Zaid's protective behavior with respect to Jacam 2013's formulations, CES believed that the Schedule G Formulas were indeed trade secrets.[40] This belief was bolstered by the fact that the only publicly available documents regarding the Schedule G Formulas, the Material Safety Data Sheets ("MSDS"), withheld the Schedule G Formulas on the basis that the Schedule G Formulas were either "TRADE SECRETS" or "PROPRIETARY INFORMATION."[41] CES did not investigate to confirm that belief or determine whether any of the Schedule G Formulas had been publicly disclosed or were being used by competitors.[42] Instead, the board of CES's valued Zaid's expertise and accepted his classification of the formulas as confidential.[43] Despite the friction over CES's access to the formulas beginning "immediately after the purchase [of Old Jacam] on March 1 of 2013[,]" CES's management decided it would be in CES's best interests to handle Zaid's "secretive" behavior "delicately," even as Zaid continued to make access difficult.[44]

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[38] Zeberkiewicz Aff., Ex. 5 at 88:23–91:19, Dkt. No. 78 ("Defs.' OB, Horton Dep.").
[39] Defs.' OB, Burroughs Dep. 86:9–87:6.
[40] Spillman Aff., Ex. 30 at 135:23–136:14, Dkt. No. 81 ("Pls.' AB, Disney Dep.").
[41] Pls.' AB 11 (citing Pls.' AB, Ex. 33, Dkt. No. 81).
[42] Pls.' AB, Burroughs Dep. 54:22–55:14, 76:1–77:14.
[43]Pls.' AB, Kitigawa Dep. 41:24–43:20.
[44] Defs.' OB, Kitigawa Dep. 39:24–41:5, 41:24–43:15.

5. West and Zaid's Departures from Jacam 2013

In January 2017, West and Zaid both resigned from Jacam 2013.[45] Burroughs and Horton both acknowledged that the departure of Zaid removed the roadblock that had previously prevented them from having unfettered access to the Schedule G Formulas.[46] While Burroughs did not review "the nature and character of [Jacam 2013]'s products[,]"[47] after Zaid's resignation, within a few days of Zaid's departure, Gene Brock, Vice President of Technology for Jacam 2013, began a detailed analysis of all products CES purchased from Old Jacam under the APA.[48] Based on this analysis, Jacam 2013 changed the formulations for hundreds of products in early 2017.[49]

After Zaid's two-year non-compete with Jacam 2013 expired in 2019, Zaid formed GeoChem, a chemical company specializing in oil and gas production.[50] Zaid is the Chief Executive Officer of GeoChem, and West serves as GeoChem's Chairman of the Board.[51]

[45] Defs.' OB 20.
[46] Defs.' OB, Burroughs Dep. 95:2–23; Defs.' OB, Kitigawa Dep. 45:3–15.
[47] Defs.' OB, Burroughs Dep. 71:5–13.
[48] Zeberkiewicz Aff., Ex. 6 at 145:2–23, Dkt. No. 78 ("Defs.' OB, Brock Dep.").
[49] *Id.* at 145:24–146:4.
[50] *See* Defs.' OB 23; Am. Compl. ¶ 37.
[51] Am. Compl. ¶ 37.

6. Plaintiffs File Suit

On May 31, 2019, Jacam 2013 brought suit in the United States District Court for the District of North Dakota against GeoChem and Arthur Shepard, a former employee of Old Jacam and Jacam 2013 (the "North Dakota Case").[52] Jacam 2013 alleged that GeoChem and Shepard misappropriated Jacam 2013's trade secrets and that GeoChem tortiously interfered with Shepard's employment agreement by causing Shepard to breach the agreement.[53]

A few days later, on June 6, 2019, Plaintiffs filed another suit in the Twentieth Judicial District in Rice County, Kansas (the "Kansas Case").[54] In the Kansas Case, Plaintiffs named GeoChem and William A. Kainz, a former employee of Old Jacam and Jacam 2013.[55] The initial complaint in the Kansas Case alleged that the defendants violated the terms of certain non-compete agreements and the Kansas Uniform Trade Secrets Act, and asserted claims for breach of contract, breach of fiduciary duties, and tortious interference with existing and prospective contracts and business relations.[56]

On October 30, 2020, Plaintiffs amended their complaint in the Kansas Case to allege that Zaid, GeoChem, and Beth Wolf, GeoChem's vice president,

[52] Defs.' OB 23.
[53] *Id.*
[54] *Id.* at 24.
[55] *Id.*
[56] *Id.*

misappropriated trade secrets listed on Schedule G.[57] Zaid filed an affidavit in the Kansas Case in November 2020 (the "Zaid Affidavit").[58] The stated purpose of the Zaid Affidavit was to challenge Plaintiffs' assertion that twenty of GeoChem's formulas were misappropriated from Jacam 2013.[59] Zaid testified that the formulas referenced in the affidavit "are not trade secrets because they are commonly known and widely used in the oil-and-gas chemical industry."[60] Specifically, Zaid explained that the formulas that GeoChem uses "were either purchased from [a third party], are readily available in the public domain, were provided on a non-confidential basis by a third party, or were developed from [Zaid's] nearly 40 years of knowledge and experience in the oil and gas industry without reference to any of Jacam's alleged confidential information."[61]

