SUPERIOR COURT
OF THE
STATE OF DELAWARE

PATRICIA A. WINSTON
JUDGE

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June 3, 2026

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Re: *SLR-AMI Acquisition SPV, LLC, et al. v. AmeriMark Holdings, LLC, et al.*,
C.A. No. N21C-12-175 PAW CCLD

Dear Counsel:

I write regarding Defendants' motions for summary judgment heard on May 20, 2026.[1] To ensure the parties have the benefit of the Court's decision prior to their

[1] *See* D.I. 400 (Raymond James Defendants' motion); D.I. 401 (PCP Defendants' motion); D.I. 403 (Seller Defendants' motion). In referencing the three groups of Defendants, this letter uses the abbreviations provided in Defendants' briefing.

upcoming mediation and while preparing for their July 13 bench trial, I am providing this ruling by letter in lieu of a more formal opinion. In writing for the parties, I assume the reader's familiarity with the background of the case. For the reasons explained below, Defendants' motions are denied.

In this action, Plaintiff[2] contends that Defendants committed, or aided and abetted, intra-contractual fraud in connection with the sale of three catalog-based retail companies.[3] Plaintiff's claims are based on issues facing the companies' catalog printer, LSC, which Plaintiff alleges rendered three Equity Purchase Agreement ("EPA") representations false.[4]

Three groups of Defendants move for summary judgment. The Seller Defendants contend that Plaintiff's claims fail because Buyer could not have justifiably relied on any of the representations.[5] They also assert that one of the

[2] "Plaintiff" refers to SLR-AMI Acquisition SPV, LLC, who purchased the litigation rights of AmeriMark Interactive, LLC, the "Buyer" in the relevant transaction. *See* D.I. 422, SLR-AMI Acquisition SPV, LLC's Omnibus Br. in Opp'n to Defs.' Mots. for Summ. J. (hereinafter "Pl.'s Ans. Br.") at 13, 53 & n.3.

[3] *See* Pl.'s Ans. Br. at 5, 53-54.

[4] *See id.* at 1-2, 40-41, 57 (identifying EPA sections 3.7, 4.5(b)(ii), and 4.23 as the representations Plaintiff asserts were false); *see also* Pl. Ex. 92 (hereinafter "EPA") §§ 3.7, 4.5(b)(ii), 4.23. "Pl. Ex. [number]" refers to the exhibits submitted with Plaintiff's answering brief. *See* D.I. 422. "Seller Defs. Ex. [number]" refers to the exhibits submitted with the Seller Defendants' opening brief, as corrected. *See* D.I. 403; D.I. 461.

[5] *See* D.I. 403, Seller Defs.' Mem. in Support of Mot. for Summ. J. (hereinafter "Seller Defs.' Op. Br.") at 31-40.

representations was true.[6] The PCP Defendants argue that Plaintiff cannot prove fraud or aiding and abetting because they did not knowingly participate in the fraud or make the relevant representations.[7] Like the PCP Defendants, the Raymond James Defendants contend that Plaintiff's aiding and abetting claim fails because the they had no knowledge of and did not substantially assist in the fraud.[8]

To succeed on a motion for summary judgment, the movant must show "that there is no genuine issue as to any material fact and that the [movant] is entitled to a judgment as a matter of law."[9] The Court "may not weigh qualitatively or quantitatively the evidence adduced on the summary judgment record."[10] Rather, the Court must ask "whether *any rational* finder of fact could find, on the [present] record . . . viewed in the light most favorable to the non-moving party, that the substantive evidentiary burden has been satisfied."[11]

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[6] *See id.* at 28-30.

[7] *See* D.I. 401, Defs. Prudential Capital Partners II, L.P., Stetson Street Partners, L.P., PGIM, Inc., and Stephen Szejner's Opening Br. in Support of Mot. for Summ. J. (hereinafter "PCP Defs.' Op. Br.") at 19-32.

[8] *See* D.I. 400, Opening Br. of Defs. Raymond James & Associates, Inc., and Lee Helman in Support of Their Mot. for Summ. J. (hereinafter "Raymond James Defs. Op. Br.") at 19-30.

