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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 LP, a Delaware limited partnership, Plaintiffs Below, Appellants, v. MICHAEL J. SMITH, an individual, and THE PARAGON INDUSTRIAL HOLDINGS GROUP, INC., a North Carolina corporation, Defendants Below, Appellees	NO. 385, 2025 Court Below: Superior Court of the State of Delaware C.A. No. N21C-12-090 SKR CCLD

APPELLANTS' REPLY BRIEF ON APPEAL AND CROSS-APPELLEES' ANSWERING BRIEF ON CROSS-APPEAL

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NATURE OF THE PROCEEDINGS

The nature of proceedings is set forth in Buyers' Opening Brief. On December 4, 2025, Sellers filed their Answering Brief on Appeal and Opening Brief on Cross-Appeal. This is Buyers' Reply on Appeal and Answering Brief on Cross-Appeal.[1]

[1] This Reply Brief on Appeal and Answering Brief on Cross-Appeal uses the same definitions and abbreviations used in Appellants' Opening Brief on Appeal.

SUMMARY OF ARGUMENT

Appeal Issues

A. Sellers contort Section 5.10(a)—and legion Delaware precedent—to create an unlimited duty by Buyers to conduct due diligence and uncover every snippet of outside information in a virtually unlimited haystack. The Agreement here does not even mention diligence by Buyers, much less require it. Sellers instead stretch Section 5.10(a) beyond its plain language to engineer an affirmative representation by Buyers about the quality of diligence. But the trial court made ***no*** findings about "the ***results*** of [Buyers'] own independent investigation and verification"—much less Buyers' "satisfaction" with same, all as provided by Section 5.10(a)—focusing on isolated "inartful" fragments of cryptic information. Sellers also ignore the impact of the Anti-Reliance Clause. Delaware law draws a distinction between the world of anti-reliance clauses, which cabin the reliance inquiry to the representations in the agreement, and the world beyond anti-reliance clauses, where reasonable reliance is a fact-intensive inquiry. *See*, *e.g.*, *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *17-*18 (Del. Ch. Jan. 26, 2024). Sellers misconstrue Buyers' cases as interpreting anti-reliance clauses to exclude claims for representations made outside an agreement, but allowing sellers to introduce extracontractual information for the reliance element of fraud. Ultimately, the illogicality of the trial court's reasoning is exposed by the fact that the same seven

badges of fraud it found for scienter also undermine reliance—it is actually the opposite, since that scienter evidence actively frustrated Buyers. If left to stand, the trial court's decision would undo every negotiated anti-reliance clause in countless transactions following Delaware law and create a duty to perform perfect due diligence in every transaction.

B. The trial court erred in adopting a "knew or should have known" standard, instead of actual knowledge, in the face of a valid Anti-Reliance Clause. The trial court never found actual knowledge and always hedged its findings as "knew or should have known." Sellers incorrectly attempt to distinguish Buyers' caselaw as relating to the procedural posture of a motion to dismiss, but nothing in those cases confined those holdings to a motion to dismiss.

C. The trial court erred in concluding that Buyers unjustifiably relied on Sellers' representation in Section 3.23 concerning the absence of a change in ZF's purchasing terms. The trial court pointed to no clear evidence showing Buyers knew or should have known of the falsity of the issue. To the contrary, the trial court held Sellers never disclosed the issue at all. Left without an articulated rationale, Sellers point to non-existent evidence. The very same evidence Sellers cite for absence of justifiable reliance is in many cases the same evidence that the trial court used to find scienter by Sellers.

Cross-Appeal Issues

A. Denied. This Court's caselaw and the overwhelming majority of Delaware cases apply a preponderance of the evidence standard to common law fraud claims.

First, Sellers misread stray comments in this Court's pre-20th century decisions referring to "clear" evidence of fraud as imposing a higher "clear and convincing standard," and fail to cite decisions made in that same time frame that impose the preponderance of evidence standard.

Second, unable to find any support within Delaware law, Sellers urge the Court to upset 100 years of Delaware precedent by adopting what they call the "majority" rule across the United States. Sellers overlook that the overwhelming majority of cases in Delaware have declined to adopt the clear and convincing standard, and Sellers present no rationale for Delaware to import the laws of other states to upset established Delaware precedent on a well-settled issue.

B. Denied. The trial court correctly interpreted the language of Section 3.23 of the Agreement that customers "will decrease the rate of buying products" to apply to "decreases in the sale of individual products" that are "reasonably expected to happen in the future," and not rewrite the representation to include a qualification about whether the sales commitments were long-term in nature. Sellers err in

contending that they warranted a limited amount of products constrained by the term of existing purchase orders. Section 3.23 contains no such restriction.

STATEMENT OF FACTS

The Statement of Facts pertinent to the reply and answering brief is set forth in Buyers' Opening Brief. *See* Buyers' Opening Brief at 5-15.

REPLY IN SUPPORT OF BUYERS' ARGUMENT ON APPEAL

I. THE TRIAL COURT ERRED IN GOING BEYOND EXPRESS REPRESENTATIONS TO DETERMINE JUSTIFIABLE RELIANCE.

A. Section 5.10(a) Does Not Open The Door To Sellers' Diligence Disclosures.

Sellers themselves first labeled Section 5.10(a) as an "anti-reliance provisio[n]" that "ma[de] clear the universe of information each party was relying on in agreeing to the deal" and which "specifically states that [Buyers] did not rely on any extra-contractual materials" (A000269, A000285-A000290, A000346-A000347, A000354-A000356, A000360, A000363, A000365). Sellers now reverse tactics on appeal, claiming Section 5.10(a) is a one-way representation that Buyers relied on extra-contractual materials. The argument fails on multiple fronts.

First, Sellers mischaracterize Buyers' argument claiming "Stellex contends that because it promised [Sellers] that it would not rely on any extracontractual representations . . . by [Sellers], it had the legal right to ignore all extracontractual information." Paragon Answering Brief ("AB") at 25–26. Buyers have not ignored anything, nor have they asked this Court to do the same. Instead, the Court should focus on the "results" or actual knowledge of Buyers. Thus, Buyers ask the Court to enforce the plain language of Section 5.10(a), recited in full for avoidance of doubt (Stellex Opening Brief ("OB") at 6), and honor the parties' mutual assent to limit the universe of information relied upon in entering the Agreement based on the Anti-

Reliance Clause they agreed upon. *See id*. at 16–25. Buyers ask the Court to reject Sellers' argument that the universe of information in play included all of their cryptic, inartful references in due diligence—made while Sellers committed 7 of 10 badges of fraud.

Sellers rewrite Section 5.10(a) by conflating the "results of [Buyers'] own 'independent investigation and verification'" with Sellers' extracontractual information. AB at 26. That is not what Section 5.10(a) says. It references Buyers' reliance "on the results of its own independent investigation" as well as "the representations and warranties expressly and specifically set forth in Article 3 and Article 4" of the Agreement. (AB at 7 (quoting A00504–05).) The Agreement contemplates Buyers' reliance on two categories: the "results" of Buyer's own investigation and verification and Sellers' representations. Nothing more.

Under Sellers' construction, the latter clause has no meaning, nor does it matter what Sellers represented in the Agreement. *See* AB at 27–29. Sellers claim Buyers' reliance on the "results of its own independent investigation and verification" means the Buyers undertook a limitless diligence burden—including to ferret out false statements Sellers made in the Agreement at Articles 3 and 4—and that Section 5.10(a) inures only to Sellers' benefit. *Id.* As further explained below, Point III.B., *infra*, Sellers offer no explanation or authority to support such result. What in reality was "independent investigation and verification"—was limited by

"results." The text of Section 5.10(a) itself would limit the scope of Buyers' reliance to the "results" of its "independent investigation and verification." Nothing that the trial court cited as evidence was a "result." What the trial court cited was a collection of cryptic, "inartful" references in Sellers' extracontractual due diligence materials. Op. 40–45. Waxman testified without contradiction that "results" in Section 5.10(a) means "output," and Buyers "selected [that] on purpose," to avoid a needle-in-a-haystack defense. A012023-A012024. Where contractual misrepresentations form a fraud claim, an anti-reliance clause cabins the universe of information and directs a simplified reliance inquiry. *See* OB at 17–18.