Based on the Zaid Affidavit, Plaintiffs sought to amend the complaint in the Kansas Case to assert claims for, amongst other things, breach of contract and breach of fiduciary duty.[62] The Kansas court denied Plaintiffs' motion to amend based on the Delaware forum selection clause in the APA.[63]

[57] *Id.* at 25; Am. Compl. ¶ 39.
[58] Am. Compl. ¶ 41.
[59] Defs.' OB 25; Am. Compl. ¶ 41.
[60] Am. Compl. ¶ 41 (quoting Am. Compl., Ex. 3 ¶ 10, Dkt. No. 11).
[61] *Id.* ¶ 41; Defs.' OB 25 (quoting Am. Compl., Ex. 3 ¶¶ 10–11).
[62] Pls.' AB 12.
[63] *Id.*

B. Procedural History

On July 27, 2021, Plaintiffs brought suit against Defendants for breach of the APA, unjust enrichment, fraud, and negligent misrepresentation, and sought a permanent injunction.[64] Plaintiffs filed the amended complaint on November 4, 2021, alleging breach of contract, breach of fiduciary duty, unjust enrichment, and requested declaratory judgment (the "Amended Complaint").[65] On November 19, 2021, Defendants filed a Motion to Stay or Dismiss the First Amended Complaint.[66] I stayed this matter on April 26, 2022.[67]

On December 20, 2022, Plaintiffs filed a Motion to Lift the Stay, which I granted on April 25, 2023, for the limited purpose of the parties taking discovery on the issue of laches and to file supplemental briefing based on that discovery.[68] The period for that discovery closed on August 16, 2023,[69] and briefing on the issues of laches was completed on November 10, 2023.[70] I heard oral arguments on November 30, 2023, and consider the matter fully submitted as of that date.[71]

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[64] Verified Compl. for Breach of Contract ¶¶ 38–71, Dkt. No. 1.
[65] Am. Compl. ¶¶ 48–74.
[66] *See* Defs.' Mot. to Stay or Dismiss First Am. Verified Compl., Dkt. No. 14.
[67] *See* Judicial Action Form Mot. to Stay Granted before Vice Chancellor Glasscock dated Apr. 26, 2022, Dkt. No. 29.
[68] *See* Pls.' Mot. to Lift Stay, Dkt. No. 33; Tr. of 4-25-2023 Oral Arg. and Rulings of the Ct. on Pls.' Mot. to Lift Stay, Dkt. No. 43.
[69] *See* Stip. Order Governing Schedule for Suppl. Br. on the Issue of Laches, Dkt. No. 77.
[70] *See* Defs.' Suppl. Reply Br. on Laches, Dkt. No. 85 ("Defs.' RB").
[71] *See* Judicial Action Form re Oral Arg. before Vice Chancellor Sam Glasscock dated 11.30.23, Dkt. No. 86.

II. ANALYSIS

A. Applicable Legal Standard

Plaintiffs contend that the Court should treat this motion to dismiss for failure to state a claim as a motion for summary judgment because an evidentiary record has been developed for consideration in deciding this motion.[72] Defendants counter that the applicable standard is a preponderance of the evidence because the Court requested the evidentiary hearing on a paper record.[73]

Under Court of Chancery Rule 12(b), where "matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56[.]" Because there has been an evidentiary record developed that I rely upon in making my decision, I will apply the summary judgment standard.

"Summary judgment is granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[74] All inferences are "viewed in the light most favorable to the nonmoving party."[75] The nonmoving party, however, "must offer, by affidavit or other admissible evidence, specific facts showing that there is a

[72] Pls.' AB 12.
[73] Defs.' RB 5.
[74] *Twin Bridges Ltd. P'ship v. Draper*, 2007 WL 2744609, at *8 (Del. Ch. Sept. 14, 2007).
[75] *Id.*

genuine issue for trial[,]" rather than merely resting upon allegations in the pleadings.[76]

B. Are Plaintiffs' Claims Time-Barred?

Defendants assert that the Amended Complaint should be dismissed because the claims asserted are time-barred.[77] Plaintiffs' assertion that their claims are timely are group together as: (1) the APA extends the statute of limitations for Count I for breach of contract, and (2) Delaware's tolling doctrines otherwise prevent the statute of limitations from running until Zaid filed his Kansas affidavit in November 2020.[78] I discuss each in turn.

