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IN THE

Supreme Court of the State of Delaware

PARAGON METALS HOLDINGS LLC, a Delaware limited liability company; PARAGON METALS LLC, a Delaware limited liability company, STELLEX PARAGON METALS SPLITTER LP, a Delaware limited partnership; STELLEX CAPITAL INVESTORS, a Delaware limited partnership, Plaintiffs Below, Appellants/ Cross-Appellees, v. MICHAEL J. SMITH, an individual; and THE PARAGON INDUSTRIAL HOLDINGS GROUP, INC., a North Carolina corporation, Defendants Below, Appellees/ Cross-Appellants.	No. 385, 2025 Court Below: Superior Court of the State of Delaware C.A. No. N21C-12-090 SKR [CCLD]

APPELLEES/CROSS APPELLANTS' ANSWERING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL

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NATURE OF PROCEEDINGS

In 2019, Plaintiffs-Appellants Stellex Capital Investors purchased Paragon Metals, an automotive-supply company, from Defendants-Appellees Michael Smith and his company Paragon Industrial Holdings Group, LLC. Three years later, Stellex sued Defendants, claiming fraud in connection with the sale.

After a five-day trial, the Superior Court ruled in Defendants' favor, finding that Stellex could not prove justifiable reliance as to any of its theories of fraud because Stellex "either knew, or should have known, about the allegedly withheld information." (Opinion 46.) The court observed that "[d]espite expressly representing and warranting that they conducted diligence and relied on the results," Stellex had "failed to follow up on numerous red flags raised by" Defendants such that Stellex's diligence amounted to "willful blindness." (*Id.*)

Stellex raises several arguments on appeal to limit the evidence the trial court can use to assess justifiable reliance. But Stellex's arguments each fail in the face of its contractual acknowledgements, Delaware law, and the facts. Stellex focuses on the anti-reliance provision in the parties' purchase agreement but substitutes the label "anti-reliance" for analysis of the actual language of the provision. Stellex's hyperbole notwithstanding, the trial court did not heedlessly turn Delaware law on its head, shred the contract, or impose impossible obligations on buyers. (*Contra* Stellex Br. 1.) Instead, the trial court's ruling applies well-settled law by enforcing

the parties' contract and holding Stellex to its representations. The contract language shows that Stellex relied on its due diligence to proceed with the purchase. The trial court simply assessed what information would have resulted if Stellex had conducted reasonable due diligence consistent with its representations. The trial court's judgment should be affirmed.

Defendants' cross-appeal raises two issues. First, this Court has consistently applied a clear-and-convincing evidence standard to allegations for more than century, but the trial court evaluated Stellex's fraud based on a preponderance standard. Application of the higher standard further demonstrates the correctness of the trial court's justifiable reliance decision but warrants vacatur of the scienter decision. Second, Defendants contingently cross-appeal the trial court's misinterpretation of two Paragon contracts, which resulted in the mistaken conclusion that Defendants had warranted customer business that they had not.

SUMMARY OF ARGUMENT

Appeal issues:

1. Denied. The trial court correctly relied on all the circumstances, including the results of Stellex's own due diligence, in assessing justifiable reliance.

First, Stellex acknowledged in Section 5.10(a) of the parties' agreement that it had conducted its own "independent investigation and verification" of Paragon's business and projected operations, and that it relied on that due diligence to buy Paragon. The trial court correctly ruled that this meant Stellex's due diligence was relevant when assessing justifiable reliance.

Second, Stellex incorrectly argues that Delaware courts have held that an anti-reliance clause reduces the justifiable-reliance inquiry to the four corners of the agreement. Not so. The cases relied upon by Stellex acknowledge that provisions like Section 5.10(a) are a promise by the *buyer* for the benefit of the *seller*. Absent the parties' stated intent to do so, they do not restrict the scope of the justifiable-reliance inquiry.

2. Denied. The trial court correctly assessed justifiable reliance by reviewing the totality of information available to Stellex, including information that it knew or should have known from reasonable due diligence.

Stellex argues that an anti-reliance provision reduces the scope of the justifiable-reliance inquiry to Stellex's actual knowledge only. But again, the trial

court's wholistic assessment was justified by Stellex's contractual acknowledgement that it was conducting and relying on its own due diligence. Moreover, the caselaw does not require a trial court limit its review of justifiable reliance to the buyer's actual knowledge.

The judgment can also be affirmed because the trial court found that Stellex had actual knowledge of the key information it claims was withheld. Stellex does not challenge these factual findings as clearly erroneous.

3. Denied. The trial court did not clearly err in finding that Stellex could not prove justifiable reliance as to the purported change in terms to Paragon's contract with its customer ZF.

Stellex argues that there were two undisclosed changes to the "terms" of Paragon's relationship with ZF: that a Paragon affiliate paid ZF a one-time rebate in 2018 and that Paragon was no longer ZF's "sole source" for a particular product. The trial court did not clearly err by rejecting Stellex's testimony at trial regarding the rebate on credibility grounds, or by finding that the "sole source" issue was disclosed to Stellex. Additionally, any error by the trial court related to these two issues was harmless because Stellex did not seek any damages connected with the rebate or sole-source arguments.

Cross-appeal issues:

4. Whether the burden of proof for common-law fraud is clear-convincing evidence as required by this Court's caselaw such that the trial court's scienter ruling should be vacated because the court applied the lower preponderance-of-the-evidence burden of proof.

5. Whether the trial court erred when it held that Paragon falsely represented that it had not received notice from customers that they "will decrease the rate of buying products" based on customers' communications about what orders they might place outside the business warranted by Paragon.

STATEMENT OF FACTS

A. Stellex decides to buy Paragon

Michael Smith founded Paragon Metals, Inc. and served as its CEO. (Opinion 3.[1]) Paragon manufactured more than 80 precision-machined automotive components and assemblies, including bearing brackets specifically machined for ZF Transmissions Gray Court, LLC, and output supports specific to transmissions made by FCA, LLC (f/k/a Chrysler). (*See Id.* at 4, nn. 19, 21; SJ Opinion 4.) In 2018, Stellex Capital Management, a private-equity firm, decided to acquire Paragon from its parent, Paragon Industrial Holdings Group, Inc. (SJ Opinion 4-5.) The parties executed an Equity Purchase Agreement (the "Agreement") in December 2018 and closed on January 31, 2019. (*Id.* at 5.)

B. The parties' representations and warranties

Article 3 of the Agreement contains Paragon's and Defendants' representations and warranties to Stellex. Three representations are central:

Section 3.8. "Since 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

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[1] "SJ Opinion" refers to the summary-judgment opinion below. "Opinion" refers to the post-trial opinion below. Both are attached as Exhibits A and B respectively to Stellex's appeal brief.

Effect[.]" (*Id*.) The Agreement provides that Paragon's "failure to meet or achieve the results set forth in any internal projection, estimate or forecast" is not an MAE. (*Id.* at 5-6 (cleaned up).)

Section 3.12. Paragon had no contracts with its 10 largest customers other than those listed on Schedule 3.12. (*Id*. at 10-11.)

Section 3.23. Other than in the ordinary course, "Paragon has not received any notice from any such customer to the effect that, and none of Paragon, Paragon Holdings 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 [Paragon.]" (*Id*. at 6 (cleaned up).)

Stellex also made representations to Defendants in Section 5.10. There, Stellex stated that it "conducted to its satisfaction an independent investigation and verification of the financial condition, results of operations ... and projected operations" of Paragon. (Agreement §5.10(a), B000177-178.) Stellex warranted that in proceeding, it "relied on the results of its own independent investigation and verification and the representations and warranties expressly and specifically set forth in Article 3 and Article 4[.]" (*Id.*) Stellex acknowledged that Defendants disclaimed any other representations or warranties, including about estimates and projections. (*Id.* at §5.10(a), (b), B000177-178.) And Stellex took "full

responsibility" for evaluating "the adequacy and accuracy of all estimates, projections and other forecasts[.]" (*Id.* at §5.10(b), B000178.)

C. Paragon's FCA and ZF transmission-parts contracts

Defendants' Section 3.12 and 3.23 representations turn, in part, on the contracts listed in Schedule 3.12, which identifies Paragon's "long term or master supply agreements" with its top-ten customers. (*Id.* at §3.12(a)(i), B000160 (cleaned up).) For FCA and ZF, Schedule 3.12 lists Paragon's General Purchase Agreement with ZF (and an amendment) and FCA blanket purchase orders. (Opinion 21.) All were governed by Michigan law. (GPA §14.9, B000028; FCA Terms §26(a), B000089.) The ZF GPA covers bearing-bracket sales for ZF's 9-speed transmissions (the 9HP48 and 9HP50) that ZF sold to automakers including FCA. (*See* Opinion 4, n.19.) FCA's blanket purchase orders cover parts for FCA's own 9-speed transmissions. (*Id.* at 4, n.21.)

Neither the FCA nor ZF supply agreements obligated these customers to purchase any quantity. (GPA §15, B000040; FCA Terms §5, B000074.) Instead, both relationships operated on a release-by-release basis: FCA issued releases for specific quantities of parts and delivery dates without a firm period. (*See* FCA Terms, B000074.) ZF's releases were generally "firm" for two weeks. (GPA §5, B000057.) Because the supply agreements did not contain a quantity, the enforceable obligations arose from individual releases, not an open-ended

"requirements" purchase obligation on the customers to buy from Paragon. *See, e.g.*, *MSSC, Inc. v. Airboss Flexible Prods. Co.*, 999 N.W.2d 335, 338-39 (Mich. 2023). Under both sets of documents, customer-provided forecasts are "for planning purposes" and "for informational purposes" only. (GPA §3.5, B000018; FCA Terms, B000074.)

The master supply agreements did not promise Paragon exclusive-supplier status for the transmission parts. (*See generally* GPA, B000013-30; GPA Amendment, B000118-120; FCA Terms, B000073-97.) Indeed, release-by-release contracts make it easy for customers to ramp up additional suppliers because the customers are not bound to long-term purchases. *Cf. MSSC, Inc.*, 999 N.W.2d at 340. Indeed, because the ZF relationship was not exclusive, when Smith was discussing ZF's efforts to obtain additional transmission customers, he noted that Paragon would have the "ability to quote and be awarded the additional business." (Gordy Email, B000116.)

In short, Paragon's FCA and ZF relationships were non-exclusive and release based, with no guaranteed orders beyond current releases.