Sellers attack Buyer's reliance on decisions like *Labyrinth*, *Columbus*, and *NetApp*, but miss the point. AB at 28–29. Differences in the procedural posture do not undermine the general principles of Delaware contract law that Buyers invoked. *Labyrinth* supports that where an anti-reliance clause references contractual representations by a seller, a buyer can justifiably rely on the accuracy of those statements. *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *17-*18 (Del. Ch. Jan. 26, 2024). The *Labyrinth* court did not rule that language indicating the buyer had "conducted its own independent investigation" swallowed the latter half of the clause identifying the seller's representations relied upon. *Id*. The question was "whether [the clause] preclude[d] Buyer's reasonable reliance on representations that *are not* identified." 2024 WL 295966, at *17–18. *Columbus* and *NetApp* affirm

the principle that justifiable reliance is "easily met" where the false statements are "contained in a written agreement." *Columbus US Inc. v. Enavate SMB, LLC*, 2024 WL 5274569, at *13 (Del. Super. Ct. Dec. 23, 2024) (buyer's reliance on seller's contractual misrepresentations concerning customer revenue was justified despite the fact that issues concerning veracity of those representations arose in due diligence);[2] *accord NetApp, Inc. v. Cinelli*, 2023 WL 4925910, at *15 (Del. Ch. Aug. 2, 2023) (similar). Sellers have not shown otherwise.

Sellers make much ado of the "verification" language in Section 5.10(a), but that does not open up an inquiry into unfettered due diligence because the phrase "results of its own" modifies both "independent investigation and verification." The "results" of Buyers' "*own independent* investigation and verification" refers to Buyers' own work, not inartful references in Sellers' due diligence materials. Sellers ignore the language of Section 5.10 to advance an untenable construction: that the Anti-Reliance Clause created an obligation for Buyer to conduct perfect due diligence, while allowing Sellers to make contractual misrepresentations without any risk of liability for fraud.

[2] Because the buyer in *Columbus* agreed not to rely on any "'due diligence materials' or any other extra-contractual representations" made by the seller, the buyer was "barred from relying on . . . the alleged extra-contractual representations" made by seller for its fraud claims. 2024 WL 5274569, at *9. That did not, however, prevent the buyer from basing its fraud claim "on representations expressly contained in the [parties' agreement]." *Id.*

Sellers turn *Getzler v. River Run Foods (DE), LLC*, 2024 WL 3273430, at *6 (Del. Super Ct. July 1, 2024) and *Arwood v. AW Site Servs., LLC*, 2022 WL 705841, at *23 (Del. Ch. Mar. 9, 2022) on their head to claim that these decisions contained an affirmative representation that the buyer had performed its own independent investigation and verification. AB at 35. *Getzler* is not even an acquisitions case, but an investment based on a pre-contractual prospectus. 2024 WL 3273430, at *6. The prospectus in *Getzler* contained a "disclaimer" that the plaintiffs should conduct their own "investigation and analysis." *Id*. at *6. The lesson from *Getzler* is that a disclaimer in a pre-contractual prospectus cannot *ipso facto* affect reliance on the representations in a sophisticated agreement. And, because the contract in *Getzler* had no anti-reliance clause, *Getzler* does not carry the water for Sellers.

Arwood was devoid of any representation by buyer that it performed its own due diligence. *Arwood,* 2022 WL 705841, at *24. *Arwood* was clear that sellers "made" the representations, and buyers "accepted those promises." *Id*. at *31. Because the *Arwood* contract did not contain a valid anti-reliance clause, it is of no moment in deciding the scope of justifiable reliance here. *Arwood,* 2022 WL 705841, at *12-13. The absence of a valid anti-reliance clause placed *Getzler* and *Arwood* "[i]n the world beyond anti-reliance clauses," where "reasonable reliance is a fact-intensive inquiry." *Labyrinth*, 2024 WL 295996, at *18.

B. Section 5.10(a) Does Not Impose An Obligation To Conduct Reasonable Diligence.

The trial court erroneously held that Section 5.10(a)'s first clause created a duty to conduct "*reasonable* diligence," when the language the parties agreed on was independent investigation and verification to Buyers' "*own satisfaction*." A011903; A000504(JX1:§5.10(a) ("Buyer has conducted to its satisfaction an independent investigation and verification . . . ."). Alternatively, even if the Court were to find Section 5.10(a) imposed a duty to conduct due diligence (it did not), that obligation was limited to Buyers' subjective "satisfaction," not an objective reasonability standard. *Cf. Wilmington Leasing, Inc. v. Parrish Leasing Co., LP*, 1996 WL 560190, at *2 (Del. Ch. Sept. 25, 1996) (holding that clause calling for whether party performed "satisfactorily" does "call for such a subjective, discretionary determination"). Thus, Sellers fail to sustain the trial court's imposition of a reasonability standard.

C. The Anti-Reliance Clause Cabined the Universe of Information for the Benefit of Both Parties.

First, Sellers misinterpret the caselaw on the Anti-Reliance Clause to only protect sellers, and not frame the body of evidence that constitutes reasonable reliance. Sellers' argument that due diligence is always a fact-dependent inquiry even in the face of an Anti-Reliance Clause is misplaced. Sellers rely on *Vague v. Bank One Corp*., 2004 WL 1202043, at *1 (Del. May 20, 2004), *Great Hill Equity*

Partners IV, LP v. SIG Growth Equity Fund I, LLLP, 2018 WL 6311829, at *33 (Del. Ch. Dec. 3, 2018), and *Trifecta Multimedia Holdings Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465-67 (Del. Ch. 2024) to no avail. All of these cases lacked an Anti-Reliance Clause, so their holdings that—outside of an anti-reliance clause—justifiable reliance is a context-dependent fact question are simply not germane to the issue here.

Sellers' effort to distance *Labyrinth*, 2024 WL 295996, at *18, as a motion to dismiss case that did not address "the fact-intensive inquiry necessary to prove justifiable reliance" fails. AB at 37. Sellers overlook *Labyrinth's* distinction between cases with and without valid Anti-Reliance Clauses. 2024 WL 295996, at *18. Justifiable reliance becomes a "fact-intensive inquiry" only where an Anti-Reliance Clause is lacking. *Labyrinth*, 2024 WL 295996, at *18 ("In the world beyond anti-reliance clauses, reasonable reliance is a fact-intensive inquiry" (citing *Arwood*, 2022 WL 705841, at *23)). Nothing in *Labyrinth* suggests that the distinction Sellers urge confining it to the motion to dismiss stage is valid.[3]

Sellers contend that *Columbus*, 2024 WL 5274569, at *9, does not extend beyond simply protecting seller from buyer claims for extracontractual representations. But Sellers ignore the purpose of an anti-reliance clause, which is

[3] Sellers' distinction that *Labyrinth's* language represented buyer did *rely on* extra-contractual information fails because it only further reflects *Labyrinth's* conclusion that there was no anti-reliance clause –- a fact not present here.

to "enhance certainty in contracting," a goal shared by both buyers and sellers. *Id*. at *8. Sellers overlook that the *Columbus*-buyer "easily met" justifiable reliance because the representation was in a written agreement and the buyer "ha[d] an absolute right to rely on the truthfulness of the representation." *Id*. at *13. The Anti-Reliance Clause benefited both parties.