1. The Impact of the APA on Count I for Breach of Contract

a. Applicable Framework: Statute of Limitations or APA

Where a plaintiff asserts a legal claim seeking legal relief, the Court of Chancery strictly applies the statute of limitations unless extraordinary circumstances dictate otherwise.[79] Delaware's statute of limitations for claims based on promises, including breach of contract, is three years from the occurrence of the breach.[80] Where the breach of contract claim is based on breaches of contractual

[76] *Eluv Hldgs. (BVI) Ltd. v. Dotomi, LLC*, 2013 WL 1200273, at *4 (Del. Ch. Mar. 26, 2013).
[77] Defs.' OB 26–44.
[78] *See* Am. Compl. ¶¶ 48–74; *see also* Pls.' AB 16–17 (explaining that Delaware's tolling doctrines save "Plaintiffs' remaining claims—breach of contract (for APA Sections 3.23 and 3.28), unjust enrichment, breach of fiduciary duty, and declaratory judgment").
[79] *Kraft v. WisdomTree Invs., Inc.*, 145 A.3d 969, 983 (Del. Ch. 2016).
[80] 10 *Del. C.* § 8106.

representations or warranties, that claim accrues at the time of closing.[81] Parties can, however, contractually extend the statute of limitations.[82] If the parties contractually agree to an indefinite period, "then the action must be brought prior to the expiration of 20 years from the accruing of the cause of such action."[83] Conversely, parties may contractually agree to a limitations period that is shorter than the statutory period, so long as the shortened period is reasonable.[84]

The parties agree that Count I for breach of contract is a legal claim seeking legal relief, requiring application of the statute of limitations in the absence of extraordinary circumstances or a contract requiring deviation from the applicable statutory limitation period.[85] However, the parties dispute whether the APA contractually alters the applicable period for when Plaintiffs may assert Count I.

Plaintiffs contend that the parties contracted around the applicable statute of limitations when they agreed in the APA to an indefinite period for breaches of certain provisions, as enumerated in Section 8.1 of the APA.[86] Section 8.1 states:

> All representations and warranties in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the Closing for a period of 12 months following the Closing Date, after which they shall expire and no further liability shall be

[81] *Eni Hldgs. LLC v. KBR Grp. Hldgs., LLC*, 2013 WL 6186326, at *11 (Del. Ch. Nov. 27, 2013).
[82] 10 *Del. C.* § 8106(c).
[83] *Bear Stearns Mortg. Funding Tr. 2006-SL1 v. EMC Mortg. LLC*, 2015 WL 139731, at *12 (Del. Ch. Jan. 12, 2015).
[84] *See GRT, Inc. v. Marathon GTF Tech., Ltd.*, 2011 WL 2682898, at *3 (Del. Ch. July 11, 2011); *HBMA Hldgs., LLC v. LSF Stardust Hldgs. LLC*, 2017 WL 6209594, at *6 (Del. Ch. Dec. 8, 2017).
[85] *See* Defs.' OB 26; Pls.' AB 13; Defs.' RB 8–9.
[86] Pls.' AB 15.

> attached thereto; provided, however, that (a) the representations of the Sellers found in Section 3.1., 3.2, 3.3., 3.4, 3.8, 3.14, and 3.21, respectively . . . shall survive indefinitely.[87]

According to Plaintiffs, Defendants breached the APA's representations specified in Sections 3.1–3.4, 3.8, 3.14, and 3.21 (the "Enduring Provisions").[88] Because the APA specifies that the Enduring Provisions survive indefinitely, Plaintiffs contend that their breach of contract claim is subject to Delaware's default twenty-year statute of limitations, and thus timely on its face.[89]

In response, Defendants assert that the Enduring Provisions relied upon by Plaintiffs are inapplicable to Plaintiffs' claim that the Schedule G Formulas are not trade secrets, as Plaintiffs believed them to be at the time of the APA's execution.[90] Rather, Defendants contend that the applicable provision of the APA is Section 3.23, which is contractually subject to a shorter twelve-month limitations period under Section 8.1 of the APA.[91] Defendants assert Section 3.23 as the controlling provision for Plaintiffs' breach of contract claim because it is the only provision that specifically references the Schedule G Formulas, while the Enduring Provisions are general provisions.[92] I agree.

Section 3.23 of the APA is entitled "Intellectual Property Assets," and states:

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[87] APA § 8.1.
[88] Pls.' AB 15–16.
[89] *Id.* at 16.
[90] Defs.' RB 13–15.
[91] *Id.*
[92] *Id.* at 14–15.

> The Sellers have disclosed on Schedule G attached hereto a true and complete list of all Intellectual Property currently used in or related to the Business (the "Seller Intellectual Property"). Sellers jointly and/or severally own or possess adequate licenses or other valid rights to all of the Seller Intellectual Property.[93]

While Plaintiffs assert that the Enduring Provisions concern Defendants having exclusive, good, and transferrable title to the Schedule G Formulas, as well as that the Schedule G Formulas were never disclosed to another person,[94] the plain text of the Enduring Provisions does not support Plaintiffs' assertion. The Enduring Provisions primarily relate to the powers and ability of the Seller to execute the APA.

