

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

EARTH PRIDE ORGANICS, LLC,)	
a Pennsylvania limited liability company,)	
LTG, INC. f/k/k LANCASTER FINE)	
FOODS, INC., a Pennsylvania corporation,)	
)	
Plaintiffs,)	C.A. No.: N23C-05-009 EMD CCLD
)	
v.)	
)	
CORONA-ORANGE FOODS)	
INTERMEDIATE HOLDINGS LLC,)	
a Delaware limited liability company,)	
)	
Defendant.)	

Submitted: November 19, 2025

Decided: February 18, 2026

Upon Plaintiffs' Motion for Summary Judgment,
DENIED.

Upon Defendant's Motion for Summary Judgment,
GRANTED IN PART and DENIED IN PART.

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DAVIS, P.J.

I. INTRODUCTION

This is a civil action assigned to the Complex Commercial Litigation Division of the Superior Court. On May 4, 2023, Earth Pride Organics, LLC (“EPO”) and LTG, Inc. (“LTG”) (collectively, the “Plaintiffs”) commenced this action asserting a breach of contract claim against Corona-Orange Foods Intermediate Holdings LLC (“Corona” or the “Defendant”). The Plaintiffs allege that Corona breached the terms of the parties’ Membership Interest Purchase Agreement (the “MIPA”) by failing to contribute \$2 million in capital investments.

After the commencement of this action, the Plaintiffs filed two amended complaints, the second of which asserted a fraud claim against Corona. The Plaintiffs contend that Corona made fraudulent statements regarding a proposed amendment to an assigned lease to lower an earnout payment under the MIPA. On January 3, 2025, Corona filed its Answer to the Second Amended Complaint (the “Answer”). Corona denies that it had breached the MIPA and that it had made false statements in connection with the lease.

Presently before the Court are the parties’ Cross-Motions for Summary Judgment (the “Motions”), which were filed on August 20, 2025. The parties filed their opposition briefs on September 17, 2025, and their reply briefs on October 1, 2025. The Court heard oral arguments on the Motions on November 19, 2025, at which time the matter was taken under advisement.

For the reasons stated below, the Court **DENIES** the Plaintiffs’ Motion for Summary Judgment (the “Plaintiffs’ Motion”) and **GRANTS IN PART and DENIES IN PART** the Defendant’s Motion for Summary Judgment (the “Defendant’s Motion”).

II. BACKGROUND

A. THE PARTIES

1. *The Plaintiffs*

EPO is a Pennsylvania limited liability company with its principal place of business in Lancaster County, Pennsylvania.¹ Lancaster Fine Foods, Inc. (“LFF”) is a Pennsylvania corporation with its principal place of business in Lancaster County, Pennsylvania.² LFF is now referred to as LTG, Inc.³ At the time the parties entered into the MIPA, EPO owned 100% of LFF.⁴

2. *Defendant*

Corona is a Delaware limited liability company with its principal place of business in Chicago, Illinois.⁵

B. NATURE OF THE DISPUTE

1. *Background Information and Negotiations to Acquire LFF*

In 2008, Michael Thompson founded LFF.⁶ LFF is a family business based in Lancaster, Pennsylvania.⁷ LFF manufactures custom private label foods.⁸ LFF’s customers included Auntie Anne’s, Casablanca Foods, Starbucks, Robert Rothschild Foods, Mike’s Hot Honey, and Bonnie’s Jams.⁹ By 2020, LFF was generating millions of dollars in annual revenue and

¹ Second Amended Complaint (“SAC”) (D.I. No. 74) ¶ 1.

² *Id.* at ¶ 2.

³ *See generally* SAC.

⁴ *Id.* at ¶ 1.

⁵ *Id.* at ¶ 3.

⁶ *Id.* at ¶ 7.

⁷ *See id.*

⁸ *See id.*

⁹ *Id.*

operated a facility in Lancaster, Pennsylvania (the “Lancaster Facility”) with advanced manufacturing abilities.¹⁰

Based on this success, prospective buyers began contacting LFF’s principals to inquire about purchasing LFF.¹¹ Corona was one of the prospective buyers. Corona is substantially owned by investment funds managed by a private equity firm, Wind Point Partners (“Wind Point”).¹² Corona is the owner of companies that comprise the Stir Foods brand of manufacturers of custom food.¹³ On September 26, 2018, Wind Point approached Mr. Thompson to inquire about the sale of LFF.¹⁴ Wind Point pitched the deal as where Corona would invest in the Lancaster Facility’s optimization and automation for the purpose of maximizing long-term success.¹⁵ On April 17, 2019, Wind Point again approached Mr. Thompson regarding a possible partnership with LFF.¹⁶

On September 11, 2020, Mr. Thompson provided due diligence information to Wind Point regarding a potential sale of LFF.¹⁷ The sale would include LFF’s current equipment list and a “wish list” of additional equipment to be added to the Lancaster Facility through investment.¹⁸

On October 5, 2020, Wind Point and Stir Foods provided Mr. Thompson with a letter of intent to purchase LFF.¹⁹ The letter of intent stated that Stir Foods would “immediately invest significant capital and operational support in the Lancaster Facility to support additional near-

¹⁰ *Id.*

¹¹ *Id.* at ¶ 8.

¹² Defendant Corona-Orange Foods Intermediate Holdings LLC’s Opening Brief in Support of Its Motion for Summary Judgment (“Def. Mot.”) (D.I. No. 124) at 3.

¹³ Plaintiffs’ Opening Brief in Support of Their Motion for Summary Judgment (“Pl. Mot.”) (D.I. No. 126) at 2.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.*

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

term volume opportunities.”²⁰ The letter of intent further detailed that Stir Foods would “commit to investing in the Lancaster Facility and plan to invest \$2 million in 2021 to support growth.”²¹ Wind Point included the \$2 million capital investment because Mr. Thompson had provided “a capital expenditure wish list which he provided to [Wind Point]” and wanted to ensure that “there was capital coming because it was important to [Mr. Thompson].”²² The Plaintiffs provide that the capital investment would be used for “equipment to make the [Lancaster] facility more efficient, increase capacity, and increase sales.”²³

2. *The MIPA*

On February 17, 2021, Corona purchased 100% of LFF’s business pursuant to the terms of the MIPA and LFF became part of the Stir Foods family.²⁴ The MIPA set forth certain contractual obligations as between EPO and Corona.

i. **Section 7.8 and Section 9.1: Capital Contributions and Survival**

MIPA Section 7.8, which is listed under a “Representations and Warranties” heading, provides that:

[Corona] and its Affiliates shall contribute not less than Two Million Dollars (\$2,000,000) to the Company following Closing, but (except as expressly set forth in the following proviso) in no event later than December 31, 2021 such amount to be used to fund capital improvements for the facility located at the Leased Real Property, provided, however, that the parties acknowledge that such contributions to capital of the Company may be delayed due to delays in ordering and delivery lead times for equipment.²⁵

Section 9.1 addresses the survival of claims arising under the terms of the MIPA. Section 9.1 states:

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.*

²⁴ Def. Mot. at 3.