Next, Sellers disregard *Prairie Capital III, L.P. v. Double E Holding Corp*., 132 A.3d 35, 50 (Del. Ch. 2015) as a decision precluding extracontractual fraud claims (AB at 31), but ignore that *Prairie Capital* interpreted similar language to Section 5.10(a) to cabin the "universe of information on which that party relied." *Prairie Capital*, 132 A.3d at 51. The sellers in *Prairie Capital* tried to point to "written materials" and "financial statements" provided "during the sale process and due diligence." *Id*. at 49. There, the "universe of information" was not limited to actionable representations, as Sellers now contend, but to "the universe of information that is in play for purposes of a fraud claim." *Id*. at 52. *Prairie Capital* interpreted the exclusive representation clause to mean that "the [b]uyer did not rely on other information." *Id*. at 51.[4] The court interpreted the agreement to create a "critical distinction" "between information identified in the written agreement and information outside of it." *Id*. at 52. If the information is outside of the universe as an actionable representation, it is outside for the justifiable reliance element.

[4] The Agreement also has an integration clause. A00535; A11700 JX1:§12.12.

Sellers cast aside other cases interpreting *Prairie Capital* as decisions benefitting only sellers by excluding fraud claims based on extracontractual statements. *Uberether, Inc. v. Anitian, Inc*., 2023 WL 1471754, at *4 (D. Del. Feb. 2, 2023) (substantially-similar language quoted in *Prairie Capital* amounted to buyer's promise that it did not rely on "statements outside the contract's four corners"), *report and recommendation adopted*, 2023 WL 2072425, at *1 (D. Del. Feb. 17, 2023); *Bamford v. Penfold, L.P*., 2020 WL 967942, at *15 (Del. Ch. Feb. 28, 2020). But those decisions did not confine themselves to benefits to the seller, but cited mutual benefits to both parties. *Bamford*, 2020 WL 967942, at *15 ("Sophisticated parties bargaining at arms' length can agree to limit the information on which they have relied . . . ."). Similarly, here, the Anti-Reliance Clause benefits both parties by "minimiz[ing] the risk of erroneous litigation outcomes by reducing doubts about what was promised and said." *Prairie Capital*, 132 A.3d at 50.

Sellers commit the same error with respect to other cases' interpretation of substantially similar language to Section 5.10(a). Sellers claim they can introduce through the back door of justifiable reliance that which parties to a contract agreed to exclude from their contracts. *Portfolio BI, Inc. v. Djukic*, 2024 WL 887047, at *1-3 (Del. Ch. Feb. 29, 2024) (substantially-similar clause meant that buyer did not base decision to acquire company on representations "beyond the four corners of the [agreement]"); *3M Co. v. Neology, Inc*., 2019 WL 2714832, at *2 (Del. Super. Ct.

Jun. 28, 2019) (anti-reliance clause and exclusive remedy clause preserve the right to bring fraud claims based on contractual representations); *Cablemaster LLC v. Magnuson Grp. Corp*., 2023 WL 8678043, at *7 n.78 (Del. Super. Ct. Dec. 5, 2023) (substantially similar clause meant that "claims are based on what [buyer] was permitted to rely on: express contractual representations").

Moreover, Sellers disregard what the cases uniformly state is the result of an Anti-Reliance Clause in an intracontractual fraud claim: it not only impacts the scope of actionable representations, but also impacts the scope of what is justifiable to rely on. *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1057 (Del. Ch. 2006) ("[S]ophisticated parties to negotiated commercial contracts *may not reasonably rely* on information that they contractually agreed did not form a part of the basis for their decision to contract." (emphasis added)). Thus, in *Aveanna Healthcare, LLC v. Epic/Freedom, LLC*, a contractual representation, combined with an acknowledgement of the sellers' "disclaimer of any extra-contractual representation" and an integration clause, meant that buyer "was not permitted to rely on any statements outside the" agreement. 2021 WL 3235739, at *3-4, *14, *19 (Del. Super. Ct. Jul. 29, 2021).

Sellers ignore that an Anti-Reliance Clause in an intracontractual fraud claim lowers the bar to proving justifiable reliance because it is "relatively easy" to prove reliance in such claims. *ChyronHego Corp. v. Wight*, 2018 WL 3642132, at *7 (Del.

Ch. Jul. 31, 2018). *ChyronHego* held that an Anti-Reliance Clause defined "those representations of fact that formed the reality upon which [they] premised their decision to bargain" and meant that "[p]laintiffs could not have acted in justifiable reliance on any extra-contractual representations or warranties." 2018 WL 3642132, at *4. Sellers narrowly construe *ChyronHego* as a case that defines which representations are actionable, and completely overlook that *ChyronHego* is a "reasonable reliance" case that allows parties to "define those representations of fact that formed the reality upon which [they] premised their decision to bargain." *Id*. at *1, *4–5 (quoting *Abry Partners*, 891 A.2d at 1058). *See also AmeriMark Interactive, LLC v. AmeriMark Holdings, LLC*, 2022 WL 16642020, at *3 (Del. Super. Ct. Nov. 3, 2022) (substantially-similar clause was sufficient to satisfy justifiable reliance).

Sellers contend that *NetApp*, which held that the "[j]ustifiable reliance" "element is 'easily met' where 'the false statements at issue are contained in a written agreement,'" is distinguishable because it did not involve an investigation clause. *NetApp*, 2023 WL 4925910, at *12 n.168, *15–16 & n.209. This is a distinction without a difference. Nothing in *NetApp* noted that this holding was conditioned on the absence of an investigation clause, and Sellers cite to no opinions to the contrary.

Accordingly, because Section 5.10(a) limited the "universe of information that is in play for purposes of a fraud claim," the trial court erred by considering

extracontractual information to conclude that Buyers unreasonably relied on the representations in Section 3.8 and 3.23.

II. THE TRIAL COURT ERRED IN APPLYING A "KNEW OR SHOULD HAVE KNOWN" STANDARD.

A. Buyers Did Not Waive Their Argument.

Sellers' claim that Buyers did not raise "actual reliance" in the trial court has no merit. *See* AB at 26. In their summary judgment briefing—relying on the exact same authority cited on appeal—Buyers argued for an "actual knowledge" standard because of the applicable Anti-Reliance Clause. A001948–1949 (citing, *e.g., Urvan v. AMMO, Inc.*, 2024 WL 863688 (Del. Ch. Feb. 27, 2024); *Agspring Holdco, LLC v. NGP X US Holdings, L.P.*, 2020 WL 4355555 (Del. Ch. July 30, 2020). Because Buyers presented the exact same argument and authority to the trial court, any claim of waiver belies logic.

Even if that were not so, and Buyers advanced additional authority in support of their arguments on appeal, preservation asks where *an issue* was raised, not every supporting rationale. Supreme Court Rule 8 states: "[o]nly questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented." Del. Supr. Ct. R. 8; *accord Floreani v. FloSports, Inc.*, 2025 WL 3275207, at *13 (Del. Nov. 24, 2025) ("questions fairly presented to the trial court may be presented for review" and the Court may "affirm on the basis of a different rationale than that which was articulated by the trial court" on an "issue fairly presented to the trial court" even if it was not ruled upon). This Court has held

that "the mere raising of [an] issue is sufficient to preserve it for appeal." *Watkins v. Beatrice Cos., Inc.*, 560 A.2d 1016, 1020 (Del. 1989). "[W]hen the argument is merely *an additional reason in support of a proposition urged below,* there is no acceptable reason why in the interest of a speedy end to litigation the argument should not be considered." *Origis USA LLC v. Great Am. Ins. Co.*, 345 A.3d 936, 954 & n.78 (Del. 2025) (emphasis added; quoting *Mundy v. Holden*, 204 A.2d 83, 85 (Del. 1964) (holding that a party's new argument on appeal was merely an additional reason supporting a theory already advanced below)); *accord LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1145 n.52 (Del. 2025) (rejecting waiver argument where highlighting a different phrase in a contract provision on appeal was deemed an additional reason supporting a theory consistently advanced below, not a new argument).

