

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GEMSPRING JTI PARENT, LLC and)
GEMSPRING JTI ACQUISITION, LLC,)
)
Plaintiffs,)

v.)

) C.A. No. N25C-10-165 SKR CCLD

)
JMC INVESTMENT LLC, JMC)
ENGINEERING SOLUTIONS, LLC, JTI)
ELECTRICAL & INSTRUMENTATION,)
INC., INNOVATIVE PROCESSES,)
INC., ANDREW WAKE, JTI)
MANAGEMENT, LLC, MATTHEW)
SCOTT, JASON TACKITT, THOMAS)
SADUSKY, and JEAN MARIE PAINVIN,)
)
Defendants.)

Submitted: January 9, 2026
Decided: April 24, 2026

MEMORANDUM OPINION AND ORDER

*Upon Consideration of Defendants' Motion to
Dismiss the Amended Complaint:*

GRANTED-IN-PART AND DENIED-IN-PART

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Rennie, Judge

I. INTRODUCTION

This opinion arises from a distinctly Delawarean procedural posture. The plaintiff commenced this action in the Court of Chancery, and the defendants filed the instant Motion to Dismiss soon thereafter. Two weeks before oral argument, the Court of Chancery dismissed the action *sua sponte*, concluding that the plaintiff had adequate remedies at law. Now, following transfer, this Court draws from the Court of Chancery-oriented briefing and Superior Court-directed oral argument to resolve the Motion.

This case tracks a familiar type of post-acquisition dispute. Despite its purported best efforts to “kick the tires” during diligence, the buyer realized after closing that it bought a lemon. Limited by its contractually circumscribed access to the courthouse, it brings a bevy of claims in hopes of securing some form of relief.

Guided by the parties’ private ordering, the public policy against fraud, and the Court of Chancery’s findings, the Court concludes that the plaintiff has stated claims for fraud, aiding and abetting fraud, and civil conspiracy. The Court dismisses the breach of contract claim.

The Court requests supplemental briefing regarding the claims for violation of state securities law statutes and defers ruling on them at this time.

II. BACKGROUND¹

A. The Parties

Plaintiffs Gemspring JTI Parent, LLC and Gemspring JTI Acquisition, LLC (together, “Gemspring” or “Plaintiffs”) are Delaware limited liability companies headquartered in Westport, Connecticut.² This case centers on their 2021 acquisition of non-party JTI Electrical & Instrumentation, LLC (the “Company”).³ The Company, which provides electrical, mechanical, and automation services to a broad array of processing facilities,⁴ is headquartered in Shafter, California.⁵

Defendant Jason Tackitt (“Tackitt”) is the Company’s founder and former CEO.⁶ He is also the owner and controller of two entity defendants: JTI Electrical & Instrumentation, Inc. (“JTI Inc.”) and Innovative Processes, Inc. (“Innovative Processes”).⁷ Tackitt was a California resident for the pendency of the Gemspring acquisition.⁸

¹ The facts are drawn from the well-pled allegations in the Verified First Amended Complaint (the “Amended Complaint”) (D.I. 1) [“Am. Compl.”], and the Equity Purchase and Contribution Agreement (the “Agreement”) (available at D.I. 1 Exhibit A) [“Agreement”], which is incorporated into the Amended Complaint by reference.

² Am. Compl. ¶ 19.

³ *Id.* at ¶ 1.

⁴ *Id.* at ¶ 37.

⁵ *Id.* at ¶ 20.

⁶ *Id.* at ¶ 24.

⁷ *Id.* at ¶ 167. Both companies were incorporated in California and are headquartered in Nevada. *Id.* at ¶¶ 28–29.

⁸ *Id.* at ¶ 24.

Defendant JMC Engineering Solutions, LLC (“JMC Engineering”) is a Delaware limited liability company.⁹ It acquired a 60% majority interest in the Company in 2013.¹⁰

Defendant JMC Investment LLC (“JMC Investment”) (together with JMC Engineering, “JMC”) is a New York-based family office.¹¹ Following the Company’s acquisition by JMC Engineering, JMC Investment provided financial, managerial, and operational services to the Company in exchange for an annual fee.¹²

Defendant Jean-Marie Painvin (“Painvin”) founded JMC Investment and was formerly chairman of the Company’s board.¹³ He is an officer of JMC Engineering,¹⁴ and a resident of New York.¹⁵

⁹ *Id.* at ¶ 27.

¹⁰ *Id.* at ¶ 48.

¹¹ *Id.* at ¶¶ 21, 48.

¹² *Id.* at ¶ 50.

¹³ *Id.* at ¶ 26.

¹⁴ *Id.* at ¶ 27.

¹⁵ *Id.* at ¶ 26.

Defendant Thomas Sadusky (“Sadusky”) is the Managing Director of JMC Investment, an officer of JMC Engineering,¹⁶ and a former member of the Company’s board.¹⁷ Sadusky is also a New York resident.¹⁸

Defendant JTI Management, LLC (“JTI Management”) is a Delaware limited liability company that JMC formed in 2013 as a compensation vehicle for the Company’s leadership.¹⁹ It is controlled by Sadusky.²⁰

Defendant Andrew “AJ” Wake (“Wake”) was the Company’s CEO.²¹ He lives in the United Kingdom.²²

Defendant Matthew Scott (“Scott”) was the Company’s CFO.²³ He is a California resident.²⁴

At the time of the Gemspring acquisition, JMC Engineering, JTI Inc., Innovative Processes, and Wake (together, the “Seller Defendants”) were owners of

¹⁶ *Id.* at ¶ 27.

¹⁷ *Id.* at ¶ 25.

¹⁸ *Id.*

¹⁹ *Id.* at ¶ 55.

²⁰ *Id.*

²¹ *Id.* at ¶ 30.