[9] Super. Ct. Civ. R. 56(c); *see also KBranch, Inc. v. BSI3 Menu Buyer Inc.*, 2026 WL 446425, at *3 (Del. Super. Jan. 30, 2026) (explaining summary judgment burden-shifting framework (citations omitted)).

[10] *Cerberus Int'l, Ltd. v. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1150 (Del. 2002).

[11] *Id.*

Although "'encouraged when possible,' there is no 'right' to summary judgment."[12] "The court may 'decline to decide the merits of the case in a summary adjudication where it is not reasonably certain that there is no triable issue.'"[13] And, "[e]ven where the facts are not in dispute, a court may decline to grant summary judgment where a more thorough exploration of the facts is needed to properly apply the law to the circumstances."[14] Here, Defendants' arguments each raise issues of disputed fact or concern matters for which the Court's analysis would benefit from a full trial record.

A. JUSTIFIABLE RELIANCE TURNS ON DISPUTED FACTUAL ISSUES THAT WILL BE DETERMINED FOLLOWING TRIAL.

The Seller Defendants argue that Plaintiff cannot prove justifiable reliance because Buyer knew about LSC's issues and their impact on the companies.[15] As the Seller Defendants point out, "[w]here an alleged fraud victim has information

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[12] *US Dominion, Inc. v. Fox News Network, LLC*, 293 A.3d 1002, 1034 (Del. Super. 2023) (first quoting *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 443 (Del. 2005); and then quoting *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002)).

[13] *Fischer v. Rambo*, 2024 WL 3757838, at *1 (Del. Ch. Aug. 12, 2024) (quoting *Unbound P'rs Ltd. P'ship v. Invoy Hldgs. Inc.*, 251 A.3d 1016, 1024 (Del. Super. 2021)).

[14] *Id.* (first quoting *In re Tri-Star Pictures, Inc., Litig.*, 1995 WL 106520, at *5 (Del. Ch. Mar. 9, 1995); and then citing *In re El Paso Pipeline P'rs, L.P. Deriv. Litig.*, 2014 WL 2768782, at *9 (Del. Ch. June 12, 2014)).

[15] *See* Seller Defs.' Op. Br. at 32.

contradicting a false representation before acting in purported reliance on that representation, that alleged victim cannot demonstrate justifiable reliance."[16] Yet "[t]he question of whether one's reliance was reasonable generally is a question of fact that cannot be determined on summary judgment."[17] Accordingly, this Court has denied summary judgment even where it appears the movant "may have a strong case that there was no justifiable reliance."[18]

There is little dispute that Buyer was aware of adverse facts about the companies pre-closing, including that they had missed their EBITDA forecasts over two months and that LSC had canceled catalogs, which decreased sales.[19] There is likewise little dispute that Buyer was unaware that LSC had declared that issues it

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[16] *See id.* at 31 (quoting *JanCo FS 2, LLC v. ISS Facility Servs., Inc.*, 344 A.3d 1009, 1036 (Del. Super. 2025)).

[17] *Vague v. Bank One Corp.*, 850 A.2d 303, 2004 WL 1202043, at *1 (Del. 2004) (TABLE) (citing *Wilm. Tr. Co. v. Aetna Cas. & Sur.*, 690 A.2d 914, 916 (Del. 1996)) (reversing grant of summary judgment, even though it was "undisputed that [plaintiff] had been given accurate information," because other information was inaccurate); *see also Arwood v. AW Site Servs., LLC*, 2022 WL 705841, at *23 (Del. Ch. Mar. 9, 2022) ("Whether reliance was justified is a contextual inquiry and 'is judged by reference to the plaintiff's knowledge and experience' and 'the relationship between the parties.'" (citations omitted)).

[18] *See, e.g.*, *Jiggy Puzzles, LLC v. Steelhead Acquisition EE, Inc.*, 2026 WL 465112, at *10 (Del. Super. Feb. 18, 2026).

[19] *See, e.g.*, Pl.'s Ans. Br. at 66 (acknowledging that Buyer "may have learned that AmeriMark had missed forecasts" and that "issues with LSC had canceled" a catalog); Seller Defs. Exs. 23, 24, 35.

was facing constituted "force majeure" under its contract with the companies.[20] Despite some agreement regarding Buyer's pre-closing knowledge, there remain disputes of fact regarding the reasonableness of Buyer's reliance on each of the representations at issue.