D. The scope of Stellex's due diligence

Stellex conducted substantial diligence. It received more than 10,000 Paragon documents, including customer contracts and industry forecasts, engaged Greenberg Traurig for legal review, and retained Ducker Worldwide Advisors for automotive-

market analysis. (Opinion 3-4; SJ Opinion 8; Waxman Testimony, A016698-16700.)

Stellex selected Bruce Swift—its choice for Paragon's post-closing CEO—to lead the diligence effort. (Opinion 3, 12.) Paragon gave Swift a desk in its facility and provided access to its key staff without needing permission from Paragon's management. (Swift Testimony, A012322-12323.)

Paragon provided a five-year forecast of estimated customer purchases. (Opinion 4.) The forecast combined customer-provided forecasts with third-party industry data, market data, and Paragon's own capacity. (*See id.)* The forecast covered both booked business (awarded contracts) and unbooked opportunities (anticipated awards). (*Id.* at 8, n.48, 42-43 ("Smith included unbooked business in the October Reforecast, to show the potential sales of the company." (cleaned up).) In October 2018, Paragon updated the forecast to reflect new ZF bearing-bracket sales pricing under the amended GPA and expressly cautioned that "[n]o volumes are guaranteed." (*Id*. at 6; Gordy Email, B000106.)

E. Stellex did not incorporate the results of its diligence into its deal model

Stellex built its purchase decision on a deal model based on Paragon's September forecast. (Opinion 8 (explaining "deal model").) When Paragon and others provided updates and clarifications—and they did so repeatedly—Stellex largely did not integrate the information into the model or its assumptions.

Stellex's lawyers reviewed Paragon's contracts but failed to dispel Stellex's belief that Paragon had requirements contracts with ZF and FCA that required those customers to buy all relevant parts from Paragon. (*See* Rogers Dep.,[2] A000927-928; Cochran Testimony, A012784 ("It was our understanding that if they produce a part, we produce the part for them, and yes, that number can vary.").) Paragon explained that its internal forecast included both booked awards and unbooked opportunities that would require Paragon to quote to achieve the forecast's volumes. (*See* Gordy Email, B000116.) Stellex nonetheless treated the forecast as if all the volumes were booked, and it modeled requirements-based purchasing for FCA and ZF. (Opinion, 42.)

Stellex's internal forecast should have alerted it to the presence of unbooked business. Before closing, Stellex prepared a presentation for its lenders that included a slide covering forecasted sales.[3] (Bank Presentation, B000517-552.) Stellex asked Smith to present on it and told him the forecasted sales were based on Stellex's "Bank Forecast," which included "booked programs" but also assumed future "new

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[2] All deposition transcript references were logged with the trial court as trial evidence but are cited to the pages in Stellex's Appendix where the testimony is reproduced.

[3] Stellex's discussion of this presentation attributes to Smith certain statements made "to the bank" (Stellex's Br. 13) without mentioning that the statements came from Stellex-drafted slides. (*See* 1/4/19 Rogers Email, B000516.) Moreover, some of the Stellex-drafted "quotes" that Stellex attributes to Michael Smith were on slides presented by a "Paul." (*See id*.)

business wins." (Rogers Email, B000516.) Stellex told Smith that its Bank "Forecast" was a "variation" on their deal model. (*Id.)* But this was not true; it was identical, meaning Stellex should have been aware that its deal model also included sales based on future "new business wins." (*Compare* Rogers Email, B000516 *with* Deal Model, "Model" worksheet, B000554-00558 (showing identical forecasted annual EBITDAs).)

Paragon provided deal-critical updates, but Stellex did not adjust its model then either. (Cochran Testimony, A015985-15986, A016013-16015.) Smith informed Swift that ZF's FCA program had been cancelled. (Opinion 43.) He also "advised Stellex that markets were 'softening ... which would affect the bottom line.'" (*Id.* at 42 (cleaned up).) Smith told Stellex "that Paragon did not win ZF's 'Nissan/Renault' business" (*id.* at 43), and, as a result, annual volumes for one ZF bearing bracket would "not exceed 200K" (Smith Email, B000443). (*See also* Opinion 43 (finding that this information was emailed to Stellex "multiple times").) Nonetheless, Stellex's model continued to carry materially higher volumes, including projections exceeding 500,000 for that part, inflating revenue assumptions

by approximately $19 million. (*See* Deal Model, "Sales Source Data Driver" worksheet, B000554.)[4]

Independent third-party diligence pointed in the same direction. Ducker—retained by Stellex to "[a]nalyze Paragon's existing, booked and forecasted business"—reported "that ZF's Honda business [the largest portion of Paragon's ZF sales] was ending and would lead to a decrease in orders from Paragon." (Opinion 42.) Ducker warned Stellex about a downturn in "[a]utomotive sales and production" that "would create a 20% dip in volume" for Paragon's machined-parts business. (*Id.* at 42, n.259.) Yet Stellex did not factor Ducker's analysis into its model. (Rogers Dep., A000944 ("I don't think we factored it in."); Waxman Testimony, A016831-16832 (based on Ducker's report, Stellex "should not include anything [related to Honda sales] beyond 2022").)

The trial court found that reasonable diligence would have "dispelled" Stellex's "flawed assumption that Paragon's internal forecasts only contained booked business" because the documents and updates showed otherwise. (Opinion 42.) The trial court identified an example: "The GPA amendment lists four customers to whom ZF sold transmissions containing Paragon bearing brackets as

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[4] Updating the forecast for 9HP50 (which is row 98 on tab "Sales Source Data Driver" in JX79, B000554) to 200,000 per year results in revenue reduction of about $19 million in columns AJ-AM of the same deal model spreadsheet.

part of [Paragon's] booked business." (*Id.* at 42-43.) But the Paragon forecast on which Stellex based its deal model "plainly include[d] volume forecasts related to customers absent from the GPA amendment[.]" (*Id*. at 43.) The same is true of Stellex's assumption that Paragon had requirements contracts with FCA and ZF. (*See* Cochran Testimony, A015917-15918, A015951-15952.)

F. Stellex's customer diligence meetings were ineffective

Defendants arranged for Swift to meet directly with Paragon's key customers, including FCA and ZF. (Opinion 9.) Stellex created a checklist of meeting topics for Swift to address including topics specific to future ZF sales volumes:

- "Current status of programs";
- "[C]hanges in expected volume"'
- Whether any programs were "ending earlier than originally forecasted";
- The "2019 volume outlook";
- The "softness in Q4;"
- ZF's "Letter to Paragon about decreasing volumes";
- ZF's "latest volume expectations"; and
- ZF's "future plans for the [9HP48/9HP50] program (expected duration, etc.)." [*Id.*, A017332, A017367; Rogers Email, B000343; Stellex Customer Topics, B000112.]

Swift disregarded Stellex's enumerated questions. As the trial court found, Swift "asked *zero* substantive questions at the ZF meeting, instead just inquiring 'is the business still good.'" (Opinion 44.) As Stellex recognized and the trial court

found, "Swift 'blew it' when it came to the customer meetings." (*Id.* at 46 (quoting Cochran Email, B000563).) Had "Swift asked about these topics, ... Stellex would have learned about the very information" Stellex would later allege that Defendants "withheld." (*Id.* at 44 (cleaned up).) ZF's Clive Spackman confirmed that if Swift had requested volume projections, Spackman would have answered truthfully. (Spackman Dep., A001204.)

Swift's meeting with FCA was marginally better—it resulted in a report to the Stellex team that sales to FCA in 2019 were not decreasing and were expected to be "flat over 2018." (Opinion 9.) But again, Stellex did not update its model to reflect FCA's report. (Rogers Dep, A000953.) Instead, Stellex continued to assume that 2019 sales to FCA would increase substantially. (*See* "Sales Source Data Driver," B000554 (row 17, forecasting annual sales to grow to 912,000 in 2019).)

By disregarding the results of its investigation, Stellex entered the transaction based on assumptions that were inconsistent with the data it possessed. Those same assumptions later formed the basis for its fraud claims.

G. Stellex takes over and Paragon struggles under new management

The deal closed on January 31, 2019. Paragon's immediate post-closing performance tracked 2018 levels, and by late 2019, Stellex assessed that Paragon's value had increased by nearly 8%. (Frazee Testimony, A016431-16435; *see also*

Cochran Testimony, A016033-16034 (acknowledging that manufacturing sales in 2019 were up over the same period in 2018).)

Thereafter, Paragon's results lagged Stellex's projections. (*See* Bank Presentation, B000580-585.) Paragon and Stellex attributed the shortfalls primarily to external factors:

- New accounting standards that took effect in 2019 (*id.*);
- General Motors' nationwide union strike (*id.*);
- Nonrecurring costs (an FCA quality issue, tariffs, severances, and a tooling-supplier transition) (*id.*);
- COVID-19 which Paragon reported reduced year-to-date sales by approximately $15 million (12/3/20 Zajaczkowski Email, PX195); and
- The global semiconductor-chip shortage (8/3/21 Crain Email, B000601).

Absent from Stellex's contemporaneous assessment were the fraud allegations against Smith and Paragon Holdings that Stellex advanced in this litigation. (*Compare* Bank Presentation, B000579-600; Crain Email, B000601 *with* Am. Compl., A000434-606.)

H. Stellex blames Smith and sues

In December 2021, nearly three years after closing, Stellex sued Smith and Paragon Holdings. (Compl., A000080-260.) Stellex alleged intra-contractual fraud relating to the representations and warranties in Sections 3.8 and 3.23, alleging supposed nondisclosures about anticipated customer-volume decreases and contract-

term changes for ZF and FCA. (*See generally id.*; A000434-606, Am. Compl., A000434-606.)

In 2018, ZF and FCA provided multi-year forecasts, and Paragon provided forecast information and context to Stellex in diligence. ZF's five-year forecast addressed bearing-bracket volumes—the forecast "plainly showed 9HP50 sales increasing" while 9HP48 volumes declined. (LaTarte Email, B000102; Opinion 27-28.) Paragon's forecast had already "provided to Stellex projected a *sharper* decline in volumes." (Opinion 42 (cleaned up).)

Later that year, FCA emailed Paragon a five-year forecast, emphasizing the information was "a forecast only" and subject to "the possibility of changing significantly." (FCA Email, B000099.) The forecast did not identify whether it covered the 9HP48 and 9HP50 transmissions or just the former. (*Id*., B000098.) Paragon understood it as 9HP48-only because it approximated industry projections for that transmission. (*Compare id. with* Paragon Forecast, worksheet "FCA 9HP48-50" B000105.) The FCA forecast was also within 1% of industry forecast information Paragon had already provided to Stellex. (*Compare* FCA Email, B000098 *with* Paragon Forecast, B000105 (tab "F 9HP48-50," 9HP48 only).) Smith was not copied on FCA's email, and the Paragon sales team did not elevate it to him. (8/30/18 FCA Email, B000098; Smith Testimony, A017247.)