Specifically, Section 3.1 is entitled "Organization, Standing and Qualification" and specifies that Defendants are valid corporate entities in good-standing to conduct business and have "the requisite power and authority necessary to own or lease its portion of the Assets[.]."[95] Section 3.2 is entitled "Authority" and states that Defendants have the authority to execute the APA and perform obligations contained therein.[96] Section 3.3 is entitled "Execution, Delivery and Performance of Agreement" and states that the APA would not cause "a default, right to accelerate or loss of rights under, or result in the creation of any Encumbrances" and that Defendants were not required to notify or seek approval from another party to enter

[93] APA § 3.23.
[94] Pls.' AB 15–16.
[95] APA § 3.1.
[96] *Id.* § 3.2.

the transaction.[97] Section 3.4 is entitled "Valid and Binding Obligation" and states that the APA "constitute[d] valid and binding obligations of" Defendants.[98] Section 3.8 is entitled "Title to Assets; Encumbrances" and states that Defendants "own good and transferable title to all of the Assets" and "[n]o Person other than the Sellers owns any property or assets that are used in the Business."[99] Section 3.14 is entitled "No Undisclosed Liabilities" and states that Defendants had disclosed all liabilities on the balance sheet or in Schedule P.[100] Finally, Section 3.21 is entitled "Environmental Matters" and relates to Defendants' compliance with applicable environmental laws.[101]

At the heart of Plaintiffs' breach of contract claim is Plaintiffs' contention that Defendants breached the APA by misrepresenting the true nature of the Schedule G Formulas by including them on a list of "Trade Secrets" when those formulas were not actually trade secrets. None of the Enduring Provisions contain representations made by Defendants to Plaintiffs regarding the nature or character of the Schedule G Formulas. Section 3.23, however, does assure Plaintiffs that the list of intellectual property included in Schedule G is "true and complete[.]" Since Plaintiffs' breach of contract claim is based on Defendants' alleged misrepresentation of the nature of

[97] *Id.* § 3.3.
[98] *Id.* § 3.4.
[99] *Id.* § 3.8.
[100] *Id.* § 3.14.
[101] *Id.* § 3.21.

the Schedule G Formulas, Section 3.23 is applicable.[102] Under Section 8.1, representations made in the APA, other than those enumerated in the Enduring Provisions, are subject to a shortened twelve-month limitation period.

Barring an extraordinary circumstance, which Plaintiffs have not alleged, the contractual limitations period strictly applies to Plaintiffs' breach of contract claim. Since the APA closed on March 1, 2013, Plaintiffs were required to assert Defendants' alleged misrepresentation covered by Section 3.23 no later than March 1, 2014.[103] However, Plaintiffs did not file suit to assert Count I until July 27, 2021. Thus, Count I is untimely under the terms of the APA and must (subject to any tolling of the limitation period) be dismissed for its untimeliness; even without the contractual limitation period the statutory limitation had expired years before this action was filed.

[102] In other words, the claim is not that Old Jacam is prohibited from using assets, including the formulae listed on Schedule G (which might implicate Section 3.8); the question is whether the formulae were, as represented in the Schedule, "true" trade secrets, which implicates Section 3.23.
[103] I decline to assess the reasonableness of the twelve-month limitations period because even if I were to apply the statute of limitations, that three-year period would run on March 1, 2016, five years before Plaintiffs initiated this action. Thus, even if I were to find the contractually agreed-upon twelve-month period was unreasonable, Plaintiffs' breach of contract claim is still time-barred by the applicable statute of limitations.

2. The Impact of the Tolling Doctrines on Plaintiffs' Claims

a. Applicable Framework: Laches

Laches is "rooted in the maxim that equity aids the vigilant, not those who slumber on their rights."[104] Unless the plaintiff asserts a legal claim seeking legal relief, the Court of Chancery generally applies the equitable doctrine of laches in determining whether the plaintiff has timely brought her claims.[105] When applying the equitable doctrine of laches, the Court of Chancery "afford[s] significant weight to an analogous statute of limitations when one exists and will presumptively bar an action filed after the limitations period, absent tolling or unusual circumstances that would make it inequitable to do so."[106]

Plaintiffs do not dispute[107] that the Court should apply Delaware's statute of limitations for causes of action based on a promise, either strictly or by analogy, to the balance of their claims for breach of contract (for APA Sections 3.23 and 3.28), breach of fiduciary duty, unjust enrichment, and declaratory judgment.[108] That statute of limitations is three years from the accrual of the claim.[109] Because claims

[104] *Kraft*, 145 A.3d at 974.
[105] *See id.* at 983.
[106] *Id.* at 979.
[107] For the sake of ease of analysis, I have adopted the framework proposed by the parties, and not parsed the claims to determine whether they are analogous to legal contract claims (with a three-year limitation period) or whether they are equitable torts, like breach of fiduciary duty, which would be subject to a shorter, two-year limitation period by analogy.
[108] *See* Pls.' AB 16–17; Defs.' RB 7.
[109] 10 *Del. C.* § 8106; *see supra* n.107.

based on a promise accrue "at the moment of the wrongful act and not when the effects of the act are felt[,]"[110] Plaintiffs' claims accrued when the APA was signed in 2013. Unless a tolling doctrine applies, the analogous statute of limitations ran in 2016, and Plaintiffs' claims, asserted in 2021, are time-barred.

