IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PARAGON METAL HOLDINGS, LLC, PARAGON METALS LLC, STELLEX PARAGON METALS SPLITTER LP, and STELLEX CAPITAL INVESTORS LP,	)	
Plaintiffs,	)	
v.	)	C.A. No. N21C-12-090 SKR CCLD
MICHAEL J. SMITH and THE PARAGON INDUSTRIAL HOLDINGS GROUP, INC.,	)	
Defendants.	)	

Submitted: May 5, 2025
Decided: August 13, 2025

DECISION AFTER TRIAL

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Rennie, J.

I. INTRODUCTION

This is a fraud action arising out of Plaintiffs', Paragon Holdings LLC, Stellex Paragon Metals Splitter LP, and Stellex Capital Investors LP (collectively "Stellex" or "Buyers"), acquisition of Paragon Metals LLC ("Paragon" or the "Company"), from Defendants Michael J. Smith ("Smith"), and The Paragon Industrial Holdings Group, Inc. (collectively "Sellers") (the "Transaction").[1] The parties effectuated the Transaction with an Equity Interest Purchase Agreement (the "Agreement").[2] Plaintiffs allege that Sellers made several knowingly false representations and warranties in the Agreement which induced Buyers to enter into the Transaction.[3] Specifically, Buyers claim Sellers did not disclose information showing that two of Paragon's top 10 customers would materially decrease or change the terms of their business with the Company.[4] Among other arguments, Sellers insist that they made all contractually obligated disclosures and Buyers' insufficient due diligence cannot support a fraud claim.[5]

The Court held a five-day bench trial on Plaintiffs' fraud claim in early February 2025.[6] For the reasons that follow, the Court concludes that Plaintiffs' fraud claim fails, because Buyers did not conduct sufficient due diligence and ignored Sellers repeated,

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[1] *See* Amended Complaint (hereafter "Amend. Compl.") (D.I. 100).
[2] *See* JX1 (hereafter "Agreement").
[3] *See* Amend. Compl. ¶¶ 85-98.
[4] *Id.*
[5] *See* Defendants' Answer to Amended Complaint (hereafter "Amed. Compl. Answer") (D.I. 104).
[6] *See* Plaintiffs' Notice of Filing Final Official Trial Transcripts, Ex. A (hereafter "2/3 Tr."); Ex. B (hereafter "2/4 Tr."); Ex. C at 1-254 (hereafter "2/5 AM Tr."), 255-366 (hereafter "2/5 PM Tr."); Ex. D (hereafter "2/6 Tr."); Ex. E (hereafter "2/7 Tr.") (D.I. 273).

though perhaps inartful, disclosure of the information at the heart of their claim. Accordingly, judgment is entered in favor of Defendants.

II. FACTUAL OVERVIEW

A. The Parties' Relationship and Pre-Transaction Due Diligence

Smith founded Paragon and ran the Company for several decades.[7] "[Burnt] out" and "concerned that [he] couldn't grow the company [] much more because [he] was so hands-on," Smith began shopping Paragon in 2018.[8] In August 2018, Stellex submitted an indication of interest followed by a letter of intent expressing a desire to purchase the Company.[9] At that point, Stellex valued a potential purchase at "105 [to] 110 million" dollars.[10]

The parties then began pre-Transaction due diligence.[11] From the outset, Stellex presented Bruce Swift ("Swift") as the leader of its diligence team, which also included Michael Cochran ("Cochran"), David Waxman ("Waxman"), and Ryan Rodgers.[12] Stellex hired several firms to assist with legal, accounting, tax, environmental, and industry diligence.[13] Generally, Smith directed Sellers' diligence efforts.[14] As part of

[7] 2/6 Tr. 7:16-17:4.
[8] *Id.* 42:14-43:6.
[9] *See* JX106; 108. *See also* JX08 (Stellex "heads-up" memo discussing what made the Company an attractive investment).
[10] 2/4 Tr. 246:16-19.
[11] *See id.* 248:12-250:13 (discussing the post-LOI diligence process).
[12] *See* JX106 (stating Swift would direct Stellex's diligence process); JX108; 2/3 Tr. 79:14-80:3.
[13] *See* 2/3 Tr. 77:3-11.
[14] *See id.* 75:16-76:15; 259:21-260:23

the diligence process, Paragon gave Buyers access to a data room with over 10,000 documents.[15] Critically, the data room included a five-year sales forecast[16] and other volume projections.[17] Sellers generated those forward-looking sales numbers using customer-provided forecasts and industry accepted third party estimates.[18] Paragon also provided Buyers with copies of the Company's customer contracts including, relevantly: (1) a General Purchase Agreement ("GPA") between Paragon and ZF Transmission Gray Court, LLC ("ZF");[19] (2) an amended ZF GPA;[20] and (3) purchase orders used by Fiat Chrysler America ("FCA").[21] Notably, the forecasts that Sellers provided Buyers, include projected sales to ZF based on automobile transmissions ultimately sold to car manufactures that were not included on the GPA or amended GPA's customer list.[22]

B. The Company's Communications with Customers During Diligence

While diligence was ongoing, the Company received volume forecasts allegedly projecting a decrease in orders of 9HP48 and 9HP50 bearing brackets (for ZF) and

[15] 2/4 Tr. 249:22-250:3 (Stellex told Smith "give us everything you have; we will go through it.").
[16] *See* JX18; DX28.
[17] *E.g.*, DX33; DX35.
[18] *See* DX28 (containing IHS forecasts); DX35 (including FCA's "Greenbook" forecast); 2/6 Tr. 86:1-87:9.
[19] JX105. Relevantly, Paragon sold ZF 9HP48 and 9HP50 bearing brackets which ZF used to build transmissions for various automakers. *Id.* (listing relevant part numbers).
[20] JX04.
[21] DX06. Paragon sold FCA 9HP48 output supports – a less machined version of the bearing brackets sold to ZF. 2/4 Tr. 46:15-23, 334:5-8.
[22] *Compare* DX28 (including sales concerning Nissan/Renault); *with* JX04 (not listing Nissan/Renault as one of ZF's customers for whom Paragon provided bearing brackets).

output supports (for FCA) over the next several years.[23] In August 2018, FCA sent Lisa Brooke ("Brooke)", a Company employee, updated volume projections for Paragon output supports.[24] These new projections differed from Paragon's then current forecasts, prompting Brooke to suggest "taper[ing] volumes faster than is currently indicated."[25] In November 2018, FCA's "40% reduction[]" in orders prompted Brooke to reach out

[23] *E.g.*, JX06 (email from FCA employee Jake Vanslembrouck ("Vanslembrouck") providing volume estimates for 2019-2023). The parties vigorously contest the reliability of customer provided forecasts, and whether any projected sales decrease therein can be considered reasonably expected to happen in the future. *Compare* Defendants' Post Trial Brief (hereafter Defs. Opening Br.") at 17 (D.I. 291) (arguing "[t]he forecasts at issue were not a statement of anything reasonably expected to happen" in the future), *with* Plaintiffs' Opening Post Trial Brief (hereafter "Pls. Opening Br.") at 5-7 (D.I. 290) (arguing customer forecasts are the best evidence of what order would occur in the future). Defendants' position is not without factual support. *See* JX06 (stating FCAs new projections were "a forecast only, and ha[d] the possibility of changing significantly."); Defendants' Notice of Lodging of Video Deposition Designations Player at Trial on February 7, 2025, Ex. E (hereafter "Spackman Dep.") 365:3-12, 369:1-371:14 (D.I. 277) (testifying ZF forecasts are for planning only and change regularly). Yet, the overwhelming weight of the evidence shows customer projections are the "best estimate of what's going to happen in the future." Notice of Filing Deposition Transcripts of Depositions Played at Trial (by Plaintiffs), Ex. H (hereafter "Wilhelm Dep.") 119:16-120:4 (D.I. 274); *see id.*, Ex. F (hereafter "Brooke Dep.") 180:3-181:23 (agreeing forecasts are a customer's "best information indicat[ing] that that's how many of [a] part they are going to order from Paragon[.]"); Spackman Dep. 139:21-140:6 (testifying ZF projections were "the best information that we, ZF had from our customers at the time."), 466:6-15 (agreeing there is "no more accurate or reliable data" for purposes of planning Paragon's business, than the ZF projections). Smith himself testified that customer forecasts are the "best guess at that time of what is happening in the future," and Paragon used them to "plan [its] business" and the forecasts in the data room. 2/4 Tr. 138:13-139:23. Plaintiffs' industry expert, Grant Church, confirmed that customer projections "have a high level of confidence." 2/7 Tr. 265:10-16. Defendants' industry expert, Scott Ferriman, agreed automotive companies use customer forecasts as "one of the inputs to create profit and loss statements." *Id.* 258:6-20. Accordingly, the Court concludes the weight of the evidence shows that in the automotive industry customer provided forecasts are valid evidence of what order volumes are reasonably expected to materialize in the future. *See Estate of Buller v. Montague*, 2022 WL 663151, at *1 (Del. Super. Mar. 4, 2022) (holding "[i]n a bench trial, the court . . . determine[s] the weight and credibility to be accorded any witness, and . . . resolv[es] conflicts in evidence." (internal quotes omitted)). As such, the Court does not credit any argument based on the inherent unreliability of customer forecasts.

[24] *See* JX06.

[25] *Id.*

again for revised projections.[26] FCA provided an updated forecast, depicting further decreases in 2019 sales compared to the August email.[27]

Similarly in fall 2018, ZF sent Paragon updated projected volumes for 9HP48 and 9HP50 bearing bracket orders.[28] These revised forecasts anticipated lower 9HP48 volumes than ZF's previous estimates.[29] ZF's and FCA's new forecasts prompted Smith to recalculate Paragon's internal volume projections (the "October Reforecast").[30] Smith sent Buyers the October Reforecast, and corresponding supporting data (the "October Support").[31]

On November 16, 2018, ZF informed the Company "FCA, has indicated . . . it intends to cancel the 9HP48 program with ZF" which would necessarily affect ZF's future orders.[32] ZF confirmed that cancellation in December 2018.[33] Smith testified that the cancellation letter caused him to believe the ZF 9HP48 program "was going to

[26] JX49.
[27] *Id.*
[28] *See* PX92; PX126. *See also* PX131 (email from Smith to ZF requesting updated volume projections in advance of a Company/ZF meeting).
[29] *See* PX92; PX126.
[30] JX18 (hereafter "Oct. Reforecast").
[31] *See id.*; DX28 (hereafter "Oct. Support").
[32] PX139.
[33] PX187.

be reduced or cancelled."[34] Notably, Smith admitted that the ZF cancellation letter made "part of [the October Reforecast] [] incorrect."[35]

During this period, ZF, through Clive Spackman ("Spackman"), and Smith negotiated an amendment to the GPA.[36] A draft GPA amendment included ZF's downward-revised volume projections,[37] but the parties removed that information at Smith's request.[38] ZF and Paragon executed the GPA amendment in December 2018.[39] The amendment gave ZF a price-down for Company bearing brackets, in exchange for which ZF removed its right to resource its business based on pricing competitiveness.[40]

During GPA amendment negotiations, Paragon's Chinese affiliate paid ZF a $300,000 rebate.[41] This was the first rebate the Company ever paid ZF.[42] While Smith admitted at trial "[y]ou don't just give a rebate and money for nothing," the parties