²⁵ Pl. Mot., Ex. H § 7.8.

The representations and warranties set forth in Article 5, Article 6 and Article 7 shall survive the Closing for a period of eighteen (18) months from the Closing Date except as follows: (i) the Fundamental Representations shall survive the Closing Date until ninety (90) days following the termination of the applicable statute of limitations; (ii) the representations and warranties contained in Sections 6.14 (Taxes), 6.15 (Employee Benefit Plans) shall survive until thirty (30) days after the expiration of the applicable statute of limitations; (iii) the representations and warranties set forth in Section 6.17 (Environmental Compliance) shall survive closing for a period of three (3) years; (iv) claims arising from willful misconduct or intentional misrepresentation shall survive for a period of six (6) years; and (v) claims arising from fraud shall survive for a period of ten (10) years. Each of the covenants and agreements of the Parties set forth in this Agreement shall survive the Closing for a period of twelve (12) months following the Closing Date, except that the covenants that definitively expire by their specific terms shall expire in accordance with such terms. Any claims under this Agreement must be asserted by written notice delivered prior to 11:59 p.m. Eastern Time on the expiration date of the applicable survival period set forth in this Section 9.1, if any, and if such a Claim Notice is given prior to such time, the survival period with respect to the claim described in such Claim Notice shall continue until such claim is fully resolved.²⁶

ii. Section 3.8(a): The Earnout Payment

The MIPA provides for an earnout payment. MIPA Section 3.8(a) affords for an earnout to the extent Corona's EBITDA exceeded \$1,800,000 between July 1, 2021 and June 30, 2022 (the "Earnout Period").²⁷ The earnout payment would be equal to four times the amount Corona's EBITDA surpassed the \$1,800,000 threshold during the Earnout Period.²⁸

iii. Section 8.10: Lease Provisions

Prior to the execution of the MIPA, the Plaintiffs leased the Lancaster Facility (the "Lease").²⁹ As part of the MIPA, the Plaintiffs agreed to assign the Lease to Stir Foods.³⁰

Section 8.10(a) states:

[a]s a consequence of the assignment of the Lease by the Asset Sellers to the Company pursuant to the Agreement re: Lease, the Company shall assume the

²⁶ Pl. Mot., Ex. H § 9.1.

²⁷ Def. Mot. at 3.

²⁸ *Id.*

²⁹ *See* Pl. Mot., Ex. H § 8.10(a).

³⁰ *Id.*

Asset Sellers' obligations under the Lease to the extent such obligations first arise following the Closing Date, including the obligation to pay, on a monthly basis, the Base Rent (as defined in the Lease), the Additional Rent (as defined in the Lease), and the pro rata share of the Common Area Expenses (as defined in the Lease) (collectively, the "Monthly Rent/CAM Expense").³¹

This assignment of the Lease imposed additional obligations on the Plaintiffs.³² Section 8.10(b) provides that, while Stir Foods occupied no more than 103,318 square feet of the Lancaster Facility, the Plaintiffs would reimburse Stir Foods the difference between the total amount of rent and \$50,000, less any rent paid by subtenants.³³ The purpose of this arrangement was to increase the EBITDA, and thus the potential earnout payment, by reducing Stir Foods' rent expense.³⁴

3. *Eighth Amendment to the Lease*

In May 2021, Corona and its affiliates sought to enter a lease of the Lancaster Facility with a third party (the "Eighth Amendment").³⁵ Mr. Thompson objected "because it would deprive [the Plaintiffs] of approximately \$1.9 million in additional earnout moneys."³⁶ Mr. Thompson explained that "the lease agreement [Corona and its affiliates] sought to negotiate with the third party could only be accomplished with [Mr. Thompson's], and therefore [the] Plaintiffs' consent."³⁷ Notwithstanding Mr. Thompson's assertion, the MIPA contains no such requirement.³⁸

In response to these assertions, Pablo Gallo, Corona's CFO, told Mr. Thompson that the Eighth Amendment "provided for approximately \$500,000 in tenant improvement monies that

³¹ *Id.*

³² *See id.*

³³ *See* Pl. Mot., Ex. H § 8.10(b).

³⁴ *See* Def. Mot. at 21.

³⁵ *Id.*

³⁶ SAC at ¶ 24.

³⁷ *Id.*

³⁸ *See generally* Pl. Mot., Ex. H.

would be recognized as EBITDA on Stir Foods’ books and records, and therefore, it ‘would all wash out in the end.’”³⁹ Mr. Thompson purportedly relied upon this representation and approved of the Eighth Amendment and the lease was executed.⁴⁰

Meanwhile, on December 28, 2020, the Plaintiffs entered into an Agreement of Sale to purchase property owned by Tim Harrison.⁴¹ Mr. Harrison learned, during the closing period, that Stir Foods was acquiring the Lancaster Facility and would become the new tenant.⁴² Mr. Harrison used the information regarding the Lancaster Facility to improperly shop the property to a new purchaser.⁴³ Subsequently, the Plaintiffs notified Mr. Harrison of potential claims arising from Mr. Harrison’s conduct.⁴⁴ As a result, Mr. Harrison threatened to walk away from the sale which could have rendered the Eighth Amendment moot.⁴⁵ The record is unclear as to the outcome of the proposed sale of the property owned by Mr. Harrison. However, the Plaintiffs claim that they relied on Mr. Gallo’s representations in deciding not to pursue legal action against Mr. Harrison which would “derail the sale of the building and the [Eighth Amendment].”⁴⁶

Ultimately, when the earnout was calculated, Corona’s accounting did not recognize the approximately \$500,000 in tenant improvement allowances as EBITDA.⁴⁷

³⁹ See SAC at ¶ 25; see also Def. Mot. at 22.

⁴⁰ See SAC at ¶ 25-28.

⁴¹ Plaintiffs’ Brief in Opposition to Defendant’s Motion for Summary Judgment (“Pl. Opp’n.”) (D.I. No. 135) at 18.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See *id.* at 19.

⁴⁷ SAC at ¶ 26.