Stellex also pointed to ZF correspondence stating that FCA "intends to cancel the 9HP48 program with ZF[.]"[5] (Opinion 6; ZF Letter, B000115; ZF Letter, B000362.) Paragon viewed that development as *favorable*: FCA's insourcing would shift 9HP48 volumes from ZF to FCA, to which Paragon provided the more profitable pre-machined output support. (Mackinder Testimony, A016355-16356; Fiske Email, B000561; Smith Testimony, A017191.) Ducker conveyed the same takeaway. (Opinion 45, n.276.)

Defendants conveyed these points directly to Stellex's diligence lead. In December 2018 and January 2019, Smith emailed Swift explaining that FCA would be cancelling its 9HP48 program with ZF and recommending an operational transition. (Opinion 43-44; Smith Email, B000442.) Smith specifically referenced the "ZFBB Cancellation Letter (attached)." (Smith Email, B000443.) Smith's email did not attach the letter but noted in a bolded section near the top titled "Current State of Paragon" that the letter implicated 150,000 units annually and that ZF's other customers were not affected. (*Id.*)

Swift forwarded Smith's email to the Stellex team to keep them "abreast of what was going on." (Swift Email, B000451; Swift Testimony, A012365-12366.) Although Swift and the others later claimed not to have read the email (Swift

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[5] The parts at issue accounted for only about 1% to 1½% of Paragon's annual revenue. (Swift Trial Tr., A012319-12321; Cochran Trial Tr., A015987-15988.)

Testimony, A012353-12356; Waxman Testimony, A016747; Cochran Testimony, A015982-015985), the trial court rejected that testimony. (Opinion 44 ("While Buyers suggest they 'never read or discussed' these emails, their own documents refute that assertion.").)

Smith also arranged for Swift to meet with Paragon's Vice-President of Operations, T. Mackinder. (Swift Testimony, A012376-12377; Mackinder Testimony, A016351-16353; Mackinder Email, B000559.) Smith directed Mackinder to be "transparent and open." (Mackinder Testimony, A016351-16352.) Mackinder explained that volumes tied to FCA purchases of ZF transmissions were expected to transition to direct FCA sales and outlined steps to track and manage the shift. (*Id.*, A016352-16363.) Swift directed follow up actions. (*Id.*, A016361-16363; Mackinder Email, B000559.)

I. The trial court grants partial summary judgment

On cross-motions for summary judgment, each side raised various arguments of which two are of interest on appeal. First, Defendants argued that the Agreement's Schedule 3.12 incorporated the GPA and that under the GPA, ZF purchased on a release-by-release basis. Accordingly, ZF's forecast did not change contracted purchases and could not render Section 3.23 or 3.8 false. (Defs.' SJ Br. A000706-707; Reply, A009088-9091.)

Second, Stellex contended that a $300,000 rebate paid to ZF by Paragon's sister company's holding company, Paragon Global Holdings, Inc. should have been disclosed. (Pls.' SJ Mot., A001943.) The sister company also sold parts to ZF. (Smith Testimony, A017164-165.) ZF demanded the rebate as part of discussions of a variety of issues related to both Paragon entities, including the amendment to the GPA. (12/11/18 Smith Email, B000123; Spackman Dep., A001208 (ZF conducted similar year-end reviews with hundreds of suppliers, and comparable rebates were common across the industry).) The sister company paid the rebate, while Paragon bore the bearing-bracket price reductions. (Transaction Report, B000441.) Therefore Paragon did not book the rebate, but it did disclose the price reduction to Stellex in the October forecast and the GPA amendment. (*See* 12/11/18 Smith Email, B000123; GPA Amendment, B000118; Schedule 3.12, B000289.) Even if Paragon had booked the rebate, the parties agreed that there was no need for disclosure. (Agreement §3.6(b), B000156.)

The trial court granted the motions in part and denied them in part. It recognized that "Paragon provided bearing brackets to ZF under contracts that expired every two weeks." (SJ Opinion 22.) But the court left open a factual issue as to duration of the contracts because the GPA appeared on Schedule 3.12, which references "long term or master supply agreements." (*Id*; Agreement §3.12(a)(i),

B000159-160.) The court did not resolve the rebate issue at summary judgment. (*See generally*, SJ Opinion.)

J. The trial court finds that Defendants did not commit fraud

After a five-day bench trial, the court entered judgment for the Defendants, holding Stellex failed to prove fraud under the preponderance standard[6] because it did not establish justifiable reliance. (*See generally*, Opinion.)

The trial court addressed three elements of the fraud claim: false representation by Defendants, Defendants' scienter (technically the elements of knowledge and intent), and Stellex's justifiable reliance. (*Id*.) On falsity, the trial court believed that the ZF and FCA contracts must have been long-term agreements because of Paragon's investment to manufacture the parts. (*Id.* at 21-22; *but see* SJ Opinion 22 (holding that ZF contracts expired every two weeks).) The court therefore concluded that certain Section 3.23 and 3.8 statements were "false" in a technical sense: the information was disclosed but some documents were not added to Schedule 3.23. (Opinion 28-30.) The court simultaneously found that the customer forecasts and ZF correspondence did not reveal any negative information and that the information at issue had been disclosed to Stellex. (*Id.* at 44-46.)

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[6] The trial court applied the preponderance standard but observed that this Court's "caselaw unequivocally provides fraud must be established by clear and convincing evidence." (Opinion 17, n.110.)

On scienter, the trial court inferred intent from a set of circumstances that it acknowledged could have separately had "innocuous" explanations, concluding that when "cobbled together," they met the preponderance standard. (*Id.* at 39-40.) That inference sits alongside the court's findings that Defendants disclosed the very information at issue—often directly to Swift—and that Stellex's own documents contradicted claims that the emails went unread.

On reliance, the trial court found that Stellex failed to prove justifiable reliance given the plethora of information that Defendants and Ducker provided. The court cited, among other facts, the following to conclude that even under the lesser preponderance-of-the-evidence standard, Stellex failed to prove reasonable reliance:

- Defendants' disclosures showed a sharper decline than ZF's own forecast (Opinion 42, n.257 (comparing Paragon Forecast, B000105 with LaTarte Email, B000102));
- Ducker's reported that ZF's Honda business was ending which would result in lower sales volume (*id.*);
- Ducker informed Stellex "that automotive sales and production downside ... would create a 20% dip in volume" (*id.* at 42, n.259);
- Ducker also told it that FCA was insourcing some transmissions (*id.*at 45);
- Smith told Stellex "that markets were 'softening ... which would affect the bottom line'" (*id.* at 42 (quoting 1/14/19 Smith Email));
- Defendants disclosed the GPA Amendment which "plainly" showed Stellex that Paragon's October reforecast and Stellex's own sales forecast included un-booked business (*id*. at 42-43);

- In "multiple emails," Smith told Stellex that Paragon had not won the "Nissan/Renault" business (which also meant that Paragon was not ZF's sole supplier for bearing brackets) (*id.* at 43 & n.263);

- Smith's emails "explicitly reference" the FCA shift away from buying 9HP48 transmissions from ZF and the corresponding letter (*id.* at 43);

- Evidence suggests that the parties discussed the facts that Paragon had not won the Nissan/Renault business, that FCA would no longer buy transmissions from ZF, and Smith's updates to volume estimates (*id.* at 43-44);

- Stellex's emails demonstrate that they knew of the ZF letter to Paragon about decreasing volumes because they told Swift to ask ZF about the letter during his meeting with ZF's Spackman (*id.* at 44-45);

- "Most damningly," had Swift asked about the topics identified for him by Stellex's diligence team, Stellex would have learned about "the very information Stellex alleges Defendants fraudulently withheld"; (*id.* at 44 (cleaned up)); and

- Swift's customer meeting with FCA (at least as reported) was so poor as to be "inconsistent with any reasonable diligence," even so, he reported that sales would " 'be flat,' " contrary to Stellex's expectation that sales would grow (*id.* at 45).

The trial court found that, "[d]espite expressly representing and warranting that they conducted diligence and relied on the results," Stellex ignored "numerous red flags" and demonstrated "some understanding of the information underlying its fraud claim." (Opinion 46 (cleaned up).) The court therefore concluded that Stellex failed to justifiably rely on any purported misrepresentation. (*Id.* at 46-47.)

The combination of findings—technical scheduling-level falsity coupled with extensive, direct disclosure and the resultant absence of reasonable reliance—demonstrated that Defendants had not committed fraud. (*Id.* at 40-47.) The trial

court entered judgment in favor of Defendants without addressing damages. Stellex's appeal and Defendants' cross-appeal followed.

ARGUMENT

I. The trial court did not err in assessing Stellex's due diligence efforts to evaluate the justifiable reliance element of Stellex's claim.

A. Question Presented

Did the trial court correctly interpret Section 5.10(a) of the Agreement as an acknowledgement by Stellex that it was relying on extracontractual information obtained during due diligence in agreeing to purchase Paragon, and not as a provision that forecloses a justifiable reliance inquiry? (SJ Opinion 23-24.) This issue was preserved below. (Defs' SJ Mot., A0005091-093.)

B. Scope of Review

This Court reviews questions of law, including the interpretation of a contract, de novo. *Osborn ex rel. Osborn v Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

C. Merits of Argument

The trial court held that Stellex did not prove by a preponderance of the evidence that it justifiably relied on any allegedly false representations in Article 3 because Stellex knew or should have known about the purportedly withheld information. (Opinion 46.) Stellex tries to circumvent the trial court's factual determination by selectively focusing on only part of its acknowledgement in Section 5.10. Stellex contends that because it promised Defendants that it would not rely on any extracontractual representations or warranties by Defendants, it had the

legal right to ignore all extracontractual information. (Stellex Br. 16-25.) Stellex is doubly wrong. First, Stellex disregards the plain language of the Agreement wherein Stellex represented that it relied on extracontractual information: the results of its own "independent investigation and verification" of Paragon's business and projected operations. Second, Stellex misinterprets general "anti-reliance provision" caselaw, which enforces anti-reliance provisions to protect sellers, not buyers.