²² *Id.*

²³ *Id.* at ¶ 23.

²⁴ *Id.*

the Company.²⁵ JMC Investment, JTI Management, Scott, Tackitt, Sadusky, and Painvin (together, the “Controller Defendants”) managed the Company.²⁶

B. Selling the Company

In early 2020, a prospective buyer sought to acquire the Company,²⁷ but the deal collapsed that July.²⁸ Shortly thereafter, the Seller Defendants engaged a financial advisor to help secure a new buyer.²⁹ The advisor worked with Painvin, Sadusky, Tackitt, and Scott to prepare a confidential information memorandum that the advisor could distribute to potential buyers (the “CIM”).³⁰ The CIM detailed the Company’s recent financial performance, and represented that its figures were “based” on “audited GAAP financials.”³¹ Specifically, the CIM represented that the Company achieved “project margins” exceeding 40%.³² Gemspring alleges that such margins would have placed the Company “near the top of the industry” had the statement been accurate.³³

²⁵ *Id.* at ¶ 134.

²⁶ *Id.*

²⁷ *Id.* at ¶ 56.

²⁸ *Id.* at ¶ 59.

²⁹ *Id.* at ¶ 60.

³⁰ *Id.* at ¶ 61.

³¹ *Id.* at ¶ 64.

³² *Id.* at ¶ 63

³³ *Id.*

In July 2021, the financial advisor sent the CIM to Gemspring.³⁴ Later that month, Gemspring submitted a nonbinding bid of \$95 million to \$105 million to acquire the Company.³⁵

Extensive due diligence followed. Gemspring representatives made “multiple trips” to California for “in-person” diligence, including trips to the Company’s headquarters, a site visit to the facilities of the Company’s largest client, and meetings with management.³⁶ Gemspring also conducted virtual due diligence sessions from its offices in Connecticut.³⁷

In September 2021, Gemspring reduced its bid to \$85 million,³⁸ and subsequently executed a Letter of Intent to acquire the Company at that price.³⁹ On December 22, 2021, Gemspring and the Seller Defendants executed the Equity Purchase and Contribution Agreement (the “Agreement”) and closed on the acquisition.⁴⁰

³⁴ *Id.* at ¶ 60.

³⁵ *Id.* at ¶ 65.

³⁶ *Id.*

³⁷ *Id.* at ¶ 66.

³⁸ *Id.* at ¶ 70. Also in September, the Seller Defendants and their financial advisors prepared a management presentation for potential bidders, including Gemspring (the “MP”). *Id.* at ¶ 68. The MP provided the Company’s summary income statement, revised 2020 financials, and updated figures through September 2021. *Id.* It is not clear if Gemspring reduced its bid before or after receiving the MP.

³⁹ *Id.* at ¶ 72.

⁴⁰ *Id.* at ¶ 78. JMC and Tackitt retained a rollover interest in the Company’s business. *Id.* at ¶ 76.

C. Post-Closing Investigation

Gemspring assumed control of the Company in early 2022. As part of that process, it hired an auditor to review the Company’s financials.⁴¹ In May 2023, the auditor issued a “material weakness letter” reporting that the Company’s 2022 financial statements revealed “several deficiencies in the Company’s internal controls.”⁴² In response, Gemspring launched a broader investigation into the Company’s financial practices.⁴³ In 2024,⁴⁴ the investigation concluded that the Company’s books and records were not GAAP compliant and that its pre-acquisition financial statements were significantly overstated.⁴⁵ This litigation followed.

D. Procedural History

Gemspring initiated this litigation in December 2024 in the Delaware Court of Chancery (the “Chancery Action”).⁴⁶ It filed its operative complaint—the Amended Complaint—in April 2025.⁴⁷ Defendants moved to dismiss, and the parties briefed the motion in the Court of Chancery.⁴⁸ On September 24, 2025, two

⁴¹ *Id.* at ¶ 85.

⁴² *Id.* at ¶ 86.

⁴³ *Id.* at ¶ 87.

⁴⁴ Gemspring attributes the delay to Scott—who controlled the Company’s books and records—because, Gemspring claims, its investigators were unable to secure necessary documents until he left the Company in November 2023. *Id.* at ¶ 88.

⁴⁵ *Id.* at ¶ 87.

⁴⁶ *See Gemspring JTI Parent, LLC v. JMC Investment LLC*, C.A. No. 2024-1332-MTZ.

⁴⁷ Chancery Action, C.A. No. 2024-1332-MTZ, D.I. 22.

⁴⁸ Chancery Action D.I. 25.

weeks before oral argument, the Court of Chancery issued a *sua sponte* decision dismissing the action finding that Gemspring had adequate remedies at law, and the Court of Chancery therefore lacked subject matter jurisdiction (the “Chancery Decision”).⁴⁹ Gemspring elected to transfer the action to this Court pursuant to 10 *Del. C.* § 1902, and refiled its complaint on October 13, 2025.⁵⁰ Faced with the pending Motion to Dismiss, the parties stipulated to incorporate their previous briefing and proceed to oral argument in this forum.⁵¹ The Court heard oral argument on January 9, 2026.⁵² This is the Court’s decision on the Motion.

E. Gemspring’s Allegations

In short, Gemspring contends that Defendants knowingly induced the Company to make false representations in the Agreement.⁵³ Gemspring alleges that

⁴⁹ The Chancery Decision is not available on Westlaw. It is available on File & Serve at Chancery Action D.I. 44 (Transaction ID 77163768).

⁵⁰ *See* D.I. 1.

⁵¹ *See* Defendants’ Opening Brief in Support of their Motion to Dismiss (the “Motion”) (D.I. 4 Ex. 2) [“Mot.”]; Plaintiffs’ Answering Brief in Opposition (the “Answering Brief”) (D.I. 4 Ex. 3) [“Ans. Br.”]; Defendants’ Reply Brief in Support (the “Reply Brief”) (D.I. 4 Ex. 4) [“Reply Br.”].