4. *Additional Post-Closing Developments*

During the first half of the Earnout Period, the Plaintiffs repeatedly reminded Corona of its obligation to invest \$2 million in 2021.⁴⁸ Moreover, the Plaintiffs provided guidance on the capital investments that would best enhance business.⁴⁹

Corona tracked the capital spending for the Lancaster Facility in 2021 using a spreadsheet.⁵⁰ Corona's spreadsheet indicates that \$1,198,114.00⁵¹ in capital was infused into the Lancaster Facility in 2021.⁵² Corona disputes the amount of capital investments despite the spreadsheet information and the deposition testimony of Mr. Gallo. Specifically, Corona contends that "in fact, Corona contributed \$2,295,367.71 for capital expenditures for which Stir Foods either: (i) spent funds in 2021; (ii) accepted invoices in 2021 for capital expenditures ordered and spent the funds in 2022; submitted purchase orders in 2021 for capital expenditures, and accepted invoices in 2022 (or on one occasion 2023); or (iii) originally recorded the expenditure in 2021 as repairs and maintenance, but later in 2021 recharacterized them as capital expenditures."⁵³

On June 10, 2022, Mr. Thompson emailed Corona's CEO, Milton Liu.⁵⁴ Mr. Thompson advised Mr. Liu that the "2021 SFL investment was \$1.1 million" which was "[w]ell short of the contracted commitment."⁵⁵

⁴⁸ *Id.* at ¶ 11.

⁴⁹ *Id.*

⁵⁰ Pl. Mot. at 5.

⁵¹ *See id.* at 6 (explaining that Corona's corporate designee, Mr. Gallo, confirmed this calculation in his deposition testimony).

⁵² *Id.* at 5.

⁵³ Def. Mot. at 13.

⁵⁴ Pl. Mot. at 5-6.

⁵⁵ *Id.*

On September 22, 2022, following the expiration of the Earnout Period, Corona provided an earnout statement which reflected that LFF was owed less than \$750,000.⁵⁶ Corona submitted this earnout statement despite earlier representations that the earnout was projected to amount to \$30,000,000.⁵⁷

On December 11, 2022, Mr. Thompson emailed Wind Point Principal Joseph Lawler to advise that the \$2,000,000 capital investment that “was to be spent to improve Lancaster manufacturing efficiency” did not happen and that the “2021 Stir capital acquisition for Lancaster totaled only \$1,198,113.”⁵⁸

C. PROCEDURAL POSTURE

On May 5, 2023, the Plaintiffs filed their first complaint (the “Complaint”) asserting one count for breach of contract against Corona.⁵⁹ On July 6, 2023, Corona moved to dismiss the Complaint.⁶⁰ On August 7, 2023, the Court entered a stipulation and order that stayed the proceedings pending mediation.⁶¹ The parties were not able to resolve the matter during mediation.

On October 25, 2023, the Plaintiffs filed an amended complaint (the “Amended Complaint”).⁶² The Amended Complaint asserted two claims – breach of contract and fraud – and added Wind Point Advisors LLC (“WPA”) as a defendant.⁶³ On November 21, 2023, the Defendants moved to dismiss the Amended Complaint (the “Motion to Dismiss”).⁶⁴ On March 14, 2024, the Court held a hearing on the Motion to Dismiss. After the hearing, the Court took

⁵⁶ SAC at ¶ 20.

⁵⁷ *Id.*

⁵⁸ Pl. Mot. at 6.

⁵⁹ See Complaint (“Compl.”) (D.I. No. 1) ¶¶ 15-20.

⁶⁰ See generally Defendant’s Motion to Dismiss the Complaint (“Mot. to Dismiss”) (D.I. No. 13).

⁶¹ See Stipulation and Order Staying Action Pending Mediation (D.I. No. 20).

⁶² See Amended Complaint (“Amend. Compl.”) (D.I. No. 26).

⁶³ *Id.* at ¶¶ 31-43.

⁶⁴ See Defendants’ Motion to Dismiss the Amended Complaint (“Mot. to Dismiss Amend. Compl.”) (D.I. No. 32).

the Motion to Dismiss under advisement. On April 17, 2024, the Court issued an opinion on the Motion to Dismiss. The Court declined to dismiss the breach of contract claim against Corona but dismissed WPA as a party.⁶⁵

On September 4, 2024, the Plaintiffs filed a Motion for Leave to File a Second Amended Complaint (the “Motion to File a Second Amended Complaint”).⁶⁶ The Motion to File a Second Amended Complaint sought leave to add claims for (i) breach of the implied covenant of good faith and fair dealing and (ii) fraud against Corona.⁶⁷ On October 11, 2024, the Court held a hearing on the Motion to File a Second Amended Complaint, at which time the matter was taken under advisement. On December 20, 2024, the Court issued an opinion granting in part and denying in part the Motion to File a Second Amended Complaint.⁶⁸ The Court granted leave to assert breach of contract and fraud claims against Corona;⁶⁹ however, the Court denied the request to add the claim for breach of the implied covenant of good faith and fair dealing.⁷⁰

On January 8, 2025, the Plaintiffs filed their second amended complaint (the “Second Amended Complaint”).⁷¹ The Second Amended Complaint asserted claims for breach of contract and fraud against Corona.⁷² On January 23, 2025, Corona filed its Answer to the Second Amended Complaint.⁷³ Following the filing of pleadings related to the Second Amended Complaint, the parties engaged in discovery.

⁶⁵ See Opinion Granting in Part and Denying in Part Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint (D.I. No. 53).

⁶⁶ See Plaintiffs’ Motion for Leave to File Second Amended Complaint (“Mot. to File SAC”) (D.I. No. 64).

⁶⁷ See *id.* at ¶¶ 11-17.

⁶⁸ See Opinion Granting in Part and Denying in Part Plaintiffs’ Motion for Leave to File Second Amended Complaint (D.I. No. 72).

⁶⁹ See *id.* at 22.

⁷⁰ See *id.*

⁷¹ See generally SAC.

⁷² See *id.* at ¶¶ 29-41.

⁷³ See generally Defendant’s Answer and Affirmative Defenses to the Second Amended Complaint (D.I. No. 78).

Presently before the Court are the Motions, which were filed on August 20, 2025. The parties filed their opposition briefs on September 17, 2025 and their reply briefs in support of their respective motions on October 1, 2025. The Court heard oral arguments on the Motions on November 19, 2025, at which time the matter was taken under advisement.

III. PARTIES' CONTENTIONS

A. PLAINTIFFS' MOTION

The Plaintiffs argue that they are entitled to summary judgment as to their breach of contract claim. The Plaintiffs make three related arguments. The Plaintiffs assert that MIPA Section 7.8 imposes a clear and enforceable contractual obligation.⁷⁴ The Plaintiffs further contend that Corona breached Section 7.8 by failing to contribute \$2,000,000 by December 31, 2021.⁷⁵ Finally, the Plaintiffs claim that Section 7.8 does not excuse performance based on equipment lead times.⁷⁶

B. DEFENDANT'S MOTION

1. Breach of Contract

Corona argues that it is entitled to summary judgment on the Plaintiffs' breach of contract claim for three reasons. Corona claims that the Plaintiffs' breach of contract claim fails as a matter of law because Section 7.8 is a representation or warranty and the Plaintiffs admitted that Corona intended to comply with Section 7.8 at the time of closing.⁷⁷ Corona further asserts that it satisfied Section 7.8 because it spent money, accepted invoices, and issued purchase orders in

⁷⁴ Pl. Mot. at 7.

