

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FORTIS ADVISORS, LLC, in its	)	
Role as Securityholders' Agent,	)	
	)	
Plaintiff,	)	
	)	C.A. No. N24C-02-191 EMD CCLD
v.	)	
	)	
CARL ZEISS MEDITEC, INC.,	)	
	)	
Defendant.	)	

DECISION AFTER TRIAL

Submitted: June 17, 2026

Decided: September 23, 2026

Michael A. Barlow, Esquire, Hayden J. Driscoll, Esquire, Quinn Emanuel Urquhart & Sullivan, LLP, Wilmington, Delaware; Andrew M. Berdon, Esquire, J. Sebastian Becker, Esquire, Kai S. Mayer, Esquire, Quinn Emanuel Urquhart & Sullivan, LLP, New York, New York; Joseph M. Paunovich, Esquire, James Bieber, Esquire, Arian J. Koochesfahani, Esquire, Quinn Emanuel Urquhart & Sullivan, LLP, Los Angeles, California. *Attorneys for Plaintiff Fortis Advisors, LLC, in its Role as Securityholders' Agent.*

Richard L. Renck, Esquire, Mackenzie M. Wrobel, Esquire, Brandon R. Harper, Esquire, Duane Morris LLP, Wilmington, Delaware; Jeremy T. Elman, Esquire, Duane Morris LLP, Palo Alto, California; Andrew John Rudowitz, Esquire, Duane Morris LLP, Philadelphia, Pennsylvania. *Attorneys for Defendant Carl Zeiss Meditec, Inc.*

DAVIS, P.J.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a breach of contract action assigned to the Complex Commercial Litigation Division of the Superior Court. On February 19, 2024, Fortis Advisors, LLC (“Fortis” or the “Plaintiff”), in its role as agent for the equity holders of Iantech, Inc. (“Iantech”), commenced this action. Fortis asserted claims for: (i) breach of contract; and (ii) breach of the implied covenant of good faith and fair dealing against Carl Zeiss Meditec, Inc. (“CZMI” or the “Defendant”).¹ Fortis alleges that CZMI breached the terms of the parties’ Merger Agreement (the “Agreement”) by failing to make a full “COGS Milestone Payment” to the equity holders of Iantech (the “Equityholders”).²

On March 25, 2024, CZMI filed a Motion to Dismiss the Plaintiff’s Complaint (the “MTD”).³ On August 16, 2024, the Court denied the MTD with respect to Fortis’ breach of contract claim.⁴ However, the Court granted the MTD regarding the breach of implied covenant claim.⁵

On September 9, 2024, CZMI filed its Answer to the Complaint (the “Answer”).⁶ In the Answer, CZMI denied the allegation that it breached the Agreement by failing to render a full “COGS Milestone Payment.”⁷ The parties engaged in discovery after the filing of the Answer. After some initial discovery disputes, the Court appointed a Special Magistrate on September 12, 2025.⁸

¹ See Complaint (“Compl.”) (D.I. No. 1).

² *Id.* ¶ 88.

³ See Defendant’s Motion to Dismiss Plaintiff’s Complaint (“Def. MTD”) (D.I. No. 8).

⁴ See Superior Court Proceeding Sheet for a Hearing, heard on August 16, 2024 (D.I. No. 26).

⁵ See *id.*

⁶ See Defendant’s Answer to Plaintiff’s Complaint (“Answer”) (D.I. No. 30).

⁷ *Id.* ¶ 88.

⁸ D.I. No. ____

On November 14, 2025, CZMI filed its Motion for Partial Summary Judgment (the “PMSJ”).⁹ On February 9, 2026, the Court denied the PMSJ. The parties proceeded to trial.

II. THE TRIAL

The Court held a bench trial on Fortis’ claims from February 9, 2026, through February 17, 2026, and again on March 12, 2026, through March 13, 2026 (collectively, the “Trial”). The Court then had both parties submit their closing arguments in written form, receiving the final post-trial paper on or about June 17, 2026.

A. WITNESSES

During the Trial, the Court heard and considered testimony from the following witnesses:

Tsontcho “Sean” Ianchulev
Luke Clauson
Brian Walsh
Farrell Tyson
Sascha Burger
Scott Chamness
Joseph Gordon
Jeffrey Kopa
Christopher Gerardo
Jim Simms
Scott Smith
Thorston Tritschler
Scott Meyer
Raymundo Ruiz
Clara von Kreis
Frank Seitzinger
Patterson Shafer
Brent Bersin
Andrew Chang
Justus Wehmer
Euan Thompson

All witnesses, other than Mr. Simms, Mr. Smith, and Mr. Thompson, testified on direct and were available for cross-examination. The fact witnesses in this civil action were Mr.

⁹ See Defendant’s Motion for Partial Summary Judgment (“Def. PMSJ”) (D.I. No. 137).

Ianchulev, Mr. Clauson, Mr. Walsh, Mr. Tyson, Mr. Burger, Mr. Chamness, Mr. Gerardo, Mr. Simms, Mr. Smith, Mr. Tritschler, Mr. Meyer, Mr. Ruiz, Ms. von Kreis, Mr. Seitzinger, Mr. Chang, Mr. Wehmer, and Mr. Thompson. The expert witnesses were Mr. Gordon,¹⁰ Mr. Kopa,¹¹ Mr. Shafer,¹² and Mr. Bersin.¹³ The parties agreed not to admit the various expert reports into evidence.