Section 4.5(b)(ii) concerns whether there has been a "Company Material Adverse Change," a term whose definition is similar to common material adverse change, or "MAC," clauses addressed by Delaware courts.[21] The Seller Defendants observe that, in identifying the MAC, Plaintiff points to the companies' August and September 2021 EBITDA misses.[22] They then observe that Buyer was aware of those EBITDA misses and additional facts about the LSC issues.[23] From there, the Seller Defendants suggest that, if there were a MAC, then Buyer must have been aware of it.[24]

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[20] *See* D.I. 427, Seller Defs.' Reply Mem. in Further Support of Mot. for Summ. J. (hereinafter "Seller Defs.' Reply") at 18-23 (arguing that disclosure that LSC had declared force majeure would not have made a difference but not contending that fact was disclosed).

[21] *See* EPA § 4.5(b)(ii), Sch. I at '400; *see Snow Phipps Grp. v. KCAKE Acquisition, Inc.*, 2021 WL 1714202, at *28-29 (Del. Ch. Apr. 30, 2021) (outlining typical MAC structure).

[22] *See* Seller Defs.' Reply at 6 (citing Pl.'s Ans. Br. at 57-58).

[23] *See, e.g.*, *id.* at 6-12.

[24] *See id.* at 12.

But to constitute a MAC, an event generally must "'substantially threaten[] the overall earnings potential of the target in a durationally-significant manner,' as opposed to causing only a 'short-term hiccup in earnings.'"[25] This inquiry is "context specific."[26] Although it appears that Buyer knew of the EBITDA misses and expressed that they were significant, that does not mean that it should have known that the effects on the business would be of such durational significance as to constitute a MAC. Indeed, Plaintiff identifies evidence that Defendants tried to convince Buyer that the misses were a short-term blip while concealing that LSC had declared force majeure.[27] There are issues of fact regarding whether Buyer should reasonably have known that the issues facing the companies would materially threaten their earnings in a durationally significant manner and whether knowledge of undisclosed information about LSC's issues would have made a difference.

Section 3.7 concerns whether the companies' contractual counterparties are "in material breach or material default" or have taken or threatened to take certain actions with respect to their contracts.[28] Section 4.23 concerns whether certain

[25] *See Bardy Diagnostics, Inc. v. Hill-Rom, Inc.*, 2021 WL 2886188, at *35 (Del. Ch. July 9, 2021) (citations omitted).

[26] *See Snow Phipps*, 2021 WL 1714202, at *30.

[27] *See, e.g.*, Pl. Ex. 21 at 15:3-10 (Yoshimura testifying Szejner told him EBITDA miss was "a one time blip"); Pl. Ex. 86 at '307 (Bradshaw characterizing LSC labor issue as "temporary").

[28] *See* EPA § 3.7.

vendors, including LSC, had "canceled, terminated or materially diminished its business relationship" with the companies or notified the companies of their intent to do so or take certain other actions.[29] The Seller Defendants assume, for purposes of summary judgment only, that LSC's "inability to 'satisfy the production schedule set forth in the LSC Agreement' is deemed a material breach" and LSC's "catalog cancellations and delays were material."[30] Based on those assumptions, the Seller Defendants assert that Buyer cannot have reasonably relied upon Sections 3.7 or 4.23 because Buyer knew that LSC would not satisfy the production schedule and had cancelled and delayed certain catalogs.[31]

Under both sections, the issue is that the Seller Defendants acknowledge that there are "factual disputes" regarding the assumptions on which they rely.[32] If, as the Seller Defendants may contend at trial, the LSC issues known to Buyer were not material, then Buyer may have been justified in relying on Sections 3.7 and 4.23. In that scenario, the falsity element would come into question, but the Seller Defendants do not move on these representations' falsity, and there are other aspects of the representations that could conceivably have been false. For example, even if

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[29] *See id.* § 4.23.

[30] *See* Seller Defs.' Op. Br. at 34-35.

[31] *See id.* at 33-36.

[32] *See id.* at 34-35.