The sole case Sellers cite for their preservation argument, involved a new factual theory. AB at 33, 43 (citing *Genger v. TR Invs., LLC*, 26 A.3d 180, 197 (Del. 2011). In *Genger*, the appellant tried to argue a new factual theory; specifically, *a different timing of execution* for the proxy than what was argued in the trial court. *Genger*, 26 A.3d at 197. The Delaware Supreme Court refused to consider this new fact because it was not presented below. *Id*. (rejecting ground for appeal after appellant argued on appeal that proxy was executed "day after" subject transfers after representing to the trial judge below that proxy was executed "the

same day" as subject transfers). Here, Buyers have not introduced any new fact or theory; even under Sellers' framing, at most, Buyers offer only an additional rationale for the same preserved issue concerning the "actual knowledge" standard.

B. Actual Knowledge Is The Standard Where An Anti-Reliance Clause Exists.

Sellers fundamentally misapprehend the state of the law on Anti-Reliance Clauses. Delaware law has held that the bar for justifiable reliance is relatively easy where an intracontractual fraud claim is brought based on a written representation. *ChyronHego*, 2018 WL 3642132, at *7; *NetApp*, 2023 WL 4925910, at *15–16 . Still other cases reduce the reliance burden where a written representation is present. *Tam v. Spitzer*, 1995 WL 510043, at *9 (Del. Ch. Aug. 17, 1995) (a recipient of a false representation has "no duty to investigate the accuracy of representations made by the seller concerning its profitability and operational affairs, even when there is an opportunity to do so."); *Columbus*, 2024 WL 5274569, at *13.

Combined with these cases, Sellers overlook that contracts with an Anti-Reliance Clause stand in a separate realm from cases without such a clause. *Labyrinth*, 2024 WL 295996, at *18; *Agspring*, 2020 WL 4355555, at *13; *Urvan*, 2024 WL 863688, at *11-*12. These cases are consistent with the Anti-Reliance Clause, which provides that Buyers reliance on the "results" or actual knowledge of their own independent investigation and verification. Yet, Sellers contend that all of these decisions are limited by their procedural posture (whether on a motion to

dismiss or otherwise), and literally do not mean the same thing when considered outside that context. Nothing supports this reading and holding otherwise would upend settled precedent.

Sellers' attempts to distinguish the procedural posture of *Urvan* and *Agspring* as motions to dismiss cases are ineffective. *Agspring*, 2020 WL 4355555, at *13; *Urvan*, 2024 WL 863688, at *11-*12. *Agspring* did not leave the door open to fact-intensive reliance inquiry at a later procedural stage; it foreclosed it, unambiguously holding that "no basis would exist to challenge [p]laintiffs' reliance on the representations in the [agreement], which expressly provides that [buyer] has relied and would rely on those representations." *Agspring*, 2020 WL 4355555, at 13 n.137.

Nor did *Urvan* open the door to a fact-intensive reliance inquiry at a later stage of the case. 2024 WL 863688, at *11–*12. *Urvan* held that given the anti-reliance clause in that case, the seller could not point to "outside information" and claim that buyer should have relied on that information and not the contractual representations. *Id*.

Finally, Sellers misread *Cobalt Operating, LLC v. James Crystal Enterprises, LLC*, 2007 WL 2142926 (Del. Ch. July 20, 2007), *aff'd*, 945 A.2d 594 (Del. 2008), as requiring a full-fledged due diligence inquiry in an intracontractual fraud case. The *Cobalt* court held that reasonableness of reliance was not up for question in a contractual fraud case: "Having contractually promised [buyer] that it could rely on

certain representations, [seller] is in no position to contend that [buyer] was unreasonable in relying on [seller's] own binding words." *Id*. at *28. But the fact that the court went on to make an alternative holding that due diligence did not disclose the fraud does not detract from the weight the *Cobalt* court placed on intracontractual representations. *Id*.

C. The Trial Court Never Found Actual Knowledge.

The trial court selected various "inartful" references in Sellers' due diligence materials to infer that Buyers should have known the falsity of Sellers' representations and ZF and FCA's decreasing rate of purchases—all while overlooking the efforts Sellers made to hide their own misconduct. But even the trial court's conclusion that Buyers "should have known" was based on an infirm foundation that underscored the lack of actual knowledge.

Sellers conflate *Buyers'* talking points checklists prior to the December 12, 2018 meeting with ZF, with the email by Mackinder (Sellers' witness and employee) with *Sellers*' checklists in late December 2018 and early January 2019 after the Agreement was signed. AB at 41. Yet, this was the basis for the trial court's infirm decision to undermine the unrebutted testimony that the Buyers' representatives had not read these Mackinder communications. A012032; A012355-A012357; A012364; A012818. The trial court leaped to the conclusion that, based on crossoffs on a "list of talking points and action items" in January 2019, it "suggests the parties

discussed those issues." Op. 43-44. This flies in the face of Mackinder's testimony that he had no recollection of meeting with Swift about the items and the items were crossed off by January 3, 2019, meaning that the discussion was before the Swift meeting. A013467-A013468; A012366-A012367; A012591-A012593.

Sellers take issue with Buyers' citation of Swift's testimony that he covered certain topics at the ZF meeting. AB at 41. But they do not question that Swift "discuss[ed] the bearing bracket product that Paragon supplied to ZF," "the price down agreement," "volumes," and "schedules." A012225-A012227. Sellers point to a supposed admission by Swift that he had not covered the topics (AB at 41–42 (citing A12394)), but the quoted material related to another topic—future "volume projections"—and not what Swift testified he had covered. A12394.

Sellers point to the Ducker report, but overlook that the report disclosed nothing about the ZF cancellation letters, showed increasing volumes, and projected "continuous improvement" in market share. A012149-A012150; A11700(DX92:44). None of the cited data points support Buyers' actual knowledge. AB at 42. Sellers point to Ducker's disclosure of an end to the Honda business, but ignore that the statement dealt with sales six years out into the future for a period of time that ZF had not provided projections. A11700(DX92:19); A11700(PX131) ("2024:TBD")). Sellers say Ducker disclosed that FCA was transitioning production in-house, but ignore that (a) it was a "suggest[ion] [of] the "possibility" of moving

in house (Op. 45); and (b) Ducker noted a "trend to outsourcing"—which would have increased Company's volume. A11700(DX92:14, 21, 44); A012149-A012150.

The trial court made no findings of "actual knowledge," couched its holding in equivocal "know or should have known" language, and cited facts that failed to support the "should have known" standard—let alone actual knowledge.

Accordingly, the trial court erred in applying the "knew or should have known" standard to an intracontractual fraud claim where an Anti-Reliance Clause was present.

III. THE TRIAL COURT ERRED IN RULING THAT THE BUYERS UNJUSTIFIABLY RELIED ON SECTION 3.23 CONCERNING THE CHANGE IN ZF'S PURCHASING TERMS.

A. Buyers Did not Waive Their Argument.

Buyers preserved their justifiable reliance on the absence of change in ZF's purchasing terms. Buyers argued they justifiably relied on the representation that there is no change in the relationship. This representation relates to that issue. Sellers make technical arguments on a preservation of argument. But *Genger*, 26 A.3d at 197, does not dictate the level of specificity that Sellers now demand. *Origis*, 345 A.3d at 954 & n.78.