Normally, the Court would list the witnesses in the order they testified, and which party called the witness. However, because the Trial was a bench trial, the Court could take witnesses out of order. In addition, the Court allowed for examination of each witness in both parties' case-in-chief pursuant to Delaware Rule of Evidence 611. Deposition testimony has been used in some instances in lieu of live testimony.

B. CREDIBILITY OF WITNESSES

In a bench trial, the Court is the sole judge of each witness's credibility, including the parties.¹⁴ The Court considers each witness's means of knowledge; strength of memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witnesses' biases, prejudices, or interests; the witnesses' manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.¹⁵

The Court finds that—based on their testimony at the Trial and the factors listed above—the witnesses that testified were generally credible. The Court accounted for bias with respect to the parties as all witnesses had some form of relationship with the Equityholders, Fortis or

¹⁰ Mr. Gordon testified and rendered his opinions on February 12, 2026.

¹¹ Mr. Kopa testified and rendered his opinions on February 12, 2026.

¹² Mr. Shafer testified and rendered his opinions on February 16, 2026.

¹³ Mr. Bersin testified and rendered his opinions on February 17, 2026.

¹⁴ See Superior Court Civil Pattern Jury Instruction 23.9.

¹⁵ *Id.*

CZMI. The Court, however, believes that the witnesses were mostly non-evasive. The Court further believes that the witnesses generally did not provide testimony that was somehow not supported by other evidence. While the Court finds that the witnesses were largely credible, the Court gave more weight to some testimony based on evidence supporting that testimony and less weight to testimony that was either contradicted or unsupported by other evidence. For example, the Court found Mr. Walsh to be mostly credible but did not give his testimony as much weight as other witnesses did due to subsequent factual developments during the Trial that directly contradicted his testimony.

C. EXHIBITS

The parties submitted an extensive number of exhibits. Many of these exhibits were admitted without objection. The parties provided the Court with the exhibits in the form of joint exhibits (“JX”). The exhibits are numbered JX-0001 through JX-1692. The Court has considered these exhibits in coming to its decision.

III. FACTUAL FINDINGS

A. THE PARTIES

1. Plaintiff

Fortis is a limited liability company with its principal place of business in San Diego, California.¹⁶ Fortis’ sole member is a resident of Pennsylvania.¹⁷ Pursuant to the Agreement, Fortis has the right to represent the interests of the Equityholders in connection with the instant litigation.¹⁸

¹⁶ Compl. ¶ 13.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 14.

2. Defendant

CZMI is a New York corporation with its principal place of business in Dublin, California.¹⁹ CZMI is a subsidiary of Carl Zeiss Meditec AG (“Zeiss”).²⁰

B. NATURE OF THE DISPUTE

1. The Global Cataract Removal Market and the Founding of Iantech

a. Cataract Surgery – Phacoemulsification

A cataract is a clouding of the eye lens that obscures an individual’s vision.²¹ The severity of a cataract is determined based upon a grade, with “Grade 1” being the least severe and “Grade 4+” being the most severe. In the United States and European Union, less than ten percent of cataracts are Grade 4 or higher.²²

In 2022, professionals performed nearly 28,000,000 cataract surgeries across the globe.²³ Phacoemulsification (“Phaco”) is the most common surgical method used to treat and/or remove cataracts.²⁴ Phaco was utilized in approximately 67% of all cataract surgeries conducted in 2022.²⁵

Three companies largely control the Phaco surgical equipment market. Phaco equipment produced by Alcon, Johnson & Johnson (“J&J”), and Bausch and Lomb (“B&L”) are utilized in approximately 99% of all Phaco procedures conducted in the United States and 67% across the world.²⁶

¹⁹ *Id.* ¶ 16.

²⁰ *Id.* ¶ 17.

²¹ JX-1545.

²² Feb. 9 Tr. at 54:2-12.

²³ JX-1545.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

b. Drawbacks of Phacoemulsification

Despite the prominence of Phaco in the cataract treatment sector, Phaco is not without drawbacks. Phaco systems operate by utilizing ultrasound to break up the eye lens.²⁷ The use of ultrasound leads to the generation of heat and cavitation which, in turn, can damage ocular tissues.²⁸

Moreover, Phaco's large console is poorly suited for office-based surgery, and its reusable handpiece must be re-sterilized between patients – adding cross-contamination risk, expense, and a twenty-minute turnover between operations.²⁹

c. Iantech is founded and creates miCOR to address the drawbacks of Phacoemulsification.

In 2014, Dr. Tsontcho Ianchulev, an inventor and ophthalmology surgeon, founded Iantech for the purpose of developing a more cost-effective, safer, and efficient alternative to Phaco for combating cataract induced blindness.³⁰ Iantech subsequently developed and produced miCOR.

MiCOR was designed to provide an efficient, gentler procedure for the most prevalent use case—mild to moderate cataracts.³¹

By 2018, Iantech had collected data from animal studies, showing certain safety benefits over Phaco.³² The same data showed less efficiency in removing more severe cataracts.³³

²⁷ Feb. 9 Tr. at 42:23-43:4.