LSC was not in material breach of its contract based on what Buyer knew, LSC's letter or other facts Buyer did not know could indicate a "threat[] to dispute, renegotiate, modify, cancel, fail to renew, renew on materially different terms, or terminate" LSC's contract.[33]

To be sure, the path for Plaintiff to prove both justifiable reliance and falsity may seem narrow. But even if Plaintiff teeters on the edge, the Court cannot rely on assumptions about disputed facts to foreclose Plaintiff the chance to traverse that path at trial.

B. THERE IS SUFFICIENT EVIDENCE FOR A RATIONAL FACTFINDER TO INFER THE PCP AND RAYMOND JAMES DEFENDANTS HAD KNOWLEDGE OF AND PARTICIPATED IN THE ALLEGED FRAUD.

The PCP Defendants and the Raymond James Defendants each seek summary judgment on grounds that they did not have knowledge of or participate in the fraud.[34] Both groups challenge Plaintiff's aiding and abetting claims. The PCP Defendants also challenge the direct fraud claim against them for similar reasons, as well as on grounds that they did not make or cause the alleged false representations to be made.[35] As to the claims against each defendant group, Plaintiff has adduced evidence sufficient to survive summary judgment.

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[33] *See* EPA § 3.7.

[34] *See* PCP Defs.' Op. Br. at 18-32; Raymond James Defs. Op. Br. at 19-30.

[35] *See* PCP Defs.' Op. Br. at 28-30.

Aiding and abetting claims are "among the most difficult to prove" at trial.[36] They require "two types of knowledge": first, knowledge of the underlying wrongdoing, and second, knowledge that the aider and abettor's own conduct was legally improper.[37] The plaintiff must also prove "substantial assistance," which requires "active participation" in the wrongdoing, rather than "passive awareness."[38]

However, such claims "are fact intensive and ill-suited for summary judgment."[39] Be it for aiding and abetting or fraud, "whether a defendant acted with *scienter* is a factual determination."[40] Substantial assistance similarly "can . . . involve a nuanced analysis,"[41] including because "the involvement of secondary actors in tortious conduct can take a variety of forms that can differ vastly in their

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[36] *In re Mindbody, Inc., S'holder Litig.*, 332 A.3d 349, 391 (Del. 2024) (quoting *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 865-66 (Del. 2015)).

[37] *See id.* at 390-91 (citations omitted).

[38] *See id.* at 393 (citation omitted).

[39] *In re Good Tech. Corp. S'holder Litig.*, 2017 WL 2537347, at *2 (Del. Ch. May 12, 2017) (ORDER); *see also Encite LLC v. Soni*, 2011 WL 5920896, at *25-26 (Del. Ch. Nov. 28, 2011) (denying summary judgment on aiding and abetting claim, though there was "scant evidence" of knowing participation, because court's "analysis of this claim would benefit from a full trial record").

[40] *Mindbody*, 332 A.3d at 391 (citation omitted); *Jiggy Puzzles*, 2026 WL 465112, at *11 ("[Q]uestions of knowledge or intent are fact-intensive, and courts ordinarily [should not] resolve these questions on a motion for summary judgment." (citation omitted)).

[41] *Mindbody*, 332 A.3d at 391.

magnitude, effect, and consequential culpability."[42] Moreover, although knowledge and substantial assistance are "two distinct concepts," Delaware courts analyze them together via a multi-factor test.[43] Our Supreme Court has explained that "[t]he relevance of each factor depends on the facts of the case, and not all factors are relevant in all situations."[44]

Turning first to the PCP Defendants, there are triable issues regarding their knowledge, participation, and involvement in making the relevant representations. In addition to evidence that the PCP Defendants controlled the companies,[45] Plaintiff has identified evidence that Szejner, acting on behalf of the other PCP Defendants: (i) was kept apprised of material developments with the companies' business;[46] (ii) was one of the primary individuals responsible for negotiating the transaction, including communicating directly with Buyer's principals;[47] (iii) coordinated messaging about the September 2021 EBITDA miss, including regarding the effects

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[42] *See In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214, at *41 (Del. Ch. Aug. 27, 2015) (citation omitted).