⁷⁵ *Id.* at 9.

⁷⁶ *Id.* at 10.

⁷⁷ Def. Mot. at 6.

the approximate amount of \$2.3 million before the end of 2021.⁷⁸ Corona also alleges that the Plaintiffs' claim is time-barred under the MIPA.⁷⁹

2. Fraud

On the fraud claim, Corona contends that it is entitled to summary judgment for four independent reasons. Corona claims that because the Plaintiffs did not have the right to veto the Eighth Amendment, the Plaintiffs could not have justifiably relied on any purported fraudulent statement.⁸⁰ Next, Corona argues that there is no evidence that the Plaintiffs consented to the Eighth Amendment. As such, Plaintiffs cannot demonstrate they relied on any alleged fraudulent statement or that Corona intended to induce reliance.⁸¹ Corona also asserts that it could not have made the alleged fraudulent statement because the Eighth Amendment does not reference the reimbursement requirement.⁸² Finally, Corona maintains that the Plaintiffs changed positions asserted in the Second Amended Complaint and that such changes are contradicted by documentary evidence.⁸³

IV. STANDARD OF REVIEW

Superior Court Civil Rule 56 governs motions for summary judgment.⁸⁴ The Court's principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, "but not to decide such issues."⁸⁵ Summary judgment will be granted if, after viewing the record in a light most favorable to a nonmoving party, no genuine issues of material fact exist and the moving party is entitled to

⁷⁸ *Id.* at 10.

⁷⁹ *Id.* at 14.

⁸⁰ *Id.* at 20.

⁸¹ *Id.* at 24.

⁸² *Id.* at 28.

⁸³ *Id.* at 29.

⁸⁴ *ET Aggregator, LLC v. PFJE AssetCo Holdings, LLC*, 2025 WL 2682583, at *5 (Del. Super. Sept. 9, 2025).

⁸⁵ *Id.* (citing *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992)).

judgment as a matter of law.⁸⁶ If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.⁸⁷ The moving party bears the initial burden of demonstrating that the undisputed facts support its claims or defenses.⁸⁸ If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for the resolution by the ultimate fact-finder.⁸⁹

“These well-established standards and rules equally apply [to the extent] the parties have filed cross-motions for summary judgment.”⁹⁰ Where cross-motions for summary judgment are filed and neither party argues the existence of a genuine issue of material fact, “the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.”⁹¹ However, the “existence of cross motions for summary judgment does not act per se as a concession that there is an absence of factual issues.”⁹²

Therefore, where cross-motions for summary judgment are filed and an issue of material fact exists, summary judgment is not appropriate.⁹³ To determine whether there is a genuine issue of material fact, the Court evaluates each motion independently.⁹⁴ And again, where it seems prudent to make a more thorough inquiry into the facts, summary judgment will be denied.⁹⁵

⁸⁶ *Id.*

⁸⁷ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁸⁸ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1970) (citing *Ebersole*, 180 A.2d at 470).

⁸⁹ *Brzoska v. Olsen*, 668 A.2d 1355, 1364 (Del. 1995).

⁹⁰ *IDT Corp. v. U.S. Specialty Ins. Co.*, 2019 WL 413692, at *5 (Del. Super. Jan. 31, 2019).

⁹¹ Del. Super. Ct. Civ. R. 56(h).

⁹² *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997).

⁹³ *Motors Liquidation Co. DIP Lenders Tr. V. Allianz Ins. Co.*, 2017 WL 2495417, at *5 (Del. Super. June 19, 2017).

⁹⁴ *Id.*

⁹⁵ *Ebersole*, 180 A.2d at 470-72.

V. DISCUSSION

A. SUMMARY JUDGMENT ON THE BREACH OF CONTRACT CLAIM IS DENIED.

Under Delaware law, to state a claim for breach of contract, a party must allege “(i) the existence of a contract; (ii) the breach of a contractual obligation; and (iii) resulting damages.”⁹⁶ Although damages may be plead generally, “conclusory allegations of damages are insufficient.”⁹⁷

The Plaintiffs and Corona each contend that they are entitled to summary judgment as a matter of law on the Plaintiffs’ breach of contract claim. The crux of these arguments revolves around three separate issues: (i) does MIPA Section 7.8 constitute a representation and warranty or a covenant; (ii) did Corona satisfy Section 7.8; and (iii) is the breach of contract claim time barred.

The Court finds that: (i) MIPA Section 7.8 constitutes a covenant; (ii) there is a genuine issue of material fact as to whether Corona satisfied Section 7.8; and (iii) the breach of contract claim is not time-barred. Accordingly, the Motions are **DENIED** with respect to the breach of contract claim.

1. MIPA Section 7.8 is a covenant.

Delaware courts have previously addressed the distinction between representations and warranties and covenants. A representation and warranty “guarantee[s] the truthfulness of a present fact, whereas covenants are promises to perform.”⁹⁸

The Plaintiffs contend that MIPA Section 7.8 constitutes a covenant that imposed an affirmative obligation on Corona to make \$2 million in capital contributions to the Lancaster

⁹⁶ *Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967, at *4 (Del. Super. Jan. 9, 2024) (citing *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003)).

⁹⁷ *Id.*

⁹⁸ *SPay, Inc. v. Stack Media Inc.*, 2021 WL 6053869, at *6 (Del. Ch. Dec. 21, 2021).

Facility in 2021.⁹⁹ Corona asserts that Section 7.8 constitutes a representation and warranty that did not impose an affirmative obligation on Corona to make \$2 million in capital contributions to the Lancaster Facility in 2021.¹⁰⁰ Corona interprets Section 7.8 as merely requiring Corona to *intend* to make \$2 million in capital contributions in 2021 at the time the MIPA was executed.

Section 7.8, which falls under a representations and warranties heading, states:

[Corona] and its Affiliates shall contribute not less than Two Million Dollars (\$2,000,000) to the Company following Closing, but (except as expressly set forth in the following proviso) in no event later than December 31, 2021 such amount to be used to fund capital improvements for the facility located at the Leased Real Property, provided, however, that the parties acknowledge that such contributions to capital of the Company may be delayed due to delays in ordering and delivery lead times for equipment.¹⁰¹

As a preliminary matter, the Court previously categorized Section 7.8 as a representation and warranty. In the Court’s decision on the Motion to Dismiss, the Court stated that “Section 7.8 ... is a representation and warranty of Corona....”¹⁰² However, notwithstanding the Court’s prior categorization of Section 7.8, that categorization is not the law of the case.¹⁰³ The Court did not make a “conclusive determination” that Section 7.8 constitutes a representation and warranty as a matter of law.¹⁰⁴ Instead, the Court applied the relevant legal standard at the pleadings stage—*i.e.*, the Court viewed the facts and drew reasonable inferences in a light most favorable to the Plaintiffs. As a result, the Court may properly revisit the issue of whether Section 7.8 constitutes a covenant at the summary judgment stage.