[34] 2/4 Tr. 182:11-183:4. Sellers believed the ZF cancellation's impact would be mitigated by sales shifting to FCA. *See* 2/7 Tr. 56:9-21. Specifically, Sellers expected the decrease in sales of 9HP48 bearing brackets to ZF would be offset by a corresponding increase in 9HP48 output supports to FCA. *Id.* 54:15-56:21; *see* JX98.
[35] 2/4 Tr. 184:6-9. At trial, Smith was unsure whether he shared the cancellation letter or just "the contents of the letter" with Swift during diligence. *Id.* 184:10-22.
[36] *See id.* 161:7-10; PX177 (email chain discussing edits to the proposed GPA amendment).
[37] PX88.
[38] PX177 (stating including such information "would [not] be agreeable given the fact we do not want to limit ourselves to programs that are current [] if a new program comes along we would like to take part in the bid process and win that business."). At trial, Smith testified he requested ZF remove volume information from the GPA amendment, because he "didn't want to be pigeonholed to just the volume of the companies that were already awarded. I wanted to be able to [] retain our capacity so we can get new programs, because [his] goal was to continue to try to get that Nissan program." 2/4 Tr. 163:11-23.
[39] JX04.
[40] *Id.*
[41] 2/6 Tr. 134:16-136:23.
[42] *See id.* 134:3-7; 2/4 Tr. 122:16-21.

dispute the rebate's purpose.[43] Sellers insist the Company "actually got new business because of [the rebate]," because it allowed Paragon to remain a "strategic supplier."[44] Buyers suggest ZF was only able to extract the rebate because Paragon was no longer the sole supplier for ZF's 9HP48 and 9HP50 transmission programs.[45] As such, Buyers assert that Smith paid the rebate to ensure Spackman did not inform Stellex's diligence team about ZF's changing relationship with Paragon.[46]

C. Buyers' Diligence Continues

While Sellers' communication with Paragon's customers was ongoing, Buyers continued due diligence.[47] This included creating a spreadsheet to value the Transaction based largely on the Company's September 2018, pre-October Reforecast data (the "Deal Model").[48] Sellers insist that they disclosed the substance of the cancellation letters and FCA/ZF's revised forecasts, but Buyers did not incorporate that new information into the Deal Model or conduct follow-up diligence.[49]

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[43] 2/4 Tr. 122:22-123:3.
[44] 2/6 Tr. 134:14-135:18.
[45] *See* Spackman Dep. 25:19-27:21.
[46] *See id.* 41:22-42:5, 45:17-46:9, 54:20-56:17; PX111.
[47] 2/3 Tr. 74:20-77:11.
[48] *See* JX79. Defendants' criticize Buyers for not accounting for the fact that the October Reforecast included both "booked" and "unbooked" business. *See* DX28 (containing "unbooked" business relating to 9HP48-50 sales to ZF regarding Nissan/Renault and Honda). Smith included unbooked business in the October Reforecast, "to show the [] [] potential sales of the company." 2/4 Tr. 224:7-8.
[49] *See* DX99; JX18; DX28; DX105; DX106. *See also* JX79.

Smith also arranged for Swift to meet with the Company's largest customers, including ZF and FCA.[50] In these meetings "Stellex had the freedom to ask whatever [it] wanted."[51] Buyers created a list of discussion topics for each meeting and reviewed them with Swift, who attended in person.[52] Notably, the list of topics for the ZF meeting included "letter to Paragon about decreasing volumes."[53] At the ZF meeting, however, Swift did not "ask [] about Stellex's volume projections" instead just inquiring "is the business still good."[54] Nor did Swift ask about the cancellation letter.[55] Similarly, after the FCA meeting Swift told Buyers "volumes for 2019 will be flat over 2018" and "[FCA] [is] happy with Paragon."[56]

D. The Agreement

The parties executed the Agreement on December 14, 2018.[57] Several provisions of the Agreement are central to Plaintiffs' intra-contractual fraud claim.[58] Section 3.8 represents and warrants:

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[50] *See* PX440.
[51] 2/6 Tr. 115:13-116:15.
[52] *See* JX26; DX76.
[53] DX76; *see* JX26.
[54] 2/4 Tr. 31:10-32:4. Spackman found Swift "capable," but thought the meeting was "just introductory." Spackman Dep. 35:18-21, 37:6-16. Plaintiffs suggest that Smith paid the one rebate specifically to prevent Spackman from disclosing ZF's deteriorating business with the Company in the meeting. *See id.* 41:22-42:8 (stating the meeting "was intended to be a look forward), 54:20-56:17 (suggesting Smith delayed paying the rebate until after Spackman's meeting with Swift as leverage); PX111.
[55] *Id.* 259:18-20.
[56] JX28.
[57] *See* Agreement.
[58] *See id.* Art. III.

> [s]ince December 31, 2017, no fact, event or circumstance has occurred or arisen that, individually or in combination with any other fact, event or circumstance, has had or would reasonably be expected to have a Material Adverse Effect. Since December 31, 2017, [Paragon] has conducted the Business only in the ordinary course of business consistent with past practices.[59]

The Agreement contains a standard "Material Adverse Effect" definition.[60] Relevantly, the Agreement provides:

> the parties acknowledge and agree that although the failure of Company to meet or achieve the results set forth in any internal projection, estimate or forecast shall not, in and of itself, constitute a "Material Adverse Effect", the underlying facts or circumstances which may lead to such failure of Company to meet or achieve such metrics may be considered when determining whether a "Material Adverse Effect" has occurred to the extent such underlying facts or circumstances, on their own, constitute a "Material Adverse Effect.[61]

Section 3.23 represents and warrants:

> [e]xcept as set forth on Schedule 3.23 and other than in the ordinary course of business, Company has not received any notice from any such customer to the effect that, and none of Company, [] or [Smith] has any Knowledge that, any such customer will stop, decrease the rate of, or change the terms (whether related to payment, price or otherwise) with respect to, buying products from Company.[62]

Schedule 3.23 identifies, ZF and FCA as two of Paragon's top three customers by sales.[63]

Two contractual representations and warranties are relevant to Sellers' defense.[64]

Section 3.12 states, "[e]xcept as set forth on [] [] Schedule 3.12, Company is not a party

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[59] *Id.* § 3.8.
[60] *Id.*, Annex 1.
[61] *Id.*
[62] *Id.* § 3.23.
[63] *Id.* Schedule 3.23.
[64] *See generally id.* Article III.

to or bound by . . . [a]ny long term of master supply agreement between Company and any of the customers listed on Schedule 3.23.[65] Schedule 3.12 includes the ZF GPA, ZF GPA amendment, and FCA purchase order.[66] Section 3.30 disclaims "any express or implied representation or warranty," except those "in [] Section 3 (as qualified by the schedules)[.]"[67]

Article 5 of the Agreement contains Buyers' contractual representations and warranties.[68] At issue here is Section 5.10, which states:

> (a) [Stellex] has conducted to its satisfaction an independent investigation and verification of the financial condition, results of operations, assets, liabilities, properties and projected operations of [Paragon], and in making its determination to proceed with the transactions contemplated by this Agreement, [Stellex] has relied on the results of its own independent investigation . . . (b) In connection with [Stellex's] investigation of Company, Buyer has received from or on behalf of Company or Parent certain projections . . . Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates . . . and that Buyer shall have no claim against Company or Parent with respect thereto. Accordingly, neither Company nor Parent makes any representations or warranties whatsoever with respect to such estimates[.][69]

[65] *Id.* § 3.12.
[66] *Id.* Schedule 3.12.
[67] *Id.* § 3.30.
[68] *See id.* Article V.
[69] *Id.* § 5.10.

E. Post-Signing Developments

The Transaction closed on January 31, 2019 (the "Closing").[70] Buyers installed Swift as Paragon's post-Closing CEO.[71] The day after Closing, FCA informed the Company that it planned to produce 9HP transmissions in-house and would order less parts from Paragon.[72] Within weeks of Closing, Company employees informed Swift that the October Reforecasts was not achievable because of ZF and FCA's declining volumes.[73] This prompted Buyers to redo the Company's sales projections to account for the decrease in volumes (the "Sales Bridge").[74]

Following Closing, Paragon struggled financially.[75] The parties attribute these difficulties to different factors. Buyers assert declining volumes, known by Sellers pre-Closing, drove Paragon's struggles.[76] Sellers contend that Buyers' mismanagement caused any financial difficulties.[77] Regardless of the cause, Paragon's financial woes threatened to cause a default on the loan used to finance the Transaction and to culminate in bankruptcy.[78] Stellex met with its bank and gave a presentation describing the sources of the Company's poor performance – including, Covid, a GM strike, and other one-off

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[70] *Id.* § 2.3.
[71] *See* 2/3 Tr. 251:9-21, 336:20-23.
[72] JX98.
[73] *See* 2/3 Tr. 270:1-271:3, 271:13-273:13; 2/4 Tr. 9:19-11:9; JX88.
[74] DX123; *see* 2/3 Tr. 136:22-137:18 (describing the Sales Bridge); JX88.
[75] *See* DX221; JX44; 2/4 Tr. 366:6-372:20.
[76] *See* 2/4 Tr. 281:5-12, 283:2-17.
[77] *See* 2/5 AM 148:3-19 (noting Paragon had "[f]our CEOs and one interim CEO" post-Closing); 2/7 Tr. 66:15-70:5 (Mackinder testifying regarding Swift's post-Closing mismanagement).
[78] *See* 2/4 Tr. 366:6-372:20.

events.[79] Ultimately, Buyers secured some debt relief in exchange for Stellex assuming the Company's loan.[80] Yet, Paragon's continued financial decline prompted Stellex to inject millions in additional capital into the Company.[81] Plaintiffs then filed this suit.

III. PROCEDURAL HISTORY

Plaintiffs initiated this lawsuit in December 2021.[82] Defendants moved to dismiss Plaintiffs' initial Complaint.[83] On June 22, 2022, then-Judge LeGrow denied Defendants' Motion to Dismiss via oral ruling.[84] Defendants then filed an Answer.[85]

On May 11, 2023, this case was reassigned.[86] In October 2023, Plaintiffs sought leave to amend their Complaint.[87] After the Court granted that request,[88] Plaintiffs filed their operative Amended Complaint in December 2023.[89] Defendants answered the Amended complaint the following month.[90]

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[79] DX221.
[80] JX44 ("[w]e have reached agreement with the lender group whereby Stellex will purchase the lender group's entire debt position for $30mm of cash proceeds (~51% discount to current par value of ~62mm).").
[81] *See* 2/4 Tr. 365:8-11, 366:6-372:20.
[82] *See* Complaint against Defendant Michael J. Smith and The Paragon Industrial Holdings Group, Inc. (hereafter "Compl.") (D.I. 1).
[83] *See* Defendants Michael J. Smith and the Paragon Industrial Holdings Group, Inc.'s Partial Motion to Dismiss the Complaint (D.I. 9).
[84] *See* Judicial Action Form 6/22/2022 Bench Ruling on the Motion to Dismiss (D.I. 26).
[85] *See* Defendants' Answer to Complaint (D.I. 31).
[86] *See* 5/11/2023 Letter Reassigning Case (D.I 61).
[87] *See* Plaintiffs' Motion for Leave to File Amended Complaint (D.I. 76).
[88] *See* Judicial Action Form for November 2, 2023 (D.I. 87).
[89] *See* Amend. Compl.
[90] *See* Amed. Compl. Answer.