Here Buyers raised reliance on Section 3.23, which represented that the terms of ZF's purchasing had not changed, after arguing that Section 3.23 was false due to the rebate and sole supplier issue. A001940-A001943; A001948-A001949; A009011-A009020; A0016143-A0016152.

B. Buyers Justifiably Relied on the Absence of A Change in the ZF Purchasing Terms.

Sellers do not contest that the trial court's justifiable reliance analysis did not directly address the rebate issue at all. Indeed, the trial court found that "Sellers never disclosed the rebate to Buyers pre-Closing" and "never recorded [it] on the books." Op. 37. Similarly, the trial court concluded that the sole supplier issue was never disclosed, opining: "Smith's failure to inform Buyers of the fact that the GPA [A]mendment was driven by the [Company's] loss of 'sole supplier' status for ZF's

9HP programs hints at Sellers' wrongful intent." Op. 36. Instead of pointing to where the trial court actually decided the issue of reliance as to the rebate and sole supplier issues, Sellers attempt to fill the gap missing from the trial court's opinion. AB at 40–47. That attempt fails.

Sellers attempt to turn their malfeasance into a credit, arguing that because the rebate was not paid by Company, it would not have appeared on the books, and did not require an explicit disclosure. AB at 45. But these facts just underscore the trial court's finding that the rebate was never disclosed. Op. 37.

Sellers argue that Swift could have pursued the topic of the rebate and the sole supplier at the ZF meeting (AB at 45), but overlook all of the indicia of scienter that steered away from such inquiry, including the "Paragon's Chinese affiliate" (Op. 7); the failure to record it on Company's books (Op. 37); the concealment of the "business plan letter" detailing the rebate (A012451-A012452; A012638-A012640; A11700(PX110)); the refusal to sign an additional "side letter to the side letter" documenting the rebate (A014641-A014643; A11700(PX0111:2)); the false representation that Seller had disclosed all contracts (Op. 10–11; A11700(JX1, §3.12(a)); the non-disclosure of the $300,000 ZF rebate (Op. 33); the confirmation of the rebate the night before the meeting (Op. 7-9, 19, 31, 33, 37-38; A11700(PX111:5); the hiding of the "draft ZF GPA amendments showing decreases in purchase volume" (Op. 32); the non-disclosure and removal of the ZF cancellation

letter (Op. 32); Smith's misdirection when asked about a letter (A012218-A012221); and Smith's destruction of his company-issued phone. Op. 37. Sellers completely ignore the impact of the trial court's finding that they "misle[d] [Buyers] regarding the nature of the ZF GPA Amendment" on their argument. Op. 32, 36.

Sellers attempt to shield the trial court's lack of finding on the justifiable reliance element of the rebate and sole supplier issues as a credibility assessment, but there is a difference between the absence of a ruling on a point and a credibility assessment. Here, the linchpin to Sellers' argument is to make the connection that the trial court did not make and cast it off as an unassailable credibility assessment. But, as a matter of law, the same evidence used to affirmatively show scienter cannot at the same time support the finding of absence of justifiable reliance. Any other result would reward sellers who engage in fraudulent conduct, thereby effecting a sea change in Delaware law.

C. The Error Is Not Harmless Because Buyers Did Allege Damages From the Change In Purchasing Terms From ZF.

Sellers' argument that Buyers never "alleged" any damages based on the falsity of Section 3.23 through a change in ZF's purchasing terms is misplaced. AB at 48. Buyers alleged that they were damaged by the falsity of the representation in Section 3.23, and calculated damages based on the falsity of the representation. A000449-A000451; A000465-A000468; A016068; A016071; A016074-016121.

Buyers would not have entered into the Agreement, but for the representations. A000466; A016772.

BUYERS' ANSWER TO SELLERS' CROSS-APPEAL

I. THE TRIAL COURT CORRECTLY APPLIED A PREPONDERANCE OF THE EVIDENCE STANDARD.

A. Question Presented.

Did the trial court correctly apply the preponderance of evidence standard to the common law fraud claim where the overwhelming majority of Delaware cases have rejected the application of the clear and convincing standard, and where there was no controlling law adopting a clear and convincing standard? This question was not preserved below as Sellers informed the trial court that it "need not decide" the issue. A016182.

B. Scope of Review.

The proper burden of proof is an issue of law. *Bryson v. State*, 840 A.2d 631, 633 (Del. 2003).

C. Merits of the Argument.

Sellers cite no controlling case that supports their theory that the Court should apply a "clear and convincing" burden of proof for common law fraud. AB at 49-52. Instead, Sellers borrow stray words from dated cases where words like "clearly" are used to leap to the conclusion that it means "clear and convincing." *Id*. Sellers feign a lack of clarity in the case law, cobbling together standards and snippets from set aside judgments and other dissimilar contexts to suggest that the clear and convincing standard applies to common law fraud. Sellers are not only wrong, but

fail to show that the result would have been different if their flawed standard had been endorsed. Application of a clear and convincing standard to common law fraud claims would reward fraudulent conduct by creating an additional hurdle for defrauded buyers to clear.

1. The Trial Court Adopted The Overwhelming Majority Rule.

Sellers incorrectly argue that, although they committed fraud, they should be rewarded with the leniency of a higher quantum of proof, i.e., a clear and convincing standard. The trial court, citing *Sofregen Medical, Inc. v. Allergan Sales, LLC*, correctly held that preponderance of the evidence is the appropriate standard for a fraud claim. A017340 (citing 2024 WL 4297665, at *16, (Del. Super. Ct. Sept. 26, 2024) ("[W]hile in some jurisdictions fraud must be shown by clear and convincing evidence, the burden of proof in a fraud case in Delaware is by a preponderance of the evidence"), *aff'd*, 2025 WL 2643790, at *1 (Del. Sept. 15, 2025) (holding "the judgment below should be affirmed on the basis of and for the reasons stated in the Superior Court's Decision After Trial dated September 26, 2024.")).

In an attempt to avoid the trial court's well-reasoned conclusion, Sellers erroneously claim that *In re IBP, Inc. Shareholders Litigation*, 789 A.2d 14, 54 (Del. Ch. 2001), was incorrectly decided, but overlook that it has been repeatedly cited with approval. *E.g.*, *NetApp*, 2023 WL 4925910, at *12 n.168; *Sofregen*, 2024 WL 4297665, at *16 n.272; *Stone & Paper Invs., LLC v. Blanch*, 2021 WL 3240373, at

*26 & n.320 (Del. Ch. Jul. 30, 2021); *Roma Landmark Theatres, LLC v. Cohen Exhibition Co., LLC*, 2021 WL 2182828, at *8 n.12 (Del. Ch. May 28, 2021).

Sellers further claim that 62% of courts nationwide have adopted clear and convincing for fraud claims (AB at 54), ignoring that Delaware courts have overwhelmingly adopted the preponderance of the evidence standard. Sellers' calculations notwithstanding, the Chancery Court has spoken loudly on the issue—"[t]he weight of authority in Delaware applies a preponderance standard to fraud claims." *NetApp*, 2023 WL 4925910, at *12 n.168. Indeed, the weight of authority alluded to in *NetApp* includes no fewer than four decisions affirmed by this Court. *Sofregen*, 2024 WL 4297665, at *16; *Paron Cap. Mgmt., LLC v. Crombie*, 2012 WL 2045857, at *5 (Del. Ch. May 22, 2012), *aff'd*, 62 A.3d 1223 (Del. 2013); *Triple H Family L.P. v. Neal*, 2018 WL 3650242, at *16 (Del. Ch. Jul. 31, 2018), *aff'd*, 208 A.3d 703 (Del. 2019); *Cobalt Op., LLC*, 2007 WL 2142926, at *2. It also includes

cases relied upon by Sellers themselves. *Arwood*, 2022 WL 705841, at *3; *Great Hill*, 2018 WL 6311829, at *2 & n.2.[5]

2. This Court Has Never Adopted The Clear and Convincing Standard For Common Law Fraud.

The overwhelming majority of Delaware decisions has adopted the preponderance of evidence standard for common law fraud claims. Ignoring this precedent, Sellers claim that Delaware courts have long required clear and convincing evidence for fraud. To do so, Sellers read *Freeman v. Topkis*, 40 A. 948, 949–50 (Del. Super. Ct. 1893), *Mears v. Waples*, 8 Del. 581, 619-20 (Del. 1868),

[5] *Accord*, *Foley v. Session Corp.*, 345 A.3d 537, 554 (Del. Ch. 2025); *BBP Holdco, Inc. v. Brunswick Corp.*, 2025 WL 1936604, at *8 (Del. Super. Ct. July 14, 2025); *White Marble LLC v. Mo Chen*, 2025 Del. Ch. LEXIS 1309, at *46-47 (Del. Ch. Oct. 31, 2025); *Camaisa v. Pharm. Rsch. Assocs., Inc.*, 2025 WL 3049891, at *7 (Del. Ch. Oct. 28, 2025); *Brody v. DCiM Sols., LLC*, 2025 WL 1802239, at *7 (Del. Ch. June 30, 2025); *Bertola v. Fisher-Price, Inc.*, 2025 WL 1170699, at *7 (Del. Super. Ct. Apr. 21, 2025), *reargument denied*, 336 A.3d 1288 (Del. Super. Ct. 2025); *Anderson v. Robinson*, 2024 WL 3826359, at *4 (Del. Ch. Aug. 15, 2024), *approved and adopted*, 2024 WL 4043102 (Del. Ch. Sept. 3, 2024); *Anderson v. Hill*, 2024 WL 64774, at *6 (Del. Ch. Jan. 5, 2024), *adopted*, 2024 WL 247139 (Del. Ch. Jan. 22, 2024); *Newwave Telecom & Techs., Inc. v. Jiang*, 2023 WL 6548673, at *4 (Del. Super. Ct. Sept. 27, 2023), *reargument denied*, 2023 WL 6888917 (Del. Super. Ct. Oct. 19, 2023); *Phage Diagnostics, Inc. v. Corvium, Inc.*, 2023 WL 3491882, at *6-8, *10-11 (Del. Super. Ct. May 2, 2023); *BCD Assocs., LLC v. Crown Bank*, 2022 WL 1316234, at *4, *5 (Del. Super. Ct. May 2, 2022); *Clouser v. Marie*, 2022 WL 453551, at *5 & n.59 (Del. Super. Ct. Feb. 14, 2022); *Senisch v. BCC Inv. Props., LLC*, 2022 WL 178506, at *1 & n.17 (Del. Super. Ct. Jan. 20, 2022); *Stone & Paper*, 2021 WL 3240373, at *26; *Roma Landmark Theatres, LLC*, 2021 WL 2182828, at *8 n.12; *Great Hill*, 2018 WL 6311829, at *2 & n.2; *Trascent Mgmt. Consulting, LLC v. Bouri*, 2018 WL 4293359, at *12-*17 (Del. Ch. Sept. 10, 2018); *Robinson v. Oakwood Village, LLC*, 2017 WL 1548549, at *11, *21 (Del. Ch. Apr. 28, 2017); *Vichi v. Koninklijke Phillips Elecs, N.V.*, 85 A.3d 725, 787 (Del. Ch. 2014); *Lord v. Peninsula United Methodist Homes, Inc.*, 2001 WL 392237, at *5 (Del. Super. Ct. Apr. 12, 2001); *Outdoor Techs., Inc. v. Allfirst Fin., Inc.*, 2001 WL 541472, at *3 (Del. Super. Ct. Apr. 12, 2001); *State ex rel Brady v. Gardiner*, 2000 WL 973304, at *5 (Del. Super. Ct. Jun. 5, 2000); *Wilson v. W.E. Cleaver & Sons, Inc.*, 1998 WL 281055, at *1 (Del. Super. Ct. May 4, 1998); *NRG Barriers, Inc. v. Jelin*, 1996 WL 451319, at *7 (Del. Ch. Aug. 6, 1996); *Pusey v. West*, 1989 WL 48685, at *1 (Del. Super. Ct. May. 10, 1989).

and *Kent Cnty. R. Co. v. Wilson*, 10 Del. 49, 56 (Del. 1875), as adopting a "clear and convincing" standard over a preponderance standard. AB at 51. This assertion fails. First, the cited sections of *Freeman*, *Waples*, and *Kent* are a charge to the jury—not a holding. *Freeman,* 40 A. at 948 ("LORE, C.J. (charging the jury)"); *Waples*, 8 Del. at 609-20 ("Gilpin, C.J., charged the jury"); *Kent*, 10 Del. at 55 ("The Court, Gilpin, C.J., charged the jury").

Second, *Sellers'* twisting of the use of the word "clearly" in *Freeman*, *Waples*, and *Kent* as adopting the "clear and convincing" standard is a reach at best. *Freeman,* 40 A. at 949; *Waples*, 8 Del. at 619-20; *Kent*, 10 Del. at 55. None of the jury charges states "clear and convincing." *Freeman*, 40 A. at 949; *Waples*, 8 Del. at 619-20; *Kent*, 10 Del. at 55. This is why the folly of using jury instructions to pluck the words "clearly" out of a sentence cannot substitute for a holding. One of the same Chief Judges, Charles B. Lore, charged a jury on a fraud charge using an explicit "preponderance of evidence" standard starting just three years after *Freeman*. *Fait & Slagle Co. v. Truxton*, 39 A. 457, 461-63 (Del. Super. Ct. Oct. 12, 1897); *see also Thomas v. Grise*, 41 A. 883, 885 (Del. Super. Ct. Jun. 16, 1898).

Third, nearly 100 years after *Freeman*, *Waples*, and *Kent*, as noted in Sellers' own cited case, the same Superior Court (New Castle County) rejected the tortured reading of *Freeman* Sellers make here and adopted a preponderance standard. *George v. A.C. & S. Co., Inc*., 1988 WL 22365, at *1 (Del. Super. Ct. Feb. 16, 1988)

("Defendant cites early jury instructions by this [c]ourt which . . . instructed the jury to find fraud only where the fraud was 'clearly' proved," citing *Freeman*, holding that standard of proof for conspiracy, a "form of fraud,"[6] was preponderance because there is "no basis for singling out this type of intentional tort, or intentional torts in general, which involve a greater level of culpability than that involved in negligent conduct, for favored treatment in the proof"). Following *George*'s rejection of Sellers' *Freeman* argument, courts have aligned with *George*. *Clouser v. Marie*, 2022 WL 453551, at *5 & n.59; *Senisch*, 2022 WL 178506, at *1 & n.17.

Travelling under their mistaken assumption that Delaware law supported the clear and convincing standard before the turn of the century, Sellers claim that *Nye Odorless Incinerator Corp. v. Felton*, 162 A. 504 (Del. Super. Ct. 1931) marked the fateful fork in the road to the preponderance standard. Sellers miss the mark again. *Nye* does not represent an aberration as *Freeman*, *Waples*, and *Kent* were jury charges that used the word "clearly," not "clear and convincing" and Sellers' argument overlooks the adoption of the preponderance standard in *Fait* and *Thomas*, whereas *Nye* was cited repeatedly with approval by this Court dating back 90 years. *E.I DuPont de Nemours & Co. v. Florida Evergreen Foliage*, 744 A.2d 457, 462 (Del. 1999) (citing *Nye* on elements of "common law fraud"); *Stephenson v. Capano*

[6] *George* assumed that the "fraud standard applies equally to the type of conspiracy alleged." *Id*. at *1.

Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983) (citing *Nye* on elements of fraud); *Canadian Indus. Alcohol Co. v. Nelson*, 188 A. 39, 49 (Del. 1936) (citing *Nye* on hearsay evidence). Had *Nye* represented a sea change in Delaware law, this Court certainly had the opportunity to point that out. That *Nye* "has been cited many times for that [preponderance of evidence] proposition" (AB at 53) underscores the fact that *Nye* is controlling, not that it marked the proverbial divergent path in the woods. *George*, 1988 WL 22365, at *1.

Sellers cite to *Project Boat Holdings, LLC v. Bass Pro Grp., LLC*, 2019 WL 2295684, at *23 n.221 (Del. Ch. May 29, 2019), to suggest a divergence of authority, but *Project Boat Holdings*' perceived split of authority rests on the slippery sands of *Ross Holding & Mgmt. Co. v. Advance Realty Grp., LLC*, 2014 WL 4374261, at *37 (Del. Ch. Sept. 4, 2014) – a case which "involved a fraud claim under New Jersey law," and "did not state the burden for a common law fraud claim under Delaware law." *Stone & Paper*, 2021 WL 3240373, at *26 n.320.

Left without an argument, Sellers assert that because fraud claims are "often proved by circumstantial evidence," *Matrix Parent, Inc. v. Audax Mgmt. Co., LLC*, 319 A.3d 909, 937 n.235 (Del. Super. Ct. 2024), fraud claims should be measured by the yardstick of a clear and convincing standard. But Sellers' argument would reward fraudsters in cases with direct evidence, *Aveanna Healthcare*, 2021 WL 3235739, at *19 (stating "the *ABRY* court treated the certificates as direct evidence

of the seller's knowledge of the company's fraudulent representations"), with a heightened standard to expose their misdeeds. *Id*. (*citing Abry Partners*, 891 A.2d at 1032). Moreover, entire classes of civil claims, such as negligence, may be proven by circumstantial evidence, *Fahey v. Niles*, 108 A. 135, 136 (Del. Super. Ct. Dec. 6, 1918) ("Negligence may be proved . . . by . . . circumstantial evidence"), but that does not mean that a "clear and convincing" standard should apply to those ordinary negligence claims.

3. Sellers Rely on Distinguishable Law.

Left without any supporting cases, Sellers rely on distinguishable cases addressing distinct procedural scenarios, policy concerns, and fact patterns. If anything, these underscore the need to apply a different burden of proof in these unique fact patterns. For instance, *Erste Asset Mgmt. GmbH v. Hees*, 341 A.3d 1008, 1022 (Del. 2025) addressed the standard to set aside a judgment for fraud pursuant to Del. R. Ch. Ct. 60(b)(3). *Erste* is inapposite because it addresses public policy concerns concerning the sanctity of judicial processes where a fraud "prevents the moving party from fairly and adequately presenting his or her case" or fraud on the court consisting of conduct that "seriously affects the integrity of the normal process of adjudication." *Id*. at 1019-22. None of those policies are implicated. If anything, *Erste* cuts against Sellers' argument by focusing on two particularly severe species of fraud, that the court held are not simply "fraud between the parties." *Id*. at 1022.

Of the same ilk is *In re Matter of Martin*, 105 A.3d 967, 975 (Del. 2014), which applies a "clear and convincing standard" to the deprivation of an attorney's livelihood through discipline upon a showing of misconduct governed by Rules that specify the clear and convincing standard. DEL. LAWYERS R. DISCIPLINARY PROC. 15(c), 16(e). And, Sellers can find no further support in *In re Doughty*, 832 A.2d 724, 732 n.19 (Del. 2003) (citing DEL. LAWYERS R. DISCIPLINARY PROC. 15(c)), which acknowledges that disciplinary proceedings against attorneys are governed by rules specifying the "clear and convincing" governing standard). In the same vein, Sellers cannot find comfort in *In re Partition of Lands & Tenements of Skrzec*, 2010 WL 2696257, at *6 (Del. Ch. June 30, 2010) (deprivation of property rights based on rescission of recorded deed) and *Killen v. Purdy*, 99 A. 537, 538 (Del. 1916) (stating fraud must be "clearly establis[hed]" in suit to "avoid a deed")—all of which implicate distinct causes of action, policy concerns, and substantive deprivations of rights not found here. Just because Delaware courts require clear and convincing evidence for contract reformation, *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 890-91 (Del. 2015), which is an "extraordinary remedy," *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 678 (Del. 2013), that does not compel the same standard for the non-extraordinary claim of common law fraud. Nor can Sellers find their footing under *Pocket Change Kahunaville, Inc. v. Kahunaville of*

Eastwood Mall, Inc., 2003 WL 1791874, at *3–*4 (Del. Ch. Mar. 21, 2003). *Pocket Change* implicated Delaware's "strong statutory and public policy" favoring arbitration by immunizing arbitration awards absent clear and convincing evidence of fraud or other circumstances. *Id*.

As a tacit admission that Delaware law applies the preponderance of evidence standard, Sellers resorts to citing out-of-state cases from Oregon, New York, New Jersey, Pennsylvania, and other jurisdictions (AB at 54-55)—none of which provide a basis to overturn a hundred years of Delaware precedent. *Rohm & Haas Co. v. Continental Cas. Co*., 781 A.2d 1172 (Pa. 2001); *Ferryra v. Arroyo*, 149 N.E.3d 47 (N.Y. 2020); *Liberty Mut. Ins. Co. v. Land*, 186 N.J. 163, 174 (N.J. 2006).

Left without precedent, Sellers also cling to distinguishable law. *Addington v. Texas*, 441 U.S. 418 (1979), is distinguishable because it holds that clear and convincing standard of proof is required by the Fourteenth Amendment "in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period to a state mental hospital." *Id*. at 419-20. *Addington* raises constitutional due process issues that are not present here, and *Addington's* reference to the stigma of a fraud proceeding finds no purchase in Delaware law, perhaps because a calculated fraud itself can tarnish reputation of its victims. *Paron*, 2012 WL 2045857, at *15 (stating that defendant committed fraud that "resulted in severe damages to the reputations and livelihoods of" victims).

In a passing reference at the end of a footnote, the trial court below cited *Wilson v. Montague*, 2011 WL 1661561, at *3 (Del. May 3, 2011) as holding that the standard is clear and convincing. A017340. But *Montague*'s citation was not to common law fraud, but referred to a new trial motion for "misconduct" pursuant to Delaware Superior Court Rule 60(b)(3). *Montague*, 2011 WL 1661561, at *3 (citing Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 2859 & Del. Super. Ct. Ct. R. 60(b)(3)). Thus, neither the opinion below nor *Montague* counsel in favor of abandoning 100 years of precedent.

II. THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANTS MADE FALSE STATEMENTS.

A. Question Presented.

Did the trial court correctly, in finding that Sellers falsely represented and warranted that Company had not received notice, and they had no knowledge, that any of Company's top 10 customers would stop, decrease the rate of, or change the terms with respect to buying products from Company, reject Sellers' argument that its representation was confined to buying products from Company for a two-week period where the language of the Agreement made no reference whatsoever to the limitations that Sellers urge?

B. Scope of Review.

The Court reviews questions of law de novo. *AIG Specialty Ins. Co. v. Conduent State Healthcare, LLC*, 339 A.3d 680, 687 (Del. 2025). "Contract interpretation is a question of law subject to de novo review by this Court." *Daniel v. Hawkins*, 289 A.3d 631, 645 (Del. 2023).

C. Merits of Argument.

1. Section 3.23 Is Not Conditioned On the Enforceable Term of the Underlying Agreements.

Sellers represented that Company had not received notice, and they had no knowledge, that any of its top 10 customers would "stop, decrease the rate of, or change the terms . . . with respect to, buying products from [Paragon]." A000498. Sellers engage in a lengthy rationale to contend that there was no enforceable long-

term commitment to purchase products from Company. But none of that is found in Section 3.23 itself. Indeed, the trial court found that "Section 3.23 applies to decreases in the sale of individual products" that are "reasonably expected to happen in the future" – findings that Sellers do not challenge – and which is not dependent on the enforceability of the relevant contracts. A011146-A011150.

Sellers' launching-off point is to argue that the trial court found that Company disclaimed any representation "beyond the business reflected in its scheduled contracts." AB at 61 (citing SJ Opinion 23-25; A011152-A011154). But the cited pages are not a contractual interpretation of Section 3.23, but a reliance analysis. A011152-A011154. Sellers' argument conflates the scheduled contracts in Schedule 3.12 with the representations in Section 3.23 – which makes no reference to such contracts or "the business reflected" in those contracts.

2. Sellers Represented The ZF and FCA Agreements Are Long-Term Agreements.

Sellers say that by scheduling the GPA, GPA Amendment, and FCA agreements *as* a long-term agreement under Section 3.12, they actually disclosed to Buyers that Company *did not have* an enforceable long-term agreement with ZF. But the whole point of Section 3.12 was to communicate the opposite to Buyers: a listing of long-term agreements. Sellers represented in Section 3.12(a) that "*[e]xcept as set forth . . . on Schedule 3.12*, Company is not a party to or bound . . . by (i) [a]ny long term or master supply agreement between Company and any of the customers

listed on Schedule 3.23." A000486-A000487 (emphasis added). The GPA, GPA Amendment, and FCA agreements are the only contracts disclosed on Schedule 3.12 of the Agreement between Company and ZF and FCA regarding the 9HP program, and none is for two weeks. A011903(JX2, Schedule 3.12). Sellers listed those as "*[l]ong-term* and master supply agreements." *Id*. (emphasis added). Sellers' argument is an effort to run from their representation that these agreements are "[l]ong term." *Id*.

Sellers' contention that the representation in Section 3.23 is bound by a two-week release period is without merit. Under the GPA, there is a "firm" window in which purchase orders (not the entire contract) are binding and ZF cannot unilaterally deviate. A011903(JX105:4-5, 13, 44). Section 3.23 is not bound by a two-week term nor any other provision of the GPA, GPA Amendment, and blanket purchase orders. That window also *is not* the "Term" of the GPA, which was "seven (7) years from the effective date of" the GPA, *i.e*., through September 6, 2023, and then was extended to the "end of life of the current OEM customer programs using the Parts." A011903(JX105:4-5, 13, 18; JX4 at 1). Sellers admitted the GPA and GPA Amendment would run until *at least* 2027, if not longer. A012425-A012426. Indeed, the GPA listed pricing out to 2024, and the GPA Amendment extended that out to 2027. A011903(JX105:34; JX4:5).

The GPA required Paragon to commit to being capable of manufacturing specific volumes for ZF, and obligated ZF to renegotiate prices if its purchases deviated by 15%. A011903(JX105:3–4, 6–7). There also is no squaring a "two-week" term with the 800,000 "Estimated *Annual* Volumes" in the GPA and price renegotiations for a "Material Forecast Change," *i.e*., "plus or minus fifteen percent" deviation from the Estimated Annual Volumes. A011903(JX105:3–4, 6–7). Company invested millions of dollars to meet customer capacity requirements, which is inconsistent with the likelihood that volumes would drop to zero. A017345 (citing A012528–27). Sellers admitted Company could pursue an obsolescence claim against ZF if purchases fell 15% or more below the Annual Estimated Volumes. A013322-A013323. So, no one could have expected ZF's purchases to evaporate overnight, and there is no evidence for that supposition; rather, all evidence is the opposite.

The original GPA contained a competitiveness clause allowing ZF to terminate if Company became uncompetitive—the antithesis of "release by re-lease." A011903(JX105:5-6, 31). Even then, ZF had to give 60 days' notice of the termination. *Id*. Sellers' "release by release" argument has no merit. Sellers' reliance on the non-binding decision in *MSSC, Inc. v. Airboss Flexible Prods. Co*., 999 N.W.2d 335, 339 (Mich. 2023), is misplaced. *Airboss* involved a supplier dispute under the Uniform Commercial Code on whether a contract was enforceable

under the statute of frauds, not fraud arising from a representation in a corporate acquisition. 999 N.W.2d at 338–39.

Nor can Sellers contend they invested $20 million in 2017 and 2018 into a two-week contract or ones from which ZF or FCA simply could walk away at any moment. A012528-A012529. Sellers admitted those investments were to "generate revenue in the coming years . . . [t]hrough purchases from . . . ZF and FCA." A012529. And Sellers' forecasts confirm they expected millions of dollars in 9HP business as a result. A012505; A012528-A012529.

Sellers represented to Buyers in Section 3.12 that the FCA agreements were long-term supply agreements. A011903(JX2, Schedule 3.12). The FCA agreements have long-term commitments, requiring Company to "have a tooling and production plan in place that will enable [the Company] to supply FCA['s] . . . annual requirements[.]" A017345; B000074. The FCA agreement contained a competitiveness clause allowing FCA to terminate if Company became non-competitive, but not for the first year of the agreement. B000091. Thus, Sellers' argument that the agreements are only for a two-week period fail.[7]

[7] Sellers point to the trial court's statement in its decision that the "contracts that expired every two weeks," but overlook the trial court's contextual statement that "Schedule 3.23 identifies 'long term' agreements between ZF and Paragon" and the trial court's later clarification that it had "inartfully described the nature of the ZF-Paragon contracts." A011151; A017345.

Even assuming that the Court accepted Sellers' argument, Sellers' argument still fails. Because a decrease in the rate of sales would be measured on an order-by-order basis, Company could rely only on the most recent customer information for firm orders to determine what was expected to occur in the future. And, here, both ZF and FCA told Sellers that purchases would decrease. A011903(PX131; JX6:1–2). Thus, under either argument, the rate of purchases was decreasing.

Finally, Sellers' argument gains no traction from *Zayo Group LLC v. Latisys Holdings LLC*, 2018 WL 6177174 (Del. Ch. Nov. 26, 2018). In *Zayo*, the buyers claimed the representation at issue, relating to disclosed contracts, was false because the sellers had notice of a party's intent *not to renew*. *Id.* at *6, *14. The court found the representation was not breached because non-renewal of the contract was different from terminating, cancelling, modifying, and not performing, which *was all* the defendant warranted did not occur. *Id.* at *14.

3. The Trial Court Did Not Improperly Rely on Parol Evidence.

Sellers incorrectly claim that the trial court's review of the duration of the GPA, GPA Amendment, and FCA agreements relied on parol evidence. AB at 66. *First*, the trial court's analysis focused on Section 3.23, and not the agreements under Section 3.12. A017342-A017346. The trial court held that the listing of the GPA, GPA Amendment, and the FCA agreement on Schedule 3.12 constituted a representation that these were long-term agreements. *Id*. *Second*, the trial court

relied upon the terms of the GPA, the GPA Amendment, and the FCA agreements *themselves*, and how those agreements operated, not testimony relating to their intent. A017342-A017346.

CONCLUSION

The Court should (A) reverse and enter judgment in favor of Buyers on their fraud claim, with instructions to fix the amount of damages to Buyers; (B) affirm the decision to apply a preponderance of the evidence standard and affirm the decision that Buyers had shown actual falsity of Sections 3.8 and 3.23.

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