[43] *See Mindbody*, 332 A.3d at 390, 395-96 (outlining factors).

[44] *Id.* at 395 (citation omitted).

[45] *See* Pl. Ex. 5 at '859; *see also* PCP Defs.' Op. Br. at 3 (acknowledging Prudential Capital Partners II, L.P. "owned a majority equity interest in AmeriMark").

[46] *See, e.g.*, Pl. Ex. 3 at 80:17-81:19; Pl. Ex. 6 at 31:9-17.

[47] *See, e.g.*, Pl. Ex. 6 at 141:20-142:25; Pl. Ex. 21 at 75:2-76:9; Pl. Ex. 79 at '223; Pl. Ex. 125 at '008.

of LSC issues;[48] and (iv) pushed back on further diligence.[49] In addition, the sell-side CFO testified that Szejner knew about LSC's force majeure position.[50]

On this record, a rational factfinder could infer that the PCP Defendants knowingly participated in fraud by participating in a strategy to downplay LSC issues that they knew were more significant than Defendants disclosed. In addition, a rational factfinder could infer that the PCP Defendants caused the relevant false representations to be made, including because there is evidence that Szejner was involved in discussing the EPA specifically, in addition to being primarily responsible for negotiating the transaction.[51]

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[48] *See, e.g.*, Pl. Ex. 67 at '281; Pl. Ex. 83 at '378; Pl. Ex. 130 at '857; *see also* D.I. 429, Defs. Prudential Capital Partners II, L.P., Stetson Street Partners, L.P., PGIM, Inc., and Stephen Szejner's Reply Br. in Support of Mot. for Summ. J. (hereinafter "PCP Defs.' Reply") at 12 (agreeing that "Szejner coordinated with Ethier, Bradshaw, and Helman about how to present the September financials" to Buyer and "worked with CSC's Yoshimura concerning how to explain the September financials" to Buyer's lenders).

[49] *See, e.g.*, Pl. Ex. 74 at '798; Pl. Ex. 90 at '932.

[50] *See* Pl. Ex. 7 at 267:11-19.

[51] *See, e.g*, Pl. Ex. 123 at '542-43; Pl. Ex. 124 at '893. The parties appear to dispute whether Plaintiff's fraud claim requires it to show that the PCP Defendants were "knowingly complicit in the fraud," on one hand, or that they both had "[a]ctual knowledge" of fraud and "'made or directly caused' the false representation to be made," on the other hand. *Compare* Pl.'s Ans. Br. at 68-69 (quoting *AmeriMark Interactive, LLC v. AmeriMark Hldgs., LLC*, 2022 WL 16642020, at *8 (Del. Super. Nov. 3, 2022)), *with* PCP Defs.' Op. Br. at 19, 28 (first quoting *AmeriMark*, 2022 WL 16642020, at *10; and then quoting *LVI Grp. Invs., LLC v. NCM Grp. Hldgs., LLC*, 2019 WL 7369198, at *29 (Del. Ch. Dec. 31, 2019)). At this stage, the Court

There are likewise triable issues as to the knowledge and participation of the Raymond James Defendants. The record contains evidence that Helman, in leading the Raymond James team advising the sell-side on the deal: (i) was one of the primary contacts with and exercised control over information flowing to Buyer;[52] (ii) was part of small group that coordinated the sales process;[53] (iii) pushed back on Buyer's attempts at further diligence;[54] and (iv) coordinated messaging about September 2021 financials with the small group, including instructing that the sell-side should not mention LSC issues as a reason for financial declines because, if it did, Buyer would "extrapolate that as being the new normal."[55] The sell-side CFO also testified that Helman knew that LSC had invoked force majeure.[56] As explained with respect to the PCP Defendants, a rational factfinder could infer the Raymond James Defendants' knowing participation on this record.

Make no mistake, the evidence described above is circumstantial; it does not directly show that Szejner or Helman were told about LSC's force majeure position

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need not decide whether these standards differ, because the record creates a triable issue under either of them.

[52] *See, e.g.*, Pl. Ex. 6 at 141:20-142:25; Pl. Ex. 31 at 27:6-28:4; Pl. Ex. 57 at '289.