After discovery, the parties filed Cross-Motions for Summary Judgment in September 2024.[91] With summary judgment pending, each party filed two *Daubert* motions to exclude counter-party experts.[92] Similarly, Defendants filed a Motion *in Limine* in November 2024.[93] Plaintiffs filed two Motions *in Limine* the same day.[94]

On December 18, 2024, the Court denied all four *Daubert* motions via an oral ruling with the limitations discussed on the record.[95] At the January 24, 2025, pretrial conference, the Court reserved ruling on the three Motions *in Limine*.[96] The Court then entered the Pretrial Stipulation.[97]

On January 28, 2025, the Court issued a Memorandum Opinion granting in part and denying in part the Motions for Summary Judgment (the "MSJ Op.").[98] The MSJ Op. disposed of: (1) Buyers' breach of contract claims; (2) Buyers' fraud claim regarding Musashi Auto Parts – Michigan, Inc.; (3) Sellers' ordinary course defense; (4) Sellers'

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[91] *See* Defendants' Motion for Summary Judgment (hereafter "DMSJ") (D.I. 184); Plaintiffs' Motion for Partial Summary Judgment (hereafter "PMSJ") (D.I. 186).
[92] *See* Defendants' Motion to Exclude the Expert Testimony of Michael P. Elkin (D.I. 191); Defendants' Motion to Exclude the Expert Testimony of Grant Church (D.I. 192); Plaintiffs' Daubert Motion to Exclude Testimony of Thomas Frazee (D.I. 193); Plaintiffs' Daubert Motion to Exclude Testimony of E. Scott Ferriman (D.I. 194).
[93] *See* Defendants' Motion in Limine to Bar Plaintiffs from Offering Evidence Regarding Customer EDIs, Releases, or Orders (D.I. 223).
[94] *See* Plaintiffs' Motion in Limine for an Adverse Inference as to the Text Messages Defendant Smith Destroyed (D.I. 224); Plaintiffs' Motion in Limine to Address Defendant Smith's Witness Tampering of David Smith (D.I. 225).
[95] *See* Judicial Action Form for December 18, 2024 (D.I. 243); Official Transcript – Cross Motions for Summary Judgment and Daubert Motions December 4, 2024 (hereafter "12/4 Tr.") (D.I. 270).
[96] *See* Judicial Action Form for January 24, 2025 (D.I. 259); Pretrial hearing transcript of January 24, 2025 (hereafter "1/24 Tr.") (D.I. 260).
[97] *See* Pretrial Stipulation and Order (D.I. 257).
[98] *See* Memorandum Opinion (hereafter "MSJ Op.") (D.I. 261).

statute of limitations and contractual survival period defenses; and (5) Sellers' economic loss doctrine defense.[99] Additionally, the MSJ Op. made several relevant legal determinations. First, the Court held that Section 3.23's representation and warranty "applies to a decrease in a single product's sale *that is reasonably likely to occur*."[100] Second, the Court determined "under the Agreement's plain terms Stellex relied on Sections 3.8 and 3.23."[101] Third, the Court interpreted Section 5.10(a) of the Agreement as "impos[ing] upon Stellex a diligence obligation and expressly stat[ing] that [Stellex] relied on the results" of that diligence.[102]

The MSJ Op. prompted Defendants to file an Emergency Motion to Amend its answer to add an ordinary course of business defense.[103] The Court denied that Motion, because Defendants "ha[d] an opportunity to assert the amendment before [Summary Judgment] but waited until after judgment before requesting leave."[104]

The Court presided over the parties' five-day bench trial from February 3, 2025, to February 7, 2025.[105] Following trial, Defendants filed a Motion to Strike Plaintiffs'

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[99] *Id.* at 13-36.
[100] *Id.* at 17-21 (emphasis added). Therefore, "to establish liability, Stellex must prove that the allegedly non-disclosed documents communicated likely changes to Paragon's business with" ZF and/or FCA. *Id.* at 21
[101] *Id.* at 23.
[102] *Id.* at 24.
[103] *See* Defendants' Emergency Motion to Amend (D.I. 264).
[104] Order Denying Defendants' Emergency Motion to Amend (D.I. 267) (quoting *Those Certain Underwriters at Lloyd's, London v. National Installment Ins. Services, Inc.*, 2008 WL 2133417, at *7-8 (Del. Ch. May 21, 2008)).
[105] *See* 2/3 Tr.; 2/4 Tr.; 2/5 AM Tr.; 2/5 PM Tr.; 2/6 Tr.; 2/7 Tr.

designation of Smith and Mackinder's depositions – arguing that considering such testimony was improper because both witnesses testified live at trial.[106] On March 24, 2025, the parties filed opening post-trial briefs.[107] A month later the parties filed post-trial opposition briefs.[108] On May 5, 2025, Plaintiffs filed an Objection to Defendants' Post-Trial Response Brief and the matter was considered submitted.[109]

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[106] Defendants' Motion to Strike Certain Deposition Designations (D.I. 280) (citing *Buck v. Viking Holding Management Company LLC*, 2024 WL 4352368, at *15 n.145 (Del. Super. Sept. 30, 2024) ("[i]f a deponent testifies at trial, the Court will rely only upon trial testimony . . . it is not appropriate to rely upon deposition testimony as affirmative evidence when a witness testifies live at trial.")). Plaintiffs' oppose Defendants' Motion to Strike – insisting that "timely designated deposition testimony from an adverse party can be used in post-trial briefs." Plaintiffs' Response in Opposition to Defendants' Motion to Strike Certain Deposition Designations (D.I. 285). In this bench trial, the Court exercises its discretion to **DENY** Defendants' Motion to Strike. *See Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967, at *4 (Del. Super. Jan. 9, 2024) ("[m]otions to strike are not favored and are granted sparingly." (internal quotes omitted)). Superior Court Civil Rule 32(a)(2) states "[t]he deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent . . . may be used by an adverse party for any purpose." Super. Ct. Civ. R. 32(a)(2). This plainly includes Plaintiffs' use of Smith's deposition. Although not a party, Mackinder was similarly "adverse" to Buyers such that Rule 32(a)(2) permits Plaintiffs to cite his deposition in post-trial briefing. *See ACP Master, Ltd. v. Sprint Corporation*, 2017 WL 75851, at *3 (Del. Ch. Jan. 9, 2017) (holding Rule 32(a)(2) "permits an adverse party to use a deposition . . . for any purpose." (internal quotes omitted)). Defendants' reliance on *Buck* does not compel otherwise. Unlike in *Buck*, the Court was able to assess Smith and Mackinder's credibility at trial.

[107] *See* Pls. Opening Br.; Defs. Opening Br.

[108] *See* Plaintiffs' Response in Opposition to Defendants' Post-Trial Brief (hereafter "Pls. Opp'n Br.") (D.I. 293); Defendants' Post-Trial Brief ("Defs. Opp'n Br.") (D.I. 294).

[109] *See* Plaintiffs' Objection to Defendants' Post-Trial Response Brief (D.I. 296). Plaintiffs' Objection challenged Defendants' reliance on: (1) DX3 – "a hard drive containing over 10,000 documents that were not admitted into evidence" which was "admitted solely for demonstrative purposes"; (2) portions of Brooke's deposition testimony not played at trial; and (3) Elkin's alleged "failure to consider the purported recovery of insurance proceeds and 'debt relief" in reaching his conclusions. *Id.* As with the post-trial Motion to Strike, the Court need not address Plaintiffs' objection because the challenged evidence does not control the case's resolution.

IV. STANDARD OF REVIEW

The burden of proof in a civil case, including one asserting fraud, is by a preponderance of the evidence.[110] Preponderance of the evidence "means proof that something is more likely than not."[111] If the evidence on any point "is evenly balanced, the party having the burden of proof has not proved that point by a preponderance of the evidence, and the Court must find against the party on that point."[112]

In a bench trial, the Court sits as fact finder.[113] As fact finder, the Court "must assess the credibility of each witness and determine the weight given to the testimony."[114] The Court "considers all exhibits, live and deposition witnesses, the parties' arguments, and the applicable Delaware law" to reach a verdict.[115]

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[110] *See Sofregen Medical Inc. v. Allergan Sales, LLC*, 2024 WL 4297665, at *16 (Del. Super. Sept. 26, 2024) ("[w]hile in some jurisdictions fraud must be shown by clear and convincing evidence, the burden of proof in a fraud case in Delaware is by a preponderance of the evidence." (citing *In re IBP, Inc., Shareholders Litigation*, 789 A.2d 14, 15, 54 (Del. Ch. 2001). While one Delaware court posited "[t]here is some uncertainty in our laws as to whether a plaintiff asserting fraud must prove the claim by clear and convincing evidence or whether a preponderance of the evidence will suffice," *Project Boat Holdings, LLC v. Bass Pro Group, LLC*, 2019 WL 2295684, at *23 (Del. Ch. May 29, 2019), Delaware Supreme Court caselaw unequivocally provides "fraud must be established by clear and convincing evidence." *Wilson v. Montague*, 19 A.3d 302 (Table) (Del. 2011).

[111] *RBY&CC East Side Homeowners Association, Inc. v. Beebe*, 2023 WL 3937932, at *13 (Del. Ch. June 9, 2023).

[112] *Sofregen*, 2024 WL 4297665, at *16 (citing Super. Ct. Civ. Pattern Jury Instruction 4.1).

[113] *City of Dover v. Cassidy Commons, LLC*, 2024 WL 807169, at *3 (Del. Super. Feb. 27, 2024).

[114] *Williams v. Bay City, Inc.*, 2009 WL 5852851, at *1 (Del. Super. Dec. 23, 2009) (internal citations omitted); *see Pardo v. State*, 160 A.3d 1136, 1150 (Del. 2017) (holding the fact finder is "free to accept or reject any and or all sworn testimony.").

[115] *Buck*, 2024 WL 4352368, at *7.

V. ANALYSIS

Plaintiffs contend that the trial evidence shows the representations and warranties in Sections 3.8 and 3.23 of the Agreement were fraudulent at Closing.[116] A plaintiff claiming fraud must prove by a preponderance of the evidence:

> 1) a false representation, usually one of fact, made by the defendant;
> 2) the defendant's knowledge or belief that the representation was false, or was made with reckless indifference to the truth;
> 3) an intent to induce the plaintiff to act or to refrain from acting;
> 4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and
> 5) damage to the plaintiff as a result of such reliance.[117]

The Court evaluates whether Plaintiffs carried their burden on each element, along with Defendants' corresponding opposition argument.

A. Sellers' Representations and Warranties in Sections 3.23 and 3.8 of the Agreement Were Knowingly False at Closing.

Plaintiffs insist that they proved Sections 3.23 and 3.8 were knowingly false at Closing.[118] Plaintiffs discuss the allegedly fraudulent representations in terms of ZF,[119] FCA,[120] and post-Closing MAEs.[121] Regarding ZF, Plaintiffs argue that the evidence shows Defendants knew: (1) the 9HP program was being significantly

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[116] *See generally* Pls. Opening Br.
[117] *Lord v. Souder*, 748 A.2d 393, 402 (Del. 2000) (citing *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983)).
[118] Pls. Opening Br. at 2-14.
[119] *Id.* at 2-10.
[120] *Id.* at 10-12.
[121] *Id.* at 12-14.

reduced or cancelled;[122] and (2) ZF's purchasing terms were changing.[123] Concerning FCA, Buyers contend that Sellers received 2019-2023 volume projections evidencing that FCA would decrease its purchases compared to previous benchmarks.[124] Regarding a post-closing MAE, Plaintiffs argue that "because Defendants knew ZF and FCA would reduce their orders and the October Reforecast was not achievable, Defendants knew Paragon would default on its financing."[125]

Before addressing the merits of Plaintiffs' knowing falsity argument, Sellers maintain that Sections 3.12 and 3.30 of the Agreement bar Buyers' claim.[126] Section 3.12 states in relevant part, "[e]xcept as set forth on the attached Schedule 3.12, Company is not a party to . . . [a]ny long term or master supply agreement between Company and any customer listed on Schedule 3.23."[127] Section 3.30 disclaims

[122] *Id.* at 2-8. Specifically, Plaintiffs argue that Defendants received two cancellation letters indicating ZF planned to cancel its 9HP48 program. *Id.* at 3-4 (citing PX139; PX187). Plaintiffs contend that trial testimony shows Defendants knew that the change to the 9HP program made the October Reforecast incorrect. *Id.* (citing 2/4 Tr. 182:21-185:2). Moreover, Plaintiffs assert that Defendants repeatedly received information "showing ZF's purchases would decline significantly from 2019 to 2023." *Id.* at 5-8 (citing PX88; PX126; PX131).