⁵² D.I. 13.

⁵³ *See* Am. Compl. ¶ 134. Specifically, the Agreement represents that: (i) the Company financial statements were true and correct (Section 4.6) (the “Financial Statement Representation”); (ii) the financial statements were prepared in accordance with GAAP (Section 4.6(a)) (the “GAAP Representation”); (iii) the financial statements fairly and accurately reflect the financial condition of the Company (Section 4.6(a)) (the “Financial Condition Representation”); (iv) the books and records are true and correct and prepared in accordance with GAAP (Section 4.6(b)) (the “Books and Records Representation”); (v) the Company maintains a standard system of accounting established and administered in accordance with GAAP (Section 4.6(b)) (the “Standardized Accounting Representation”); (vi) the Company maintains no off-the-books accounts and assets are only used in accordance with management directives (Section 4.6(d)) (the “Secret Books Representation”); (vii) the Company maintains a system of internal accounting controls and procedures appropriate for its size and industry that provides reasonable assurance that the

its investigation revealed that the Company’s financial records—which the Agreement represented were accurate—painted a “false picture” of the Company’s profitability.⁵⁴ Specifically, the investigation purportedly revealed that the 40% profit margin touted in the CIM actually peaked at 35% and declined to 25%,⁵⁵ and that the Company overstated its 2021 profit margin by \$10 million.⁵⁶ Now informed by the results of the investigation, Gemspring argues that, based on these findings, it overpaid for the Company by “approximately \$66 million.”⁵⁷

Gemspring further alleges that Defendants were personally involved in the processes that resulted in the misstated financials and the Company’s representations in the Agreement that they were accurate. It alleges that the individual Defendants regularly discussed the Company’s lack of internal controls,⁵⁸ and were either aware of or actively engaged in “questionable accounting practices” spearheaded by Scott.⁵⁹ This alleged conduct included creating false “internal” invoices, baselessly

reporting is reliable and prepared in accordance with GAAP (Section 4.6(e)) (the “Internal Controls Representation”); all tax returns are true, complete, and correct (Section 4.22) (the “Tax Returns Representation”) (together, the “Alleged Misrepresentations”). *See id.* at ¶ 81.

⁵⁴ *Id.* at ¶ 119.

⁵⁵ *Id.*

⁵⁶ *Id.* at ¶ 122.

⁵⁷ *Id.* at ¶ 123.

⁵⁸ *Id.* at ¶ 91.

⁵⁹ *Id.* at ¶ 94. In April 2021, Company auditors sent a letter to the Board stating that the Company had inadequate controls and had failed to implement the percentage-of-completion method. *Id.* at ¶ 151.

inflating revenue and deflating costs, and maintaining “secret spreadsheets” that tracked the actual data.⁶⁰

To remedy this purported misconduct, the Amended Complaint asserts eight claims, which the Court categorizes into three groups: (1) Gemspring’s fraud and fraudulent inducement claim (the “Fraud Claim”);⁶¹ (2) claims contingent on a finding of fraud, including aiding and abetting and civil conspiracy (the “Fraud-Related Claims”);⁶² and (3) claims seeking recovery under California and Connecticut securities law (the “State Securities Claims”).⁶³

F. Agreement Section 8.9

Defendants argue that Gemspring contracted away its claims via Section 8.9 of the Agreement (“Section 8.9”), which provides that Gemspring’s “sole and exclusive” remedy for breaches of the Agreement is indemnification—which Gemspring is not seeking.⁶⁴ Instead, Gemspring contends that its claims fall within

⁶⁰ *Id.* at ¶¶ 94–105.

⁶¹ Count I: Fraud and Fraudulent Inducement (All Defendants) (Am. Compl. ¶ 133).

⁶² Count VI: Breach of Contract (Seller Defendants) (Am. Compl. ¶ 197); Count VII: Aiding and Abetting Fraud (All Defendants, Alternative to Fraudulent Inducement) (Am. Compl. ¶ 205); and Count VIII: Civil Conspiracy (All Defendants) (Am. Compl. ¶ 211).

⁶³ Count II: California Securities Fraud (Seller Defendants) (Am. Compl. ¶ 146); Count III: California Securities Fraud Controller Liability (All Defendants) (Am. Compl. ¶ 155); Count IV: Connecticut Securities Fraud (Seller Defendants) (Am. Compl. ¶ 171); and Count V: Connecticut Securities Fraud Controller Liability (All Defendants) (Am. Compl. ¶ 181).

⁶⁴ Am. Compl. ¶ 82 (quoting Section 8.9) (Agreement p. 58).

Section 8.9. Exclusive Remedies. Subject to Section 3.2 (other than with respect to Company Transaction Expenses and Indebtedness, which shall also be subject to the indemnification provisions set forth in ARTICLE VIII), Section 1.5, and

the ambit of the two carveouts in Section 8.9: (1) claims seeking equitable relief (the “Equitable Relief Carveout”), and (2) claims predicated on “Fraud” (the “Fraud Carveout”).

The Equitable Relief Carveout states that “[n]othing in this Section 8.9 shall limit any Person’s right to seek and obtain any equitable relief to which any Person shall be entitled.”⁶⁵

The Fraud Carveout provides that “[n]othing in this Section 8.9 shall limit any Person’s right to . . . seek any remedy on account of any other party’s **Fraud**.”⁶⁶ The Agreement narrowly defines “Fraud” as follows:

“**Fraud**” means an actual and intentional common law fraud under Delaware law (and not a constructive fraud, statutory fraud, equitable fraud, negligent misrepresentation or omission, or any form of fraud premised on recklessness or negligence) committed by or on behalf of a Seller or the Company in the making of the representations and warranties in ARTICLE IV (as modified by the Disclosure Schedules) that it is false and made for the purpose of inducing Parent or Buyer to act and upon which Parent or Buyer relies.⁶⁷

Section 6.1, the parties hereto acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement, or obligation contained in this Agreement shall be pursuant to the indemnification provision set forth in this ARTICLE VIII. Nothing in this Section 8.9 shall limit any Person’s right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any other party’s Fraud.