²⁸ Feb. 9 Tr. at 42:23 43:4.

²⁹ *Id.*, 52:7-10; JX-1545.

³⁰ Compl. ¶ 29.

³¹ Feb. 9 Tr. at 180:11 23; 181:1-17; 251:1-9; 180:1-20; 185:18-23.

³² Feb. 9 Tr. at 180:11 23; 181:1-17; 251:1-9.

³³ *Id.*

2. *Zeiss Acquires Iantech*

a. Due Diligence Process

By 2018, Iantech was generating interest from potential acquirers, including J&J and Zeiss.³⁴ At that time, Zeiss had a presence in the ophthalmic device market, but its legacy Phaco machine had a limited market share, no presence in the United States, and was being retired.³⁵

Zeiss conducted extensive due diligence on miCOR throughout 2018. Iantech represented to Zeiss that miCOR was extremely “efficient” and “safe” in Grade 1-3 cataracts but was “slower in the hardest ten percent of cases.”³⁶

In late 2018, Iantech set up a “demonstration studio” for Zeiss for the purpose of demonstrating the potential of miCOR.³⁷ Following the demonstration, Zeiss decided to move forward with a potential acquisition of Iantech because miCOR showed commercial potential, could “improve visual outcomes,” and would “gain market share from all key players.”³⁸ To address concerns regarding miCOR’s shortcomings when utilized on higher grade cataracts, Zeiss planned to develop “miCOR Plus,” a higher energy version of miCOR.³⁹

Also, during due diligence, Iantech represented to Zeiss that miCOR would be ready for a commercial launch in 2019 or 2020 by performing as well as or outperforming traditional Phaco systems.⁴⁰ Based upon the foregoing, there was “a lot of excitement” at Zeiss regarding a potential merger with Iantech, all the way “up to the board.”⁴¹

³⁴ Feb. 10 Tr. at 164:20-165:6.

³⁵ JX-1545; Feb. 13 Tr. at 124:3-11; Feb. 10 Tr. at 167:15-168:16; 169:19-170:8.

³⁶ Feb. 9 Tr. at 182:20-184:6; Feb. 13 Tr. at 121:17-21; JX-0017.

³⁷ Feb. 9 Tr. at 184:7-186:5; JX-0147.

³⁸ JX-0147.

³⁹ JX-0147.

⁴⁰ JX-0048; JX-0062; JX-0102., Feb. 11 Tr. at 82:20-83:16; 87:6-13; 92:6-93:2.

⁴¹ Feb. 11 Tr. at 93:7-12.

b. The Agreement

On October 22, 2018, the parties executed the Merger Agreement (the “Agreement”).⁴² The Agreement provided for the Equityholders to receive multiple forms of consideration in exchange for their interests in Iantech.⁴³ Specifically, the Equityholders were to receive: (i) an “Up-Front Payment” of \$110 million (subject to certain adjustments); (ii) a “Clinical Validation Milestone Payment Amount” of up to \$25 million, depending upon the performance of Iantech’s miPORT302 product in a clinical trial of 100 patients, as measured against criteria the Merger Agreement defines; (iii) a “Regulatory Approval Milestone Payment Amount” of up to \$40 million, depending upon the date the Food and Drug Administration (“FDA”) delivered any approval required to sell Iantech’s miLOOP Product and miPORT304 Product in the United States; (iv) a Product COGS Milestone Payment (the “COGS Milestone Payment”) of up to \$25 million (the “Product COGS Milestone Amount”); and (v) annual “Earnout Milestones” based upon the revenue generated by Iantech’s miLOOP, miPORT302, miPORT303, miPORT304,⁴⁴ and miPOLE401 products during the nine-year period following the earlier of (a) the first commercial sale of the miPORT304 device, or (b) October 1, 2020.⁴⁵

i. The Product COGS Milestone

Section 2.12(a)(iii) of the Agreement outlines the Product COGS Milestone.⁴⁶ Section 2.12(a)(iii) provides:

[w]ithin fifteen (15) Business Days following the achievement of the Product COGS Milestone, [CZMI] shall notify [Fortis] that the Product COGS Milestone has been achieved and, within ten (10) Business Days of such notice to [Fortis], [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of [Iantech’s]

⁴² Compl. ¶ 45.

⁴³ *Id.* ¶ 46.

⁴⁴ The “miPORT” line of products subsequently became referred to as “miCOR.”

⁴⁵ Compl. ¶ 46.

⁴⁶ JX-0129.