[123] Plaintiffs specifically flag two changing terms. First, Plaintiffs point to Paragon's first-ever rebate payment to ZF. Pls. Opening Br. at 8 (citing 2/4 Tr. 122:16-21; 324:21-326:13). Second, Plaintiffs note that Paragon lost its "sole supplier" status for ZF's 9HP program. *Id.* at 8-10.

[124] *Id.* at 10-12 (citing JX6; JX49; 2/4 Tr. 335:22-336:3, 339:18-345:3).

[125] *Id.* at 12-14 ("Smith knew this because the Agreement contained Stellex's $45 million equity and the banks' $57.5 million financing commitments. Smith also knew Paragon effectively would double its $28,488,125 in debt before the closing, while earnings were in freefall, as only he knew."). Buyers maintain that default, and associated loss of EBITDA, is a MAE. *Id.* at 13-14 (citing *Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *75 (Del.Ch. Oct. 1, 2018)).

[126] Defs. Opp'n Br. at 1-2.

[127] Agreement § 3.12.

reliance on any non-contractual representation and warranty.[128] Taken together, Sellers argue that these provisions limited Buyers' reliance to the ZF and FCA contracts on Schedule 3.12, which only guaranteed two-weeks of business.[129] Sellers take the position that this defeats Buyers' fraud claim.[130] The trial facts, however, refute Sellers' argument.

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[128] *Id.* § 3.30 ("[e]xcept for the representations and warranties contained in this Section 3 (as qualified by the schedules), neither Company nor [Sellers] make any express or implied representation or warranty, and Company and owners hereby disclaim any such representation or warranty with respect to the execution and delivery of this Agreement and the consummation of the Transaction contemplated by this Agreement.").

[129] Defs. Opp'n Br. at 1-2 (citing Agreement at Schedule 3.12). Defendants also argue that Section 3.30 bars any falsity argument based on Paragon's supposed "sole-supplier" status concerning ZF's 9HP48 and 9HP50 programs or the ZF rebate. Defs. Opp'n Br. at 9-10. Not so. Plaintiffs argue that Paragon's loss of sole supplier status and the rebate rendered Section 3.23 fraudulent, because they changed the terms under which the Company sold products to ZF. Pls. Opening Br. at 8-10. Section 3.23 unambiguously represented that Sellers had not received notice that ZF would "change the terms (whether related to payment, price or otherwise) with respect to, buying products from Company." Agreement § 3.23. Defendants essentially argue that the relevant "terms" are limited to those included in the contracts disclosed in Schedule 3.12. Defs. Opp'n Br. at 9-10 (arguing Buyers' fraud claim based on sole supplier status and the new rebate fail because those were not terms included in the ZF GPA or amended GPA). Yet, the Agreement's text does not limit "terms" to provisions in contracts noticed in Schedule 3.12. *See* Agreement § 3.23. "[T]erms" undefined and Section 3.23. *See generally id.* Elsewhere in the Agreement the parties explicitly cabined the scope of representation and warranties based on the attached schedules – including in Section 3.23 with regards to the relevant Paragon customers. *See, e.g.*, *id.* ("Schedule 3.23 . . . sets forth [] a list of Company's top 10 customers . . . Company has not received any notice *from any such customer* . . ." (emphasis added)). That the Agreement lacks similar qualifying language regarding the word "terms" shows the parties intended to use that term generally, without limiting the applicable terms to those in Schedule 3.12 contracts. *See Genworth Financial, Inc. v. AIG Specialty Insurance Company*, 2025 WL 688987, at *9 (Del. Super. Feb. 21, 2025) ("where a term is used in one portion of a writing, but omitted from another portion, that is a 'meaningful variation' suggesting the drafters intended a different result." (quoting *City of Lewes v. Nepa*, 212 A.3d 270, 279, n.37 (Del. 2019)). Accordingly, the fact that rebates and sole supplier status are not discussed in the ZF GPA or GPA amendment does not preclude Buyers' fraud claim based on those "terms."

[130] Defs. Opening Br. at *Id.* at 13-14. Defendants note that the ZF and FCA agreements are governed by Michigan Law, under which "an automotive supply contract that does not obligate the buyer, in writing, to purchase its requirements is a 'release-by-release' contract, under which 'both parties' have the 'freedom to allow their contractual obligations to expire in short order by

Schedule 3.12 discloses two ZF contracts (the GPA and GPA Amendment) and one contract for FCA (the purchase order).[131] The GPA has a two week "firm window" in which ZF's orders are theoretically not subject to change.[132] Sellers rely on this firm window to argue the GPA only guaranteed volumes for two weeks.[133] This misstates the GPA's nature. As an initial matter, multiple witnesses testified that volumes "would change all the time" both "up or down" within the "firm window."[134] Thus, Sellers' attempt to draw a stark contrast between firm window volumes and other customer projections, falls flat.[135]

More fundamentally, the GPA's language dispels Seller's argument. The GPA's "term" is "seven (7) years from the effective date of this [GPA]."[136] The GPA amendment extended the "term" "until the end of life of the current OEM customer program using the Parts."[137] At trial, Smith testified that the amended GPA's term "was going to continue to at least [] 2027 and maybe even further."[138] During that term, the Company was required to maintain the volume capacity listed on Schedule

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either not issuing or not accepting a new release.'" *Id.* at 14 (quoting *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 999 N.W.2d 335, 340 (Mich. 2023), *as amended* (Sept. 22, 2023)).

[131] *See* Agreement Schedule 3.12; JX105 (ZF GPA); JX04 (amended ZF GPA); DX06 (FCA Purchase Order).

[132] JX 105; *see* 2/3 Tr. 342:16-343:14.

[133] Defs. Opening Br. at 14-15.

[134] 2/6 Tr. 36:13-38:17; *see* 2/3 Tr. 342:16-343:4.

[135] *See* 2/6 Tr. 38:18-39:6 (Smith testifying orders within the firm window are "kind of reasonably likely to happen in that period); *supra* n.23.

[136] JX105.

[137] JX04.

[138] 2/4 Tr. 111:19-112:3.

2 of the GPA amendment.[139] Pre-Transaction, Paragon invested millions of dollars to meet customer capacity requirements[140] – actions fundamentally inconsistent with Sellers' assertion that ZF could order zero parts after two weeks. Therefore, the Court rejects Defendants' position that the ZF contracts on Schedule 3.12 only made representations regarding volumes over two-weeks.[141]

The analysis concerning FCA's purchase order follows a similar path.[142] While the FCA contract disclaimed any obligation to purchase the exact quantities forecasted, it required Paragon to "have a tooling and production plan in place that will enable [the Company] to supply FCA['s] . . . annual requirements[.]"[143] As with ZF, this caused the Company to invest millions to meet FCA's capacity

[139] JX105; *see* JX04 Schedule 2 (requiring Paragon to maintain an overall capacity of 800,000 for ZF orders).
[140] 2/4 Tr. 214:8-215:12.
[141] Contrary to Defendants' assertion, the MSJ Op. does not preclude this finding. *See* Defs. Opening Br. at 14. The MSJ Op. held "Paragon provided bearing brackets to ZF under contracts that expired every two weeks." MSJ Op. at 22. Trial evidence revealed that the Court inartfully described the nature of the ZF-Paragon contracts in the MSJ Op. The ZF GPA does not expire every two-weeks – its "term" ran for at least seven years. JX04; JX105. The two weeks described in the MSJ Op. referenced the GPA's two week "firm window." *See* JX105. Nevertheless, the Court denied summary judgment because "there [was] a[] [] genuine dispute regarding the time period over which Stellex's ZF-based fraud claims can apply." MSJ Op. at 22. Thus, the MSJ Op. reached no conclusive holding regarding the nature of the ZF GPA, such that the law of the case bars the Courts current finding. Even if the Court's one-sentence statement regarding the ZF GPA could be considered law of the case, nothing prevents revisiting that holding now with the benefit of a complete post-trial record. *See Hoskins v. State*, 102 A.3d 724, 729 (Del. 2014) (stating that the law of the case doctrine is not an "absolute bar to reconsideration of a prior decision" and should give way when the decision establishing it is "clearly wrong" or "produces an injustice").
[142] *See generally* DX06.
[143] *Id.* § 5.

requirement.[144] Therefore, the Court concludes that the FCA contract on Schedule 3.12, coupled with the volume projections given to Buyers during diligence, conferred a representation concerning volumes beyond two-weeks.

Sellers also contend that Section 5.10(b) of the Agreement bars Buyers' fraud claim.[145] In Section 5.10(b) "Stellex expressly waived any right to rely on Paragon's forecasts, acknowledged that it had no claim against the Company or Parent regarding such forecasts, and assumed 'full responsibility for making its own evaluation of the adequacy and accuracy' of all forecasts provided in due diligence."[146] Buyers insist that their intracontractual fraud claims "are not dependent on any unactionable forecasts."[147] Rather, Plaintiffs maintain that they cite the ZF and FCA forecasts to show "Defendants [had] notice and knowledge [that] purchases would decrease, i.e., Sections 3.23 and 3.8 were false as compared to" information Sellers previously provided Buyers.[148] The Court agrees.

Section 5.10(b) does not bar Buyers' fraud claim. Section 5.10(b) states "Buyer shall have no claim against Company or Parent with respect" to forecasts

[144] *See, e.g.*, 2/4 Tr. 214:8-215:12. Additionally, though not guaranteed, the trial evidence universally shows customer-provided projections are the best evidence of what future orders will occur. *See supra* n.23.
[145] Defs. Opp'n Br. at 2.
[146] *Id.* at 17-18 (quoting Agreement § 5.10(b)).
[147] Pls. Opp'n Br. at 21-23.
[148] *Id.*

provided during diligence.[149] Smith, defined as "Owner" in the Agreement,[150] is not included in that prohibition. As such, Section 5.10(b) does not purport to impact Buyers' fraud claim against Smith. Additionally, Section 5.10(b) only applies to projections "Buyer *has received from or on behalf of Company or Parent*."[151] Plaintiffs fraud claim necessarily relies on the allegation that Sellers *did not* share the at-issue ZF and FCA volume forecasts with Stellex's diligence team.[152] Moreover, Plaintiffs' claims are not "with respect" to the forecasts mentioned in Section 5.10(b). Buyers' claim is not that any specific forecast was inaccurate or that the Company missed any projection.[153] Rather, Plaintiffs claim that the ZF and FCA forecasts gave Sellers knowledge of facts that rendered Sections 3.8 and 3.23 false at Closing.[154] Section 5.10(b) does not prevent Buyers from citing projections to prove that Sellers knew Sections 3.8 and 3.23 were false. Hence, the Court finds Section 5.10(b) does not bar Plaintiffs' fraud claim.