⁶⁵ Agreement Section 8.9.

⁶⁶ *Id.* (emphasis in original).

⁶⁷ *Id.* at p. 86. Gemspring concedes, as it must, that the Fraud Carveout only applies to “actual and intentional common law fraud[.]” not “other fraud claims, including based on recklessness or constructive knowledge.” *See* Ans. Br. p. 48.

III. ANALYSIS

The Court first addresses the Fraud Claim, then the Fraud-Related Claims, and defers ruling on the State Securities Claims.

A. The Fraud Claim

1. *Standard*

To state a claim for fraud, a plaintiff must plead: (1) a false representation; (2) the defendant's knowledge or belief that the representation was false or was recklessly indifferent to its truth; (3) the defendant intended to induce the plaintiff to act or refrain from acting; (4) the plaintiff acted or refrained from acting in justifiable reliance on the representation; and (5) damage resulted from such reliance.⁶⁸

Delaware Superior Court Civil Rule 9(b) “imposes a heightened pleading standard for allegations of fraud.”⁶⁹ Under Rule 9(b), “[i]n all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity. Malice, intent, knowledge and other condition[s] of mind of a person may be averred generally.”⁷⁰ Damages may also be alleged generally.⁷¹

⁶⁸ *Valley Joist BD Hldgs., LLC v. EBSCO Indus., Inc.*, 269 A.3d 984, 988 (Del. 2021) (citing *Prairie Cap. III, L.P. v. Double E Hldg. Corp.*, 132 A.3d 35, 49 (Del. Ch. 2015)).

⁶⁹ *Avve, Inc. v. Upstack Techs., Inc.*, 2019 WL 1643752, at *5 (Del. Super. Apr. 12, 2019).

⁷⁰ Del. Super. Ct. Civ. R. 9(b).

⁷¹ *See Phage Diagnostics, Inc. v. Corvium, Inc.*, 2020 WL 1816192, at *9 (Del. Super. Mar. 9, 2020).

2. *False Representation*

To satisfy the heightened pleading standard for fraud, a plaintiff ordinarily must allege the time, place, and contents of the false representations; the facts misrepresented; the identity of the person(s) making the misrepresentations; and what the person(s) gained from making the misrepresentations.⁷²

The Alleged Misrepresentations are contained in the Agreement, and they meet the specificity criteria.⁷³ Defendants argue that specificity notwithstanding, the Alleged Misrepresentations are not *false* representations because their accuracy was disclaimed by the Company's contractual disclosure that certain financial statements were not prepared in accordance with GAAP ("the GAAP Disclosure").⁷⁴

It is well-settled in Delaware that if a seller discloses a fact in a disclosure schedule, that fact is "carved out" of the seller's representations and warranties.⁷⁵

⁷² See *Valley Joist*, 269 A.3d at 988.

⁷³ See *Mosaic US Hldgs. LLC v. Atlas Tech. Sols., Inc.*, 2025 WL 483064, at *7 (Del. Super. Jan. 22, 2025) ("[W]hen the basis of the alleged misrepresentation is contained in a written contract, the particularity requirement is relaxed because the who, what, where and when are imbedded in and easily ascertained from the contract.").

⁷⁴ Mot. p. 20. The GAAP Disclosure represents that "The Company has not prepared its financial statements in accordance with GAAP with respect to the following areas: (i) monthly revenue recognition, (ii) capitalization and accrual of project expenses, (iii) capitalized recruiting fees, and (iv) accrued indirect and administrative payroll." Agreement p. 104. On a separate note, the Agreement specifically provides that the disclosure schedules modify the representations and warranties. It limits "Fraud" to "the making of . . . representations and warranties in ARTICLE IV (as modified by the disclosure schedules)[.]" *Id.* at p. 87 (emphasis added).

⁷⁵ *BBP Holdco Inc. v. Brunswick Corp.*, 2025 WL 1936604, at *12 (Del. Super. July 14, 2025) (quoting *Pilot Air Freight LLC v. Manna Freight Sys., Inc.*, 2020 WL 5588671, at *6 (Del. Ch. Sep. 18, 2020)).

Courts review these disclosures for the “realities that are revealed” to the parties rather than focusing solely on specific terms.⁷⁶

At this procedural stage, the Court cannot conclude that the GAAP Disclosure neutralizes the Alleged Misrepresentations. Defendants rely on *DCV Holdings, Inc. v. ConAgra, Inc.* and *Legent Group, LLC v. Axos Financial, Inc.* to argue for dismissal. However, both cases involved post-trial findings where the factual basis for the fraud was “almost verbatim” or “the same as” information provided in a disclosure schedule.⁷⁷

Here, the overlap is not so clear cut. Gemspring alleges misconduct that arguably transcends mere non-compliance with GAAP.⁷⁸ For example, Gemspring pleads that Scott “shift[ed] costs” between projects to “hide” them,⁷⁹ created “internal” invoices to recognize “up to \$500,000 to \$600,000 in false revenue[,]”⁸⁰ and “marked up” revenue by 25% to “cover overages[.]”⁸¹ More broadly, Gemspring

⁷⁶ *Legent Gp., LLC v. Axos Fin., Inc.*, 2025 WL 3124529, at *16 (Del. Ch. Nov. 7, 2025) (citing *DCV Hldgs., Inc. v. Conagra, Inc.*, 2005 WL 698133, at *7–8 (Del. Super. Mar. 24, 2005), *aff’d*, 889 A.2d 954 (Del. 2005)).