Justifiable reliance is a factual question. *Vague v. Bank One Corp.*, 850 A.2d 303, 2004 WL 1202043 at *1 (Del. 2004) (table case). As discussed below, the party alleging fraud is required to prove reasonable reliance by clear-and-convincing evidence. (*See* Arg. IV.) Whether reliance is reasonable is measured by "an objective standard," *Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2018 WL 6311829, at *33 (Del. Ch. Dec. 3, 2018), and requires a "context-dependent inquiry that takes into account the plaintiff's knowledge and experience." *Trifecta Multimedia Holdings Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024). It depends on "all of the circumstances." *Vague*, 2004 WL 1202043 at *1.

Anti-reliance clauses can limit the universe of representations actionable by the buyer against the seller to those in the agreement, but they do not relieve the buyer of proving justifiable reliance. *See Prairie Capital III LP v. Double E Holding*

Corp., 132 A.3d 35, 52 (Del. Ch. 2015) (explaining that the purpose of an anti-reliance clause is to address the "double-liar problem" and prevent a misled buyer from itself misleading the seller).

1. Section 5.10(a) required the trial court to review Stellex's due diligence to assess justifiable reliance.

Under Section 5.10(a), Stellex represented to Defendants that it was relying on the results of its investigation and verification of Paragon's business and projected operations as well as the contractual representations and warranties in making its acquisition decision. (Agreement, B000177-178.) The trial court correctly reasoned that if Stellex was relying on the results of its own diligence, then Stellex's diligence was key to assessing its purported justifiable reliance. (Opinion 41-42.) But Stellex contends that the court erred by considering extracontractual information it received, labelling Section 5.10(a) an "anti-reliance" clause without addressing the actual contractual language. (Stellex Br. 16-25.) But the text governs, not labels. *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006).

Section 5.10(a) must be interpreted to give effect to all the language in the provision. *Kuhnn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396-97 (Del. 2010). Stellex represented that it had "conducted to its satisfaction an *independent investigation and verification* of the financial condition, results of

operations, assets, liabilities, properties and projected operations of Company." (Agreement §5.10(a), B000177-178.) 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 and verification" as well as Paragon's representations and warranties. (*Id.*) The trial court gave effect to all of Section 5.10, reasoning that the provision requires reliance on extracontractual information obtained during Stellex's diligence.

Stellex directs the Court to *Labyrinth, Inc. v. Urich*, 2024 WL 295996 (Del. Ch. Jan. 26, 2024), but the case undermines rather than supports its argument. (Stellex Br. 16, 19, 21.) There, the buyer promised that it had "conducted its own independent investigation, review, and analysis" of the seller's business. *Labyrinth, Inc.*, 2024 WL 295996 at *17. The court reasoned that the provision does not "communicate any anti-reliance commitment." *Id.* (cleaned up). Indeed, the provision "reasonably can be read to reflect that Buyer was expressly representing it *did rely* on extra-contractual information." *Id.* (cleaned up).

Stellex's affirmative-reliance representation is more expansive than the provision in *Labyrinth*. Stellex represented that it "relied" on the results of its investigation "and verification" of Paragon's business. (Agreement §5.10(a), B000177-178.) "Verification" means the "action of establishing or testing the truth or correctness of a fact theory, statement, etc. by means of special investigation or

comparison of data." *Verification*, Oxford English Dictionary (Dec. 2023). Thus, Stellex agreed that it had established the correctness of Paragon's operations and projections.

Stellex's affirmative-reliance representation distinguishes this case from cases where the parties agreed that the buyer would not rely on diligence materials. *See, e.g.*, *Columbus US Inc. v. Enavate SMB, LLC*, 2024 WL 5274569, at *9 (Del. Super. Ct. Dec. 23, 2024); *NetApp, Inc. v. Cinelli*, 2023 WL 4925910, at *16 (Del. Ch. Aug. 2, 2023), *judgment entered,* (Del. Ch. 2023).[7]

Stellex never addresses its obligation or the Agreement's "verification" language. In fact, when Stellex discusses Section 5.10(a), it sometimes excises "verification" from text. (*See* Stellex Br. 1, 23.) Regardless, the provision's language demonstrates that Stellex relied on its own diligence, and so the trial court property considered Stellex's diligence as part of the context-dependent, all-the-circumstances analysis of whether Stellex's purported reliance was justifiable. (Opinion 40-46.)

[7] The language of the provision at issue in *NetApp* can be found in one of plaintiff's briefs, accessible at 2022 WL 2834057.

2. The Agreement's anti-reliance clause does not eliminate Stellex's burden to prove justifiable reliance.

Stellex also misapprehends the operation of anti-reliance clauses, flipping them on their heads. Courts apply anti-reliance clauses to bar a *plaintiff* from alleging extra-contractual fraud. *See RAA Mgmt., LLC v. Savage Sports Holdings, Inc.*, 45 A.3d 107, 112-15 (Del. 2012). Courts do not apply anti-reliance clauses to put blinders on fraud plaintiffs when assessing justifiable reliance.

An anti-reliance provision is a buyer's promise that benefits the seller—buyers forego reliance on a seller's extra-contractual statements: "[A] party cannot promise ... that it will not rely on promises and representations outside of the agreement and then shirk its own bargain in favor of a 'but we did rely on those other representations' fraudulent inducement claim." *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1057 (Del. Ch. 2006). That is not what is happening here. Instead, Stellex is relying on purportedly false representations in the Agreement and using the anti-reliance provision to disclaim reliance on information that it obtained outside the contract.

Stellex tries to justify its reinterpretation of anti-reliance provisions by claiming "the unbroken line running through Delaware decisions construing similar anti-reliance clauses is that none of them permitted due diligence materials to impact the justifiable reliance inquiry." (Stellex Br. 22 (cleaned up).) There is no such unbroken line. The decisions Stellex cites apply anti-reliance provisions to limit

actionable misrepresentations to the contract's text—not to forbid courts from examining the buyer's diligence materials when objectively analyzing the totality of the circumstances to assess the buyer's justifiable reliance. Consider the following cases cited by Stellex:

- *Columbus US*, 2024 WL 5274569 at *9 (buyer could not base fraud claim on extra-contractual materials due to anti-reliance provisions);
- *ChyronHego Corp. v. Wight*, 2018 WL 3642132, at *1 (Del. Ch. July 31, 2018) (dismissing buyer's claims for extra-contractual fraud due, in part, to anti-reliance clause)
- *Prairie Capital*, 132 A.3d at 35, 50-51 (Del. Ch. 2015) (dismissing buyer's extra-contractual fraud claims because of an anti-reliance clause)
- *Portfolio BI, Inc. v. Djukic*, 2024 WL 887047, at *3 (Del. Ch. Feb. 29, 2024) (explaining that anti-reliance clause would bar any claims by buyer for extra-contractual fraud, but denying seller's motion to dismiss because all claims were for intra-contractual fraud);
- *3M Co. v. Neology, Inc.*, 2019 WL 2714832, at *13 (Del. Super. Ct. June 28, 2019) (same);
- *AmeriMark Interactive, LLC v. AmeriMark Holdings, LLC*, 2022 WL 16642020, at *6–7 (Del. Super. Ct. Nov. 3, 2022) (same).
- *Labyrinth*, 2024 WL 295996, at *18 (denying seller's motion to dismiss extra-contractual fraud claim in part because the contract did not contain an anti-reliance provision);
- *Uberether, Inc. v. Anitian, Inc.*, 2023 WL 1471754, at *3 (D. Del. Feb. 2, 2023) (report and recommendation) (same);
- *Bamford v. Penfold, L.P.*, 2020 WL 967942, at *15 (Del. Ch. Feb. 28, 2020) (same); and

- *FdG Logistics LLC v. A&R Logistics Holdings, Inc.*, 131 A.3d 842, 857-61 (Del. Ch. 2016) (same).[8]

In sum, the cases Stellex relies on do not stand for the proposition that a buyer alleging intra-contractual fraud can use a standard anti-reliance provision to escape its burden to prove justifiable reliance. But more importantly, the parties' actual agreement provides that Stellex was relying on the results of its own investigation and verification—extracontractual information—in deciding whether to proceed. (Agreement §5.10(a), B000177-178.) The trial court was thus correct to consider Stellex's due diligence when assessing whether Stellex had proved justifiable reliance.

[8] *Aff'd sub nom. A & R Logistics Holdings, Inc. v. FdG Logistics LLC*, 148 A.3d 1171 (Del. 2016).

II. The trial court did not err in weighing the information Stellex knew and should have known in evaluating justifiable reliance.

A. Questions Presented:

Stellex asks: Did the Superior Court err in applying a "knew or should have known" standard for justifiable reliance in an intracontractual fraud case where the standard is "actual knowledge" of falsity where an anti-reliance clause is present?

Stellex claims this question was raised below in their summary-judgment brief. (Stellex Br. 26 (citing A001948-1949).) But there, Stellex does not argue that the Agreement's anti-reliance provision requires that justifiable reliance be assessed based solely on its actual knowledge. The question is unpreserved and forfeited. *See, e.g.*, *Genger v. TR Investors, LLC*, 26 A.3d 180, 197 (Del. 2011) (citing Del. Sup. Ct. R. 8).

B. Scope of Review

This Court reviews questions of law, including the interpretation of a contract, de novo. *Osborn*, 991 A.2d at 1158.

C. Merits of Argument

This issue is not preserved, so the Court need not address it. Stellex's argument also fails on its merits. The trial court did not err in concluding that Stellex failed to prove justifiable reliance based on the extracontractual information known to Stellex and information which, had Stellex conducted reasonable due diligence, it

would have known. (Opinion 40-47.) Stellex does not challenge as clearly erroneous the trial court's conclusion that based on the knowledge Stellex had and the knowledge that reasonable diligence would have obtained, it could not prove reasonable reliance by a preponderance of the evidence. Instead, Stellex repackages its anti-reliance provision argument to contend that the adequacy of its diligence activities is irrelevant to its justifiable reliance because it was responsible only for the information it actually knew based on its due diligence. (Stellex Br. 33.) But Stellex again ignores the effect of its representation that it conducted an independent investigation and verification of Paragon's business and relied on the results.

Given Stellex's representation, the trial court correctly assessed whether Stellex had conducted reasonable diligence, held that it did not, and imputed to Stellex the knowledge that reasonable diligence would have uncovered.

Stellex's argument also fails because the trial court found Stellex had actual knowledge of the FCA cancellation, the declining forecasts, and other information. Those findings are sufficient to uphold the judgment.

1. Because Stellex represented that it relied on the results of its independent investigation and verification, it warranted that it had conducted reasonable due diligence.