⁹⁹ See Pl. Mot. at 8.

¹⁰⁰ Def. Opp’n. at 8.

¹⁰¹ Pl. Mot., Ex. H § 7.8.

¹⁰² Opinion Granting in Part and Denying in Part Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint at 13.

¹⁰³ See *Johnson v. Preferred Professional Ins. Co.*, 91 A.3d 994, 1009 (Del. Super. Feb. 17, 2014) (explaining that the law of the case doctrine “requires that issues already decided by the same court should be adopted without relitigation”).

¹⁰⁴ See *Seiden v. Kaneko*, 2017 WL 1093937, at *4 (Del. Ch. Mar. 22, 2017) (explaining that the law of the case doctrine applies only where the underlying facts were “conclusively determined” at the pleadings stage).

The Court finds that Section 7.8 constitutes a covenant even though Section 7.8 falls under the MIPA’s representations and warranties heading. Delaware courts have recognized that a contractual provision may be construed as a covenant even though it falls under a representation and warranty heading.¹⁰⁵ Further, MIPA Section 10.5 states that “[t]he headings contained in this Agreement are intended solely for convenience and shall not be considered in construing or interpreting this Agreement.”¹⁰⁶ The reality that Section 7.8 falls under a representations and warranties heading, therefore, does not require a finding that Section 7.8 constitutes a representation and warranty or a covenant.

Section 7.8 includes mandatory language creating an affirmative obligation on the part of Corona to make \$2 million in capital contributions in 2021. Namely, Section 7.8 states that “[Corona] *shall* contribute not less than Two Million Dollars (\$2,000,000) to the Company following closing, but ... in no event later than December 31, 2021....”¹⁰⁷ Based upon the mandatory and affirmative language creating a promise to perform, the parties intended for Section 7.8 to operate as a covenant.

Moreover, the developed record supports the conclusion that Section 7.8 should be construed as a covenant. The facts demonstrate that the parties treated Section 7.8 as a covenant since the execution of the MIPA. For example, while the exact amount contributed is disputed as explained below, there is no dispute that Corona made at least \$1,198,113 in capital contributions to the Lancaster Facility in 2021.¹⁰⁸ Further, immediately following the execution

¹⁰⁵ See *Spay, Inc.*, 2021 WL 6053869, at *6 (finding that the applicable contractual provisions should be construed as covenants even though the provisions were described as representations and warranties in the agreement).

¹⁰⁶ Pl. Mot., Ex. H § 10.5.

¹⁰⁷ Pl. Mot., Ex. H § 7.8 (emphasis added).

¹⁰⁸ See Pl. Mot. at 6 (explaining that Corona’s corporate designee, Mr. Gallo, confirmed this calculation in his deposition testimony).

of the MIPA, Corona allocated a budget of \$4,000,000 for capital contributions for the Lancaster Facility.¹⁰⁹

Both the language of Section 7.8 and the record support the conclusion that Section 7.8 should be construed as a covenant. Accordingly, the Court finds that Section 7.8 constitutes a covenant which created an affirmative obligation on the part of Corona to make \$2 million in capital contributions to the Lancaster Facility in 2021.

2. *A genuine dispute of material fact exists as to whether Corona complied with Section 7.8.*

The Plaintiffs argue that Corona failed to satisfy Section 7.8.¹¹⁰ The Plaintiffs contend that “the undisputed facts show that [Corona’s] actual capital investment in calendar year 2021 fell far short of the \$2,000,000 minimum.”¹¹¹ The Plaintiffs posit that Corona’s 2021 capital contributions undisputedly amounted to \$1,198,113.¹¹²

Corona contends that it satisfied Section 7.8.¹¹³ Corona alleges that “by spending, accepting invoices, and issuing purchase orders for capital expenditures worth approximately \$2.3 million before the end of 2021, Corona satisfied” its obligation under Section 7.8.¹¹⁴

The operative contractual language is contained in Section 7.8. Section 7.8 imposes an affirmative obligation on Corona to make \$2 million in capital contributions to the Lancaster facility in 2021. Section 7.8 states:

¹⁰⁹ See Def. Mot., App. Tab 114 at 47:10-14.

¹¹⁰ Pl. Mot. at 9.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Def. Mot. at 6. Corona’s initial argument is premised upon the assumption that Section 7.8 constitutes a representation and warranty. Corona claims it satisfied Section 7.8 as the record purportedly reflects that, at closing, Corona intended to comply with Section 7.8. However, for the reasons provided above, Section 7.8 constitutes a covenant. As such, the issue is not whether Corona intended to make \$2 million in capital contributions at the time of closing. Instead, the issue is whether Corona actually made \$2 million in capital contributions in 2021. Therefore, the Court will only address Corona’s alternative argument that it satisfied Section 7.8 by making over \$2 million in capital contributions in 2021.

¹¹⁴ Def. Mot. at 10.

[Corona] and its Affiliates shall contribute not less than Two Million Dollars (\$2,000,000) to the Company following Closing, but (except as expressly set forth in the following proviso) in no event later than December 31, 2021 such amount to be used to fund capital improvements for the facility located at the Leased Real Property, provided, however, that the parties acknowledge that such contributions to capital of the Company may be delayed due to delays in ordering and delivery lead times for equipment.¹¹⁵

The Court finds that a genuine dispute of material fact exists as to whether Corona complied with its obligation to make \$2 million in capital contributions to the Lancaster Facility in 2021. The record provides sufficient support for a finding that Corona's contribution fell short of its capital contribution obligation under Section 7.8. Specifically, Corona's spreadsheet, which tracked the capital investment spending in 2021, indicates that Corona only purchased \$1,198,114.00 in capital for the Lancaster Facility in 2021.¹¹⁶ At his deposition, Corona's corporate designee, Pablo Gallo, confirmed this calculation.

However, the record also provides sufficient support for a finding that Corona satisfied its capital contribution obligation under Section 7.8. Corona has presented documentation indicating that it made capital expenditures worth approximately \$2.3 million towards the Lancaster Facility in 2021.¹¹⁷ Corona acknowledges that some of the items comprising the \$2.3 million may not have in fact been delivered or fully paid for in 2021.¹¹⁸ However, as Corona correctly points out,¹¹⁹ Section 7.8 contemplates a situation where the delivery of items constituting capital contributions may be delayed due to "delivery lead times."¹²⁰ Corona has advanced deposition testimony of Mr. Thompson explaining that when the delivery of items is

¹¹⁵ Pl. Mot., Ex. H § 7.8.