Securityholders all or a portion of the Product COGS Milestone Amount, based on the following criteria:

- if the Product COGS Milestone has been achieved on or prior to the Product COGS Deadline, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of [Iantech's] Securityholders 100% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of January 1, 2023 through June 30, 2023, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 80% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of July 1, 2023 through September 30, 2023, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 70% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of October 1, 2023 through December 31, 2023, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 60% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of January 1, 2024 through March 31, 2024, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 50% of the Product COGS Milestone Amount; and
- no Product COGS Milestone Amount shall be due or payable under this Section 2.12(a)(i) if achievement of the Product COGS Milestone has not been verified by March 31, 2024.⁴⁷

ii. Definitions Relevant to the Product COGS Milestone

The “Product COGS Milestone” is defined as “on or before the Product COGS Deadline the COGS for the miPORT304 single-procedure disposables Product (including the device, sterilization, packaging, I/A tip, and sterile sheath) shall be below 103% of the COGS Projections.”⁴⁸

⁴⁷ *Id.*

⁴⁸ *Id.*

The “Product COGS Deadline” means December 31, 2022..⁴⁹

“COGS” are defined as follows:

the aggregate accumulated total of all direct costs and expenses incurred in connection with the production of the Applicable Products, calculated in accordance with IFRS, including without limitation (i) direct labor costs (at a Parent-owned low-cost manufacturing facility, with no profit margin added to the labor cost), (ii) costs of raw materials (assuming stability of raw material source pricing such as oil/plastic and steel), and (iii) sterilization and packaging (as clearly represented and limited in scope to the COGS Projections); provided, however, that in no event will any of the following be included in the calculation of COGS: (a) any and all management fees, general corporate overhead expenses or other intercompany charges of Parent, of whatever kind or nature, charged by Parent to the Surviving Corporation, (b) shipping costs (including freight and container cost beyond the dollar amounts listed in the COGS Projections that will be incurred by shipping to Tijuana, Mexico), (c) costs or amortization of tooling, equipment or contract manufacturer startup costs (as long as such costs remain within 120% of projected costs described in the COGS Projections - any such costs in excess of 120% over projected may be amortized and included in the finished goods price), (d) costs and expenses of transportation and importation of finished manufactured products to any distribution centers not listed in the COGS Projections, and (e) costs associated with Parent-directed product profile changes, such as a stand-alone 25 gauge, high CPM peristaltic vitrector..⁵⁰

“COGS Projections” means the amount listed in Exhibit B attached..⁵¹

iii. COGS Projections

Exhibit B to the Agreement describes the COGS Projections..⁵² The COGS Projections provide different COGS targets for four different manufacturing run amounts: (i) 50,000 units, (ii) 100,000 units, (iii) 500,000 units, and (iv) 1,000,000 units..⁵³

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See id.*

⁵³ *See id.*

Exhibit B lists a corresponding COGS target amount for each manufacturing run amount.⁵⁴ The corresponding COGS target amounts are as follows: (i) \$43.51 for 50,000 units, (ii) \$26.43 for 100,000 units, (iii) \$22.06 for 500,000 units, and (iv) \$16.83 for 1,000,000 units.⁵⁵

iv. Parent Commercially Reasonable Efforts

Section 2.12(c)(ii) of the Agreement required CZMI and its “Affiliates” to use Parent Commercially Reasonable Efforts (“PCRE”) to “achieve each of the Milestones.”⁵⁶ The Agreement defines PCRE as:

the expenditure of efforts and resources, consistent with commercially reasonable efforts to accomplish such objective as would be reasonable for a similarly situated company with revenues comparable to the revenues of Parent to use with respect to the development, commercialization, marketing and sales of its products (A) at a similar stage of development or product life, (B) with similar market potential (including based upon the then current assessment of (x) the products' comparative uniqueness and expected superiority, (y) assumed market penetration in the relevant segment/regional markets, and (z) whether the cost of production is in line with the Product COGS Milestone and, if not the variance therefrom), (C) marketing and distribution in markets similar to those in which the Applicable Products are projected to be marketed, and (D) margin, as reasonably determined by Parent from time to time (without taking into account other competitive internal programs of such company or payments made or to be made pursuant to this Agreement).⁵⁷

v. Acceleration Clause

Section 2.12(c)(iii) of the Agreement provides an acceleration clause regarding the potential Milestone Payments. Section 2.12(c)(iii) states:

[i]n the event of the occurrence of any of the following events, and provided the same can then be reasonably determined and calculated, any Contingent Payments that have not been paid shall be immediately due and payable in full: (1) Parent or the Surviving Corporation commences any proceeding in bankruptcy or for dissolution, liquidation, winding-up, or other relief under state or federal bankruptcy laws; (2) any such proceeding is commenced against Parent or the Surviving Corporation, or a receiver or trustee is appointed for Parent or the Surviving Corporation or a substantial part of its respective property, and such

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

proceeding or appointment is not dismissed or discharged within sixty (60) days after its commencement; (3) Parent or the Surviving Corporation makes an assignment for the benefit of creditors, or petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for all or substantially all of its assets or has a receiver, custodian or trustee appointed for all or substantially all of its assets; and (4) Parent shall have materially breached any of its material obligations under this Section 2.12(a) or (c).⁵⁸

3. *Post-Closing Developments and the Alleged Breach*

a. CZMI provides significant financial resources to CTI prior to the anticipated miCOR launch.

From closing through early-2021, CZMI intended to launch miCOR in the United States at the “ASCRS” conference in July 2021 (“ASCRS 2021”).⁵⁹ CZMI further planned to launch miCOR globally, with a simultaneous launch in European countries and future launches in seventy-eight other countries.⁶⁰ During this period, CZMI provided significant financial and personnel resources to CTI with budgets ranging from \$10 million to \$12 million per year to support robust research and development.⁶¹

b. miCOR obtains 510(k) approval following clinical testing.