b. Tolling Doctrines

Delaware courts recognize that certain circumstances may dictate the tolling of the applicable statute of limitations.[111] According to Plaintiffs, the analogous statute of limitations was tolled until November 2020, when Zaid filed his affidavit in the Kansas Case.[112] Plaintiffs contend that three tolling doctrines apply to Plaintiffs' claims: (i) inherently unknowable injury, (ii) equitable tolling following a breach of fiduciary duties, and (iii) fraudulent concealment.[113] To invoke any of these tolling doctrines, "the facts underlying a claim [must be] so hidden that a reasonable plaintiff could not timely discover them."[114] Where a tolling doctrine is invoked, "the statute begins to run 'upon the discovery of facts constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery

[110] *Albert v. Alex Brown Mgmt. Servs., Inc.*, 2005 WL 1594085, at *18 (Del. Ch. June 29, 2005).
[111] *Krahmer v. Christie's Inc.*, 903 A.2d 773, 778 (Del. Ch. 2006).
[112] Pls.' AB 35.
[113] *Id.* at 17.
[114] *Krahmer*, 903 A.2d at 778.

of such facts.'"[115] To put a plaintiff on "[i]nquiry notice does not require the plaintiff to have actual knowledge of the wrong, but merely an objective awareness of the facts giving rise to the wrong."[116]

i. Inherently Unknowable Injury

If an injury is inherently unknowable, the statute of limitations is tolled until the harmful effects of the injury become ascertainable.[117] A plaintiff asserting the application of this doctrine must prove that "it would be practically impossible for [the] plaintiff to discover the existence of a cause of action."[118] The burden lies with the plaintiff to "show that they were 'blamelessly ignorant' of both the wrongful act and the resulting harm."[119]

Plaintiffs contend that determining whether something that is represented as a trade secret is actually a trade secret is, by its very nature, inherently unknowable[120] unless a competitor showed Plaintiffs its formulas.[121] In support of this, Plaintiffs assert that in the years preceding the APA, Defendants filed several "Material Safety Data Sheets" that declared that the Schedule G Formulas were "PROPRIETARY

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[115] *Vichi v. Koninklijke Philipss Elecs. N.V.*, 2009 WL 4345724, at *17 (Del. Ch. Dec. 1, 2009) (quoting *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004)) (emphasis in original).
[116] *Id.*
[117] *Layton v. Allen*, 246 A.2d 794, 798 (Del. 1968).
[118] *In re Tyson Foods, Inc.*, 919 A.2d 563, 584 (Del. Ch. 2007).
[119] *Id.* at 585.
[120] *See* Pls.' AB 19–20 (citing 6 *Del. C.* § 2006, the statute of limitations for misappropriation of trade secrets, a claim not asserted by Plaintiffs in this action).
[121] *Id.* at 25.

INFORMATION" or "TRADE SECRETS."[122] It was still impossible for Plaintiffs to uncover the true nature of the Schedule G Formulas during the 2013 due diligence because "(1) no one at CES, including Burroughs, had access to the Schedule G Formulas, and (2) there is no evidence that a review of Schedule G by Burroughs, absent the formulas, would have indicated that" the Schedule G Formulas were not actually trade secrets, as Defendants represented.[123]

According to Plaintiffs, Defendants created Schedule G and it was Defendants, not Plaintiffs, who categorized the Schedule G Formulas as trade secrets and failed to remove the incorrect label to indicate the Schedule G Formulas were not trade secrets.[124] Plaintiffs contend that that the risk of this misrepresentation must lie with the party making the representation and that Plaintiffs were entitled to rely on Defendants' representations.[125] Once Plaintiffs executed the APA and became the lawful owners of the Schedule G Formulas, Plaintiffs aver that there was no indication for Plaintiffs to suspect that the Schedule G Formulas were not trade secrets until Zaid filed his affidavit stating as much in November 2020, because Zaid carefully guarded the Schedule G Formulas even when employed by Jacam 2013, thus "underscor[ing] the fact that" the formulas were trade secrets.[126] Even if, as the

[122] *Id.* at 11, 20; *see also* Pls.' Answering Br. to Defs.' Suppl. Br. on Laches, Ex. 33, Dkt. No. 81.
[123] Pls.' AB 21.
[124] *Id.* at 22.
[125] *Id.* at 24 (citing *Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *76–77 (Del. Ch. Oct. 1, 2018)).
[126] *Id.* (quoting Pls.' AB, Kitigawa Dep. 54:13–25, 55:15–22).

record shows, Zaid's behavior led Plaintiffs to be suspicious of the accuracy of Defendants' representations, Plaintiffs assert that courts do not require "litigants to file suit based merely on suspicions and fears."[127] Of course, this is not the question; notice of a need to inquire is the operative consideration.