Substantively, Defendants insist that the at-issue ZF and FCA projections did not show a volume decrease implicating Section 3.23 or 3.8.[155] Defendants contend

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[149] Agreement § 5.10(b).
[150] *Id.* at Preamble.
[151] *Id.* § 5.10(b) (emphasis added).
[152] *See* Amend. Compl. ¶¶ 63-81.
[153] *See generally id.*
[154] *See id.* ¶¶ 85-96.
[155] Defs. Opening Br. at 15-16. Specifically, Defendants argue that LaTarte's ZF email showed 9HP50 volumes would increase and 9HP48 volumes would decrease at a lower rate than previously projected. *Id.* at 16. Defendants insist that the FCA email "did not show any decrease" compared to information previously communicated to Stellex. *Id.* at 16.

that the "allegedly hidden ZF forecast projected higher sales than the forecast given to Stellex."[156] Similarly, Defendants maintain that Plaintiffs did not show that the FCA forecast – which disclaimed volumes were a "forecast only" with "the possibility of changing significantly"[157] – noticed a meaningful sales decrease.[158] Defendants also argue that Stellex "overstates the ZFBB [l]etter's potential impact"[159]

Plaintiffs insist that the evidence shows that the ZF and FCA forecasts were reasonably expected to occur, because "[e]very witness confirmed customer forecasts [are] the best information for what was expected to happen, including

[156] Defs. Opp'n Br. at 2-5. Defendants first reject Stellex's discussion regarding the non-existent 9HP Program. *Id.* at 3 ("9HP48 [] and 9HP50 [] were distinct parts, with separate forecasts and commercial lifecycles."). Regarding 9HP48, Defendants maintain that the October Reforecast disclosed sales were expected to decline and LaTarte's email exceeded those projected volumes. *Id.* at 3-4 (citing JX18; JX105; DX28; PX131). Concerning 9HP50, Defendants accuse Plaintiffs of "purposefully conflat[ing] forecasts for two parts" to show a decrease, when "every 9HP50 forecast projected growth" and "included unbooked business." *Id.* at 4-5 (citing JX4; JX73; JX113; JX138; PX131; JX18; DX28).

[157] JX6.

[158] Defs. Opp'n Br. at 6-7. Defendants also maintain that Stellex did not prove any decrease was "reasonably expected to happen," because forecasts were subject to change and the ZF/FCA contracts did not guarantee volumes. Defs. Opening Br. at 8-9, 17 (insisting volumes being the best guess regarding future sales is not the same as projected volumes being reasonably likely (citing Spackman Dep. Tr. 365:13-370:5, 385:2-13 (testifying the volumes in the automotive industry often change); 2/4 Tr. 19:8-13 (Swift testifying similarly); *Getzler v. River Run Foods (DE), LLC*, 2024 WL 3273430, at *5 (Del. Super. July 1, 2024))).

[159] *Id.* at 10-12 (arguing the program only accounted for "approximately 1% of Paragon's annual sales."). Defendants maintain "Smith repeatedly disclosed and explained the entire contents of the letter pre-closing." *Id.* at 10 (citing DX99). Moreover, Defendants assert lost ZF sales would be offset by "FCA-direct sales." *Id.* at 11 (citing 2/7 Tr. 55:15-56:21; JX98).

Smith."[160] Plaintiffs also point out that Defendants' opening brief concedes that LaTarte's email projected a decrease in ZF's purchases of 9HP48 bearing brackets.[161]

The trial evidence shows that Sellers knew Section 3.23 was false at Closing. Regarding FCA, Sellers do not meaningfully dispute that Vanslembrouck's updated projections noticed a volume decrease implicating Section 3.23.[162] Instead, Defendants argue: (1) the email only provided volume forecasts which did not notice any change reasonably expected to occur; and (2) they mistakenly assumed that Vanslembrouck's volumes only referenced 9HP48.[163] The Court already rejected the first argument, because the overwhelming trial evidence shows that customer forecasts are the best evidence of what volumes would materialize in the future.[164] Indeed, Brooke explicitly solicited updated forecasts to "prepare [Paragon's] budget."[165] Hence, Sellers' first FCA falsity argument is unavailing.

The Court is similarly unconvinced by Defendants' second argument. Vanslembrouck provided updated forecasts in response to Brooke asking FCA to

[160] Pls. Opp'n Br. at 2.
[161] *Id.* at 2-3 (citing Defs. Opening Br. at 15-16). Plaintiffs reject Defendants efforts to paint the 9HP48 and 9HP50 bearing brackets as meaningfully different. *Id.* at 3 ("the 9HP48 and 50 bearing brackets were a single program, using the same machines and production line." (citing 2/6 Tr. 24:4-7, 154:8-155:20, 197:6-20; JX100; PX174; JX105)). Plaintiffs insist Smith's treatment of FCA volumes confirms that the 9HP48 and 9HP50 were a single program. *Id.* at 3-4 (citing DX28; 2/6 Tr. 87:16-88:13, 98:14-15).
[162] *See* Defs. Opening Br. at 15-16; Defs. Opp'n Br. at 6-7.
[163] *See* Defs. Opening Br. at 15-16; Defs. Opp'n Br. at 6-7.
[164] *See supra* n.23.
[165] JX06.

confirm previous projections that included *both* 9HP48 and 9HP50.[166] While the lower forecasted volumes caused Smith to "believe" Vanslembrouck only included 9HP48, he stated Paragon "need[ed] to verify with him that it includes both 9hp48 and 50."[167] Sellers failure to follow up with FCA does not excuse their subjective mistake regarding the parts included in the updated forecast or obviate the fact that Vanslembrouck's email gave Defendants' knowledge that FCA would significantly decrease its purchases from Paragon.[168] Accordingly, the Court finds that Sellers knew Section 3.23 was false at Closing with regards to FCA.

Turning to ZF, the parties expend considerable effort arguing whether the 9HP48 and 9HP50 constitute a single program or independent parts.[169] Ultimately, that dispute is inconsequential. In the MSJ Op. the Court held "Section 3.23 applies to a decrease in a single product's sale[.]"[170] As such, an undisclosed decrease in either 9HP48 or 9HP50 is sufficient to find that Section 3.23 was false at closing.

There is no serious argument against Sellers' position that they did not know, pre-Closing, that ZF would decrease orders of 9HP50. The projections central to

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[166] *Id.*
[167] *Id.*
[168] *See Geronta Funding v. Brighthouse Life Insurance Company*, 284 A.3d 47, 69 (Del. 2022) ("a party is not excusably ignorant if it is willfully blind to the relevant facts.").
[169] *See e.g.*, Pls. Opp'n Br. at 3 ("the 9HP48 and 50 bearing brackets were a single program, using the same machines and production line." (citing 2/6 Tr. 24:4-7, 154:8-10, 197:6-20; JX100; PX174; JX105)); Defs. Opp'n Br. 3 ("Stellex begins by inventing [] the terms '9HP Program.' It does not appear in Paragon's internal documents or forecasts, and falsely implies a single program. The 9HP48 [] and 9HP50 [] were distinct parts, with separate forecasts and commercial lifecycles.").
[170] MSJ Op. at 17-18.

Buyer's claim plainly showed 9HP50 sales increasing from 2018 figures.[171] Plaintiffs have no meaningful response to that fact, except to argue that 9HP48 and 9HP50 are a single program.[172] Yet, as discussed, that argument ignores the MSJ Op. Accordingly, there is no evidence that Sellers knew Section 3.23 was false at Closing with regards to ZF's purchases of 9HP50 bearing brackets.

The 9HP48 bearing brackets are a different story. Defendants effectively concede that ZF's forecasts projected a decrease in year-over-year 9HP48 sales.[173] Nonetheless, Defendants argue that ZF's downward-revised forecasts did not render Section 3.23 false, because Sellers previously disclosed larger anticipated volume decreases.[174] That argument, however, speaks to the sufficiency of Buyers' diligence, not Section 3.23's falsity. Section 3.23's plain text required Sellers to disclose known decreases on Schedule 3.23.[175] Sellers' failure to disclose the volume decrease noticed by ZF's projections on Schedule 3.23 made Section 3.23 false at Closing with regards to ZF's purchases of 9HP48.[176] Plaintiffs' falsity argument concerning the ZF cancellation letter is correct for the same reason – even

[171] *Compare* PX131 (projecting a volume of 115,520 for 2019), *with* DX28 (disclosing 11,330 in 9HP50 sales for 2018 and projecting 96,000 in sales for 2019).
[172] *See* Pls. Opp'n Br. at 3.
[173] Defs. Opening Br. at 16 ("LaTarte's forecast projected 9HP48 sales to fall over the five years).
[174] *Compare* DX28, *with* PX131.
[175] *See* Agreement § 3.23 ("*[e]xcept as set forth on Schedule 3.23 . . .*" (emphasis added)).
[176] The Court has already rejected Seller's argument that ZF's customer provided forecast was not "reasonably expected to occur." MSJ Op. at 20; *see supra* n.23.

if Smith disclosed the "substance" of the letters in diligence,[177] Sellers did not include any information about the cancellation on Schedule 3.23.[178] Accordingly, the Court finds that Section 3.23 was also knowingly false at Closing regarding the ZF cancellation letter.[179]

Beyond Section 3.23, Plaintiffs maintain that Section 3.8 was independently false for two reasons.[180] First, Plaintiffs assert that the known decrease in ZF and FCA volumes caused an EBITDA loss which constitutes a MAE.[181] Second, Plaintiffs insist that Smith knew the decreased volumes would cause Paragon to default on the Transaction financing – "a quintessential MAE."[182]

Defendants advance three arguments in response. Specifically, Defendants contend: (1) Section 3.8 cannot be fraudulent if Section 3.23 is not fraudulent;[183] (2) Buyers' claim is inconsistent with "Stellex's own contemporaneous assessments, which attributed the default to three events having absolutely nothing to do with

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[177] *See* DX99

[178] *See* Agreement Schedule 3.23.

[179] The Court has already addressed Sellers arguments concerning whether the loss of ZF "sole supplier" status and the ZF rebate made Section 3.23 knowingly false. *See supra* n.129 (rejecting Defendants' argument that the rebate and sole supplier status were not "terms" as used in Section 3.23). Schedule 3.23 contains no disclosure that ZF: (1) received a first-time rebate from Paragon; or (2) secured an alternative supplier of 9HP bearing brackets. *See* Agreement Schedule 3.23. Therefore, the Court finds that Section 3.23 was knowingly false at Closing concerning the relevant terms pursuant to which ZF transacted business with the Company.

[180] *Id.* at 7-9.

[181] *Id.* at 7-8 (citing JX14; JX78; JX99; DX123; 2/4 Tr. 71:23-72:7, 291:8-294:5); *see Akorn*, 2018 WL 4719347, at *75.

[182] Pls. Opp'n Br. at 8-9.

[183] Defs. Opening Br. at 12 n.2 (citing MSJ Op. at 21 n.131).

Smith";[184] and (3) Buyers have not shown that any MAE "'substantially theaten[ed] the overall potential of Paragon in a durationally-significant manner.'"[185] None of these arguments demonstrate that Section 3.8 was not false at closing.