In or about late-2018, CTI began conducting clinical testing on miCOR in Panama.⁶² The results of the clinical testing were overall positive apart from difficulties removing dense cataracts.⁶³ However, the COVID-19 pandemic brought clinical testing to a halt in Panama in June 2020.

Notwithstanding the ceasing of clinical testing in Panama, miCOR obtained 510(k) clearance from the FDA in July 2020.⁶⁴ Shortly thereafter, CZMI paid the Equityholders \$40

⁵⁸ *Id.*

⁵⁹ JX-0237; JX-0341; Feb. 11 Tr. at 224:11-13.

⁶⁰ *See* JX-0394.

⁶¹ Feb. 13 Tr. at 158:16-159:19; JX-1486; JX-1487; JX-1488; JX-1489; JX-1490; JX-1491; JX-1492.

⁶² Feb. 9 Tr. at 254:7-12.

⁶³ Feb. 9 Tr. at 255:4-17.

⁶⁴ JX-0379.

million pursuant to the Regulatory Approval Milestone, which was achieved when the commercial version of miCOR obtained FDA clearance.⁶⁵

c. miCOR is evaluated in the United States.

After receiving 510(k) clearance, CTI evaluated miCOR's performance in surgical centers located in the United States. As of June 2021, miCOR had been evaluated in 660 patients.⁶⁶ According to CZMI, the surgeries went "smoothly," "[a]ll grade cataracts (1-4+) have been consistently removed safely and effectively," and "Grade 1-3 cataract removal is as efficient as state-of-the-art phacoemulsification with key safety advantages."⁶⁷

However, while CZMI acknowledged the strengths of miCOR, CZMI also recognized weaknesses. Namely, CZMI was concerned that (i) miCOR was slower and less efficient than Phaco on "Grade 4" hard cataracts and required a different technique or a separate device, such as miLOOP,⁶⁸ to complete the surgery and (ii) the irrigation/aspiration handpiece ("I/A Handpiece") of miCOR was not "optimized."⁶⁹ In October 2021, Mr. Burger expressed these concerns to Zeiss management, stating that "only 23% of hard cataracts in MPT cases were able to be done without the use of miLOOP" and recommended that miCOR be launched only after there was no significant disadvantages versus Phaco.⁷⁰

CMZI's highlighted concerns were not trivial. Hard cataracts comprise 10% of U.S. cases and surgeons cannot predict cataract hardness until mid-operation.⁷¹ Thus, clinics would

⁶⁵ JX-0129.

⁶⁶ JX-0310.

⁶⁷ *Id.*; Feb. 10 Tr. at 23:2 24:23; 130:7-14; Mar. 12 Tr. at 67:13-22 (miCOR was faster than Phaco in the most common cataracts in the US).

⁶⁸ miLOOP is a separate lens extraction device created by Iantech. miLOOP was often utilized in conjunction with miCOR when removing dense cataracts.

⁶⁹ JX-0555; JX-0593; JX-0603; JX-0644; JX 0658; JX-0730; JX-0793; JX-0896; Feb. 10 Tr. at 133:14-141:5; 37:19-22; Feb. 11 Tr. at 55:7-20; 57:17-20.

⁷⁰ JX-0644; Mar. 12 Tr. at 10:5 14:6.

⁷¹ Feb. 11 Tr. at 98:10-110:3; Feb. 9 Tr. at 54:2-21.

have to maintain both miCOR and a Phaco machine (and switch them out mid-surgery).⁷² As a result, CZMI became worried that ophthalmologists would be dissuaded from the adoption of miCOR altogether.

d. miCOR's launch is delayed.

Around this time, Zeiss was also attempting to commercialize its own Phaco machine – Quatera. Zeiss had been planning to launch miCOR and Quatera together as a “joint” lens-extraction launch at ASCRS 2021.⁷³ However, Zeiss’ plans were thwarted when Quatera became a “burning platform” that ran into major delays.⁷⁴ Accordingly, Zeiss made the decision to also delay the launch of Quatera.

Based upon the apparent shortcomings of miCOR and the delaying of the Quatera launch, Zeiss made the decision to delay the miCOR launch such that Zeiss would later be able to launch miCOR and Quatera in conjunction.⁷⁵ As such, CZMI abandoned its plans to launch miCOR at ASCRS 2021.⁷⁶ Notwithstanding, CZMI continued to devote significant financial resources toward miCOR to address its apparent shortcomings.⁷⁷

In May 2022, the launch date was again delayed until January 2024 assuming “everything [went] to plan” because miCOR still needed significant improvement in many aspects.⁷⁸

e. CTI receives binding quotes for miCOR.

With the initial COGS Milestone deadline approaching, in May 2022, Mr. Burger commenced “miCOR COGS milestone tracking.”⁷⁹ To “gauge the validity of the COGS

⁷² Feb. 9 Tr. at 54:2-21.

⁷³ JX-0191; JX-0237; JX-1883.

⁷⁴ JX-1884.; Feb. 11 Tr. at 181:15-18.