⁷⁷ *DCV Hldgs.*, 889 A.2d at 957; *Legent Gp.*, 2025 WL 3124529, at *16.

⁷⁸ *See* Ans. Br. p. 27.

⁷⁹ Am. Compl. ¶ 94.

⁸⁰ *Id.* at ¶ 96.

⁸¹ *Id.* at ¶ 102.

alleges, its accountants identified “significant costs” that were “hidden away” in a separate project without any associated billing.⁸²

A disclosure that a party has not followed GAAP in specific areas does not, at the pleading stage, constitute a disclosure that the party has abandoned accounting principles entirely by allegedly manipulating invoices or engaging in the wholesale fabrication of revenue. Whether the GAAP Disclosure is broad enough to encompass these specific alleged questionable accounting practices is a factual question that requires a developed record. With such a record, the Court can determine which—if any—Alleged Misrepresentations properly fall within the GAAP Disclosure.

3. Scier: Knowledge

While knowledge may be “averred generally” under Rule 9(b),⁸³ where a fraud claim places a defendant’s state of mind at its “core”, a plaintiff must plead to support a reasonable inference that: (i) the information was “knowable”; and (ii) the defendant “was in a position to know it.”⁸⁴ Gemspring has met this burden.

⁸² *Id.* at ¶ 110.

⁸³ Del. Super. Ct. R. Civ. Pro. 9(b).

⁸⁴ *Valley Joist*, 269 A.3d at 988 (quoting *Trenwick Am. Litig. Tr. v. Ernst & Young L.L.P.*, 906 A.2d 168, 208 (Del. Ch. 2006)). Defendants’ near perfunctory contention that the Agreement requires Gemspring to plead actual knowledge is unavailing. *See* Mot. pp. 18–19; Reply Br. p. 16. The Agreement’s definition of “Fraud” defines it as “common law fraud under Delaware law.” Agreement p. 86. “Position to know” is the pleading standard for common law fraud. *See Matrix Parent, Inc. v. Audax Mgmt. Co., LLC*, 319 A.3d 909, 934 (Del. Super. 2024) (“[I]f a defendant was in a position to know a knowable fact, it is reasonably conceivable that the defendant *did know* that fact.”) (emphasis in original).

Defendants contend that Gemspring’s allegations are “stale” because they allege knowledge of financial misconduct from 2019 and 2020, which—Defendants contend—is not “contemporaneous” with the December 2021 execution of the Agreement.⁸⁵ While this Court has indeed dismissed claims for failure to allege “contemporaneous” knowledge, it typically does so to prevent “fraud by hindsight”—where a plaintiff attempts to use a disappointing post-closing outcome to prove that pre-closing projections were fraudulent.⁸⁶ This concern is not present here. Gemspring does not challenge the Company’s post-acquisition performance; rather it alleges particularized pre-existing “irregularities.”⁸⁷

Nor are the allegations noncontemporary because they address conduct from “long before” Gemspring “entered the scene.”⁸⁸ If Defendants were aware of these accounting issues in 2019 or 2020, the Court may reasonably infer their continued awareness in December 2021.

⁸⁵ Reply Br. p. 16.

⁸⁶ *Mooney v. E.I. DuPont de Nemours & Co.*, 2017 WL 5713308, at *7 (Del. Super. Nov. 28, 2017).

⁸⁷ See Ans. Br. P. 33; Am. Compl. ¶ 121.

⁸⁸ Mot. p. 27.

The Court also rejects Defendants’ “group pleading” argument.⁸⁹ The Amended Complaint provides individualized allegations sufficient to put each Defendant on notice, and that knowledge can be imputed to the entity Defendants.⁹⁰

For example, the Amended Complaint alleges that Painvin and Sadusky knew or should have known about the “irregularities” because they provided financial, managerial, and operational services to the Company, made strategic decisions such as expanding its service offerings, and received regular updates regarding the Company’s finances and controls.⁹¹ Despite receiving an audit letter in April 2021 reporting deficiencies in the Company’s financial reporting and controls, Scott and Tackitt allegedly worked extensively with Painvin and Sadusky in preparing financial reports and presentations for potential buyers—including the CIM—that did not disclose these issues.⁹² Wake also allegedly received the April 2021 audit letter,⁹³ and he, Sadusky, and Scott “routinely communicated” “regarding improper estimated costs and lack of controls.”⁹⁴

⁸⁹ *See id.*; Reply Br. p. 19.

⁹⁰ *See River Valley Ingredients, LLC v. Am. Proteins, Inc.*, 2021 WL 598539, at *3 (Del. Super. Feb. 4, 2021) (“A plain reading of [Rule 9] suggests that group pleading may be permitted so long as the individual defendants are on notice of the claim against them.”).

⁹¹ Am. Compl. ¶¶ 50, 51, 136; *see* Ans. Br. pp. 34–35.

⁹² *Id.* at ¶¶ 61–69.

⁹³ *Id.* at ¶ 126.

⁹⁴ *Id.* at ¶ 151. Painvin was also involved in these conversations. *Id.* at ¶ 94.

Because individual directors and officers' knowledge is generally imputed to an entity when acting within the scope of their authority,⁹⁵ Gemspring has adequately alleged Defendants' knowledge of the alleged fraud as to the entity Defendants as well.⁹⁶

4. Intent

Defendants challenge Gemspring's pleading of intent on three grounds: (i) the GAAP Disclosure nullifies the alleged misrepresentations, (ii) the theory of fraud rests "almost exclusively" on alleged conduct from "years before" the sale process, or (iii) Gemspring has had "unhindered" access to Company systems for several years, so it should have found evidence of intentional misrepresentations during the sales process.⁹⁷ The Court has already addressed and rejected the first two arguments. The third—whether Gemspring's access to Company systems should have revealed the alleged fraud—is a question of fact more appropriately addressed in the context of reliance below.