In response, Defendants explain that once Plaintiffs became the rightful owners of the Schedule G Formulas, Plaintiffs were uninhibited from conducting a review of the assets purchased under the APA, including the Schedule G Formulas.[128] Defendants further counter that Zaid's secretive behavior while employed by Jacam 2013 caused Plaintiffs to be suspicious of the true nature of the Schedule G Formulas, putting them on at least inquiry notice that the designations may be spurious.[129] To the extent that Zaid prevented a review of the Schedule G Formulas, Defendants assert that Zaid's departure in 2017 removed any roadblock preventing Plaintiffs from accessing the Schedule G Formulas, as evidenced by Jacam 2013 altering the formulas for hundreds of products shortly after Zaid's departure.[130] Defendants also note that Plaintiffs' General Manager, Burroughs, admitted that he could determine the true nature of the Schedule G Formulas through a simple review.[131]

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[127] *Id.* (quoting *Accenture Glob. Servs. GmbH v. Guidewire Software Inc.*, 619 F. Supp. 2d 577, 594 (D. Del. 2010)).
[128] Defs.' RB 16–17.
[129] Defs.' OB 34–35; Defs.' RB 18–19.
[130] Defs.' OB 35; Defs.'RB 18–19.
[131] Defs.' RB 17, 19 (citing Defs.' OB, Burroughs Dep. 71:5–73:6).

From 2012 through 2013, the parties negotiated the terms of what would ultimately become the APA and engaged in due diligence, including discussion of the product portfolio that was memorialized in Schedule G. While the parties dispute which entity included certain formulas on Schedule G's list of "Trade Secrets," Old Jacam was in a position to know if the formulas were properly categorized as trade secrets and failed to correct the misrepresentation. Even if Burroughs, who was tasked with conducting technical due diligence, could have confirmed the true nature of the Schedule G Formulas through a simple review, Plaintiffs were not given the Schedule G Formulas during due diligence, prohibiting any such review. Therefore, I find that Plaintiffs could not discover their claims during the 2012–2013 due diligence period.

The APA was executed on March 1, 2013, and Zaid joined Jacam 2013 as its CEO. While CES's CEO believed he received the full book of Schedule G Formulas as of April 2015, CES's CTO and General Manager both acknowledged that their access to the Schedule G Formulas was limited to a one-off basis, and that Zaid's secretive behavior raised concerns. Plaintiffs, however, could not investigate these concerns because Zaid's behavior while employed by Jacam 2013 prevented Plaintiffs from confirming whether CES actually had access to all Schedule G Formulas, at least without alienating Zaid, which CES wished to avoid. Due to Plaintiffs' lack of access to investigate the true nature of the Schedule G Formulas,

I assume for purposes of this motion that Plaintiffs were unable to learn of their right to bring suit against Defendants while Zaid was employed by Jacam 2013.

Zaid resigned from Jacam 2013 in January 2017. At that time, CES's CTO and General Manager acknowledge that the roadblock preventing full access to the Schedule G Formulas was removed. Indeed, the Vice President of Technology for Jacam 2013 began a detailed analysis of all formulas purchased under the APA, resulting in Jacam 2013 changing the formulation for 300–400 of its products in early 2017, soon after Zaid's departure. While the parties dispute whether any of these formulas were Schedule G Formulas, the record nonetheless demonstrates that Plaintiffs had unfettered access to the Jacam 2013 products upon Zaid's departure in 2017, including those on Schedule G. I find that, to the extent the inherently unknowable injury doctrine applies to Plaintiffs' claims during Zaid's tenure at Jacam 2013, these claims were objectively discoverable and knowable by Plaintiffs no later than Zaid's exit in January 2017.

Nonetheless, Plaintiffs assert that the statute of limitations should be tolled until Zaid's 2020 affidavit.[132] According to Plaintiffs, West's and Zaid's "zealous secrecy" hindered Plaintiffs' access to the Schedule G Formulas and was designed "to keep Plaintiffs in the dark" to the claims.[133] While Plaintiffs' employees were

[132] *See generally* Pls.' AB.
[133] Pls.' AB 27.

concerned about West's and Zaid's "extreme" behavior in guarding the Schedule G Formulas, Plaintiffs allege that this behavior confirmed Plaintiffs' beliefs that the Schedule G Formulas were indeed trade secrets.[134]

Plaintiffs assert that the secretive conduct of Zaid and West, consistent with the representation that the Schedule G Formulas were trade secrets, thereby "gave Plaintiffs no suspicion of falsity of the representation or reason to conduct an investigation into [the] veracity of the representation," presumably *even after* the departure of West and Zaid.[135] According to Plaintiffs, their reliance on West's and Zaid's conduct is further supported, since West and Zaid did not disclose that the true nature of the Schedule G Formulas were misrepresented to Plaintiffs, in spite of their fiduciary relationship while employed with Jacam 2013.[136] Thus, per Plaintiffs, West and Zaid, by January 2017, had "lulled Plaintiffs 'into a false sense of security[,] . . . [thus] the statute of limitations [should be] tolled.'"[137]

In other words, despite Plaintiffs' concerns about Zaid's secretive and preclusive behavior concerning the products, which Plaintiffs tolerated only to

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[134] *Id.* at 24.

[135] *Id.* at 30. Plaintiffs further argue that even if West and Zaid's conduct had made Plaintiffs suspicious about the accuracy of the representations regarding the true nature of the Schedule G Formulas, mere suspicions are insufficient to require Plaintiffs to file suit or risk having the statute of limitations run. *Id.* at 24 (citing *Accenture Glob. Servs. GmbH*, 691 F. Supp. 2d at 594. The issue here, however, is when Plaintiffs could have reasonably investigated to confirm their suspicions and learn of their ability to bring the Equitable Claims.

[136] *Id.* at 29–33.

[137] *Id.* at 30–31 (quoting *Ocimum Biosolutions (India) Ltd. V. LG Chem. Ltd.*, 2022 WL 3354708, at *9–10 (D. Del. July 31, 2022)) (alterations added).

placate Zaid, they were nonetheless simultaneously lulled into such a somnolent state that they failed, over the ensuing years, to examine what they had purchased. If it is true that Zaid's lullaby overcame the Plaintiffs reasonable vigilance, that is the very definition of laches, slumbering upon one's rights.

Therefore, unless another tolling doctrine applies, the analogous statute of limitations began running, at the latest, in January 2017, and Plaintiffs were required to bring their claims no later than January 2020.

ii. Equitable Tolling

The equitable tolling doctrine "stops the statute of limitations from running while a plaintiff has reasonably relied upon the competence and good faith of a fiduciary."[138] To invoke this doctrine and save an otherwise time-barred claim, plaintiff "must plead specific facts to demonstrate [their] reliance on a self-dealing fiduciary, and that this reliance prevented the [plaintiff] from being on inquiry notice of the wrongs perpetuated by its fiduciary."[139]

Plaintiffs assert that their claims are equitably tolled because Zaid and West became fiduciaries of Jacam 2013 upon the execution of the APA, when they assumed executive roles at the company.[140] This fiduciary relationship entitled Plaintiffs to rely on Zaid and West's conduct and representations of the Schedule G

[138] *Matter of Estate of du Pont Dean*, 2017 WL 3189552, at *10 (Del. Ch. July 13, 2017).
[139] *Eni Hldgs., LLC*, 2013 WL 6186326, at *13.
[140] Pls.' AB 26.

Formulas.[141] Thus, Zaid and West's behavior closing guarding the Schedule G Formulas kept Plaintiffs in the dark about their breach of contract claims.[142] Moreover, because of this relationship that began in March 2013, Plaintiffs allege that Zaid and West had a duty to report their prior breaches of the APA and admit that Old Jacam had misrepresented the true nature of the Schedule G Formulas.[143] According to Plaintiffs, every day that Zaid and West came to work at Jacam 2013 and remained silent about these breaches of the APA, Zaid and West breached their fiduciary duties and lulled Plaintiffs into a false belief that Plaintiffs had no claims to bring.[144]

Defendants note that Plaintiffs fail to point to any affirmative act taken by West or Zaid to obscure Plaintiffs' claims while acting in a fiduciary capacity.[145] There is no evidence of any conversation or event during West and Zaid's employment with Jacam 2013 that would further implicate a duty to disclose their alleged breaches of the APA.[146] According to Defendants, there were no incorrect representations or omissions made by either West or Zaid.[147] To the extent that West or Zaid were obligated to report their breaches of the APA while serving as

[141] *Id.* at 27.
[142] *Id.*
[143] *Id.* at 28.
[144] *Id.*
[145] Defs.' OB 41.
[146] *Id.*
[147] *Id.*

fiduciaries of Jacam 2013, neither West nor Zaid were in a fiduciary relationship following their resignation from Jacam 2013 in January 2017.[148]

West and Zaid assumed their fiduciary roles with Jacam 2013 in March 2013.[149] There is no evidence supporting Plaintiffs' contention that Plaintiffs relied to their detriment on West's and Zaid's "silence" during their employment with Jacam 2013. West's and Zaid's "silence" did not prevent Plaintiffs from being on inquiry notice of the wrongs perpetuated by West and Zaid. Rather, members of Plaintiffs' management expressed concerns about Zaid's secretive behavior during his employment at Jacam 2013. Despite these concerns, Plaintiffs decided to defer to Zaid and keep him appeased while employed by Jacam 2013. Even if I find for purposes of this motion that these Defendants' silence tolled the laches period during their employment, that cannot save this action.

Assuming that West and Zaid did commit equitable torts by failure to disclose the true nature of the Schedule G Formulas during their employment, laches still bars recovery here. While Plaintiffs determined it was in Jacam 2013's best interests to not confront Zaid during his employment about potential misrepresentations perpetuated through Zaid's and West's silence, Zaid and West both left their roles

[148] *Id.* at 41–42.