¹¹⁶ Pl. Mot. at 5.

¹¹⁷ See Def. Mot., App. Tab 61 ¶¶ 9-15; see also Def. Mot., App. Tab 61, Ex. A.

¹¹⁸ See Def. Mot. at 11.

¹¹⁹ See *id.*

¹²⁰ See Pl. Mot., Ex. H § 7.8 (stating that "the parties acknowledge that such contributions to capital of the Company may be delayed due to delays in ordering and delivery lead times for equipment").

delayed, the purchaser is typically not required to pay in full up front. Corona cites to the following testimony:

Q: When there's going to be a longer delivery lead time, is it standard for the seller ... not to require full payment upon order?

A: ... payment on any piece of equipment is typically split up into three or four dates.

...

Q: So, there would be down payment upon order; correct?

A: Yes.

...

Q: And there might be some progress payments; correct?

A: ... yes.

...

Q: Sometime around the final delivery, you'd have to make the final payment; correct?

A: Correct.

...

Q: Would you agree that it would be not good business practice for SFL to pay the full price ... when ordered if the seller was not requiring it?

A: Yeah, it would not make sense to pay more than one had to at any given time.¹²¹

Thus, the Court finds a genuine issue that Corona satisfied its obligations under Section 7.8 by spending, accepting invoices, and issuing purchase orders for capital expenditures worth approximately \$2.3 million before the end of 2021. Accordingly, a genuine dispute of material fact exists as to whether Corona satisfied its obligation to make \$2 million in capital contributions to the Lancaster Facility in 2021.

3. *The Plaintiffs' breach of contract claim is not time-barred.*

Corona alleges that the Plaintiffs' breach of contract claim is time-barred under the MIPA. Corona maintains the Plaintiffs were required to provide notice of their claim by August 17, 2022, and failed to do so.¹²² In support, Corona relies upon Section 9.1. In conjunction with

¹²¹ Def. Mot., App. Tab 8 at 161:17-165:12.

¹²² Def. Mot. at 14.

its reliance on Section 9.1, Corona suggests that discovery “has proven that Corona did not engage in willful misconduct or intentional representation.”¹²³

In response, the Plaintiffs argue that the survival period for the Plaintiff’s breach of contract claim did not expire on August 17, 2022.¹²⁴ The Plaintiffs cite to Section 9.1, asserting that “because [Corona] willfully breached the [MIPA], the survival period ... is six years and does not expire until February of 2027.”¹²⁵ Moreover, the Plaintiffs maintain that, even if the survival period terminated on August 17, 2022, the Plaintiffs provided written notice of the breach of contract claim prior to that date.¹²⁶

Section 9.1 states:

The representations and warranties set forth in Article 5, Article 6 and Article 7 shall survive the Closing for a period of eighteen (18) months from the Closing Date except as follows: (i) the Fundamental Representations shall survive the Closing Date until ninety (90) days following the termination of the applicable statute of limitations; (ii) the representations and warranties contained in Sections 6.14 (Taxes), 6.15 (Employee Benefit Plans) shall survive until thirty (30) days after the expiration of the applicable statute of limitations; (iii) the representations and warranties set forth in Section 6.17 (Environmental Compliance) shall survive closing for a period of three (3) years; (iv) claims arising from willful misconduct or intentional misrepresentation shall survive for a period of six (6) years; and (v) claims arising from fraud shall survive for a period of ten (10) years. *Each of the covenants and agreements of the Parties set forth in this Agreement shall survive the Closing for a period of twelve (12) months following the Closing Date, except that the covenants that definitively expire by their specific terms shall expire in accordance with such terms. Any claims under this Agreement must be asserted by written notice delivered prior to 11:59 p.m. Eastern Time on the expiration date of the applicable survival period set forth in this Section 9.1, if any, and if such a Claim Notice is given prior to such time, the survival period with respect to the claim described in such Claim Notice shall continue until such claim is fully resolved.*¹²⁷

¹²³ *Id.* at 14-15.

¹²⁴ Pl. Opp’n. at 15.

¹²⁵ *Id.* at 15-16.

¹²⁶ *See id.* at 16-17.

¹²⁷ Pl. Mot., Ex. H § 9.1 (emphasis added).

In disputing whether Corona’s purported misrepresentations were willful or intentional, the parties premise their arguments on the assumption that Section 7.8 constitutes a representation and warranty. However, as explained above, Section 7.8 constitutes a covenant. Thus, the six-year survival period for willful or intentional misrepresentations is inapplicable. Instead, the survival period for covenants is applicable.

Section 9.1 provides for a twelve-month post-closing survival period.¹²⁸ The closing date on the MIPA was February 17, 2021.¹²⁹ As such, the applicable survival period typically would have ended on February 17, 2022.

Delaware courts have recognized that survival periods truncate the applicable statutory limitations period, meaning that such provisions are subject to the rules of accrual, tolling, and delayed discovery.¹³⁰ Thus, under Delaware law, a survival period for a breach of contract is not triggered until a claimant is aware of a breach.¹³¹

Section 7.8 required Corona to make \$2 million in capital contributions to the Lancaster Facility “in no event later than December 31, 2021....”¹³² Accordingly, any purported breach of Section 7.8 on the part of Corona occurred on January 1, 2022. It follows that the earliest the Plaintiffs could have learned of the purported breach was also January 1, 2022. Therefore, assuming that the Plaintiffs became aware of the breach on January 1, 2022, the applicable survival period ended on January 1, 2023.

¹²⁸ *Id.* (“[e]ach of the covenants and agreements of the Parties set forth in this Agreement shall survive the Closing for a period of twelve (12) months following the Closing Date....”).

¹²⁹ Def. Mot. at 3.

¹³⁰ See *Aircraft Service International, Inc. v. TBI Overseas Holdings, Inc.*, 2014 WL 4101660, at *3-4 (Del. Super. Aug. 5, 2014); see also *Certainteed Corp. v. Cleotex Corp.*, 2005 WL 217032, at *7 (Del. Ch. Jan. 24, 2005) (citing *Wal-Mart Stores Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004)).

¹³¹ See *Certainteed Corp.*, 2005 WL 217032, at *7.

¹³² Pl. Mot., Ex. H § 7.8.