⁹⁵ See *Matrix Parent, Inc.*, 319 A.3d at 935 (citing *EMSI Acq., Inc. v. Contractarian Funds, LLC*, 2017 WL 1732369, at *13 (Del. Ch. May 3, 2017)) (reaffirming long-standing rule that an individual director or officer's knowledge can be imputed to an entity when the director or officer was acting in the scope of their authority).

⁹⁶ JMC Investment—Painvin (founder, CEO, and controller) (Am. Compl. ¶ 166); JMC Engineering—Painvin (through JMC Investment) (¶ 166); JTI, Inc.—Tackitt (founder and controller) (¶ 167); Innovative Processes—Tackitt (¶ 167) (founder and controller); and JTI Management—Sadusky (formed by JMC, controlled by Sadusky) (¶ 55).

⁹⁷ Mot. pp. 25–27.

5. *Justifiable Reliance*

Defendants argue that Gemspring’s reliance was unjustifiable as a matter of law because Gemspring “closed its eyes” to the risk of financial irregularities by failing to ask more probing questions regarding the GAAP Disclosure.⁹⁸

Under Delaware law, justifiable reliance is a fact-intensive inquiry determined by an objective standard “viewed in the context of the parties’ relationship, knowledge, and experience.”⁹⁹ While a claim may fail if a plaintiff ignores an “obvious” risk,¹⁰⁰ or fails to utilize the “means of knowledge” readily within its reach,¹⁰¹ Gemspring’s allegations satisfy the *prima facie* standard for three reasons. First, Gemspring alleges reliance on specific *contractual* misrepresentations. Reasonable reliance is “easily met” in this context, as a buyer is generally entitled to rely on the accuracy of a seller’s negotiated representations.¹⁰² Second, Gemspring’s performance of due diligence generally supports, rather than undermines, a finding of reliance.¹⁰³ Whether it should have “uncovered” the alleged

⁹⁸ *Id.* at p. 25; Reply Br. p. 15.

⁹⁹ *Brent L. Mills, Inc. v. Katsamakias*, 2024 WL 196087, at *5 (Del. Super. Jan. 18, 2024); *see also Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *18 (Del. Ch. Jan. 26, 2024) (“In the world beyond anti-reliance clauses, reasonable reliance is a fact-intensive inquiry.”).

¹⁰⁰ *Id.*

¹⁰¹ *Universal Enter. Gp., L.P. v. Duncan Petroleum Corp.*, 2013 WL 3353743, at *14 (Del. Ch. July 1, 2013).

¹⁰² *Labyrinth, Inc.* 2024 WL 295996, at *18 (quoting *LVI Gp. Inv., LLC v. NCM Gp. Hldgs., LLC*, 2018 WL 1559936, at *13 n. 198 (Del. Ch. Mar. 28, 2018)).

¹⁰³ *Id.* at *19.

fraud—particularly where it alleges that Defendants took active steps to hide the misconduct—is a factual dispute that cannot be resolved on a motion to dismiss.¹⁰⁴

Third, nothing in the Amended Complaint suggests that Gemspring missed an obvious fraud;¹⁰⁵ rather, the allegations point to a situation where “a buyer simply failed to discover the hidden skeleton in the closet during due diligence.”¹⁰⁶

Gemspring’s pleading of reliance is sufficient.

6. Damages

Defendants do not dispute the sufficiency of Gemspring’s damages allegations.¹⁰⁷ As Gemspring has adequately pleaded each element of actual fraud, Defendants’ Motion to Dismiss the Fraud Claim for failure to state a claim is DENIED.

B. The Fraud-Related Claims

Gemspring raises three claims that are contingent on the viability of its fraud claim: (i) civil conspiracy, (ii) aiding and abetting fraud, and (iii) breach of contract. The Court addresses aiding and abetting and civil conspiracy together.¹⁰⁸ The Court

¹⁰⁴ *Id.* (citing *Arwood v. AWS Servs.*, 2022 WL 705841, at *24 (Del. Ch. Mar. 9, 2022)).

¹⁰⁵ *Arwood*, 2022 WL 705841, at *24.

¹⁰⁶ *Id.* at *25.

¹⁰⁷ *See* Mot. pp. 17–29; Reply Br. 9–20 (discussing elements of fraud).

¹⁰⁸ *See Stone & Paper Inv’rs, LLC v. Blanch*, 2021 WL 3240373, at *30 (Del. Ch. July 30, 2021) (aggregating cases to note that the two theories are “quite similar” and “the distinctions usually are not material.”).

then addresses Gemspring's unorthodox proposition that a breach of contract claim is a remedy for fraud.

1. Civil Conspiracy and Aiding and Abetting

Gemspring asserts its civil conspiracy claim against all Defendants,¹⁰⁹ and its alternative aiding and abetting claim against the Controller Defendants.¹¹⁰

As a threshold matter, Defendants argue that both claims are barred by the intra-corporate conspiracy doctrine (and concomitant aiding and abetting variation).¹¹¹ The Court declines to consider the argument at this stage. Defendants raised the doctrine for the first time in their Reply Brief, providing only a terse paragraph of analysis.¹¹² While Gemspring addressed the doctrine at oral argument, it did so in passing.¹¹³ In Delaware, issues not adjudicated or raised in the opening brief may be deemed waived.¹¹⁴ Defendants' late invocation of this contention has left the Court and Gemspring without an adequate record to assess how the doctrine implicates the interlocking web of individual and entity defendants involved in this

¹⁰⁹ Am. Compl. ¶ 213.