Addressing the arguments in reverse order, Sellers' third argument is factually incorrect. Section 3.8 represented and warranted that between December 31, 2017, and Closing, no "combination [of] any [] fact[s], event[s], or circumstance[s]" occurred, that "would reasonably be expected to have a Material Adverse Effect."[186] As discussed, within that period Sellers learned: (1) Paragon was longer ZF's sole supplier of 9HP bearing brackets; (2) ZF was cancelling is 9HP program concerning FCA; (3) ZF would independently decrease its orders of 9HP48 bearing brackets; and (4) FCA planned to lower its 9HP orders. Trial evidence showed that these extensive changes to Paragon's business with two of its top three customers,[187] made it reasonably likely that the Company would default on its bank loan.[188] Trial testimony confirmed that the volume decrease threatened to force Paragon into

[184] Defs. Opp'n Br. at 12 (citing DX221).
[185] *Id.* at 12-13 (quoting *Akorn*, 2018 WL 4719347, at *53).
[186] Agreement § 3.8.
[187] *Id.* Schedule 3.23 (listing FCA as Paragon's second-largest customer accounting for $23,377,488 in 2018 revenue and ZF as Paragon's third-largest customer accounting for $15,073,442 in 2018 revenue).
[188] *See* 2/4 Tr. 272:19-21 (testifying that the Transaction could not have occurred without bank financing); JX78 (Buyer and Smith's presentation to the bank projecting EBITDA growth diametrically opposed to ZF and FCA's falling orders); JX45 (email noting bank presentation financial projections are based on sales forecasts disclosed in diligence); JX99 (email from two-weeks after Closing discussing how decreased volume projections would impact EBITDA)

bankruptcy.[189] Bankruptcy is a material adverse effect[190] that would substantially impact Paragon's business in the long term.[191]

Sellers' second argument – related to Stellex's *post*-Closing explanation for default – implicates causation related to damages, not whether Section 3.8 was knowingly false at Closing. Similarly, Defendants' first argument does not compel finding in Sellers' favor. The Court already determined that Section 3.23 was false at Closing. Finding that Section 3.8 was also false at closing for additional reasons is not inconsistent with the MSJ Op.'s observation that "if a challenged Smith action *does not breach Section 3.23*, it cannot breach Section 3.8."[192] Hence, the Court concludes that Section 3.8 was knowingly false at closing.

Accordingly, the Court finds that Plaintiffs proved by a preponderance of the evidence that Sections 3.23 and 3.8 were knowingly false at closing for all the reasons Buyers' assert, except with regards to Paragon's sale of 9HP50 bearing brackets to ZF.

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[189] *See* 2/4 Tr. 366:6-372:20.
[190] *In re Sears Hometown and Outlet Stores, Inc. Stockholder Litigation*, 309 A.3d 474, 490 (Del. Ch. 2024).
[191] *See GB-SP Holdings, LLC v. Walker*, 2024 WL 4799490, at *45 (Del. Ch. Nov. 15, 2024) ("bankruptcy would have negative consequences . . . which would result in a seriously diminished value for the enterprise." (internal quotes omitted)); *Bomarko, Inc. v. International Telecharge, Inc.*, 794 A.2d 1161, 1170 (Del. Ch. 1999) ("the perception at the time was that *a bankruptcy filing would prove disastrous for all involved*." (emphasis added)); *VGS, Inc. v. Castiel*, 2004 WL 876032, at *3 (Del. Ch. Apr. 22, 2004) ("bankruptcy caused a considerable market shock.").
[192] MSJ Op. at 21 n.131 (emphasis added).

B. Sellers Possessed the Requisite Scienter to Support Buyers' Fraud Claim.

Fraud "require[s] a certain level of scienter on the part of the defendant; a misrepresentation must be made either knowingly, intentionally, or with reckless indifference to the truth."[193] This is a "subjective test" that considers whether "the defendants intended to induce reliance."[194] Because "[i]t is often difficult to discern precisely what is, or was, in an actor accused of fraud,"[195] "scienter may be demonstrated through circumstantial evidence."[196]

Plaintiffs assert that the evidence adduced at trial proved Defendants acted with the intent to defraud Stellex.[197] Plaintiffs argue that they demonstrated Defendants' scienter by showing:

> (1) Smith added the "MAE and ordinary course qualifiers" to Section 3.23 to avoid disclosing the ZF cancellation letters;[198]
> (2) Smith specifically removed a ZF cancellation letter in an email forwarded to Swift "to hide the cancellation from Stellex;"[199]
> (3) Defendants did not share draft ZF GPA amendments showing decreases in purchase volume;[200]
> (4) Defendants mislead Stellex regarding the nature of the ZF GPA Amendment;[201]

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[193] *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 143 (Del. Ch. 2004)
[194] *Arwood v. AW Site Services, LLC*, 2022 WL 705841, at *21 (Del. Ch. Mar. 9, 2022) (citations omitted).
[195] *Id.* at *22.
[196] *Maverick Therapeutics, Inc. v. Harpoon Therapeutics, Inc.*, 2020 WL 1655948, at *29 (Del. Ch. Apr. 3, 2020).
[197] Pls. Opening Br. at 14-20.
[198] *Id.* at 15 (quoting JX83 at 1); *see* 2/6 Tr. 223:1-224:9 (Smith admitting he would have to disclose the ZF cancellation letters absent those qualifiers).
[199] Pls. Opening Br. at 15 (citing DX99; 2/4 Tr. 83:23-86:1).
[200] *Id.* at 15-16 (citing PX88; PX177).
[201] *Id.* at 16 (citing PX174; 2/4 Tr. 252:8-18).

(5) Defendants did not disclose the $300,000 ZF rebate;[202]
(6) Smith acted to prevent Stellex from learning the truth at Swift's pre-Closing meeting with ZF;[203]
(7) Smith destroyed his company phone which contained important evidence;[204]
(8) Defendants knew the October Reforecast was "not achievable," but didn't tell Stellex;[205]
(9) Smith falsely told Stellex a non-existent new contract with Musashi would fill the revenue gap created by the ZF discounts;[206] and
(10) Smith tampered with witnesses – namely his brother David.[207]

Defendants reject all ten of Buyers' scienter arguments.[208]

Several of Buyers' scienter arguments can be summarily rejected as legally or factually unfounded. Buyers' first argument – regarding why Smith added the MAE and ordinary course qualifiers to Section 3.23 – speaks to his subjective intent while contracting.[209] Typically, "courts do not look for [or] give legal force to a [party's] private subjective state of mind (intent)" when contracting.[210] The Court is hesitant

[202] *Id.* at 16-17 (citing PX110; PX311; 2/6 Tr. 243:15-18).
[203] *Id.* at 17 (citing PX111).
[204] *Id.* at 18 (citing 2/6 Tr. 250:2-253:2).
[205] *Id.* (quoting 2/6 Tr. 245:19-22).
[206] *Id.* at 18-19 (citing PX162; PX386; 2/3 Tr. 293:23-294:1; 2/6 Tr. 208:4-215:10).
[207] *Id.* at 19-20 (citing 2/6 Tr. 255:21-264:9); *see McCool v. Gehret*, 657 A.2d 269, 277 (Del. 1995).
[208] Defs. Opp'n Br. at 14-23. Generally, Sellers maintain the evidence shows Smith: (1) "gave Stellex unfiltered access to customers and employees;" (2) "was transparent and relied on professional advisors;" (3) reasonably believed the FCA and ZF projections did not need to be scheduled; and (4) disclosed the substance of the ZFBB Letter as well as the ZF and FCA projections. Defs. Opening Br. at 18-24 (citing 2/6 Tr. 65:7-17, 68:21-69:11, 86:16-92:14, 116:11-15, 223:22-224:9; 2/7 Tr. 50:9-51:22, 54:17-55:6, 58:4-61:5, 80:12-81:13 412:14-413:19, 432:04-432:18; JX26 (Stellex's list of questions to ask in customer meetings); DX99; DX492)).
[209] *See* Pls. Opening Br. at 15.
[210] *MHM/LLC, Inc. v. Horizon Mental Health Management, Inc.*, 1996 WL 592719, at *2 (Del. Ch. Oct. 1, 1996); *see F.A.M.E. LLC v. EmTurn LLC*, 2025 WL 1218227, at *4 n.68 (Del. Super. Apr. 25, 2025) ("[g]enerally, the unexpressed intention of a party is irrelevant to a contract's interpretation." (internal quotes omitted)).

to rely on subject intent here, especially because Smith's testimony directly refuted Buyers' argument.[211] Accordingly, the Court does not consider Smith's subjective reasons for including the Section 3.23 qualifiers.

Plaintiffs' sixth argument is belied by Swift's questionable diligence. The undisputed trial evidence shows that Swift did not ask *any* substantive questions in his meeting with ZF.[212] Rather, Swift merely asked "is the business still good."[213] Spackman testified that he "never attempted to deceive" or "hide anything" from Swift, and Smith "never asked that [he] hide any information from [Stellex]."[214] Accordingly, the evidence does not support Plaintiffs' assertion that Smith sought to, or did, hinder Swifts meeting with ZF.

Finally, Buyers' tenth argument is unconvincing. To support their witness tampering argument, Buyers rely on the temporal proximity between several payments from Smith to David and key dates in which David participated in this dispute.[215] Buyers maintain that the timing of these payments suggest a *quid pro quo* whereby Smith compensated David for testifying in support of Sellers' defenses.[216] Yet, at trial Smith credibly testified regarding the nature of these

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[211] *See* 2/6 Tr. 222:7-225:12. Additionally, regardless of why Smith proposed adding the qualifiers, Stellex agreed to including them in the Agreement. *See* Agreement § 3.23.
[212] 2/4 Tr. 31:10-32:4; Spackman Dep. 37:6-16, 46:10-15.
[213] 2/4 Tr. 31:17-31:19.
[214] Spackman Dep. 412:23-413:19.
[215] Pls. Opening Br. at 19-20 (citing 2/6 Tr. 255:21-364:9).
[216] *Id.*

payments – namely, a continuation of Smith's longstanding financial support of his brother David.[217] Courts do not credit witness tampering allegations without definitive proof where "there are [credible] innocuous explanations for each of the[] [challenged] actions."[218] The Court finds that to be the case here. Hence, the Court does not credit any alleged witness tampering in evaluating scienter.

Based on the remainder of Buyers' arguments, the Court concludes that Sellers acted with the requisite scienter. Regarding Buyer's second argument, Smith conceded at trial that he did not include the ZF cancellation letter in an email to Swift, despite Mackinder including the letter in a similar email to Smith.[219] Smith provided no explanation for why he did not include the cancellation letter, instead stating that he referenced the cancellation "in the body of the e-mail . . . to call it out so [Buyers] could see it clearly."[220] That justification is dubious at best. It stretches logic to think that burying the cancellation in a few lines within an extensive list of discussion topics calls more attention to the issue than attaching the cancellation letter itself.[221] Rather, Smith's decision to not attached the cancellation letter suggests that he sought to hide ZF's cancellation from Buyers.

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[217] 2/7 Tr. 23:13-26:21.
[218] *OptimisCorp v. Waite*, 2015 WL 5147038, at *68 (Del. Ch. Aug. 26, 2015).
[219] 2/4 Tr. 82:20-85:1; *see* DX99. *See also* 2/6 Tr. 151:9-11 (Smith admitting he copied and pasted the body of the Swift email from the email Mackinder sent him).
[220] 2/6 Tr. 151:9-20.
[221] *See* DX99 (stating "FCA Volume only is cancelled with ZFBB FCA Pre Machine will increase 150k units annually" within list of numerous discussion topics).