⁷⁵ See Feb. 11 Tr. at 227:4-11; *see also* 108:22-109:07 (Although miCOR was “ready to launch,” the “instruction” was to “wait until Quatera [was] ready to launch”).

⁷⁶ Feb. 11 Tr. at 227:4-11; *see also* 108:22-109:07.

⁷⁷ Feb. 13 Tr. at 158:16-159:19; JX-1486; JX-1487; JX-1488; JX-1489; JX-1490; JX-1491; JX-1492.

⁷⁸ JX-730.

⁷⁹ JX-0724.

projections for miCOR, which are the base of the M&A COGS milestone,” CZMI planned to ask CTI “for the specifications, quotes & estimates on which the projections are based.”⁸⁰ Mr. Burger subsequently discussed the process with Mr. Tritschler.⁸¹ Mr. Rein approved the plan for evaluating the milestone.⁸² Mr. Burger then initiated the assessment process with CTI, who procured binding quotes to support the process.⁸³

In October 2022, Mr. Rein requested a status update regarding the Product COGS Milestone.⁸⁴ Mr. Burger prepared a slideshow, which Mr. Rein approved and subsequently shared with several senior Zeiss officials, including Mr. Wehmer, and Mr. Thompson.⁸⁵ The slideshow explained that miCOR’s “[c]urrent projected cost at 50k” was lower than the Agreement’s “COGS” target at 50,000 order volumes.⁸⁶ Therefore, CZMI expected “to be obliged to pay the full COGS milestone by [December 31, 2022]” following the verification of “missing quotes.”⁸⁷

CZMI subsequently received the “missing data” referenced in the October slideshow.⁸⁸ In November 2022, CTI supplied a final set of binding quotes demonstrating that CTI could manufacture miCOR at a cost was within 103% of the COGS Projections at all order volumes.⁸⁹

f. miCOR receives negative feedback from Key Opinion Leaders.

In or around September 2022, miCOR began receiving negative feedback from Key Opinion Leaders (“KOL”) employed by CZMI and CTI.⁹⁰ Specifically, in September 2022, a

⁸⁰ *Id.*

⁸¹ Feb. 11 Tr. at 255:4-13.

⁸² JX-0724.

⁸³ Feb. 11 Tr. at 256:5-21.

⁸⁴ JX-0806.

⁸⁵ JX-0802.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ JX-0831; Feb. 11 Tr. at 260:8-11.

⁸⁹ JX-0831.

⁹⁰ *See JX-0793.*

KOL noted that miCOR's ability to handle hard cataracts was "sadly not positive."⁹¹ This trend continued into 2023 and beyond.

In February 2023, a KOL evaluating miCOR, Dr. Liz Yeu, reported a "need for additional accessories, like the soft, bent tip of I/A," that Phaco was still faster than miCOR, especially with a "dense nucleus," that "[p]roof needs to show the benefit of miCOR [versus] Phaco," and that miCOR was "NOT ready for primetime."⁹²

g. Manufacturing of miCOR begins and CTI achieves the Product COGS Milestone.

By November 2022, the only step that remained for CTI to meet the Product COGS Milestone was for CZMI "to send an order to do it."⁹³ However, at this time, "[n]o actual COGS [had been] realized for measurement."⁹⁴

Beginning in/about December 2022, the manufacturing of miCOR began.⁹⁵ In early November 2023, Mr. Bonwit sent correspondence to Zeiss executives indicating that the "[c]urrent COGS" were \$43.21 at "10k" order volumes, which meets the Product COGS Milestone.⁹⁶ The evidence is not clear as to the precise date the Product COGS Milestone was achieved. However, Mr. Bonwit's correspondence indicates that the Product COGS Milestone was achieved by November 2023 at the latest.

In December 2023, Zeiss created an internal slideshow presentation that was shared with its shareholders. The presentation included CTI COGS calculations that were "vet[ted]" by

⁹¹ *Id.*; Feb. 11 Tr. at 55:1-10; 106:4-107:6.

⁹² JX-0896; Feb. 17 Tr. at 154:21-156:21

⁹³ Feb. 9 Tr. at 228:1-10.

⁹⁴ JX-0875.

⁹⁵ *See* JX-0841.

⁹⁶ JX-1108.

Zeiss.⁹⁷ The presentation indicated that, as of December 2023, miCOR was actively being manufactured at a price of \$44.45.⁹⁸

Notwithstanding the apparent achievement of the Product COGS Milestone in November 2023, CZMI failed to render the appropriate Product COGS Milestone payment. To date, CZMI has not made the Product COGS Milestone payment.

h. Zeiss initiates Early Access Program but restricts the marketing of miCOR.