¹¹⁰ *Id.* at ¶¶ 205–210. It argues that if the Seller Defendants are liable for fraud, then the Controller Defendants aided and abetted them.

¹¹¹ Reply Br. p. 20.

¹¹² *Id.*

¹¹³ Indeed, the issue did not feature in Gemspring's slide deck, which was quite thorough.

¹¹⁴ *See Ethica Corp. Fin. S.r.L v. Dana Inc.*, 2018 WL 3954205, at *3 (Del. Super. Aug. 16, 2018) (“Courts may disregard or deem waived any arguments made in a reply brief which was not raised in the opening brief.”).

action. Rather than speculate, the Court will not dismiss any defendants on this basis—for now.

Defendants next argue that the conspiracy claim fails because Gemspring has not established an “explicit agreement” between Defendants.¹¹⁵ This is a misstatement of Delaware law. To plead civil conspiracy, a plaintiff must show: (i) a confederation or combination of two or more persons; (ii) an unlawful act done in furtherance of the conspiracy; and (iii) damages resulting from the action of the conspiracy parties.¹¹⁶ A court may “infer” an agreement from factual allegations of particular acts.¹¹⁷

In *AmeriMark Interactive, LLC v. AmeriMark Holdings, LLC*, this Court found that one defendant was the “main driver” of the disputed transaction, discussed compromising information with two other officer defendants, and told a third how to message the issue.¹¹⁸ This was sufficient for the Court to infer that each defendant—and an entity—participated in the alleged conspiracy.¹¹⁹ In *River Valley Ingredients, LLC v. American Proteins, Inc.*, this Court determined that even though

¹¹⁵ Reply Br. p. 21.

¹¹⁶ *AmeriMark Interactive, LLC v. AmeriMark Hldgs., LLC*, 2022 WL 16642020, at *12 (Del. Super. Nov. 3, 2022) (citing *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *10 (Del. Ch. Aug. 26, 2005)).

¹¹⁷ *River Valley Ingredients, LLC*, 2021 WL 598539, at *5; see also *AmeriMark Interactive, LLC*, 2022 WL 16642020, at *12 (“Plaintiffs do not need to prove the existence of an explicit agreement.”) (quoting *In re Am. Int’l Gp., Inc.*, 965 A.2d 763, 806 (Del. Ch. 2009)).

¹¹⁸ *AmeriMark Interactive, LLC*, 2022 WL 16642020, at *13.

¹¹⁹ *Id.*

the conspiracy claim did not include specific allegations of an agreement, the Complaint as a whole made it “reasonably conceivable” that the plaintiff “could” show that the defendants conspired.¹²⁰

Gemspring meets this low bar. Similar to *AmeriMark*, the allegations present a narrative of coordination: Scott and Tackitt allegedly shared “secret spreadsheets” and discussed how to “hide” costs;¹²¹ Wake, Painvin, Sadusky, Scott, and Tackitt conferred regarding the Company’s operational issues and lack of proper controls;¹²² and all but Wake worked closely on preparing the CIM.¹²³ This shared knowledge of the purported “irregularities” and regular communication is sufficient to support an inference of conspiracy at the pleading stage.¹²⁴

Regarding aiding and abetting, the Controller Defendants argue that they did not “knowingly assist the alleged fraud.”¹²⁵ Aiding and abetting requires: (i) underlying tortious conduct; (ii) knowledge; and (iii) substantial assistance.¹²⁶ To plead knowledge, the plaintiff must allege facts from which the court can reasonably infer that “the defendants knew or were in a position to know of” the underlying

¹²⁰ *River Valley Ingredients*, 2021 WL 598539, at *5.

¹²¹ Am. Compl. ¶¶ 100–05.

¹²² *Id.* at ¶¶ 91–93.

¹²³ *Id.* at ¶ 61.

¹²⁴ Defendants do not dispute Gemspring’s pleading of the damages element of civil conspiracy.

¹²⁵ Mot. pp. 29–31; Reply Br. pp. 20–21.

¹²⁶ *AmeriMark Interactive, LLC*, 2022 WL 16642020, at *11; *see also, e.g., Agspring Holdco, LLC v. NGP X US Hldgs., L.P.*, 2020 WL 4355555, at *20 (Del. Ch. July 30, 2020).

tortious conduct.¹²⁷ To show substantial assistance, the plaintiff must allege that “the secondary actor must have provided assistance or participation in aid of the primary actor’s allegedly unlawful acts.”¹²⁸

This inquiry is “necessarily fact intensive.”¹²⁹ In *Yangaroo Inc. v. Digital Media Services, Inc.*, this Court concluded that there was a “fair inference” that one group of defendants “knowingly assisted” another’s purported fraud when the Complaint alleged that the group was in “regular communication,” were “involved in” the decision to withhold certain information, and “advised against” disclosure.¹³⁰ Here, the allegations similarly reflect that the Controller Defendants participated in the Seller Defendants’ decision-making process and furthered the fraud themselves. The Complaint identifies specific conduct by each of the four individual Controller Defendants—Scott, Tackitt, Sadusky, and Painvin—that demonstrates that they were aware of deficiencies in the Company’s internal controls and the efforts to leverage this reduced oversight to maximize profit margins. Under the standard set in *Yangaroo*, these allegations create a “fair inference of knowing assistance.” Accordingly, both the civil conspiracy and aiding and abetting claims survive.

¹²⁷ *Id.*

¹²⁸ *Id.* (quoting *In re Oracle Corp. Deriv. Litig.*, 2020 WL 3410745, at *11 (Del. Ch. June 22, 2020) (internal quotation omitted)).

¹²⁹ *Yangaroo Inc. v. Digital Media Servs., Inc.*, 2024 WL 2791100, at *10 (Del. Super. May 30, 2024) (quoting *In re Oracle Corp. Deriv. Litig.*, 2020 WL 3410745, at *11).