[53] *See, e.g.*, Pl. Exs. 40-54 (emails amongst small group from January to October 2021 discussing sales process, diligence, and whether and when to provide information to Buyer).

[54] *See, e.g.*, Pl. Ex. 74 at '798; Pl. Ex. 126 at '942-44; Pl. Ex. 127 at '177.

[55] *See, e.g.*, Pl. Ex. 68 at '323; Pl. Ex. 80 at '672-73; Pl. Ex. 81 at '678.

[56] *See* Pl. Ex. 7 at 267:11-19.

or knew other information withheld from Buyer. But "there often is no 'smoking gun' . . . that directly evidences knowledge," and state of mind "can be inferred from circumstantial evidence."[57] And although the sell-side CFO later testified that he did not himself tell Szejner or Helman about the force majeure position or know of others who did,[58] the Court cannot now determine which part of his testimony is more credible. Nor can it weigh the credibility of purportedly "self-serving" testimony that Defendants urge it to reject.[59] The Court will weigh evidence and witness credibility through "the rigor of the courtroom."[60]

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[57] *ITW Glob. Invs. Inc. v. Am. Indus. P'rs Cap. Fund IV, L.P.*, 2017 WL 1040711, at *8-9 (Del. Super. Mar. 6, 2017) (citations omitted) (addressing fraud); *see also In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324, 356-57 (Del. 2025) (explaining that although knowledge for aiding and abetting "must . . . be actual," "[o]f course, circumstantial evidence . . . might suffice").

[58] *See* D.I. 428, Raymond James Defs. Ex. 42 at 347:12-348:19.

[59] *See* D.I. 428, Reply Br. of Defs. Raymond James & Associates, Inc. and Lee Helman in Support of Their Mot. for Summ. J. at 12-13; PCP Defs.' Reply at 14; *Cerberus*, 794 A.2d at 1150 ("If the matter depends to any material extent upon a determination of credibility, summary judgment is inappropriate."); *Tilton v. Stila Styles, LLC*, 2025 WL 2355090, at *11 (Del. Super. July 22, 2025) (noting that party "raises a valid concern regarding the self-serving nature of this testimony" but that this "is ultimately a credibility issue which the Court does not consider at summary judgment" (citation omitted)).

[60] *See Stercula v. Wengert*, 2025 WL 1881783, at *5 (Del. Ch. July 8, 2025).

C. WHETHER A MAC HAS OCCURRED IS A FACTUAL ISSUE.

Last, the Seller Defendants contend that EPA Section 4.5(b)(ii), which concerns whether the companies had suffered a MAC, was true.[61] Whether a MAC has occurred is a factual issue that the Court will assess at trial.

Where, as here, a MAC definition follows the ordinary structure, Delaware courts apply a three-step test to determine whether there has been a MAC. First, the buyer bears the initial burden "of proving that an event ha[s] occurred that had or would reasonably be expected to have a material adverse effect" on the target company.[62] Second, if the buyer proves a base MAC has occurred, the burden shifts to the seller to prove that the relevant event was "arising from or related to" one or more enumerated exceptions.[63] Third, if the seller proves that the purported MAC falls within an exception, then the buyer bears the burden of demonstrating that an exclusion to the exception applies "because the change affected [the target company] disproportionately relative to other comparable entities operating in the industry."[64]

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[61] *See* Seller Defs.' Op. Br. at 28-30.

[62] *See Snow Phipps*, 2021 WL 1714202, at *29 (citations omitted); EPA Sch. I at '400 (defining MAC as "any material adverse change in the Business, results of operations or financial condition of the Acquired Companies taken as a whole").

[63] *See Snow Phipps*, 2021 WL 1714202, at *29 (citations omitted); EPA Sch. I at '400 (providing exceptions for "any material adverse change or effect arising from or related to the following (either alone or in combination): [list of exceptions]").