Here, the Court need not and will not endeavor to determine the precise date the Plaintiffs became aware of Corona’s purported breach. The Court finds that the Plaintiffs provided timely notice of their claim regardless of when the Plaintiffs became aware of the purported breach. On June 30, 2022, Mr. Thompson sent Joseph Lawler an email notifying him that the contractually required capital expenditure commitment had not been fulfilled.¹³³ Further, on December 11, 2022, Mr. Thompson emailed Mr. Lawler to advise that the \$2,000,000 capital investment that “was to be spent to improve Lancaster manufacturing efficiency” did not happen and that the “2021 Stir capital acquisition for Lancaster totaled only \$1,198,113.”¹³⁴ Because email communication directed to Mr. Lawler constituted sufficient written notice under the MIPA¹³⁵ and the emails were sent prior to the applicable survival period termination date, the Plaintiffs’ breach of contract claim was timely asserted.

Accordingly, the Motions are **DENIED** with respect to the breach of contract claim.

B. SUMMARY JUDGMENT ON THE FRAUD CLAIM IS GRANTED.

Under Delaware law, to prove fraud, a plaintiff must establish: “(i) a false representation made by the defendant; (ii) the defendant knew or believed the representation was false or was recklessly indifferent to its truth; (iii) the defendant intended to induce the plaintiff to act or refrain from acting; (iv) the plaintiff acted or refrained from acting in justifiable reliance on the representation; and (v) damage resulted from such reliance.”¹³⁶

Corona contends that it is entitled to summary judgment on the Plaintiffs’ fraud claim for four independent reasons. First, Corona claims that because the Plaintiffs did not have the right to veto the Eighth Amendment, the Plaintiffs could not have justifiably relied on any purported

¹³³ Pl. Mot. at 16.

¹³⁴ *Id.* at 6.

¹³⁵ See Pl. Mot., Ex. H § 10.6.

¹³⁶ *Matrix Parent, Inc. v. Audax Management Co., LLC*, 319 A.3d 909, 932 (Del. Super. June 27, 2024).

fraudulent statement.¹³⁷ Second, Corona argues that because there is no evidence that the Plaintiffs consented to the Eighth Amendment, there is no evidence that Plaintiffs relied on any alleged fraudulent statement or that Corona intended to induce reliance.¹³⁸ Third, Corona contends that because the Eighth Amendment does not reference the reimbursement requirement, Corona could not have made the alleged fraudulent statement.¹³⁹ Fourth, Corona asserts that the Plaintiffs' arguments are inconsistent with the Second Amended Complaint's allegations and that such arguments are contradicted by documentary evidence.¹⁴⁰

In response, the Plaintiffs assert that Corona is not entitled to summary judgment as the Plaintiffs' fraud claim raises genuine issues of fact.¹⁴¹ The Plaintiffs allege that Corona ignores pertinent facts purportedly showing that the Plaintiffs justifiably relied on Corona's inducement and obtainment of consent to the Eighth Amendment.¹⁴² Moreover, the Plaintiffs contend that there is a genuine issue of material fact as to whether a misrepresentation of fact was made.¹⁴³

1. Corona did not make a false representation of material fact or intend to induce reliance on such a representation as to the Eighth Amendment.

Corona argues that, because the Eighth Amendment does not reference the rent reimbursement provision in Section 8.10(b), Mr. Gallo could not have made a false representation regarding the Eighth Amendment.¹⁴⁴ Specifically, Corona claims that Mr. Gallo could not have referred to \$480,000 in lost EBITDA resulting from the proposed Eighth Amendment.¹⁴⁵

¹³⁷ Def. Mot. at 20.

¹³⁸ *Id.* at 24.

¹³⁹ *Id.* at 28.

¹⁴⁰ *Id.* at 29.

¹⁴¹ Pl. Opp'n. at 17.

¹⁴² *See id.* at 17-18.

¹⁴³ *Id.* at 19.

¹⁴⁴ Def. Mot. at 28.

¹⁴⁵ *Id.*

The Plaintiffs argue that Corona’s assertion ignores contrary evidence showing that a false representation was made.¹⁴⁶ The Plaintiffs allege that Mr. Thompson had a right to take legal action against the previous landlord of the Lancaster Facility if the facility was leased to a new landlord without the Plaintiffs consent.¹⁴⁷ The Plaintiffs claim that, to avoid this, Mr. Gallo told Mr. Thompson that the Plaintiffs’ rent reimbursement obligation under the MIPA would end as of June 30, 2021.¹⁴⁸ Moreover, Mr. Thompson stated that this would not harm the Plaintiffs as \$480,000 in “tenant improvements” provided for in the Eighth Amendment would go towards EBITDA.¹⁴⁹

In response, Corona notes that the Plaintiffs “change their story” regarding their fraud claim in a manner and that is contradicted by evidence.¹⁵⁰ Corona claims that Mr. Gallo never told Mr. Thompson that EPO no longer had an obligation to pay rent after June 30, 2021.¹⁵¹ Moreover, Corona states that Mr. Gallo made “crystal clear” on three separate occasions that reducing or eliminating EPO’s rent obligations would reduce EBITDA.¹⁵² In support of this argument, Corona relies upon a series of emails between Mr. Gallo and Mr. Thompson indicating that Mr. Gallo made Mr. Thompson aware of the fact that his position on EPO’s rent obligations would negatively affect EBITDA.

The Court finds that Corona did not make a false representation of material fact. The Plaintiffs’ fraud claim is based upon Mr. Gallo’s statement that approximately \$500,000 in tenant improvement monies would be recognized as EBITDA. As such, the Plaintiffs would receive approximately \$2 million from the Eighth Amendment as part of the earnout payment.

¹⁴⁶ See Pl. Opp’n. at 17-19.

¹⁴⁷ See *id.* at 18-19.

¹⁴⁸ See *id.*

¹⁴⁹ *Id.*

¹⁵⁰ Def. Mot. at 29.

¹⁵¹ *Id.* at 32.

¹⁵² *Id.* at 32-33.

While this statement turned out not to be true, Corona was entirely transparent as to the effect of reducing or eliminating EPO's rent obligations.

As a preliminary matter and contrary to the Plaintiffs' argument, EPO's rent obligation did not cease on June 30, 2021. In fact, Mr. Thompson recognized that EPO's rent obligation continued past June 30, 2021, and was accruing throughout 2021. For example, on November 10, 2021, Mr. Thompson wrote to Mr. Gallo indicating that EPO had overpaid its rent obligations as SFL had been occupying more than 103,318 square feet of the Lancaster Facility.¹⁵³ On December 10, 2021, in an apparent attempt to remedy the situation, Mr. Gallo responded that Stir Foods would agree to pay \$65,000 per month for all of 2021 as compared to the \$50,000 per month provided for in the MIPA.¹⁵⁴ Mr. Gallo further stated to Mr. Thompson that "[Corona] will do whatever you feel is fair, it will just end up impacting earnout EBITDA."¹⁵⁵ Thus, the above exchange indicates that the Plaintiffs were aware that their rent obligation did not cease on June 30, 2021, notwithstanding any purported misrepresentations to the contrary.