¹³⁰ *Id.* at *10–11.

2. *Breach of Contract*

Gemspring claims that the fraud caused the Company to breach the Tax Returns Representation in the Agreement, which represented that the Company's tax returns and payments were accurate.¹³¹

On its face, this claim should fail because Section 8.9 expressly bars breach of contract claims.¹³² However, the Fraud Carveout provides that nothing in Section 8.9 "limits" Gemspring from pursuing "any remedy" for "Fraud".¹³³ Seizing on the opportunity, Gemspring argues that because the breach of contract was caused by the alleged fraud, the breach of contract claim is actually a permissible *remedy* to the fraud claim.¹³⁴ Defendants respond that claims and remedies are "separate and distinct" legal concepts.¹³⁵

"As a question of law, a contract's proper interpretation can be resolved on a motion to dismiss."¹³⁶ The Court will only dismiss the claim if Defendants have offered "the *only* reasonable construction" of the contract.¹³⁷ The Court's benchmark

¹³¹ Am. Compl. ¶¶ 202–04.

¹³² Agreement Section 8.9.

¹³³ *Id.* ("Nothing in this Section 8.9 shall limit any Person's right to . . . seek any remedy on account of any other party's Fraud).

¹³⁴ *Id.*

¹³⁵ Reply Br. p. 26.

¹³⁶ *Blue Cube Spinco LLC v. Dow Chem. Co.*, 2021 WL 4453460, at *7 (Del. Super. Sep. 29, 2021).

¹³⁷ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003) (emphasis in original).

for a reasonable construction is one that “fulfill[s] the ‘parties’ expectations at the time they contracted[,]”¹³⁸ “as reflected in the four corners of the agreement.”¹³⁹ The Court “constru[es] the agreement as a whole and giv[es] effect to all its provisions.”¹⁴⁰ Absent ambiguity, the Court “will give effect to the plain meaning of the contract's terms and provisions, without resort to extrinsic evidence.”¹⁴¹

The Court begins with the text.¹⁴² The question is whether “bringing an otherwise-barred breach of contract claim” falls within “any remedy on account of any other party’s Fraud.” The terms “remedy” and “claim” are distinct legal concepts. Black’s Law Dictionary provides that a “remedy” is a “means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.”¹⁴³ A “claim”, on the other hand, is an “assertion of an existing right” or a “demand for money, property, or a legal remedy to which one asserts a right.”¹⁴⁴ The contractual language

¹³⁸ *Leaf Invenergy Co. v. Invenergy Renewables LLC*, 210 A.3d 688, 696 (Del. 2019) (quoting *Exelon Generation Acqs., LLC v. Deere & Co.*, 176 A.3d 1262, 1272 (Del. 2017)).

¹³⁹ *In re Viking Pump, Inc.*, 148 A.3d 633, 648 (Del. 2016).

¹⁴⁰ *Id.*

¹⁴¹ *Sunlin Com. Carriers, Inc. v. CITGO Petrol. Corp.*, 206 A.3d 836, 846 (Del. 2019) (internal quotations omitted) (quoting *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159–60 (Del. 2010)).

¹⁴² *See Twin City Fire Ins. Co. v. Del. Racing Ass’n*, 840 A.2d 624, 628 (Del. 2003) (“The [contract] analysis starts with the language.”).

¹⁴³ REMEDY, Black’s Law Dictionary (12th ed. 2024).

¹⁴⁴ CLAIM, Black’s Law Dictionary (12th ed. 2024).

of “any remedy” is reasonably read to mean “any form of legal or equitable relief available for a fraud claim.”

The relief available for a fraud claim is well settled. When a party is fraudulently induced to enter a contract, the defrauded party may “elect either to affirm the contract and sue at law for monetary damages, or disaffirm the contract and seek rescission in equity.”¹⁴⁵ Where—as here—the plaintiff chooses to affirm a valid, enforceable contract, the legal relief can range from “benefit-of-the-bargain” damages¹⁴⁶ to reliance damages.¹⁴⁷ But allowing a barred contract claim to be revived as a “remedy” would ignore the plain meaning of the Agreement and the parties’ “private ordering.” While Gemspring may seek damages for fraud that are *equivalent* to contract damages, it cannot maintain an independent cause of action for breach of contract that it expressly waived in Section 8.9. Accordingly, the breach of contract claim is DISMISSED.

¹⁴⁵ *Tam v. Spitzer*, 1995 WL 510043, at *10 (Del. Ch. Aug. 17, 1995).

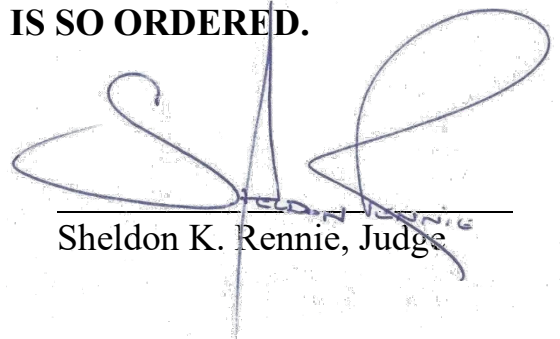
¹⁴⁶ *Id.* at *6.

¹⁴⁷ *In re Wayport, Inc. Litig.*, 76 A.3d 296, 327 (Del. Ch. 2013); *see also* Restatement (First) of Torts § 549 (as updated September 2025).

IV. CONCLUSION

Defendants' Motion to Dismiss is GRANTED regarding Count VI (Breach of Contract) and DENIED as to Count I (Fraud), Count VII (Aiding and Abetting Fraud), and Count VIII (Civil Conspiracy).¹⁴⁸

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

¹⁴⁸ The Court defers ruling on Count II through Count V (the State Securities Claims) pending the receipt of supplemental briefing from the parties.