By April 2023, Zeiss again postponed miCOR's anticipated launch from November 2023 to Spring 2024.⁹⁹ Presumptively referring to the failure to pay the Product COGS Milestone, Mr. Seitzinger instructed Zeiss personnel "not to give any impression we are launching, due to the legal issues."¹⁰⁰

In May 2023, Zeiss initiated an "Early Access Program" ("EAP") where CTI would sell miCOR to select customers.¹⁰¹ Zeiss did not provide any additional sales representatives to support the EAP.¹⁰² Zeiss was concerned that training sales representatives on miCOR would "take too much of their attention away from Quatera."¹⁰³ Zeiss also priced miCOR above Quatera in order "to avoid internal competition."¹⁰⁴ Zeiss denied CTI's requests for marketing resources and instructed personnel to "not proactively or actively communicate about miCOR" during the EAP.¹⁰⁵ Zeiss instructed CTI employees to "figure out how to position miCOR without juxtaposition to [P]haco."¹⁰⁶

⁹⁷ Feb. 16 Tr. at 96:7 22_ (Seitzinger).

⁹⁸ JX-1140.

⁹⁹ JX-0945.

¹⁰⁰ *Id.*

¹⁰¹ JX-0954.

¹⁰² Feb. 10 Tr. at 205:19-206:13.

¹⁰³ JX-1180.

¹⁰⁴ JX-1210.

¹⁰⁵ JX-0954.

¹⁰⁶ JX-1092.

In February 2024, Mr. Walsh complained that miCOR’s Spring 2024 launch would fail because of the lack of trained sales representatives.¹⁰⁷ Ms. von Kreis agreed, stating that Zeiss “simply [is] not ready as an organization to launch [miCOR] properly in spring.”¹⁰⁸

By April 2024, when the COGS Milestone expired, miCOR had not been launched anywhere in the world.¹⁰⁹

i. miCOR continues to fail to generate substantial interest from ophthalmic surgeons and remains on “life support.”

From 2024-2025, CTI and CZMI continued to work towards a successful product despite significant initial market resistance to switch from Phaco to a purportedly disruptive product in miCOR.¹¹⁰ Even as late as November 2024, 48% of surveyed surgeons indicated that they had no plans to use miCOR in the next year and an additional 28% stating that they would wait for early adoptors’ feedback before utilizing miCOR in surgeries.¹¹¹

Based upon the foregoing, Zeiss has no plans for a global launch of miCOR this decade.¹¹² MiCOR is currently on “life support,” with Zeiss executives recognizing that they are “killing” miCOR “through attrition.”¹¹³

IV. APPLICABLE LAW

The Court will be applying the following general legal principles:

¹⁰⁷ JX-1216.

¹⁰⁸ *Id.*

¹⁰⁹ Feb. 16 Tr. at 139:2-23.

¹¹⁰ *See* Feb. 11 Tr. at 50:1-11; Feb. 13 Tr. at 219-220:17-234:18.

¹¹¹ JX-1385.

¹¹² JX-1449.

¹¹³ JX-1274; JX-1261.

A. GOVERNING SUBSTANTIVE LAW

Delaware law applies here as the Agreement is governed by Delaware law. Section 10.6 provides that “[t]his Agreement shall be governed by and construed in accordance with the internal Applicable Laws of the State of Delaware....”¹¹⁴

B. BREACH OF CONTRACT

Under Delaware law, to prove a breach of contract claim, a party must show: “(i) a contractual obligation; (ii) a breach of that obligation; and (iii) resulting damages.”¹¹⁵ A party harmed by a breach of contract is entitled to compensation that will place that party in the same position that the party would have been in if the other party had performed under the contract.¹¹⁶

The standard remedy for breach of contract is based upon the reasonable expectations of the contracting parties.¹¹⁷ Expectation damages are measured by determining “the amount of money that would put the promisee in the same position as if the promisor had performed the contract.”¹¹⁸ “Damages for a breach of contract must be proven with reasonable certainty. Recovery is not available to the extent that the alleged damages are uncertain, contingent, conjectural, or speculative.”¹¹⁹

“Delaware adheres to the ‘objective’ theory of contracts, *i.e.*[,] a contract’s construction should be that which would be understood by an objective, reasonable third party.”¹²⁰ “Contract terms themselves will be controlling when they establish the parties’ common meaning so that a

¹¹⁴ JX-0129.

¹¹⁵ *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. 2005).

¹¹⁶ *See E.I. DuPont de Nemours and Co. v. Pressman*, 679 A.2d 436, 445-46 (Del. 1996).

¹¹⁷ *See Duncan v. Theratx, Inc.*, 775 A.2d 1019, 1022 (Del. 2001).

¹¹⁸ *Id.*

¹¹⁹ *Lee-Scott v. Shute*, 2017 WL 1201158, at *7 (Del. Com. Pl. Jan. 30, 2017).

¹²⁰ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (citing *NBC Universal v. Paxson Commc’ns*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005) and *Brown v. Zachary Roseman, P.A.*, 565 A.2d 279 (Table)(Del. 1989)).

reasonable person in the position of either party would have no expectations inconsistent with the contract language.”¹²¹

C. BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE

In a civil case, the burden of proof is by a preponderance of the evidence. Proof by a preponderance of the evidence means proof that something is more likely than not. This means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes the Court believe that something is more likely true than not. If the evidence on any particular point is evenly balanced, the party having the burden of proof has not proved that point by a preponderance of the evidence, and the Court must find against the party on that point.¹²²

In deciding whether any fact has been proved by a preponderance of the evidence, the Court may consider the testimony of all witnesses regardless of who called them, and all exhibits received into evidence regardless of who produced them.