The trial court correctly held that because Stellex warranted that it had independently investigated and verified Paragon's business and represented that it relied on the results, the Agreement imposed on Stellex "a diligence obligation." (SJ

Opinion 24.) Courts recognize that when a buyer represents that it has relied on its due diligence, courts can review the reasonableness of that diligence in assessing justifiable reliance. S*ee, e.g.*, *Arwood v. AW Site Servs., LLC*, 2022 WL 705841, at *24 (Del. Ch. Mar. 9, 2022); *Getzler v. River Run Foods (DE), LLC*, 2024 WL 3273430, at *6 (Del. Super. Ct. July 1, 2024). If that were not the case, then merely looking at file cabinets—real or virtual—would satisfy the representation, rendering it illusory.

Stellex nevertheless argues that the anti-reliance clause required the trial court to limit the scope of its justifiable-reliance inquiry to its actual knowledge. (Stellex Br. 27-31.) In large part, this reiterates Stellex's first argument and fails for the same reasons. *See* Arg. I. Because Stellex agreed to undertake reasonable investigation and verification, the trial court correctly assessed what Stellex should have known based thereon. (*See* Opinion 46.)

None of the cases cited in Stellex's second argument suggest that the trial court erred. They instead underscore the significance of Stellex's promise that it *was* relying on its due diligence results.

Stellex first points to *Columbus US*, 2024 WL 5274569. But *Columbus* did not address an anti-reliance provision that incorporated the broad investigation-and-verification clause present here. Moreover, the court's justifiable-reliance discussion cuts against Stellex because the court undertook a fact-based inquiry

regarding what extracontractual information might have been available to the buyer despite the anti-reliance clause. *Id.* at *13. The court ultimately denied summary judgment on justifiable reliance because the buyer's "due diligence efforts can be evidence that its reliance on a false representation was reasonable because it made efforts to verify the representation and discovered no reason to doubt its truth." *Id.* (cleaned up). The trial court applied the same analysis here, finding that Stellex's due diligence showed that any purported reliance was not reasonable.

The case that is perhaps most damaging to Stellex's argument is *Cobalt Operating, LLC v. James Crystal Enterprises, LLC*, 2007 WL 2142926 (Del. Ch. July 20, 2007).[9] There, the buyer contracted to *avoid* the "need to verify every minute aspect of a seller's business," by obtaining representations from the seller "about the accuracy of unaudited financial statements." *Id.* at *28. The seller made a reciprocal warranty that "no inspection or investigation made by or on behalf of [buyer] or [buyer's] failure to make any inspection or investigation shall affect [seller's] representations, warranties, and covenants[.]" *Id.* The *Cobalt* court acknowledged that these provisions are not "ubiquitous" and that their effect was to "lessen" the buyer's "need ... to independently verify" the key aspects of the seller's business. *Id.* at *28. Nonetheless, the *Cobalt* court *still* undertook a factual review

[9] *Judgment entered*, (Del. Ch. 2007), *aff'd*, 945 A.2d 594 (Del. 2008).

of the adequacy of the buyer's due diligence as part of its justifiable-reliance analysis. *Id.*

The other cases upon which Stellex substantively relies do not help it either. *Agspring* and *Labyrinth* were decided at the motion-to-dismiss stage and thus discussed only whether the plaintiff-buyer had adequately pled that it relied on the defendant-seller's representations; neither discussed the fact-intensive inquiry necessary to prove justifiable reliance. *See Agspring Holdco, LLC v. NGP X US Holdings, L.P.*, 2020 WL 4355555, at *13, n.137 (Del. Ch. July 30, 2020); *Labyrinth*, 2024 WL 295996, at *15-*19.

Finally, the contract at issue in *Urvan v. AMMO, Inc.*, 2024 WL 863688 (Del. Ch. Feb. 27, 2024) provided the opposite of Stellex's acknowledgement here because the "parties agreed to rely exclusively on the contents of the Merger Agreement's representations." *Id.* at *12. So too in *Tam v. Spitzer*, 1995 WL 510043 (Del. Ch. Aug. 17, 1995), which did not discuss any due diligence acknowledgement by the buyer. In the absence of such a provision, the court found that the seller had only a "limited opportunity" to review the relevant information and that this review revealed no more than "clues" of the seller's misrepresentations. *Id.* at *9. That is not the case here, where Stellex promised that it would conduct due diligence and the evidence was overwhelming that the allegedly withheld information was provided directly to Stellex during that due diligence.

These cases show that contract language regarding the buyer's reliance can affect the scope of the justifiable-reliance inquiry, but even where parties agree that the buyer will not rely on its own due diligence, the information obtained through due diligence is relevant to assessing whether reliance is justified. Accordingly, the trial court did not err by assessing Stellex's due diligence.

2. Anti-reliance clauses do not limit a buyer's reliance to only its actual knowledge.

Stellex asserts that the presence of §5.10(a) limits the scope of a court's justifiable reliance inquiry to Stellex's actual knowledge. (Stellex Br. 33.) No Delaware authority supports such a rule. To the contrary, Delaware courts consistently apply a fact-intensive, totality-of-the-circumstances inquiry to assess justifiable reliance after the pleadings stage. *See, e.g.*, *Arwood*, 2022 WL 705841 at *23-*27.

Stellex insists instead on an "actual knowledge" inquiry in lieu of the fulsome inquiry applied by the trial court. But Stellex's only authority for this purported rule is a footnote in *Abry Partners*. There, the court says that a buyer cannot "escape an exclusive remedy provision when it was aware of the falsity of a contractual representation of fact before the closing and nonetheless elected to close on the contract." (Stellex Br. 33 (citing *Abry Partners*, 891 A.2d at 1065, n.86).) The footnote does not address the scope of a court's inquiry when determining whether

there was justifiable reliance. And it certainly does not evidence abandonment of the searching, fact-intensive inquiry consistently applied to assess justifiable reliance.

The most comprehensive discussion of the actual justifiable-reliance standard is in *Arwood*, 2022 WL 705841. There, the court surveyed caselaw and conceded that courts have "struggled to draw a line" on justifiable reliance, recognizing that the line falls "somewhere *between* actual knowledge and negligence." *Id.* at *24 (emphasis added). Ultimately, the court landed on a "recklessness" standard. *Id.* at *25. Applying this standard, the court found that the plaintiff-buyer had not proved justifiable reliance because the buyer had "passed warning sign after warning sign as the information [buyer] now points to as the source of the fraud stared them in the face." *Id.* The buyer "either saw the evidence" of the alleged misrepresentations "and chose to ignore it, or they somehow missed what [seller] placed right before their eyes." *Id. Accord JanCo FS 2, LLC v. ISS Facility Servs., Inc.*, 344 A.3d 1009, 1036 (Del. Super. Ct. 2025) ("Where an alleged fraud victim has information contradicting a false representation before acting in purported reliance on that representation, that alleged victim cannot demonstrate justifiable reliance.").

Here, the trial court's reasoning tracked this and other pertinent Delaware cases. The trial court explained that "actual knowledge is not the only way for Sellers to defeat justifiable reliance, because 'a party is not excusably ignorant if it

is willfully blind to the relevant facts.'" (Opinion 41-42 (quoting *Geronta Funding v. Brighthouse Life Ins. Co.*, 284 A.3d 47, 69 (Del. 2022)).)

Stellex criticizes the citation to *Geronta*, saying the trial court used it as "the benchmark for justifiable reliance in an intracontractual fraud case with an anti-reliance clause." (Stellex Br. 32-33.) Stellex similarly chides the trial court's citation to *Heron Bay Property Owners Ass'n v. CooterSunrise, LLC*, 2013 WL 3871432 (Del. Ch. June 27, 2013), accusing the court of misapplying it to craft a "willful blindness argument." (Stellex Br. 31.) But these critiques misstate the trial court's analysis. The trial court observed that Stellex exhibited a "willful blindness" like that discussed in *Geronta* and *Heron Bay*, but the trial court did not rely on either case to establish the standard for justifiable reliance. Instead, the court relied on several cases that Stellex itself cites. (*See* Opinion 40, n.243 & 41, n.254.) These authorities support the trial court's analysis and do not require an "actual knowledge" threshold.

3. The trial court did not clearly err when it found Stellex had actual knowledge.

Stellex did not meet its burden even under its preferred "actual knowledge" standard. Despite contending that the trial court should have assessed its actual knowledge, Stellex largely fails to challenge (or even acknowledge) the trial court's actual knowledge findings. These findings of actual knowledge standing alone are

sufficient to uphold the factual determination that Stellex had not proved justifiable reliance under a clearly erroneous standard.

The trial court determined that Stellex had actual knowledge of the allegedly declining volumes in the ZF forecasts because Paragon provided Stellex with a forecast that "projected a *sharper* decline in volumes than [the allegedly undisclosed] ZF's email," (Opinion 42), and Stellex used this information to create its own deal model "based largely" on that same forecast (*id.* at 8).

The trial court also observed that the talking points checklists used for Stellex's meetings with Paragon during due diligence showed that "Buyers incorporated Smith's disclosures into their diligence outlook." (Opinion 43.) Those checklists included "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," all of which "were uniformly crossed off" the checklists, which "suggests the parties discussed those issues." (*Id.* at 43-44.) Stellex has no response.

The trial court also rejected as a factual matter Stellex's story that they "never read or discussed" some of the key diligence emails, finding this not credible because "their own documents refute that assertion." (*Id.* at 44.) Chief among those documents were the discussion topics they provided to Swift for his Paragon customer meetings. (*Id.*) Stellex responds half-heartedly that "Swift testified he covered these topics." (Stellex Br. 35.) But Stellex does not contend with the trial

court's contrary finding (Opinion 44-45.), or Swift's admission at trial that he did not (Swift Testimony, A12394.)

Stellex also had full knowledge of the contents of the Ducker report. (Opinion 42, 45; *see* Cochran Testimony, A015940-19541; Waxman Testimony, A016862-16864.) The Ducker report gave Stellex actual knowledge of key assumptions that contributed to the forecasts shared by Paragon, including "that ZF's Honda business was ending and would lead to a decrease in orders from Paragon"; that Paragon's customer FCA was transitioning transmission production in-house; and that a broader automotive production downturn created a risk of a 20% decline for Paragon's machined parts business as a whole. (Opinion 42, n.259 (citing Ducker Report, B000412).) Stellex hardly addresses these prognostications, instead merely cherry-picking its own witnesses' interpretations of these data points at trial. (*See* Stellex Br. 34-35.)

Ultimately, these findings of Stellex's actual knowledge led to the trial court's conclusion that "'it is axiomatic that a plaintiff does not justifiably rely on a defendant's misrepresentations if the plaintiff knows that the representation is false.'" (Opinion 46 (*quoting Arwood*, 2022 WL 705841 at *24).) Stellex does not appeal these factual findings (and does not establish any as clearly erroneous). The trial court's judgment can thus be upheld even under Stellex's preferred standard.

III. The trial court did not err in failing to find justifiable reliance as to the "sole supplier" or "rebate" issues.

A. Question Presented

Stellex asks: Whether the Superior Court erred in finding that Buyers unjustifiably relied on Section 3.23 concerning the change in ZF's purchasing terms where the Agreement contained an Anti-Reliance Clause, while also concluding that these facts were never disclosed and that Sellers intended to hide them?

Stellex says this issue was raised in its summary-judgment briefing and its opening post-trial brief. (Stellex Br. 37.) But Stellex refers to arguments related to the scope of analysis for a justifiable-reliance inquiry generally, not an argument that Stellex justifiably relied on the rebate and sole supplier issues as Stellex makes on appeal. (*See* Stellex SJ Mot., A0001944-1949; Stellex Post-Trial Op. Br., A016147-16152.)

In truth, Stellex never argued below that it justifiably relied on the "rebate" issue. This portion of Stellex's argument is thus unpreserved and forfeited. *Genger*, 26 A.3d at 197. Stellex did argue in two sentences in its post-trial response brief that it had justifiably relied on representations related to Paragon's supplier status. (Pls.' Post-Trial Resp. Brief, A016236.) Defendants similarly preserved their argument that Stellex did not prove justifiable reliance as to the "sole supplier" issue in their post-trial response brief. (Defs.' Post-Trial Resp. Br., A016281-82.)

B. Scope of Review

Questions of law and contractual interpretations are reviewed *de novo*; factual findings are reviewed for clear error. *Osborn*, 991 A.2d at 1158. The deference "required by the clearly erroneous standard of appellate review is enhanced" when the factual findings are based on credibility determinations. *Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485, 491 (Del. 2000) (cleaned up). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Bank of N.Y. Mellon Trust Co., N.A. v. Liberty Media Corp.*, 29 A.3d 225, 236 (Del. 2011).

C. Merits of Argument

The trial court did not commit clear error in finding that Stellex had failed to prove justifiable reliance related to the rebate or sole-source issues. The trial court made several, well-grounded findings of fact that led to its conclusion. Stellex does not address these findings head-on but offers a censored and abbreviated version of the trial evidence. The court rejected Stellex's conclusions based on witness credibility and documentary evidence. These findings are entitled to considerable deference, and this Court should affirm.

1. The trial court did not clearly err in finding that Stellex had not justifiably relied on any "rebate" representation.

The trial court correctly did not credit Stellex's arguments that it had justifiably relied on a rebate paid by a Paragon affiliate. As the trial court found, the $300,000 rebate at issue was not paid by Paragon; it was paid by an affiliate company and thus never would have appeared on Paragon's books. (Opinion 7.) Stellex's argument also ignores that the parties agreed that rebates would not require separate disclosure. (Agreement §3.6(b), B000156.)

Stellex argues as a factual matter that it would not have been able to uncover the affiliate rebate regardless of its diligence failures, but those theories were squarely rejected by the trial court. The trial court credited testimony from ZF's Clive Spackman that he "never attempted to deceive" Swift and that Smith "never asked that [he] hide any information." (Opinion 34.) Stellex argues that it "could not have anticipated the rebate because Sellers took affirmative steps to hide it." (Stellex Br. 38.) But the trial court found that Stellex failed to pursue the topic when it had the chance, including at Swift's meeting with ZF. (Opinion 34.) The trial court also found that "the evidence does not support" the argument Stellex repeats on appeal that "Smith sought to, or did, hinder Swift's meeting with ZF." (*Id*.) Findings like these that rest on credibility assessments and documentary evidence "can virtually never be clear error." *Cede*, 758 A.2d at 492. They are not here.

2. The trial court did not clearly err in finding that Stellex had not justifiably relied on any "sole supplier" representation.

The trial court was also correct to implicitly reject Stellex's argument that it justifiably relied on any representation that Paragon was ZF's "sole source" for any particular product. This was never a term of ZF's GPA, nor did Defendants make any representations in the Agreement about "sole source" status. (*See generally* GPA, B000013; GPA Amendment, B000114; Agreement, B000146-265.) Thus, any argument by Stellex that it relied on a representation of sole-source status is barred by the anti-reliance provision. (Agreement §§3.30, 5.10(a), B000174, B000177-178.)

Moreover, the trial court's findings that Defendants did disclose that Paragon was not ZF's sole supplier of bearing brackets were robust. The trial court correctly credited Smith's emails directly to Stellex telling them another supplier was "tooled up for Nissan / Renault," one of ZF's customer programs. (Opinion 43 & n.263.) The trial court found the testimony of Stellex's representatives that they never read or discussed these emails not credible, in part because of talking-points emails with crossed-out items, including the disclosure of ZF's other supplier. (*Id.* at 43-44.) The trial court also pointed to Stellex's diligence checklist, which directed Swift to ask ZF about "potential displacement of other suppliers on future programs"—is another implicit acknowledgment that ZF already had other suppliers. (Rogers Email, B000127.)

Stellex lastly argues that the trial court should have found as a matter of fact that Defendants' disclosures about Paragon's supplier status required "pars[ing] the 10,000 documents in the data room." (Stellex Br. 43-44.) Stellex then points to two documents that were anything but buried: the October Reforecast, which Defendants emailed directly to Stellex (October Re-Forecast (including native attachment), B000106); and the GPA Amendment, which was scheduled as part of the Agreement (Opinion 10-11; Schedule 3.12, B000289).

3. The trial court did not err by failing to apply a "buried facts" doctrine.

Stellex lastly invokes a "buried facts" doctrine, but it is misplaced. (*See* Stellex Br. 44-45.) The doctrine arises only in the context of stockholder disclosure/proxy fiduciary-duty cases, not in arm's length M&A transactions where the buyer receives documents directly from the seller in diligence. *See e.g.*, *Vento v. Curry*, 2017 WL 10767725 (Del. Ch. Mar. 21, 2017) (fiduciary-duty/proxy-disclosure case). The doctrine is also inapplicable because, as just discussed, the trial court never found that any material information was "buried."

4. Any error by the trial court related to these issues was harmless because Stellex claimed no damages related to these issues.

Any error related to these issues is harmless because Stellex never alleged any damages based on these theories. (*See* Defs.' Post-Trial Resp. Br., A016265.) Under Delaware law, a fraud claim fails absent proof that the alleged misrepresentation or omission caused an actual, non-speculative loss. *Vichi v. Koninklijke Philips Elecs., N.V.*, 85 A.3d 725, 815 (Del. Ch. 2014) ("To be actionable, a fraudulent misrepresentation or omission must cause the plaintiff to suffer damages." (citing *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983)). Absent this critical element, Stellex could not prevail on these theories even if it had proven justifiable reliance.

IV. The trial court erred by applying a preponderance standard to Stellex's fraud claim despite acknowledging that this Court's caselaw requires clear-and-convincing evidence.

A. Question Presented

Whether the burden of proof for common-law fraud is clear-convincing evidence as required by this Court's caselaw such that the trial court's scienter ruling should be vacated because the court applied the lower preponderance-of-the-evidence burden of proof? This issue was preserved. (Defs.' Post-Tr. Br., A016182.)

B. Scope of Review.

This Court reviews "questions of law, including a trial court's interpretations of ... burdens of proof, *de novo*." *In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1143 (Del. 2025).

C. Merits of Argument.

This Court's jurisprudence has consistently applied a clear-and-convincing-evidence standard to fraud claims for more than a century. The trial courts have inconsistently applied this Court's standard and a lower preponderance-of-the-evidence standard. Here, the trial court noted that courts have expressed confusion about the standard, acknowledged that this Court's caselaw "unequivocally provides fraud must be established by clear and convincing evidence," and applied a prepon-derance standard. (Opinion 17, n.110, 17-18, 31, & 39-40.) The lesser evidentiary

burden was decisive as to the trial court's scienter ruling—the trial court found scienter only by cobbling together various facts that hinted or suggested of an intent to defraud, evidence that does not meet the clear-and-convincing standard. (*Id.* at 32-40.)

This Court should resolve the confusion among the trial courts by holding that common-law fraud must be proved by clear-and convincing evidence and reverse the trial court's scienter ruling even if the Court affirms the judgment. Application of the correct standard would warrant vacatur of the scienter ruling which, in turn, would ameliorate the collateral reputational and business consequences for Defendants and Smith in particular from the erroneous scienter ruling.

1. The Court should resolve the confusion among the trial courts and reaffirm the clear-and-convincing standard.

Before the twentieth century, Delaware courts uniformly required fraud claims to satisfy a clear-and-convincing or equivalent intermediate evidence standard.[10]

> Fraud is never presumed to exist. On the contrary, it must be *clearly established by the evidence*; for where the circumstances attending the transaction are of a doubtful

[10] *See Addington v. Texas*, 441 U.S. 418, 424 (1979) ("The intermediate standard ... usually employs some combination of the words "clear," "cogent," "unequivocal," and "convincing"[.]). This standard is typically used "in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant." *Id.*

> character merely, or raise but a bare suspicion of fraud in regard to the party charged therewith, they will not be sufficient evidence of the fact. The circumstances relied on must be of such a nature as to raise more than a suspicion of fraud; they must be of such significance and force as *clearly* to establish the fact in the judgment of the jury. [*Mears v. Waples*, 8 Del. 581, 619-20 (Del. Super. 1868) (emphases added), *aff'd* 9 Del. 62 (Del. Ct. Err. & App. 1869).]

Accord Kent Cnty. R. Co. v. Wilson, 10 Del. 49, 55 (Del. Super. 1875) ("[F]raud ... must be clearly proved[.]"); *Freeman v. Topkis*, 40 A. 948, 949 (Del. Super. 1893) (same)).

Early in the last century, this Court established as a "proposition[] of law" that fraud claims "must be *clearly established* by the evidence." *Griffin v. Star Printing Co.*, 74 A. 1072, 1072-73 (Del. 1910) (emphasis added). Shortly thereafter, in a case where plaintiffs sought to avoid a deed for fraud, this Court once again affirmed that "[f]raud when alleged must be *clearly proved* to avail the party charging it[.]" *Killen v. Purdy*, 99 A. 537, 538 (Del. 1916) (emphasis added).

Since then, the Court has not addressed the standard in the context of common-law fraud, but it has applied the clear-and-convincing standard to claims of fraud in other contexts. For example, fraud or misrepresentation must be proven by clear-and-convincing evidence to obtain relief from judgment. *Erste Asset Mgmt. GmbH v. Hees*, 341 A.3d 1008, 1022 (Del. 2025). And clear-and-convincing evidence of fraud is required to obtain contract reformation. *Nationwide Emerging*

Managers, LLC v. Northpointe Holdings, LLC, 112 A.3d 878, 890-91 (Del. 2015). *Cf. In re Doughty*, 832 A.2d 724, 732 (Del. 2003) (clear-and-convincing evidence to prove knowing misconduct including fraud under the Delaware Lawyers Rules of Professional Conduct).

Consistent with this Court's approach, Delaware lower courts have applied the clear-and-convincing standard to a broad range of fraud claims:

- To avoid deeds because of fraud. *E.g.*, *In re Partition of Lands & Tenements of Skrzec*, 2010 WL 2696257, at *6 (Del. Ch. June 30, 2010) (citing *Killen*, 99 A. at 538).
- To avoid a settlement or release because of fraud. *E.g.*, *Brandywine Dev. Grp., LLC v. Brinker Rest. Corp.*, 2023 WL 3496206, at *5 & n.34 (Del. Super. May 16, 2023) ("A party seeking to nullify a contracted release due to fraud ... typically bears the burden of proof by clear and convincing evidence.").
- To disqualify an applicant for unemployment benefits because of fraud. *E.g.*, *Byrd v. Westaff USA, Inc.*, 2011 WL 3275156, at *2 (Del. Super. July 29, 2011).
- To vacate an arbitration award based on fraud. *Pocket Change Kahunaville, Inc. v. Kahunaville of Eastwood Mall, Inc.*, 2003 WL 1791874, at *4 (Del. Ch. Mar. 21, 2003).

Since 1931, the trial courts have perforated Delaware's otherwise uniform jurisprudence by applying a preponderance-of-the-evidence standard to common-law fraud claims. Among the earliest Delaware cases to do so is *Nye Odorless Incinerator Corp. v. Felton*, 162 A. 504, 510 (Del. Super. 1931). There, the court deviated from this Court's established precedent by applying the preponderance of the evidence standard to a common law fraud-in-the-inducement claim. *Id.* The

court cited no precedent, Delaware or otherwise, for the lower burden of proof. *See id.* Nevertheless, *Nye Odorless* became widely cited for its clear presentation of the elements of a fraud claim. And with the clear statement of the elements came the court's erroneous burden of proof. Nonetheless, the case was later dubbed a "landmark decision." *See George v. A.C. & S. Co., Inc.*, 1988 WL 22365, at *1 (Del. Super. Feb. 16, 1988). *See also In re IBP, Inc. Shareholders Litig.*, 789 A.2d 14, 54 (Del. Ch. 2001) (another widely cited authority for the preponderance standard)).

Due to confusion created by cases like *Nye Odorless* and *IBP*, lower courts perceive that there is "uncertainty ... 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). *Accord NetApp*, 2023 WL 4925910 at *12 n. 168 (collecting cases).

There are sound policy justifications for requiring clear-and-convincing evidence to establish fraud. Proving fraud typically requires circumstantial evidence. *See, e.g, Matrix Parent, Inc. v. Audax Mgmt. Co., LLC*, 319 A.3d 909, 937 n. 235 (Del. Super. 2024). Because circumstantial evidence creates a greater risk of error, a higher evidentiary threshold is warranted. *See Disner v. Westinghouse Elec. Corp.*, 726 F.2d 1106, 1111 (6th Cir. 1984). ("[T]he higher

standard of clear and convincing evidence is justified precisely because it guards against the risk of error inherent in cases involving allegations of fraud.").

Moreover, the harm caused by erroneous findings of fraud is particularly pernicious not just because it takes the parties outside the bounds of their negotiated contractual allocation of risk, but because of the moral stigma on a defendant who is thereby "branded with something akin to guilt." *Riley Hill Gen. Contractor, Inc. v. Tandy Corp.*, 737 P.2d 595, 603 (Or. 1987). In civil cases involving allegations of fraud "or some other quasi-criminal wrongdoing" the interests at stake may "be more substantial than mere loss of money" and thus merit a higher burden of proof to avoid the "risk to the defendant of having his reputation tarnished erroneously[.]" *Addington*, 441 U.S. at 423-24.

For these reasons, the clear-and-convincing evidence standard has been adopted by a super majority of the nation's highest courts. A review of common-law fraud decisions by those courts demonstrates that 62% apply the clear-and-convincing standard to common-law fraud claims.[11] *See, e.g.*, *Ferryra v. Arroyo*, 149 N.E.3d 47, 47 (N.Y. 2020); *Liberty Mut. Ins. Co. v. Land*, 892 A.2d 1240, 1246

[11] Here is the math: the highest courts in 31 jurisdictions (including the District of Columbia) apply the clear-and-convincing standard. In the remaining 19 jurisdictions, the highest court has either not addressed the issue or applied a lesser standard.

(N.J. 2006); *Rohm & Haas Co. v. Continental Cas. Co.*, 781 A.2d 1172, 1179 (Pa. 2001).

In summary, the Court has not addressed the evidentiary standard for common-law fraud claims for more than a century, it has continued to apply the clear-and-convincing standard to fraud allegations in other contexts as recently as 2025. The trial courts that have applied a preponderance standard in recent years have done so without reference to this Court's jurisprudence. This Court's higher standard is both prudent and consistent with the decisions of most of the nation's highest courts. Accordingly, the Court should reaffirm the clear-and-convincing-evidence burden of proof for common-law fraud claims.

2. The trial court's application of the lower preponderance-of-the-evidence standard led it to erroneously find that Stellex had proven scienter.

The trial court erred by applying the less rigorous preponderance-of-the evidence standard to Stellex's fraud claim. That error led the trial court to conclude that Stellex had proven by a preponderance that the Defendants acted with the intent to induce Stellex to act based on equivocal evidence that it had to "cobble" together. (See Opinion 39-40.) Because the ruling has erroneously tarnished Defendants' reputations, the Court should vacate the trial court's scienter ruling even while otherwise affirming the trial court's judgment. To prove fraud, Stellex had to prove that Defendants "knew or believed" that their representations were "false" or made

the representations "with a reckless indifference to the truth." *See DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954, 958 (Del. 2005). Stellex further had to prove that Defendants "intended to induce" Stellex to act based on knowing misrepresentations. *See id.*

To find that Stellex had proven "scienter by a preponderance of the evidence" (Opinion 40), the trial court relied on bits of circumstantial evidence that the court admitted could be separately explained with "an innocuous rational." (*Id.* at 39.) Nevertheless, the court held that the circumstantial evidence, "cobbled together," established scienter by a preponderance of the evidence. (*Id.* at 39-40.) The court erred by failing to apply the more demanding clear-and-convincing standard which requires "evidence that produces an abiding conviction that the truth of the contention is 'highly probable.'" *In re Martin*, 105 A.3d 967, 975 (Del. 2014). The trial court's hedged conclusion demonstrates that Stellex's proof would not have survived the clear-and-convincing evidence standard.

Stellex's inability to satisfy the clear-and-convincing-evidence standard is apparent when the "cobbled together" evidence is examined under that greater burden. For example, the court concluded that Smith's decision to share his summary and assessment of the ZF cancellation letter without attaching it "suggests that he sought to hide ZF's cancellation from Stellex." (Opinion 35.) But the record shows that Smith disclosed the contents of the letter to Swift and the rest of Stellex's

leadership team, but that he went further and explained the effect the cancellation could have on Paragon and how Stellex could prepare for it. (*Id.* at 43-44; Smith Email, B000442.) The trial court was unsure that this explanation "calls more attention to the issue than attaching the cancellation letter itself" (Opinion 35), but this tasks Defendants with a burden they did not have. The question when evaluating scienter is whether Stellex could prove by clear-and-convincing evidence that Defendants intended to withhold the information. *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 143 (Del. Ch. 2004). The fact that Defendants expressly disclosed the information should have cut against Stellex's case, not in favor of it.

Similarly, the court believed that Smith's insistence during negotiations with ZF that volume forecasts be removed "suggests that Smith wanted to hide the expected volume decrease from Buyers" and that Defendants "did not disclose the falling volumes." (Opinion 36, 38 (cleaned up).) But Defendants *did* disclose the falling volumes as the trial court recognized elsewhere. The forecasted reductions were disclosed in Paragon's forecasts on which Stellex based its deal moDel. (*Id.* at 42-43.) In fact, the reduction predicted in Paragon's forecast was steeper than the forecast that ZF projected. (*Id.* at 42.) Likewise, Smith informed Stellex in writing that the volume of 9HP50 transmissions that ZF was producing would not exceed 200,000, which was less than half the original projection. (Smith Email, B000443.)

This is another instance where the trial court's preference for duplicative disclosure led it to find a suggestion of scienter.

The court also faulted Defendants for not disclosing a rebate to ZF, which the court recited "was never recorded on the books of Paragon." (Opinion 37, n.228.) But the parties agreed that rebates pursuant to written agreements would not require separate disclosure. (Agreement §3.6(b), B000156.) The rebate was not paid by Paragon but by another Smith-owned company so there was no reason for it to appear on Paragon's books. (*See* Opinion 37 ("The Court agrees that there is nothing inherently illegitimate with how Sellers paid the ZF rebate.").) Not disclosing a fact that is not required to be disclosed and which had no material adverse effect on Stellex is not clear-and-convincing evidence of scienter.

As a final example, the trial court concluded that because Smith discarded his company-issued phone "when the parties' dispute was brewing," there is a hint "at a wrongful intent." (*Id.*) Smith had no idea of any "brewing" (*id*.) dispute until January 2020, a year after he left Paragon (*see* SJ Opinion 11). But the undisputed record shows that Smith changed phones "several months" after leaving Paragon in January 2019. (Opinion 37.) Smith did not know of any dispute, so the fact that Smith replaced his phone when he got a new one does not evidence illicit intent.

The evidence the lower court relied on does not create an abiding conviction that it is highly probable that Defendants acted with the requisite scienter. *See In re*

Martin, 105 A.3d at 975. Because the trial court erroneously applied the wrong burden of proof on Stellex, it made a scienter ruling that has inflicted upon Defendants unwarranted moral opprobrium and loss of reputation. The Court should thus vacate the trial court's finding of scienter. If the case is remanded on any other issue, however, the Court should, at minimum, ensure that the lower court reevaluates all elements of Stellex's fraud claim including the scienter element applying the higher burden of proof to avoid the "risk to the defendant of having his reputation tarnished erroneously[.]" *Addington*, 441 U.S. at 424.

V. The trial court erred when it concluded that Defendants made false statements.

A. Question Presented

Whether the trial court erred when it held that Paragon falsely represented that it had not received notice from customers that they "will decrease the rate of buying products" based on customers' communications about what orders they might place outside the business warranted by Paragon. This issue is preserved. (Defs.' SJ Br. A000706-707; Defs' Post-Trial Br. A016183-16185.)

B. Scope of Review

This Court reviews questions of law, including the interpretation of a contract, de novo. *Osborn*, 991 A.2d at 1158.

C. Merits of Argument

The trial court concluded that Paragon's receipt of ZF and FCA five-year forecasts as well as the FCA-cancellation letter from ZF rendered false Defendants' representation in Section 3.23 that Defendants had not received notice that either customer would decrease the rate of product purchases from Paragon. The court held that the same information falsified Defendants' representations in Section 3.8 that Defendants had no knowledge that Paragon had or would be expected to have suffered a material adverse effect. These holdings were erroneous because they exceeded the scope of Paragon's representations. Paragon limited its representations

regarding ZF and FCA to the business included in its scheduled contracts. And because those contracts did not obligate them to buy parts months or years in the future, forecasts of what orders those customers might place in future months or years exceeded the scope of Paragon's contractual representations.

1. Paragon did not make any representations about sales volumes beyond what was in its scheduled customer contracts.

The trial court correctly understood that Paragon disclaimed any representation related to its top-ten customers beyond the business reflected in its scheduled contracts. (SJ Opinion 23-25.) In Section 3.12, Paragon warrants that it "is not a party to or bound by ... any long term or master supply agreement" not listed on Schedule 3.12. (Agreement §3.12(i), B000159-160.) The limited nature of Defendants' representations is underscored by Section 3.30 which disclaims representations and warranties not found in Article 3 "as qualified by the schedules." (*Id.* at §3.30, B000174.) The trial court correctly interpreted the representations in Article 3 together to mean that the representations in Sections 3.23 and 3.8 were limited to the customer business Paragon had identified in Schedule 3.12. (SJ Opinion 23-25.)[12]

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[12] This understanding led the trial court to dismiss Stellex's claims related to another Paragon customer, Musashi. Stellex claimed to have been misled regarding a future

As the next two sections explain, the trial court misinterpreted Paragon's contracts with ZF and FCA resulting in the erroneous conclusion that Paragon had made long-term representations in Sections 3.23 and 3.8 related to those customers. (Opinion 21-23.)

2. Paragon's agreements with ZF and FCA did not provide for more than two weeks of future business, meaning Paragon disclaimed any representations beyond that period.

To determine the scope of Paragon's representations regarding its business with ZF and FCA, the trial court reviewed the contracts with those customers identified on Schedule 3.12. (*Id.*) Properly understood, Paragon scheduled umbrella agreements with those customers which were in place to govern future contracts but were not themselves enforceable beyond the duration of the customer's most recent order.

As previously noted, Paragon's contracts with ZF and FCA were governed by Michigan law. Under Michigan's Uniform Commercial Code, the supply contracts are not enforceable "beyond the quantity of goods shown in the writing." Mich.

Musashi program that was not identified in Schedule 3.12. (SJ Opinion, A011154.) The trial court correctly reasoned that this claim was barred by the anti-reliance clause because it exceeded the scope of Paragon's representations under Sections 3.23 and 3.8. (*Id.*) Stellex has not appealed this ruling.

Comp. Law §440.2201(1). That quantity can be either a fixed number or measured by the customer's requirements. *See Airboss*, 999 N.W.2d at 338-41.

The ZF GPA, including the amendment, and FCA's terms do not contain either commitment. (*See* GPA, B000013 (stating the GPA was "NOT A REQUIREMENTS CONTRACT"); FCA Terms, B000073-97.) Agreements like the GPA and FCA's terms are "more appropriately thought of as an umbrella agreement that governs the terms of future contract offers." *Airboss*, 999 N.W.2d at 340. Umbrella agreements are "only enforceable once a firm quantity is stated, which happens only when a release is issued and accepted." *Id.* (cleaned up). Consequently, both contracts were formed on a release-by-release basis. *See id.* (explaining that release-by-release agreements are common in the automotive industry).

Here, releases issued by ZF to Paragon obligated ZF to buy quantities identified for the next two weeks (referred to as "firm" orders). (SJ Opinion 22; GPA §5, B000020.) FCA's releases did not provide firm quantities. (*See generally* FCA Terms, B000073-97.)[13]

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[13] A few years ago, Stellex agreed that the GPA was unenforceable because it did not contain a commitment to purchase any portion of ZF's requirements. (LaTarte Dep., A001265-1266.) Stellex was right then, just as Defendants are right now; the enforceability of the GPA does not turn on Stellex's current litigation needs.

The customers' long-term forecasts did not create long-term obligations either. The umbrella agreements expressly provided that forecasts did not create commitments to purchase parts. (GPA §3.5, B000018-19; FCA Terms §5, B000078-79.) Indeed, ZF's Global Commodity Director testified that the forecasts were "not a notification that ZF will purchase any of those quantities," nor even "notification that ZF's purchases will align with [the forecasted] numbers in any particular way." (Spackman Dep., A001199.)

Accordingly, when Paragon identified the FCA and ZF contracts in Schedule 3.12, it was disclaiming any representation or warranty as to customer orders beyond the then-current releases (and letting Stellex know that even the current FCA release was not firm). (*See* Agreement §3.12, B000159-160 (disclaiming any contracts not listed in Schedule 3.12).)

Paragon's Section 3.12 disclaimer cabined its representations under Sections 3.23 and 3.8. Five-year forecasts showing what orders ZF and FCA may place in the future cannot constitute notice that either customer "will" decrease the rate of buying products in a way that would render Section 3.23 false because Paragon disclaimed *any* sales to ZF and FCA during those years. The same reasoning applies to the ZF cancellation letter. Even if the ZF letter signified a potential shift in orders in March 2019, this was more than two weeks after closing and thus outside ZF's firm release. (ZF Letter, B000336 (referencing anticipated March 2019 cancellation

of KL platform); Spackman Dep., A006030 (identifying that Paragon supplied the "KL" platform").)[14]

The same holds true for the occurrence of a material adverse effect under Section 3.8. An MAE requires "an adverse change in [Paragon's] business that is consequential to [Paragon's] long-term earnings power over a commercially reasonable period." *AB Stable VIII LLC v. MAPS Hotels & Resorts One LLC*, 268 A.3d 198, 217, n.86 (Del. 2021) (cleaned up). The receipt of a forecast that shows *more* business than Paragon was contracted for and was warranted by Paragon in the Agreement cannot be an "adverse change." *Accord Zayo Grp., LLC v. Latisys Holdings, LLC*, 2018 WL 6177174, at *10, 14 (Del. Ch. Nov. 26, 2018) (holding that where seller disclosed that years-long customer relationships were governed by month-to-month contracts that imposed no renewal obligation, customers' non-renewal decisions before closing did not falsify the representation that there had been no material modifications to those contracts).

[14] Not all of Paragon's contracts were release-by-release. With some customers, Paragon had long-term requirements contracts. (*See, e.g.*, Musashi Terms, B000001.) Paragon's Section 3.23 representation related to those customers extended beyond two weeks.

3. The trial court reached a different conclusion only because it strayed beyond Paragon's warranted contracts with ZF and FCA.

Despite earlier observing that the GPA's release-by-release nature made it equivalent to "contracts that expired every two weeks," (SJ Opinion 22), the trial court reached a different conclusion after trial by relying on parol evidence. It made the same mistake regarding FCA's purchase orders.

The trial court erred by focusing on the duration of the umbrella agreements instead of whether the GPA and FCA terms actually committed either customer to ordering any parts. The court observed that the GPA and its amendment had a "term" through at least 2027. (Opinion 19-23.) The court then reasoned that this term, the GPA's requirement that Paragon maintain certain levels of manufacturing capacity, and Paragon's investments to meet that capacity requirement, were "fundamentally inconsistent with Sellers' assertion that ZF could order zero parts after two weeks." *Id.*

But as a matter of Michigan law, the ZF GPA and FCA terms either provided for future quantities or they did not—future quantities cannot be inferred based on parol evidence. *See Lorenz Supply Co. v. Am. Standard, Inc.*, 358 N.W.2d 845, 847 (Mich. 1984) (holding that a contract's "quantity term" must be "specifically stated" and cannot be "infer[red]"); *Kendzierski v. Macomb Cnty.*, 931 N.W.2d 604, 615 (Mich. 2019) ("The parol evidence rule prohibits the use of extrinsic evidence to

interpret unambiguous language." (cleaned up)). Because the GPA and FCA purchase orders unambiguously did not require Paragon's customers to order parts outside of the two-week window in the ZF GPA, the trial court should not have looked to the parties' extracontractual actions to determine the length of their contractual commitment.

The trial court's contrary reasoning tracks arguments the Michigan Supreme Court rejected in *Airboss*. *See* Mitsubishi's Br., 2022 WL 1574714, at *34–35. There, the court held that despite over six years of supply and substantial investments made according to a blanket purchase order, no party was guaranteed future performance from the other under that umbrella agreement. *Airboss*, 999 N.W.2d at 343-45.

By scheduling the GPA, the GPA amendment, and the FCA terms, Paragon disclaimed any representation as to business with those customers beyond the next two weeks. (*See* Agreement §3.12, B000159-162.) The trial court thus erred in ruling that Sections 3.23 and 3.8 were false based on forecasts and a letter concerning possible future sales extending far beyond these periods.

CONCLUSION AND REQUESTED RELIEF

The trial court reviewed all the evidence and correctly found that Stellex failed to prove justifiable reliance under any of theory. Stellex tries to compartmentalize the evidence, hoping that it might prevail if the trial court were forced to assess justifiable reliance in a vacuum divorced from the circumstances as a whole. But Delaware law does not support Stellex's approach and the parties' Agreement requires the opposite. The trial court's judgment in Defendants' favor should be affirmed.

The trial court did err, however, in holding Stellex to a preponderance-of-the-evidence burden only. Its findings on justifiable reliance are all the stronger for having been made based on the lesser preponderance standard, but its scienter ruling should be vacated because it is premised on that lesser standard.

If the Court agrees with any of Stellex's appeal arguments, the Court should nevertheless affirm the judgment in Defendants' favor because Stellex did not prove falsity.

Lastly, if Stellex obtains remand, the mandate should require that entire case be reassessed applying the clear-and-convincing-evidence standard.

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