Similarly, concerning Plaintiffs' third argument, the evidence shows that ZF removed its falling volume projections from the GPA amendment at Smith's insistence.[222] Smith testified that he wanted the forecasts removed because he "want[ed] to be able to be awarded new business" and did not "want to be pigeonholed to these volumes."[223] Yet, Defendants do not explain why including ZF's revised estimates would prevent Paragon from winning new business. Nor does the GPA establish such a limitation.[224] Hence, Smith's insistence that ZF exclude any estimates from the GPA amendment suggests that he wanted to hide the expected volume decrease from Buyers.[225] Moreover, Smith's failure to inform Buyers of the fact that the GPA amendment was driven by Paragon's loss of "sole supplier" status for ZF's 9HP programs hints at Sellers' wrongful intent.[226]

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[222] *See* PX88; PX177. *See also* Spackman Dep. 101:14-25 (testifying including volume projections in a contract like the GPA amendment was "standard.").
[223] 2/4 Tr. 165:8-18.
[224] *See* JX105 (requiring Paragon to maintain capacity of *at least* the volumes included in Schedule 2 but not preventing ZF from ordering parts more than those minimums).
[225] The Court is not convinced by Smith's retort that including ZF's falling projections was irrelevant because he had already included lower numbers. *See* Defs. Opp'n Br. at 17 (citing DX28). If Smith is correct, there was no reason not to include ZF's forecast.
[226] *See* Spackman Dep. 25:19-26:22 (testifying ZF was unable to get Paragon to renegotiate its pricing, because it did not have "an alternative supplier." This caused ZF to "further refine[] the opportunities [it] had for sourcing [] [] elsewhere in the future."), 27:9-21 (testifying that when the parties negotiated the GPA amendment, ZF had secured an alternative supplier). Sellers do not contend they *ever* told Buyers that Paragon was no longer ZF's sole supplier of 9HP transmission bearing brackets. *See* Defs. Opp'n Br. at 17-18. Rather, Sellers argue "sole supplier" status was not a "term" as contemplated in Section 3.23. *Id.* As discussed, the Agreement's text invalidates that argument. *See supra* n.129. Additionally, multiple witnesses, including Smith, testified that Sellers told Buyers Paragon was ZF's sole-supplier. *See, e.g.*, 2/4 Tr. 104:11-105:4, 242:19-244:15. Moreover, Sellers' pre-Transaction communications show they expected "to be the sole supplier for the 9 Speed output support/bearing bracket[.]" PX174 (Stating losing sole-supplier status "presents a problem for [Paragon].").

Defendants' only response to Plaintiffs' fifth scienter position is that "Paragon's affiliate paid the rebate for the benefit of both entities [–] a standard and legitimate transaction."[227] The Court agrees that there is nothing inherently illegitimate with how Sellers paid the ZF rebate. Yet, that fails to explain why Sellers never disclosed the rebate to Buyers pre-Closing.[228] That non-disclosure, coupled with Sellers' decision to route payment through an affiliate, suggests a wrongful intent.

Turning to Buyer's seventh argument, Defendants do not dispute that Smith destroyed his company issued phone despite having no legal right to do so.[229] Smith's unexplained decision to "throw[] the phone in [sic] [] the trash several months after [he] left the [C]ompany," when the parties' dispute was brewing hints at a wrongful intent.[230] Smith pleads ignorance regarding the phone's contents and

[227] Defs. Opp'n Br. at 18. Defendants also assert that the rebate did not change the terms of the Company's business with ZF. *Id.* at 18-19. As discussed above, the fact that Paragon never paid ZF a rebate is a "term" within the meaning of Section 3.23 of the Agreement. *See supra* n.129; 2/4 Tr 122:16-21 (Smith testifying the Company never paid ZF a rebate before the GPA amendment). Thus, Defendants' argument that the rebate did not change the terms pursuant to which Paragon delt with ZF is unavailing. *See* 2/4 Tr. 326:14-22 (discussing how knowing about the rebate would change Buyers' view of the deal).

[228] *See, e.g.*, 326:2-7 ("[the rebate] was never recorded on the books at Paragon. It was never disclosed.").

[229] *See* Defs. Opp'n Br. at 19-20. JX59 is not to the contrary, it merely states Smith was keeping his company phone, not that he had any right to do so. JX59. The Agreement plainly required Smith to "deliver to Buyer . . . [all] property of Company in Owner's possession or under Owner's control." Agreement § 9.1(f)(iii). The employee who sent JX59 "worked for Paragon" not Stellex, and had no authority to waive Buyers' right in Section 9.1(f)(iii). 2/6 Tr. 253:9-11; *see* JX59.

[230] 2/6 Tr. 252:3-7.

why he destroyed it.[231] Yet, the Court does not find Smith's testimony on that point credible given that he repeatedly contradicted his earlier deposition testimony.[232]

Regarding Plaintiffs' eighth argument, Defendants do not dispute that Smith conceded in November 2018 that he knew the October Reforecast was not achievable, but "didn't tell [Buyers] the forecast would be affected."[233] Rather, Defendants assert that just because "the October Reforecast was 'not achievable' [] does not render the earlier forecast false."[234] That might be true, but it does not explain why Smith did not disclose the falling volumes to Buyers. Nor does Smith's one-off reference to "some softening in the market which will affect the bottom line" show that he lacked scienter.[235] Smith's decision to not share the specific volume information he possessed to quantify the "softening,"[236] suggests that he wanted to

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[231] *See id.* 250:2-253:11.
[232] *See id.* 250:2-253:11; *see MRPC Christiana LLC v. Crown Bank*, 2017 WL 6606587, at *7 (Del. Super. Dec. 26, 2017) ("[i]f the Court finds that a witness made an earlier sworn statement that conflicts with the witness's trial testimony, the Court may consider the contradiction in deciding how much of the trial testimony, if any to believe.").
[233] 2/6 Tr. 245:1-246:14; *see* PX220 (Smith stating "softening" orders "will have a negative effect on the forecasts [Sellers] have already provided [Stellex]."); Defs. Opp'n Br. at 20-21.
[234] Defs. Opp'n Br. at 20.
[235] DX109.
[236] *Compare id.* (lacking any volume data); *with* PX220 (containing volume data). Nor is Smith's consultation with his advisor a silver bullet obviating any suggestion of scienter. *See* DX63. While "blameless ignorance can be established by showing . . . reliance on a professional or expert," Smith was not blamelessly ignorant. *Crest Condominium Association v. Royal Plus, Inc.*, 2017 WL 6205779, at *3 (Del. Super. Dec. 7, 2017); *see Brody v. DCiM Solutions, LLC*, 2025 WL 1802239, at * (Del. Ch. June 30, 2025) (noting reliance on experts can cut "against a finding of fraudulent intent."). Specifically, by the time Smith disclosed that volumes were "softening" on January 14, 2019, he had already received: (1) ZF's revised downward forecasts; (2) ZF's cancellation letter; and (3) FCA's lower projections. DX109; *see* PX131; PX139; JX49. As such, Smith should have been aware that his advisors' opinion – that lower volumes were due to "[n]ormal vagaries of the automotive word." – was incorrect. DX63.

hide the extent of declining orders from Buyers.[237] This too supports a finding of scienter.

Finally, concerning Buyers' ninth position, Defendants do not explain why Smith withheld the fact that Paragon lost the Musashi business,[238] despite previously telling Buyers it would "offset the . . . ZF price-downs."[239] Instead, Defendants note that the Court previously dismissed Plaintiffs' Musashi-based fraud claim.[240] While true, the Court dismissed the Musashi claim because Schedule 3.12 "did not include any agreement related to a Musashi-Honda deal," and Buyers' fraud claim was contractually limited to the contracts therein.[241] That holding does not prevent Buyers from citing Smith's Musashi statements to prove scienter. Smith non-disclosure of the Company's failure to win the Musashi business after affirmatively representing its potential to offset ZF losses evidences scienter.

In conclusion, the Court finds sufficient circumstantial evidence that Sellers intended to defraud Buyers. In isolation, there may be an innocuous rational for each of Smith's challenged actions, but when cobbled together they paint a picture of

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[237] *See Arnold v. Society for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1277 (Del. 1994) (holding "misleading partial disclosures" can support a finding of a wrongful intentional act); *Airbrone Health, Inc. v. Squid Soap, LP*, 2010 WL 2836391, at *9 (Del. Ch. July 20, 2010) ("[a] partial disclosure may be technically true yet actionably misleading." (citations omitted)).
[238] PX386.
[239] 2/4 Tr. 252:23-254:7; *see* JX162. While Defendants are correct that Smith did not send JX162 (his advisor did) there is independent, credible evidence that Smith told Buyers the Musashi business would offset lost ZF revenue. 2/4 Tr. 252:23-254:7.
[240] MSJ Op. at 25.
[241] *Id.*

scienter. Accordingly, the Court finds that Plaintiffs proved scienter by a preponderance of the evidence.

C. Buyers Did Not Justifiably Rely on Sections 3.23 and 3.8, Because They Knew or Should Have Known About the Allegedly Withheld Information Through Diligence.

In the MSJ Op., the Court held "under the Agreement's plain terms Stellex relied on Sections 3.8 and 3.23."[242] The Court based that conclusion on "well-settled Delaware law that the reliance element of an intra-contractual fraud claim is met when the agreement explicitly states that the plaintiff relied on the [representations and warranties]."[243] As discussed in the MSJ Op., the Agreement explicitly states, "Buyer has relied on . . . the representations and warranties expressly and specifically set forth in Article 3 and Article 4[.]"[244]

Sellers do not challenge the Court's previous holding or the Agreement's unambiguous language regarding reliance.[245] Rather, Sellers insist that Stellex's diligence, or lack thereof, precludes finding any justifiable reliance because "[t]he record reflects numerous times Stellex was informed of the information it now complains about having wrongfully been withheld."[246] Defendants point to the

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[242] MSJ Op. at 23.
[243] *Id.* (citing *Agspring Holdco, LLC v. NGP X US Holdings LP*, 2020 WL 4355555, *13 n.137 (Del. Ch. July 30, 2020); Urvan v. AMMO, Inc., 2024 WL 863688, at *12 (Del. Ch. Feb. 27, 2024)).
[244] Agreement § 5.10(a).
[245] *See* Defs. Opening Br. at 24-28; Defs. Opp'n Br. at 24-29.
[246] Defs. Opening Br. at 25-28.

ZF/FCA customer meetings,[247] Ducker's diligence report,[248] the softening automotive market,[249] and Smith's communications to Stellex,[250] as supporting their position that Buyers "ignored the results of [their] own diligence."[251]

Buyers maintain that "the results of their independent investigation" did not disclose Sections 3.8 and 3.23's falsity.[252] In advancing the argument, Plaintiffs assert that the MSJ Op. held "Defendants must show Plaintiffs' actual knowledge of the falsity of the representations and warranties to defeat reliance."[253] The Court made no such holding. The MSJ Op. held "the Agreement imposed upon Stellex a diligence obligation and expressly stated that it relied on the results."[254] That ruling recognized that Section 5.10(a) required Buyers to conduct reasonable diligence.[255] Hence, actual knowledge is not the only way for Sellers to defeat justifiable reliance,

[247] *Id.* at 26 ("Stellex attended a diligence meeting with ZF but failed to inquire about sales projections or the ZFBB Letter . . . [a]t Stellex's FCA due diligence meeting, FAC advised Stellex that [] sales would be 'flat' [] [] yet did not update its forecast." (citing JX26; DX129; JX28; JX79)).
[248] *Id.* at 26 (citing DX92; 2/3 Tr. 208:2-15).
[249] *Id.* at 26 ("Stellex knew the market was softening but did not update its forecast." (citing DX75; DX76; DX109; JX31; 2/5 Morning Tr. 39:13-17)).
[250] *Id.* at 27-28 (citing DX99; DX100; DX105-DX107; 2/4 Tr. 49:14-63:13; 2/7 Tr. 51:23-62:11).
[251] Defs. Opp'n Br. at 24-29.
[252] Pls. Opening Br. at 20-25; *see* Pls. Opp'n Br. at 13-21.
[253] Pls. Opening Br. at 20 (citing MSJ Op. at 23-24).
[254] MSJ Op. at 24 (citing Agreement § 5.10). The Court only used the phrase "actual knowledge" in a quote articulating the general mechanism by which diligence can obviate reliance. *Id.* at 23 (quoting *Great Hill Equity Pr's IV, LP v. SIG Growth Equity Fund I, LLLP*, 2018 WL 6311829, at *33 (Del. Ch. Dec. 3, 2018) (holding a party "who gains actual knowledge of the falsity of a representations, structures a contract to address the risk of loss associated with the false representation, and proceeds to closing cannot claim justifiable reliance.")).
[255] Agreement § 5.10(a).

because "a party is not excusably ignorant if it is willfully blind to the relevant facts."[256] Here, the evidence shows that Buyers either knew, or should have known, about the allegedly withheld information that made Sections 3.23 and 3.8 false.