Moreover, Mr. Gallo's statement regarding the effect of reducing or eliminating rent obligations as to the potential earnout does not constitute a misrepresentation. In fact, the record provides three separate instances where Mr. Gallo explained to Mr. Thompson that a reduction or elimination of rent obligations could negatively impact EBITDA. In addition to the example provided above, on January 5, 2022, Mr. Thompson requested a write-off from Mr. Gallo claiming that EPO paid \$16,000 more in rent in 2021 than it should have.¹⁵⁶ In response, Mr. Gallo warned Mr. Thompson that a potential write-off of the \$16,000 would negatively impact

¹⁵³ See Def. Mot. at 30, App. Tab 49.

¹⁵⁴ See Def. Mot. at 30, App. Tab 51.

¹⁵⁵ *Id.*

¹⁵⁶ Def. Mot. at 32, App. Tab 53.

EBITDA. Specifically, in a subsequent email, Mr. Gallo stated “[p]lease have Alex write off the EPO rent receivable (will affect EBITDA), charge the remaining 16k (also to rent – also impacts EBITDA).”¹⁵⁷ The record is clear that, contrary to the Plaintiffs’ position, Corona was transparent regarding how EBITDA could be negatively affected by the Plaintiffs’ altering their rent obligations.

Thus, the Court finds that Corona did not make a false representation of material fact. Moreover, the Court finds that Corona’s transparency as to the effect of the Plaintiffs altering their rent obligations indicates that Corona did not intend to induce any sort of reliance on the purported misrepresentation. The Court finds that the Plaintiffs have failed to advance evidence capable of satisfying the elements of (i) a false representation and (ii) intent to induce reliance.

2. The Plaintiffs did not justifiably rely on the alleged misrepresentation of material fact as the Plaintiffs’ consent was not required for the Eighth Amendment.

Corona argues that because the Plaintiffs did not have the right to veto the Eighth Amendment, the Plaintiffs could not have justifiably relied on any purported fraudulent statement.¹⁵⁸ In support of this argument, Corona claims that the MIPA is devoid of a provision requiring the Plaintiffs’ consent regarding transfers of the Lease of the Lancaster Facility.¹⁵⁹

The Plaintiffs contend that a material issue of fact exists as to whether the Plaintiffs justifiably relied upon Corona’s representations.¹⁶⁰ Specifically, the Plaintiffs claim that they justifiably relied on Corona’s misrepresentations by “agreeing to not ‘derail the sale of the [Lancaster Facility] and the [Eighth] Amendment.’”¹⁶¹

¹⁵⁷ *Id.*

¹⁵⁸ Def. Mot. at 20.

¹⁵⁹ *See id.* at 22.

¹⁶⁰ Pl. Opp’n. at 17.

¹⁶¹ *Id.* at 19.

Under the MIPA, the Plaintiffs assigned the lease of the Lancaster Facility to Corona.

Section 8.10(a) states:

[a]s a consequence of the assignment of the Lease by the Asset Sellers to the Company pursuant to the Agreement re: Lease, the Company shall assume the Asset Sellers' obligations under the Lease to the extent such obligations first arise following the Closing Date, including the obligation to pay, on a monthly basis, the Base Rent (as defined in the Lease), the Additional Rent (as defined in the Lease), and the pro rata share of the Common Area Expenses (as defined in the Lease) (collectively, the "Monthly Rent/CAM Expense").¹⁶²

Further, MIPA Section 8.10(b) provides that, while Stir Foods occupied no more than 103,318 square feet of the Lancaster Facility, the Plaintiffs would reimburse Stir Foods the difference between the total amount of rent and \$50,000, less any rent paid by subtenants.¹⁶³ The MIPA does not contain a provision which requires the Plaintiffs to consent to any subsequent assignment of the lease.

Here, the Court finds that the Plaintiffs have failed to establish justifiable reliance based upon their consent to the Eighth Amendment. The Plaintiffs' consent was simply not required under the MIPA. The now developed record supports this fact. During his deposition, Mr. Thompson admitted that the Plaintiffs' consent was not required for amendments to the Lease. Specifically, the deposition transcript of Mr. Thompson states:

Q: And there's nothing in the [MIPA] that gave either Plaintiffs or you or [Mr. Thompson's wife] personally the right to veto any amendments to the leases, correct?

A: There's nothing that says we have to sign off on any new lease.¹⁶⁴

As the Court previously stated in its opinion on the Plaintiffs' Motion for Leave to File the Second Amended Complaint, "[i]f there was no consent required, it is hard to find justifiable

¹⁶² See Pl. Mot., Ex. H § 8.10(a).

¹⁶³ See Pl. Mot., Ex. H § 8.10(b).

¹⁶⁴ Def. Mot., App. Tab 8 at 75:5-12.

reliance. Without needing Plaintiffs' consent, [Corona], no matter what was represented to Plaintiffs, could do what it wanted in terms of the lease agreement." Taking the terms of the MIPA in conjunction with the deposition testimony of Mr. Thompson, the record makes clear that the Plaintiffs' consent was not required for the Eighth Amendment. Thus, the Court finds that the Plaintiffs cannot establish justifiable reliance based upon their consent to the Eighth Amendment as the Plaintiffs did not have a right under the MIPA to veto amendments to the lease.

The Plaintiffs' argument tries to circumvent the fact that their consent to subsequent Lease amendments was not required under the MIPA. Specifically, the Plaintiffs seem to argue that the Plaintiffs could have obstructed the execution Eighth Amendment by taking legal action against Mr. Harrison but chose not to sue due to Mr. Gallo's representations. That is not the nature of the Plaintiffs' fraud claim. The Plaintiffs pled that they suffered damages in that the EBITDA, and thus the earnout, was reduced because of the Eighth Amendment. The Plaintiffs did not plead that they were damaged based upon their decision to forego legal action indirectly relating to the Eighth Amendment. As a result, the Plaintiffs cannot now rely on an argument regarding their decision not to "derail" the Eighth Amendment by deciding not to pursue legal action. The Plaintiffs' consent was not required for the execution of the Eighth Amendment and, therefore, the Plaintiffs cannot prove justifiable reliance based upon their provision of such consent.

It is for these reasons, the Defendant's Motion is **GRANTED** with respect to the Plaintiffs' fraud claim.

VI. CONCLUSION

For the reasons set forth above, the Court **DENIES** the Plaintiffs' Motion and **GRANTS** **IN PART and DENIES IN PART** the Defendant's Motion.

IT IS SO ORDERED.

February 18, 2026
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress