IN THE SUPERIOR COURT
OF THE STATE OF DELAWARE

PROSPECT STREET ENERGY, LLC and PROSPECT STREET VENTURES I, LLC,	)	
Plaintiffs,	)	
v.	)	C.A. No. N13C-08-203 WCC CCLD
RAI BHARGAVA, MANOUCHEHR DANESHVAR, SHANTI SHARMA, VINCENT BRENNAN, JOSEPH E. MORADIAN, LANCE SHEEHY, THE BHARGAVA FAMILY TRUST, THE MANOUCHEHR DANESHVAR LIVING TRUST, THE BRENNAN FAMILY TRUST, and SPM ENTERPRISES, LLC,	)	
Defendants.	)	

Submitted: August 12, 2015
Decided: January 27, 2016

Defendants' Motion to Dismiss -- GRANTED IN PART

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court is Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction and 12(b)(2) for lack of personal jurisdiction. For the following reasons, Defendants' Motion to Dismiss the equitable claims in the Complaint for lack of subject matter jurisdiction is GRANTED.

I. FACTUAL & PROCEDURAL HISTORY

Plaintiffs, Prospect Street Energy, LLC and Prospect Street Ventures I, LLC (together, "Plaintiffs" or "Prospect"), are two affiliated Delaware limited liability companies. Defendants in this matter are Rai Bhargava and his wholly-controlled trust The Bhargava Family Trust, Manouchehr Daneshvar and his wholly-controlled trust The Manouchehr Daneshvar Living Trust, Shanti Sharma and his wholly-controlled company SPM Enterprises, LLC, Vincent Brennan and his wholly-controlled trust The Brennan Family Trust, Joseph E. Moradian, and Lance Sheehy (collectively, "Defendants").

The dispute underlying this Motion concerns the Defendants' association and involvement with a group of entities collectively referred to as "Everest:" Everest Energy Management, LLC, Energy Group Management, LLC, and EE Group, LLC ("Everest"). Specifically, each Defendant, either individually or via their respective entity, owned a percentage of EE Group, LLC ("EE Group

Defendants”).[1] Most of the EE Group Defendants were also members of Everest management.[2] With the exception of Defendant Sheehy, all of the individual Defendants (Bhargava, Daneshvar, Brennan, Sharma, and Moradian) were likewise members of Energy Group.[3]

On March 6, 2003, Prospect and Everest executed a Joint Venture Agreement (“JVA”), whereby “Prospect agreed to use its best efforts to locate and arrange financing” for Everest’s acquisition of certain assets from CMS Energy Company (“Marysville Assets”).[4] In exchange, each party “and/or [its] affiliates” would own 50% of the equity acquired.[5] Pursuant to the terms of the JVA, Prospect identified and contacted “multiple reputable and credible financing sources…” and ultimately proposed Wachovia Capital Partners.[6] Defendants initially expressed interest in “proceed[ing] with Wachovia to acquire the

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[1] Pls. Am. Compl., at 2-3, ¶ 2. Moradian, Sheehy, Bhargava Family Trust, Manouchehr Daneshvar Living Trust, Brennan Family Trust, and SPM Enterprises, LLC each owned a percentage of EE Group. Defendants Bhargava, Daneshvar, Sharma and Brennan were linked to EE Group via their respective trusts (and in the case of Sharma, his wholly-owned company SPM Enterprises, LLC).
[2] *Id.* (noting that Manouchehr Daneshvar Living Trust was the only Defendant not involved in Everest management).
[3] *Id.*
[4] *Id.* ¶¶ 2-3 (listing that assets included a natural gas storage terminal located in Marysville, Michigan).
[5] *Id.*
[6] *Id.* ¶ 5.

Marysville Assets, with Wachovia receiving 90% of the initial equity and Prospect and Everest each receiving equal 5% shares."[7]

In connection with the acquisition of the Marysville Assets, Defendant Bhargava formed Marysville Hydrocarbons, LLC, a Delaware limited liability company, on July 14, 2003. The entity was later renamed Marysville Hydrocarbon Holdings, LLC ("MHH").[8] MHH was the Delaware LLC in which Prospect and Everest ultimately held their equal 5% interests.[9] In August 2003, Bhargava created Marysville Hydrocarbons, Inc. ("MHI"), a Delaware corporation and MHH's wholly-owned subsidiary, to hold the Marysville Assets.[10]

Unbeknownst to Prospect, on or about September 4, 2003, Everest terminated negotiations with Wachovia and arranged financing for the Maryville Assets from a former business partner, Dart Energy Corporation ("Dart"). While Prospect accepted Everest's selection of Dart over Wachovia as the 90% holder in MHH, it did so under the impression that the arrangement would otherwise be "on the same terms as Wachovia."[11] Nevertheless, it was later revealed that the deal was structured as follows:

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[7] Pls. Answ. Br. in Opp'n to Defs. Mot. to Dismiss, at 3.
[8] *Id*. at 4-5.
[9] *Id*. at 5.
[10] Pls. Am. Compl., at 13-14, ¶ 29.
[11] *Id*. ¶¶ 9, 49-52, 55. *See also* Pls. Answ. Br. in Opp'n to Defs. Mot. to Dismiss, at 3.

> Everest allowed Dart into the deal in return for Dart's agreement to "flip" the proceeds received from half of Dart's 90% interest in MHH back to Everest – so that, after Prospect and Everest exercised their warrants, Prospect would own only 17.86% of the proceeds and Everest secretly would own 41.07% – instead of owning a share equal to Prospect's, as required by the JVA.[12]

On September 18, 2003, Everest and Dart memorialized this arrangement in a writing purporting to "supplement" the MHH Agreement, which the Plaintiffs' Amended Complaint refers to as the "Secret Kickback Agreement" ("SKA").[13] The SKA was not disclosed to Prospect and its terms provided Dart full indemnification should Prospect learn of and challenge the agreed-upon "interest flip."[14]

Soon thereafter, on September 25, 2003, Prospect signed the MHH Agreement "which reflected the JVA's equal equity share between Prospect and Everest and nowhere mentioned the terms of the SKA."[15] The MHH Agreement pertained to both MHH and its subsidiary corporation, MHI.[16] According to Plaintiffs, the entity and individual Defendants "took turns" operating MHH in various capacities:

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[12] Pls. Answ. Br. in Opp'n to Defs. Mot. to Dismiss, at 6.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 8.

> Over the years, the Everest constituent entities took turns ostensibly operating as "Manager" of MHH, but always with Bhargava in control (both as controller of Everest and as Prospect's designee on the MHH board), and with Daneshvar (who had come to work for MHH and was given a cut of the SKA) and Brennan as the other real "Managers." Bhargava was the designee of Prospect and the Former EE Group Members on the Board of Members of MHH, and admitted that the "significant decisions made at MHH were at the board level." In addition, each of Bhargava, Daneshvar and Brennan held themselves out to the government and other third parties as an officer or "Manager" of MHH. There was no real distinction between the Delaware Entities. Bhargava was a director and the President of MHH and a director and the President of MHI, and MHH was the sole stockholder of MHI.[17]

It was not until 2008 that Prospect learned of the SKA from Dart. At that time, Dart and Defendants allegedly assured Plaintiffs "that Prospect's equity ownership remained the same as Everest's, necessarily implying that the SKA would never be implemented."[18] Yet, two years later, Defendants and Dart allegedly carried out their kickback scheme when they sold their MHH interests to DCP Midstream Partners, L.P. ("DCP"), a Delaware limited partnership, "for significantly higher prices than Prospect could obtain."[19] According to Plaintiffs, because "DCP had already negotiated a price for 100% of MHH and Defendants

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[17] *Id*. at 7-8.
[18] *Id*. at 9.
[19] *Id*.

had appropriated the lion's share,"[20] Prospect was forced "to either take the remainder or own an illiquid, 5% stake in a DCP-controlled MHH."[21]

Pursuant to the MHH Agreement, Plaintiffs subsequently commenced arbitration against Dart, Everest, and Defendants. Defendants sought a declaratory judgment in a Michigan state court "that they were not liable to Prospect on any claim brought in the Arbitration."[22] On August 22, 2012, the Michigan court ruled that Prospect could not force Defendants to arbitrate, without making any ruling on the merits of Plaintiffs' claims. Hence, Plaintiffs are now attempting to litigate claims based on similar misconduct against Defendants in this Court.

Plaintiffs filed their Complaint on August 20, 2013, asserting a lengthy list of sixteen claims against Defendants: (I) fraud, (II) violation of the Racketeering Influenced and Corrupt Organizations ("RICO") Act, (III) conspiracy to violate the RICO Act, (IV) fraudulent inducement, (V) fraudulent transfer, (VI) gross negligence, (VII) unjust enrichment, (VIII) aiding and abetting breach of the JVA, (IX) aiding and abetting breach of the MHH Agreement, (X) tortious interference with contractual relations, (XI) breach of implied covenant of good faith and fair

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[20] *Id*. at 8-9 ("Of the $101 million DCP was willing to pay for all of MHH, Defendants, who collectively owned (like Prospect) 5% of the MHH Interests, were going to get $52.9 million – 52.4% of the total proceeds and over 120x their initial investment of $439,000. Effectuating the SKA, Dart (the 90% unitholder) accepted $31.5 million – a comparatively small, 4x return on its investment of $7.9 million.").
[21] *Id*. at 11.
[22] *Id*. at 12.

dealing with respect to the MHH Agreement, (XII) breach of fiduciary duty with respect to the JVA, (XIII) breach of fiduciary duty with respect to the MHH Co. Agreement, (XIV) breach of fiduciary duty based on misuse of confidential information, (XV) aiding and abetting breach of fiduciary duty, and (XVI) civil conspiracy.

On September 16, 2013, Defendants moved to dismiss the Complaint for lack of personal and subject matter jurisdiction, as well as for failure to state a claim. On January 26, 2015, after the close of jurisdictional discovery, Plaintiffs filed their First Amended Complaint. On March 2, 2015, Defendants filed the instant Motion to Dismiss based solely on lack of personal and subject matter jurisdiction.[23]

II. DISCUSSION

Defendants urge the Court to dismiss the entire Complaint for lack of subject matter and personal jurisdiction. Since the Court finds that the decision as to what Court has subject matter jurisdiction impacts where the personal jurisdiction issue should be decided, this Court will first address the question of whether it has subject matter jurisdiction over Prospect's claims.[24]

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[23] For purposes of this Motion, the parties agreed to brief the threshold jurisdictional questions before presenting Rule 12(b)(6) arguments.
[24] Mot. Tr., Aug. 12, 2015, at 56.

A. SUBJECT MATTER JURISDICTION

Pursuant to Superior Court Civil Rule 12(b)(1), the Court will grant dismissal when it lacks jurisdiction over a complaint's subject matter.[25] The question of whether the Court has jurisdiction over the subject matter of a controversy "must be determined in the first instance by the allegations of the complaint."[26] In making this determination, the Court must view the factual allegations of the complaint as true.[27] Dismissal is proper where a claim amounts to a "purely equitable cause of action" because the "Superior Court's jurisdiction lies in matters of law, as opposed to the Court of Chancery's jurisdiction, which lies in matters of equity."[28]

Defendants contend this Court lacks subject matter jurisdiction over Counts VII- IX and XII-XV of the Complaint because they assert equitable and fiduciary claims, over which the Court of Chancery has exclusive jurisdiction. These "primary claims," as they are referred to by Defendants, allege unjust enrichment, aiding and abetting breach of contract, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. Defendants likewise contest the Court's

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[25] *See, e.g.*, *Dickerson v. Murray*, 2015 WL 447607, at *2-3 (Del. Super. Feb. 3, 2015).
[26] *See Stidham v. Brooks,* 5 A.2d 522, 524 (Del. 1939).
[27] *See Reybold Venture Grp. XI-A, LLC* v. *Atl. Meridian Crossing, LLC*, 2009 WL 143107, at *2 (Del. Super. Jan. 20, 2009).
[28] *See Dickerson*, 2015 WL 447607, at *2-3.

jurisdiction over Plaintiffs' claims for fraud, violation of the RICO Act, conspiracy to violate the RICO Act, fraudulent transfer, gross negligence, tortious interference with contractual relations, fraudulent inducement, breach of the implied covenant of good faith and fair dealing, and civil conspiracy as "factually intertwined" with Plaintiffs' equitable claims and seeking equitable remedies (namely, accounting and disgorgement). As a result, Defendants request that the Court dismiss the entire Complaint.

In response, Plaintiffs maintain the Court has jurisdiction because "the main pillars of Prospect's case" are contracts and the fiduciary duty claims "are grounded in Defendants' use of Delaware entities to conceal and execute the improper theft of money either using or in violation of those contracts."[29] Plaintiffs contend the remaining claims "aris[e] from and relat[e] to" the contracts and are "indisputably legal,"[30] so even if the Court lacks jurisdiction over the fiduciary claims, it should retain jurisdiction with respect to the rest of the Complaint.[31] "This would allow Prospect to …petition the Delaware Supreme Court to allow this Court to be appointed to sit temporarily as Vice Chancellor to hear the transferred claims under Article IV, § 13(2) of the Delaware

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[29] Pls. Answ. Br. in Opp'n to Defs. Mot. to Dismiss, at 16.
[30] *Id*.
[31] *Id*. at 18.

Constitution"[32] and thereby preserve "Prospect's constitutional right to a jury trial" and its ability to obtain punitive relief.[33] The Court will first address Plaintiffs' "primary" claims as asserted by Defendants and then consider those that remain.

1. PLAINTIFFS' EQUITABLE CLAIMS

Delaware law presents a "historic and constitutional separation" of common law and equity jurisdiction.[34] It is thus well-settled that this Court "lacks subject matter jurisdiction to entertain equitable causes of action."[35] While it is true that "[d]isputes seeking only monetary damages are generally within this Court's jurisdiction," the nature of the remedy is not, alone, determinative of jurisdiction.[36] The Court must also consider the origin of the right asserted in deciding whether subject matter jurisdiction is proper.[37]

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[32] *Id.* (citing *Reybold Venture Grp.*, 2009 WL 143107, at *6 n. 44).
[33] *Id.*
[34] *See, e.g., Monroe Park v. Metro. Life Ins. Co.*, 457 A.2d 734, 738 (Del. 1983) ("Indeed, under article IV, section 7 of the Delaware Constitution, the Superior Court's jurisdiction relates to all civil causes at "common law" while article IV, section 10 and 10 Del. C. § 341, make clear the Court of Chancery's jurisdiction to hear and determine all matters and causes in equity.").
[35] *See, e.g., Dickerson*, 2015 WL 447607, at *7.
[36] *See id.* at *6-7. *See also Grace v. Morgan*, 2004 WL 26858, at *2 (Del. Super. Jan. 6, 2004) ("While the nature of the remedy is relevant, the focus of the jurisdictional inquiry regarding a fiduciary claim is whether a special relationship of trust existed between the parties sufficient to establish the fiduciary duty.").
[37] *See Dickerson*, 2015 WL 447607, at *6-7.

i. Breach of Fiduciary Duty

A cause of action based on breach of fiduciary duty is often referred to as the "quintessential equitable claim."[38] In addressing such claims, Delaware Courts have made clear that "the origin of the asserted right…is equity because 'equity, not law, is the source' of a fiduciary relationship."[39] Given the equitable nature of fiduciary duty claims, jurisdiction lies exclusively within the Chancery Court even where the relief sought is purely monetary.[40]

Generally, a "fiduciary relationship" exists "where one person reposes special trust in and reliance on the judgment of another or where a special duty exists on the part of one person to protect the interests of another."[41] Aside from the "classic examples" in the contexts of corporations and trusts, Chancery has recognized fiduciary relationships among general partners "and, in some instances, joint venturers or principals and their agents."[42] Yet, where "straightforward commercial relationship[s]" based in contract are involved and "no element of

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[38] *See QC Commc'ns Inc. v. Quartarone*, 2013 WL 1970069, at *1 (Del. Ch. May 14, 2013) ("This states a claim for breach of fiduciary duty, an equitable claim—perhaps *the* quintessential equitable claim."). *See also McMahon v. New Castle Assocs.*, 532 A.2d 601, 604 (Del. Ch. 1987) ("Among the most ancient of headings under which chancery's jurisdiction falls is that of fiduciary relationships.").

[39] *See Dickerson*, 2015 WL 447607, at *6 (quoting *McMahon*, 632 A.2d at 604).

[40] *See id.* at *6-7.

[41] *See McMahon*, 532 A.2d at 604 (citation omitted).

[42] *See id.* at 604-05 (stating that it is the existence of the "element of confidentiality or joint undertaking which sometimes extends chancery's concern to principals and agents or to co-venturers"). *See also Grace*, 2004 WL 26858, at *2.

confidentiality or joint undertaking" are alleged,[43] "Chancery will not exercise jurisdiction even if the parties use the standard language used to articulate an equitable cause of action."[44]

Here, Plaintiffs assert three breach of fiduciary duty claims in connection with the (1) JVA, (2) MHH Company Agreement, and (3) alleged misuse of confidential information. Plaintiffs also seek recovery for the Defendants' alleged aiding and abetting each other's, Everest's, and Dart's breaches of fiduciary duty. To address the question of whether these claims are based in equity or law, the Court must start by reviewing the Complaint to determine what is truly being alleged with respect to each category.

a. Joint Venture Agreement

Given Defendants' role "as co-principals and controlling persons of the Joint Venture and the Joint Venture's 50/50 partner Everest," Prospect claims it was entitled to repose trust and confidence in the Defendants.[45] By virtue of this relationship, Plaintiffs allege "Defendants owed to Prospect fiduciary duties, including, without limitation, fiduciary obligations and utmost duties of good faith, fair dealing, full disclosure, loyalty, care, candor, and substantive fairness."[46]

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[43] *See McMahon*, 532 A.2d at 604-05.
[44] *Grace*, 2004 WL 26858, at *2.
[45] Pls. Am. Compl., at 78, ¶¶ 242-44.
[46] *Id*. ¶ 244.

According to Plaintiffs, Defendants breached their fiduciary duties by (1) "[m]isappropriating Prospect's share of the value of the assets of the Joint Venture;" (2) "[a]ppropriating opportunities to themselves and Dart, rather than sharing the opportunities with Prospect;" (3) "[c]oncealing the implementation of the conspiracy;" (4) "[n]ot sharing the profits of Joint Venture assets equally with Prospect;" and (5) "[d]eliberately causing Prospect to receive proceeds far less than those Defendants received."[47]

b. Marysville Hydrocarbon Holdings Company Agreement

As a minority member of MHH, Prospect maintains it was owed fiduciary duties by Defendants in their various capacities "[a]s (i) managers of MHH, (ii) principals of those managers and/or (iii) owners of the Manager of MHH."[48] Additionally, "[a]s (i) a member of MHH's Board of Members and (ii) the member of MHH's Board of Members designated to represent Prospect within the Board of Members," Defendant Bhargava individually "owed Prospect, a minority member of MHH, fiduciary duties."[49] According to Plaintiffs, Defendants breached these duties by engaging in the following conduct:

(1) Failing to inform Prospect of material financial matters involving MHH;
(2) Requiring and entering into confidentiality agreements with DCP;

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[47] *Id.* ¶ 245.
[48] *Id.* ¶ 249.
[49] *Id.* ¶ 250.

> (3) Failing to share financial information with Prospect during negotiations with DCP;
> (4) Causing Everest to enter into the Secret Kickback Agreement with Dart;
> (5) Excluding Prospect from MHH business opportunities;
> (6) Causing MHH to engage in numerous improper related-party transactions to the detriment of Prospect's interests;
> (7) Forming, through their agent Bhargava, both MHH and MHI, and using those Delaware entities as the vehicles to perpetrate and benefit from all of the foregoing wrongdoing; and
> (8) Excluding Prospect from its rightful share of the proceeds from the Malpractice Litigation.[50]

As a result, "Prospect seeks an order that Defendants disgorge all ill-gotten gains they earned."[51]

c. Misuse of Confidential Information

In negotiating the sale of their individual interests in MHH, Defendants are alleged to have breached their fiduciary obligations by misusing MHH's material confidential information "solely to enrich themselves" and failing to disclose such information to Prospect.[52] As a result, "Defendants improperly arranged to receive a unit price that was multiple times more than the price Prospect received for the identical Class B units" and "improperly diverted at least $27.5 million, with the precise amount to be determined at trial."[53]

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[50] *Id.* ¶ 253.
[51] *Id.* ¶ 255.
[52] *Id.* ¶ 264.
[53] *Id.* ¶¶ 266-67.

d. Aiding and Abetting Breach of Fiduciary Duty

Plaintiffs contend Defendants were aware of the fiduciary duties Defendants, Everest, and Dart owed to Prospect and "materially and substantially" assisted one another, Everest, and Dart in breaching those duties by "causing Everest and Dart to enter into the Secret Kickback Agreement before Prospect executed the MHH Company Agreement, and causing Everest to enter into other agreements with Dart, without Prospect's knowledge."[54] According to Plaintiffs, "Defendants, Everest and Dart each committed such acts in furtherance of its breach of fiduciary duties by improper means, including fraud and breach of the JVA and MHH Company Agreement."[55]

It is clear to the Court that any reasonable reading of the claims in these counts would lead one to characterize them as equitable in nature. They reflect a duty, not of the kind imposed by contract, but rather by virtue of the parties' relationship and the level of trust Prospect was entitled to repose in Defendants as a result of their joint undertaking. Thus, the Court agrees with Defendants that these claims must be dismissed for lack of subject matter jurisdiction as they fall squarely within the Court of Chancery's exclusive jurisdiction over fiduciary

[54] *Id*. ¶¶ 272-73.
[55] *Id*. ¶ 274.

relationships.[56] Plaintiffs' counterargument that this Court has jurisdiction because the claims involve "direct theft of money or property" rather than "special rules of corporate law" is unavailing.[57] Then -Vice Chancellor Lamb dismissed a similar argument in *Actrade Financial Technologies, Ltd. v. Aharoni*:

> Aharoni challenges this court's subject matter jurisdiction by characterizing the disputed action as a simple conversion of Actrade funds that can be fully remedied by damages. Aharoni argues that Actrade may invoke equity jurisdiction only if damages cannot adequately remedy Actrade's injury. He is simply wrong.[58]

The *Actrade* Court reiterated that "[b]reach of fiduciary duty is a well-established equitable claim properly invoking the subject matter jurisdiction of this court" despite the monetary character of relief sought.[59]

Despite Plaintiffs attempts to characterize their case as otherwise,[60] the Amended Complaint expressly bases Prospect's right to relief on the fiduciary relationship allegedly formed by virtue of the parties' joint venture and their roles

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[56] *See McMahon*, 632 A.2d at 604 (discussing Chancery's exclusive and longstanding jurisdiction over fiduciary relationships).
[57] Pls. Answ. Br. in Opp'n to Defs. Mot. to Dismiss, at 13-15, 16 (citing *Liquid Tank Servs., Inc. v. Sullivan*, 1992 WL 240351, at *1 (Del. Super. Ct. Sept. 18, 1992)). *See also Actrade Fin. Techs. Ltd. v. Aharoni*, 2003 WL 22389891, at *5 (Del. Ch. Oct. 17, 2003).
[58] *Actrade Fin. Techs. Ltd.*, 2003 WL 22389891, at *5.
[59] *See id.*
[60] The Court notes Plaintiffs' original Complaint presented the breach of fiduciary duty claims as Counts I-IV. The Amended Complaint presents these claims towards the end of the document, as Counts XII-XV.

with respect to MHH.[61] The word "fiduciary" appears nearly sixty times throughout the document. While the Court is mindful that equitable jurisdiction "is not conferred by the incantation of magic words," a realistic assessment of Plaintiffs' Amended Complaint makes vividly clear that this dispute is not framed as one arising from the straightforward, purely contractual relationships, which are often entertained in this Court.[62] To the contrary, Plaintiffs breach of fiduciary duty claims specifically allege "Prospect was entitled to, and did, repose trust and confidence in Defendants."[63] It is precisely these "element[s] of confidentiality or joint undertaking" that the Chancery Court has relied upon in finding fiduciary relationships among participants in joint ventures.[64] This is not a case where the terms of the contractual relationship were breached, as it appears the Plaintiffs received what was required under the contract. Instead, these claims assert that Prospect was unfairly treated and wrongfully misled by those with whom they had

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[61] *See McMahon,* 532 A.2d at 604-05 (noting that fiduciary relationships have been recognized among joint venturers). While the parties appear to disagree as to the precise nature of their relationship, "[t]he Court of Chancery regularly determines the existence of joint ventures and related breach of fiduciary duty claims." *Reybold Venture Grp.*, 2009 WL 143107, at *6. Because this Court has determined it lacks jurisdiction over the fiduciary duty claims arising from the purported venture, it "need not determine the sufficiency of the pleaded claim of a joint venture." *See id.* at *6 n. 43.

[62] *See McMahon,* 532 A.2d at 603, 605.

[63] Pls. Am. Compl., at 78-82.

[64] *See McMahon,* 532 A.2d at 604-05 (classifying relationship as one at "arms-length" involving "no element of confidentiality or joint undertaking which sometimes extends chancery's concern to principals and agents or to co-venturers").

a special fiduciary relationship. Such claims are fundamental to the jurisdiction of the Court of Chancery and the Superior Court cannot maintain jurisdiction simply because Plaintiffs seek a jury determination or punitive damages. Thus, Counts XII, XIII, and XIV alleging breach of fiduciary duty are dismissed for lack of subject matter jurisdiction. Count XV for aiding and abetting breach of fiduciary duty is likewise dismissed as success on that claim would require Plaintiffs first prove "that there has been a cognizable breach of fiduciary duty."[65]

ii. Gross Negligence

Count VI, while captioned "gross negligence," plainly attempts to spell out a breach of fiduciary duty of care claim. It is well-settled that "[g]ross negligence is the standard for evaluating a breach of the duty of care."[66] At its core, Count VI alleges Defendants acted with "reckless indifference" in carrying out their "fiduciary obligations" to Prospect.[67] "[A] claim that a corporate manager acted

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[65] *See, e.g., Zimmerman v. Crothall*, 2012 WL 707238, at *19 (Del. Ch. Mar. 5, 2012), *as revised* (Mar. 27, 2012) (internal quotation marks omitted). *See also Metro. Life Ins. Co. v. Tremont Grp. Hldgs., Inc*., 2012 WL 6632681, at *18 (Del. Ch. Dec. 20, 2012) ("The elements for a claim of aiding and abetting a breach of fiduciary duty are: '(1) the existence of a fiduciary relationship; (2) the fiduciary breached its duty; (3) a defendant, who is not a fiduciary, knowingly participated in a breach; and (4) damages to the plaintiff resulted from the concerted action of the fiduciary and the nonfiduciary.'").

[66] *See, e.g., Feeley v. NHAOCG, LLC*, 62 A.3d 649, 664 (Del. Ch. 2012).

[67] Pls. Am. Compl., at 70-71, ¶¶ 194-95. The relevant portions of Plaintiffs' Amended Complaint are as follows:

> By virtue of the fiduciary and confidential relationships existing between Defendants and Prospect, Defendants owed to Prospect duties, including, without limitation, fiduciary obligations and utmost duties of good faith, fair dealing, full disclosure, loyalty, care, candor, and substantive fairness.

with gross negligence is the same as a claim that [he or] she breached [his or] her fiduciary duty of care."[68] Thus, despite Plaintiffs' halfhearted attempt to masquerade their "gross negligence" claim as one at law, the Court finds it must be pursued in the Court of Chancery alongside their other fiduciary duty claims.[69]

iii. Unjust Enrichment

In Count VII of the Amended Complaint, Plaintiffs allege Defendants' actions resulted in unjust enrichment at Prospect's expense. As a result, Plaintiffs request an accounting and disgorgement of Defendants' "ill-gotten gains," which Plaintiffs estimate to exceed $75 million. Defendants argue the Court lacks subject

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> Defendants acted with gross negligence in (i) engaging in secret self-dealings to redistribute assets of MHH, MHI and MGL to themselves (via both the sale to DCP and the round tripping through MEL) at the expense of Prospect; (ii) forming, through their agent Bhargava, both MHH and MHI, and using those Delaware entities as the vehicles to perpetrate and benefit from all of the foregoing fraud; (iii) excluding Prospect from, and deliberately refusing to disclose any information to Prospect regarding, the negotiations with DCP regarding the sale to DCP of MHH interests (including but not limited to the sale of EE Group containing no holdings except 50 Class B units of MHH); (iv) using DCP as the "common fund"contemplated in the Secret Kickback Agreement to launder the proceeds of the MHH and Joint Venture equity Defendants stole from Prospect; and (v) excluding Prospect from its rightful share of the proceeds in the Malpractice Litigation.

[68] *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2004 WL 2050527, at *6 (Del. Super. Sept. 15, 2004).

[69] *See id.* at *3 ("Plaintiffs have scrupulously avoided using the words 'breach of fiduciary duty' to describe Defendants' conduct, though their brief does not deny that this characterization is apt. That avails them nothing, however, because Delaware courts look beyond mere form to the substance of the pleadings when determining subject matter jurisdiction.").

matter jurisdiction because “unjust enrichment is [a] purely equitable” claim, and therefore, must be heard in Chancery.[70]

Unjust enrichment is defined as “the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or *equity* and good conscience.”[71] Yet, where a plaintiff pleads unjust enrichment but seeks “money damages in order to be made whole, Chancery has no jurisdiction because no equitable remedy is sought.”[72] In such cases, this Court has routinely entertained claims for unjust enrichment. Here, however, Plaintiffs do not seek mere money damages. During oral argument, Plaintiffs elaborated that, although they received the percentage of profits they were entitled to under the relevant agreements, they request in addition to damages that Defendants *disgorge* any profits unjustly received. While Plaintiffs estimate such profits at $75 million, they maintain “[o]nly full discovery and a *complete accounting* will disclose the true extent of Defendants’ unjust compensation.”[73]

In Delaware, “when a defendant's fraudulent, unfair or unconscionable conduct causes him to be unjustly enriched at the expense of another to whom he

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[70] Defs. Br. in Support of Mot. to Dismiss, at 14 (citing *Cartanza v. Cartanza*, 2012 WL 1415486, at *6 (Del. Super. Apr. 16, 2012)).
[71] Am. Jur. 2d, *Restitution and Implied Contracts* § 3 (1973) (emphasis added).
[72] *See Grace*, 2004 WL 26858, at *3.
[73] Pls. Am. Compl., at 45, ¶ 108 (emphasis added).

owed some duty, the court may disgorge a defendant's profits by imposing a constructive trust, *an equitable remedy*."[74] Moreover, an accounting is a means by which the amount of "benefits bestowed on an unjustly enriched defendant" is measured.[75] While alone insufficient to confer equitable jurisdiction,[76] where, as here, a fiduciary relationship is alleged *and* an accounting is requested "equity will generally entertain jurisdiction on the premise that legal remedies are inadequate."[77] Thus, it appears to the Court that the Court of Chancery is better

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[74] *Ciappa Const., Inc. v. Innovative Prop. Res., LLC*, 2007 WL 914640, at *1 (Del. Super. Mar. 2, 2007) (internal quotation marks omitted) (emphasis added). *See also Quill v. Malizia,* 2005 WL 578975, at *11 (Del. Ch. Mar. 4, 2005) (citation omitted) ("The imposition of a constructive trust is premised on a finding of fraud, violation of fiduciary duty, or some other unconscionable act."); *Envo, Inc. v. Walters*, 2009 WL 5173807, at *6 (Del. Ch. Dec. 30, 2009) (acknowledging that Chancery may impose a constructive trust "upon specific property [or] identifiable proceeds of specific property, and even money so long as it resides in an identifiable fund to which the plaintiff can trace equitable ownership"), *aff'd*, 2013 WL 1283533 (Del. Mar. 28, 2013); *Hogg v. Walker*, 622 A.2d 648, 652 (Del. 1993) ("The constructive trust concept has been applied to the recovery of money, based on tracing an identifiable fund to which plaintiff claims equitable ownership, or where the legal remedy is inadequate-such as the distinctively equitable nature of the right asserted.").

[75] *See Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1063 (Del. 1988) ("An accounting for profits is a means of measuring the benefits bestowed on an unjustly enriched defendant. Accordingly, an unjustly enriched defendant may be ordered to turn over to the plaintiff the profits earned through the use or possession of the plaintiff's property.").

[76] *See Int'l Bus. Machs Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991) ("An accounting is within the jurisdiction of this Court. The accounting usually ordered by this Court, however, involves the wrongdoing of a fiduciary, no allegations of which are involved here…an accounting among non-fiduciaries is an action recognized but rarely realized in equity.").

[77] *See Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487, 497 (Del. 1982). *See also Pan Am. Trade & Inv. Corp. v. Commercial Metals Co.*, 94 A.2d 700, 701-02 (Del. Ch. 1953) ("Equity will not entertain jurisdiction in an action for an accounting except: (1) where there are mutual accounts between the parties; (2) where the accounts are all on one side but there are circumstances of great complication; and, (3) where a fiduciary relationship exists between the parties and a duty rests upon defendant to render an account.").

positioned to afford Plaintiffs the relief they request and as such, their unjust enrichment claim is also dismissed.[78]

2. PLAINTIFFS' LEGAL CLAIMS

Plaintiffs' also allege fraud, aiding and abetting breach of contract, violation of the RICO Act, conspiracy to violate the RICO Act, fraudulent transfer, tortious interference with contractual relations, fraudulent inducement, breach of the implied covenant of good faith and fair dealing, and civil conspiracy. Defendants urge the Court to dismiss these claims and allow the entire case to be litigated in Chancery because Plaintiffs legal claims seek equitable remedies and the claims are predicated on the same facts underlying the equitable claims. Plaintiffs request the Court retain jurisdiction over the remaining claims so as to respect their right to trial by jury and pursuit of punitive damages.

Generally speaking, Plaintiffs are correct that this Court would have subject matter jurisdiction over many of their remaining claims. It is also true that joining legal and equitable claims does not necessarily result in the automatic deprivation

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[78] *See Harman*, 442 A.2d at 497 ("An accounting is prayed; and a proper accounting and the correct inferences to be drawn from the facts developed are matters only for a court of equity in which a careful, patient and extended examination of all of the evidence can be made and a just conclusion reached by a trained mind in accordance with established equitable principles."). *See also Envo, Inc.,* 2009 WL 5173807, at *6 (finding that the likely need to impose a constructive trust provided sufficient grounds for equitable subject matter jurisdiction in a dispute between two corporations regarding the sale of assets).

of "the right to trial by jury on the purely legal issues."[79] However, "of particular importance in the determination of whether to sever legal and equitable claims is the extent to which the claims are so '*intertwined*' as to make separation impractical or impossible."[80] Additionally, the Court must consider "whether the claims are primarily the type … usually tried before a jury."[81]

Having weighed these considerations, it is apparent to the Court that it could find that Plaintiffs' legal claims are intertwined with their equitable claims and that there is a fair basis to dismiss the entire suit with leave to transfer it to the Court of Chancery.[82] However, absent the equitable claims, it is undisputed that this Court has jurisdiction to hear Plantiffs' remaining claims. That said, it is unrealistic for the parties to expect that both the Superior Court and Chancery Court will entertain this dispute. Both the legal and equitable claims arise out of the same set of facts

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[79] *See Catamaran Acq. Corp. v. Spherion Corp*., 2001 WL 755387, at *6 (Del. Super. May 31, 2001) (quoting *Getty Ref. & Mktg. Co. v. Park Oil, Inc.*, 385 A.2d 147,151 (Del. Ch. 1978)).

[80] *Id.* ("While these concepts have been developed in the context of the Court of Chancery's ancillary jurisdiction over legal claims, the Court can discern no reason why the concepts would not apply equally to this Court's determination of whether to transfer legal claims (poised for trial by jury in this Court) to the Court of Chancery along with equitable claims over which this Court has no jurisdiction.") (emphasis added). *See also Getty Ref. & Mktg. Co.,* 385 A.2d at 150 ("Of great importance is whether the facts involved in the equitable counts and in the legal counts are so intertwined as to make it undesirable or impossible to sever them."), *aff'd sub nom*., *Park Oil, Inc. v. Getty Ref. & Mktg. Co.*, 407 A.2d 533 (Del. 1979).