[149] I do not address the application of equitable tolling to the period prior to West and Zaid assuming their fiduciary relationships with Jacam 2013 because Plaintiffs have not asserted reliance on representations by West and Zaid prior to their assumption of fiduciary roles in March 2013.

as fiduciaries in January 2017. At that point in time, Plaintiffs no longer needed to placate Zaid by acquiescing to his secretive behavior. Instead, Plaintiffs were uninhibited from investigating their management's concerns at that time to discover whether West and Zaid had perpetuated wrongs against Jacam 2013. Thus, to the extent that equitable tolling applies to Plaintiffs' claims, Plaintiffs were on inquiry notice of the wrongs perpetuated by West and Zaid by at least January 2017. Unless another tolling doctrine applies, the analogous three-year statute of limitations began to run no later than January 2017.

iii. Fraudulent Concealment

Under the doctrine of fraudulent concealment, the applicable limitations period is tolled "when the defendant conceals facts constituting plaintiffs' cause of action through the commission of affirmative acts of misrepresentation or failure to disclose facts when there is a duty to disclose."[150] "To assert fraudulent concealment as a tolling doctrine, a plaintiff requires facts supporting an inference of scienter such that the defendant had actual knowledge of the wrong done and acted affirmatively in concealing the facts."[151] Moreover, a plaintiff asserting the application of fraudulent concealment "must plead the circumstances supporting the doctrine with

[150] *Litman v. Prudential-Bache Properties, Inc.*, 1994 WL 30529, at *4 (Del. Ch. Jan. 14, 1994).
[151] *Lebanon Cnty. Emps.' Ret. Fund v. Collis*, 287 A.3d 1160, 1215–16 (Del. Ch. Dec. 15, 2022) (internal quotation marks omitted).

particularity sufficient to advise the defendant of the basis for the claim."[152] Therefore, under the requirements of Rule 9(b), the "complaint must allege: (1) the time, place, and contents of the false representation; (2) the identity of the person making the representation; and (3) what the person intended to gain by making the representations."[153]

Plaintiffs assert that West and Zaid fraudulently concealed facts forming the basis for Plaintiffs' causes of actions against Defendants.[154] First, Plaintiffs assert that, during the due diligence period, West and Zaid had actual knowledge of the true nature of the Schedule G Formulas and affirmatively misrepresented those facts to Plaintiffs.[155] Once West and Zaid joined Jacam 2013 as fiduciaries in March 2013, their close guarding and treatment of the Schedule G Formulas as confidential were sufficient to prevent Plaintiffs from becoming suspicious.[156] Plaintiffs aver that West and Zaid were under an affirmative duty to disclose their breaches of the APA and that their previous representations regarding the trade secret status of the products were inaccurate.[157] Despite this affirmative duty, West and Zaid remained silent throughout their employment with Jacam 2013.[158] Instead, West and Zaid

[152] *Id.* at 1215.
[153] *Abry P'rs V, L.P. v. F&W Acq. LLC*, 891 A.2d 1032, 1050 (Del. Ch. 2006).
[154] Pls.' AB 29.
[155] *Id.* at 30.
[156] *Id.*
[157] *Id.* at 31–32.
[158] *Id.*

strictly guarded the secrecy of the Schedule G Formulas and limited access to them.[159] According to Plaintiffs, these constant omissions and secretive behavior were meant to conceal the true nature of the Schedule G Formulas and, therefore, trigger tolling under the fraudulent concealment doctrine.[160]

Assuming without deciding that Plaintiffs have sufficiently pled facts supporting tolling here,[161] the ongoing misleading behavior ceased when the individual Defendant's left Jacam 2013.

Prior to the execution of the APA, West and Zaid allegedly misrepresented the true nature of the Schedule G Formulas, thereby giving rise to Plaintiffs' claims. At most, Plaintiffs assert that West and Zaid acted affirmatively to conceal this misrepresentation by refusing to give Plaintiffs access to any of the Schedule G Formulas to prevent Plaintiffs from discovering that the Schedule G Formulas were not, in fact, trade secrets. That ongoing fraud, if fraud it was, ended by January 2017. At that point, Zaid and West could do nothing to conceal the Schedule G Formulas from a thorough review by Plaintiffs. I have rejected the Plaintiffs "lulling" argument, by which they mean to extend any tolling indefinitely, above. Thus, I find that, to the extent the statute of limitations was tolled by fraudulent

[159] *Id.* at 32–33.
[160] *Id.*
[161] Defendants argue strenuously, *inter alia*, that the Amended Complaint fails to comply with Rule 9(b), an argument I need not reach here.

concealment, the tolling ended upon Zaid and West's departure from Jacam 2013 in January 2017.

iv. Preclusive Effect

I have determined that laches by analogy to the statute of limitations bars the affirmative claims addressed above. This is not meant to preclude the Plaintiffs from arguing that Defendants' conduct, if demonstrated, may provide grounds for estoppel or waiver in any other litigation.

III. CONCLUSION

Count I for breach of contract is untimely under both the terms of the APA and the applicable statute of limitations because the latest the limitations period would have run was March 2016. Plaintiffs failed to assert Count I until July 2021. Plaintiffs' equitable claims, Counts II–IV, are untimely under the analogous statute of limitations. To the extent any tolling doctrine applies, upon West's and Zaid's departure from Jacam 2013 in January 2017, Plaintiffs were reasonably able to uncover the true nature of the Schedule G Formulas and Plaintiffs' right to bring suit against Defendants. The analogous (three-year) statute of limitations expired in January 2020. Plaintiffs did not bring this suit until July 2021. Thus, Plaintiffs' equitable claims are time-barred. Accordingly, Defendants' motion to dismiss is GRANTED. The parties should submit a form of order consistent with this memorandum opinion.