[64] *See Snow Phipps*, 2021 WL 1714202, at *29 (citations omitted); EPA Sch. I at '400 (providing exclusion from exceptions stating that "any event, occurrence, fact, condition or change referred to in [certain exceptions] shall be taken into account in

On the present motions, the parties do not dispute the first step. Rather, the Seller Defendants contend that there can be no MAC because the LSC issues fall into exceptions for general industry conditions, general market changes, or the COVID-19 pandemic.[65] Plaintiff counters that the Seller Defendants interpret the exceptions too broadly and that LSC's issues disproportionately affected the companies.[66]

The Seller Defendants are correct that the MAC exception language here is broad.[67] They also identify evidence suggesting that LSC's issues related to general industry conditions, market changes, or COVID-19.[68] But there is some evidence that the impacts were disproportionately felt by the companies, particularly due to their exclusive relationship with LSC.[69] That evidence, even if thin, creates a triable

determining whether a Company Material Adverse Change has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Acquired Companies (or any Acquired Company) compared to other participants in the industries in which such Acquired Company or Acquired Companies conducts its businesses").

[65] *See* Seller Defs.' Op. Br. at 28-30 (invoking EPA MAC exceptions (a), (i), and (j)).

[66] *See* Pl.'s Ans. Br. at 59-62.

[67] *See* Seller Defs.' Reply at 26-27; *Snow Phipps*, 2021 WL 1714202, at *35 (explaining that "[t]he language 'arising from or related to,'" like the language here, "is broad in scope under Delaware law," and explaining its application in MAC exceptions (citation omitted)).

[68] *See, e.g.*, Seller Defs. Ex. 1 at '122, '124 & n.1; Seller Defs. Ex. 57 at '429; Seller Defs. Ex. 58 at '219.

[69] *See, e.g.*, Pl. Ex. 122 at 45:11-22; Pl. Ex. 63 at '559; *see also* Pl. Ex. 25 at 17:16-18:10.

issue at least over whether the disproportionate impact exclusion applies.[70] And because MAC exceptions and exclusions function together to "allocate[] general market or industry risks to the buyer, and company-specific risks to the seller,"[71] the Court will permit a more thorough exploration of the facts to apply these intertwined provisions to the particular circumstances of this case.

It is true, as Seller Defendants point out, that to determine whether a MAC exclusion applies, parties typically identify specific universes of comparable companies.[72] And that universe is customarily established through expert testimony. But the parties have presented no case holding, as a matter of law, that expert testimony regarding a specific universe of comparable companies is required. Without an expert on this issue, it may be difficult for Plaintiff to carry its burden to establish the disproportionate impact exclusion. But the Court will weigh the evidence after trial.

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[70] *See Carello v. PricewaterhouseCoopers LLP*, 2002 WL 1454111, at *8 (Del. Super. July 3, 2002) ("[I]n the context of a summary judgment motion, a court is constrained to deny the motion even if the 'nonmovant's support is considered weak by the court.'" (citation omitted)).

[71] *See Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *49 (Del. Ch. Oct. 1, 2018), *aff'd*, 198 A.3d 724 (Del. 2018) (TABLE).

[72] Seller Defs.' Reply at 28 (first citing *Snow Phipps*, 2021 WL 1714202, at *29; and then citing *Bardy*, 2021 WL 2886188, at *35); *see also, e.g.*, *Akorn*, 2018 WL 4719347, at *58-59.

The parties should not interpret this letter as ruling on the strength of Plaintiff's case. Plaintiff must prove its claims at trial. At that stage, based on the information it appears Buyer knew, it may be difficult to establish that it justifiably relied on the EPA's representations.[73] It likewise may be difficult to prove a MAC or aiding and abetting. But, for now, "[t]he test is not whether the judge . . . is skeptical that plaintiff will ultimately prevail."[74] Accordingly, Defendants' motions are **DENIED**.

Very truly yours,

/s/ Patricia A. Winston
Patricia A. Winston, Judge

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[73] Much of the Seller Defendants' caselaw, while less relevant at the summary judgment stage, may prove instructive post-trial. *See, e.g.*, *JanCo*, 344 A.3d at 1036-38; *Paragon Metal Hldgs., LLC v. Smith*, 2025 WL 2531610, at *18-20 (Del. Super. Aug. 13, 2025); *Surf's Up Legacy P'rs, LLC v. Virgin Fest, LLC*, 2024 WL 1596021, at *18-20 (Del. Super. Apr. 12, 2024).

[74] *Cerberus*, 794 A.2d at 1150.