[81] *See Clark v. Teeven Hldg. Co.*, 625 A.2d 869, 882 (Del. Ch. 1992) (citing *In re Markel*, 254 A.2d 236 (Del. 1969)).

[82] *See Catamaran Acq. Corp.*, 2001 WL 755387, at *6. Should the Chancery Court find it has equity jurisdiction over part of Plaintiffs' case, it has discretion "to exercise jurisdiction over related legal claims." *See, e.g., Actrade Fin. Techs. Ltd.,* 2003 WL 22389891, at *5.

and seek similar relief, through alternative pleading. It is also true that the equitable claims presented in the Complaint represent more than minor assertions that are overwhelmed by the significance and importance of the legal claims. It appears to the Court that Plaintiffs' intent was to choose a forum, assert every claim they believed in good faith was appropriate, and hope their forum choice would be allowed to handle all of the litigation. Unfortunately, the Court is beginning to routinely see similar pleadings perhaps because of the misconception that this Court, like Chancery, can apply a clean up doctrine. That is not the case and Chancellor Bouchard recently denied a request to cross designate a Superior Court judge to handle equitable claims filed in a legal matter.[83] In his Letter Opinion Chancellor Bouchard stated:

> A fundamental aspect of the constitutional separation of law and equity in Delaware is that the Court of Chancery has exclusive jurisdiction to hear all matters and causes in equity. *See* 10 *Del. C.* § 341; *Monroe Park v. Metro Life Ins. Co*., 457 A.2d 734, 738 (Del. 1983). Requests for equitable relief thus may not be brought in the Superior Court, even when accompanied by legal claims, because the Superior Court does not have the jurisdictional authority to grant equitable relief. *See, e.g., Ciappa Const., Inc. v. Innovative Prop. Res*., *LLC,* 2007 WL 914640, at *1 (Del. Super. Mar. 2, 2007). In contrast, when the equitable jurisdiction of the Court of Chancery has been invoked, it may exercise jurisdiction over legal

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[83] *Dow Chem. Co. v. Organik Kimya Hldg. A.S.,* Del. Ch., C.A. No. N15C-06-252, Bouchard, C. (Dec. 18, 2015) (Letter Op.).

> claims under the equitable cleanup doctrine. *See Wilmont Homes, Inc. v. Weiler,* 202 A.2d 576, 580 (Del. 1964); *Darby Emerging Markets Fund, L.P. v. Ryan,* 2013 WL 6401131, at *8 (Del. Ch. Nov. 27, 2013).
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> The Chancellor has asked the Chief Justice on occasion to designate a member of the Superior Court to serve as a Vice Chancellor for purposes of judicial efficiency. The making of such a request may be appropriate when the need to assert an equitable claim or to seek equitable relief was not apparent at the outset of a case filed in the Superior Court but becomes apparent after the case has progressed, particularly when the assigned judicial officer has invested a significant amount of time becoming familiar with the factual and legal issues in the case. That is not the situation here.
>
> Plaintiffs' original complaint in this case sought various forms of permanent and mandatory injunctive relief beyond the jurisdictional authority of the Superior Court that should have been sought in the Court of Chancery in the first place. *See Johnson v. Penrose, Inc.,* 1983 WL 19789, at *2 (Del. Ch. Apr. 21, 1983) ("Equity and law courts should not be placed in the position of competing for litigation nor should Plaintiff be afforded a choice of forums.").[84]

This Court agrees with Chancellor Bouchard and believes the historical separation of jurisdiction has served well the interest of litigants for centuries. As such, designation should be a rare event clearly justified by the circumstances of the litigation. It is not a tool to simply satisfy the forum selection of a party and

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[84] *Id.*

this Court is confident that both courts will zealously protect their jurisdiction positions.

Ultimately, Plaintiffs have a choice to make. They may agree to have the case transferred to Chancery where the equity claims may be litigated and the law claims considered under Chancery's clean up doctrine. Alternatively, Plaintiffs can abandon with prejudice the equitable claims altogether and proceed in this Court on their legal claims alone. Or finally, Plaintiffs could proceed on the equitable claims in Chancery Court with the law claims being stayed pending the outcome of that litigation. Under this last option, counsel should be fully aware that this Court does not intend to retry matters reasonably handled and resolved in Chancery and the rulings there will have full force and effect in any litigation continuing in this Court. Candidly, the Court questions whether any issues would even remain to be tried once the equitable claims are fully litigated.

From the Court's perspective, it appears Plaintiffs are attempting to litigate at law what is really a dispute seeking equitable relief. While this Court appreciates the confidence the parties have shown in this Court to fairly and appropriately handle complex business disputes, the Complex Commercial Litigation Division was established to provide a forum in which disputes *at law* could be decided by dedicated business court judges. It is not, nor does it aim to

be, a court where equitable matters are routinely resolved. That has long been the function of the Chancery Court and only under limited and factually unique circumstances should that jurisdictional line be crossed.

Plaintiffs have until February 15, 2016 to decide how they wish to pursue this litigation. Since the Court believes the personal jurisdiction issues should be handled by the Court ultimately handling the litigation, that issue will remain pending until Plaintiffs decide where they want to try the case.

III. CONCLUSION

Based upon the above reasoning, Defendants' Motion to Dismiss Counts VI, VII, XII, XIII, XIV, and XV is hereby GRANTED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.