Starting with ZF, Buyers argue that Smith never disclosed the revised customer volume forecasts showing a decrease in 9HP48 sales. Yet, the October reforecast that Smith provided to Buyers projected a *sharper* decline in volumes than ZF's email.[257] Additionally, the Ducker diligence report that Stellex solicited informed Buyers that ZF's Honda business was ending and would lead to a decrease in orders from Paragon.[258] Moreover, Smith advised Buyers that markets were "softening . . . which would affect the bottom line."[259] Hence, Buyers knew, or should have known, about the anticipated decrease in 9HP48 sales to ZF. Reasonable diligence should have similarly dispelled Buyers of their flawed assumption that Paragon's internal forecasts only contained booked business.[260] The GPA amendment lists four customers to whom ZF sold transmissions containing

[256] *Geronta*, 284 A.3d 69.
[257] *Compare* DX28 (projecting Paragon's sales of 9HP48 bearing brackets to ZF to go from 754 in 2019, to 431 in 2020, and 278 in 2021), *with* PX131 (anticipating 9HP48 volumes of 665 in 2019, 680 in 2020, and 404 in 2021).
[258] DX92; *see* 2/3 Tr. 208:2-209:13 (agreeing that based on the Ducker report, Buyers "should not include anything [related to Honda sales] beyond 2022[.]").
[259] DX109. Indeed, the Ducker report also called out that "[a]utomotive sales and production downside . . . would create a 20% dip in volume" for the Company's machined parts business. DX92.
[260] *See* 2/3 Tr. 88:1-23, 187:14-188:20 (testimony concerning Buyers' belief that all business was booked).

Paragon bearing brackets as part of the Company's booked business.[261] The October Reforecast plainly includes volume forecasts related to customers absent from the GPA amendment – most notably "Renaut-Nissan-Mitsubishi."[262] In multiple diligence emails Smith referenced, albeit inartfully, that Paragon did not win ZF's "Nissan / Renault" business.[263] These emails also explicitly reference ZF's cancellation of its FCA program, stating "FCA Volume only is cancelled with ZFBB."[264] At a minimum, this information should have caused Buyers to ask more questions regarding volumes and Paragon's business with ZF during diligence.

Indeed, the evidence suggests that Buyers incorporated Smith's disclosures into their diligence outlook. Following discussions in January 2019 Sellers sent an updated list of talking points and action items to Buyers.[265] In that email, topics related to: (1) ZF's cancellation; (2) Paragon's loss of ZF's Nissan/Renault business to a new supplier; and (3) changes to volume estimates, were uniformly crossed off.[266] Throughout the multiple times that list was circulated via email, those topics remained crossed off and no action items related thereto were added.[267] This

[261] JX04, Schedule 2 (listing FCA, Daimler, Honda, and JLR).
[262] DX28 ("ZF 9HP48-50" tab).
[263] DX99 ("China is tooled up for Nissan / Renault"); *see* DX102 (same); DX105 (same). The reference to "China" winning the Nissan/Renault business also at least hints at Paragon's loss of sole supplier status, i.e. if ZF awarded business to another supplier, the Company could no longer be the sole supplier.
[264] DX99; *see* DX102; DX105.
[265] *See* DX102.
[266] *Id.*
[267] DX105-110.

suggests the parties discussed those issues, such that Buyers knew or should have known about the changes to ZF's business with Paragon central to their claim.[268]

While Buyers suggest they "never read or discussed" these emails,[269] their own documents refute that assertion. Stellex's diligence team sent Swift a list of discussion topics to address at the in-person customer meeting with ZF that included: (1) "changes in expected volume"; (2) "any program ending earlier than originally forecast; (3) explicitly addressing the cause of "softness" in sales; (4) the nature of the GPA amendment; (5) "Paragon's key supplier distinction and importance"; and (6) a "[l]etter to Paragon about decreasing volumes."[270] If Swift asked about these topics, as Stellex's team asked him to, Buyers would have learned about the very information they allege Sellers fraudulently withheld.[271] Swift, however, asked *zero* substantive questions at the ZF meeting, instead just inquiring "is the business still good."[272] Most damningly, post-Closing members of Stellex's diligence team admitted they "explicitly had ZF volumes on the checklist [that they] sent Bruce into the [ZF]

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[268] 2/4 Tr. 54:1-12 (Swift testifying that the various relevant discussion topics on the email list were crossed out), 89:6-11; 2/6 Tr. 178:12-179:9 (Smith testifying Sellers "met with Bruce Swift . . . and [] went through [all the topic on the email discussion list] with him[.]"); 2/7 46:5-47:10 (Mackinder, sender of the at-issue emails, credibly testifying "if there were things that were closed, they were often crossed out or truck through.").

[269] Pls. Opening Br. at 21 (citing 2/3 Tr. 124:10-21; 2/4 Tr. 39:9-43:3; 2/5 AM Tr. 90:10-15).

[270] DX76; *see* JX26.

[271] *See* 2/6 Tr. 115:13-116:15 ("Stellex had the freedom to ask whatever they [sic] wanted" in customer meetings). Spackman testified he "never attempted to deceive" or "hide anything" from Swift, and Smith "never asked that [he] hide any information from [Stellex]." Spackman Dep. 412:23-413:19.

[272] 2/4 Tr. 31:10-32:4 (Spackman testifying he "did not ask specifically about Stellex's volume projections at th[e] [ZF] meeting[.]").

meeting with."[273] The same post-Closing email noted that Buyers "caught in a redline . . . that [Sellers] 'received a letter about lower volumes' [and] [] brought that to Bruce's attention for the meeting too."[274]

The analysis regarding FCA is largely overlapping. Smith's emails regarding the "softening" market were not limited to ZF, rather it spoke to Paragon's sales generally.[275] The Ducker report suggested the possibility of FCA moving some production in-house.[276] Additionally, an email from Mackinder to Swift called out that "FCA [] *is not showing an increase in demand*."[277] Swifts' pre-FCA customer meeting checklist shows that Stellex was concerned about: (1) "changes in expected volume"; (2) "programs ending earlier than originally forecasted"; (3) changes to how FCA conducted its "HP48/50" program, including "[p]otential outsourcing."[278] The *only* update Swift provided following the FCA meeting was that "[v]olumes for 2019 will be flat over 2018."[279] The Court considers that one line update inconsistent with any reasonable diligence, given that Stellex was "explicit to [B]ruce to confirm volumes,"[280] and FCA

[273] DX129 ("we were pretty explicit to [B]ruce to confirm volumes.").
[274] *Id.*
[275] *See* DX109.
[276] *See* DX92. While the Ducker report framed this as a positive – suggesting Paragon could benefit if FCA started buying more output supports instead of ZF transmissions – the potential for FCA to move production in house was a double-edged sword as Ducker noted FCA had other suppliers that could step into the Company's shoes. *See id.*
[277] DX107 (emphasis added).
[278] DX76; *see* JX26.
[279] JX28. Swift conceded his assertion that sales would be "flat," did not "reference [] any part in particular . . . just [the] overall business[.]" 2/3 Tr. 299:15-21.
[280] DX129.

repeatedly disclosed its downward forecast upon Paragon's request.[281] Rather, the Court agrees with Waxman's post-Closing assessment, that Swift "blew it" when it came to the customer meetings.[282]

Based on this evidence the Court finds that Buyers knew or should have known about Section 3.23's and 3.8's[283] falsity before Closing. Despite expressly representing and warranting that they conducted diligence and relied on the results,[284] Buyers failed to follow up on numerous red flags raised by Sellers. Although Sellers' disclosures could have been more explicit, the evidence shows that Buyers had at least some understanding of the information underlying their fraud claim. A party that "had means of obtaining knowledge" cannot claim a lack of knowledge based on "willful blindness."[285] Well-settled Delaware law provides "it is axiomatic that a plaintiff does not justifiably rely on a defendant's misrepresentations if the plaintiff knows that the representation is false."[286] Accordingly, Buyers did not justifiably rely on Sections 3.23 and 3.8 of the Agreement

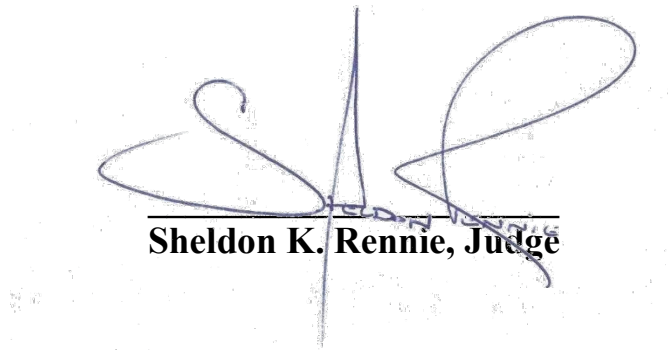
[281] *E.g.*, JX06.
[282] DX129.
[283] Because Buyers Section 3.8 claim is based on the risk of EBIDA loss and loan default caused by falling volumes, the Court's finding that Buyers had knowledge of the facts underlying their Section 3.23 claim necessarily means Plaintiffs also had knowledge of the allegedly withheld facts on which their Section 3.8 claim relies. *See* MSJ Op. at 21 n. 131 ("Stellex relies on the same evidence to support its breach theory regarding each section, and the MAE Clause is written such that if a challenged Smith action does not breach Section 3.23, it cannot breach Section 3.8.").
[284] *See* Agreement § 5.10(a).
[285] *Heron Bay Property Owners Association, Inc. v. CooterSunrise, LLC*, 2013 WL 3871432, at *9 (Del. Ch. June 27, 2013).
[286] *Arwood*, 2022 WL 705841, at *21.

as they relate to the challenged portions of Paragon's business with ZF and FCA. Hence, Plaintiffs' fraud claim fails for lack of justifiable reliance.

VI. CONCLUSION

Plaintiffs carried their burden of showing that Sections 3.23 and 3.8 were knowingly false at Closing and that Sellers acted with the requisite scienter. Yet, Buyers failed to conduct reasonable due diligence and ignored Sellers repeated disclosure of the information at the heart of the fraud claim. Hence, Section 5.10(a) of the Agreement bars Plaintiffs fraud claim. Accordingly, judgment is entered in favor of Defendants.

IT IS SO ORDERED THIS 13th DAY OF August 2025.



Sheldon K. Rennie, Judge