In this case, Fortis carries the burden of proof by a preponderance of the evidence regarding its claims, which are brought pursuant to the Agreement.

D. EVIDENCE EQUALLY BALANCED

If the evidence tends equally to suggest two inconsistent views, neither has been established. That is, where the evidence shows that one or two things may have caused the breach/damages: one for which a party was responsible and one for which a party was not, the Court cannot find for the party carrying the burden of proof if it is just as likely that the breach/damages was caused by one thing as by the other.¹²³

¹²¹ *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997).

¹²² Superior Court Civil Pattern Jury Instruction 4.1.

¹²³ Superior Court Civil Pattern Jury Instruction 4.2.

V. DISCUSSION

A. THE COURT FINDS THAT FORTIS HAS SHOWN, BY A PREPONDERANCE OF THE EVIDENCE, THAT CZMI BREACHED THE AGREEMENT BY FAILING TO RENDER THE PRODUCT COGS MILESTONE PAYMENT.

To interpret a contract, Delaware courts read the agreement as a whole and enforce the plain meaning of clear and unambiguous language.¹²⁴ Unambiguous language is reasonably susceptible to one interpretation.¹²⁵ Contracts will be interpreted to “give each provision and term effect” and not render any terms “meaningless or illusory.”¹²⁶ “When a contract is clear and unambiguous, the court will give effect to the plain meaning of the contract’s terms and provisions.”¹²⁷ Language is ambiguous if it is fairly susceptible to more than one reasonable interpretation.¹²⁸ An interpretation is unreasonable if it “produces an absurd result” or a result “that no reasonable person would have accepted when entering the contract.”¹²⁹ “The parties’ steadfast disagreement over interpretation will not, alone, render the contract ambiguous.”¹³⁰

In the Complaint, Fortis contends that CZMI breached the explicit terms of the Agreement “by failing to make the full COGS Milestone Payment to the Equityholders.”¹³¹ For the reasons set forth below, the Court finds that Fortis has shown, by a preponderance of the evidence, that CZMI breached the Agreement by failing to render the Product COGS Milestone Payment. CTI achieved the Product COGS Milestone in November 2023 based upon the actual

¹²⁴ *Origis USA LLC v. Great Am. Ins. Co.*, 345 A.3d 936, 952 (Del. 2025).

¹²⁵ *Id.*

¹²⁶ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159-60 (Del. 2010) (first citing *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396-97 (Del. 2010); and then citing *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992)).

¹²⁷ *Id.* at 1159-60 (citing *Rhone-Poulenc*, 616 A.2d at 1195).

¹²⁸ *Id.* at 1160 (first citing *Twin City Fire Ins. Co. v. Del. Racing Ass’n*, 840 A.2d 624, 628 (Del. 2003); and then citing *Rhone-Poulenc*, 616 A.2d at 1195); see also *Sunline Com. Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 847 (Del. 2019) (“If, after applying these canons of interpretation, the contract is nonetheless ‘reasonably susceptible [to] two or more interpretations or may have two or more different meanings,’ then the contract is ambiguous” (quoting *Kaiser Alum. Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996))).

¹²⁹ *Osborn*, 991 A.2d at 1160 (citations omitted).

¹³⁰ *Id.* (citing *Rhone-Poulenc*, 616 A.2d at 1195).

¹³¹ Compl. ¶ 88.

production of less than 50,000 miCOR units. Accordingly, CZMI's failure to render the Product COGS Milestone Payment constitutes a breach of the Agreement.

Prior to the Trial, the Court did not hold that the terms of the Agreement were completely unambiguous. Instead, the Court found that both CZMI and Fortis advanced reasonable interpretations on certain terms of the Agreement.

1. The Agreement unambiguously requires COGS to be incurred based upon actual production.

At trial, the parties heavily contested the proper interpretation of the definition of COGS under the Agreement. Fortis maintains that the COGS definition is forward looking to include hypothetical costs that will be incurred in the future, such as binding quotes and estimates. To the contrary, CZMI posits that the COGS definition is only based upon actual production.

Under the Agreement, COGS are defined as:

the aggregate accumulated total of all direct costs and expenses incurred in connection with the production of the Applicable Products, calculated in accordance with IFRS, including without limitation (i) direct labor costs (at a Parent-owned low-cost manufacturing facility, with no profit margin added to the labor cost), (ii) costs of raw materials (assuming stability of raw material source pricing such as oil/plastic and steel), and (iii) sterilization and packaging (as clearly represented and limited in scope to the COGS Projections); provided, however, that in no event will any of the following be included in the calculation of COGS: (a) any and all management fees, general corporate overhead expenses or other intercompany charges of Parent, of whatever kind or nature, charged by Parent to the Surviving Corporation, (b) shipping costs (including freight and container cost beyond the dollar amounts listed in the COGS Projections that will be incurred by shipping to Tijuana, Mexico), (c) costs or amortization of tooling, equipment or contract manufacturer startup costs (as long as such costs remain within 120% of projected costs described in the COGS Projections - any such costs in excess of 120% over projected may be amortized and included in the finished goods price), (d) costs and expenses of transportation and importation of finished manufactured products to any distribution centers not listed in the COGS Projections, and (e) costs associated with Parent-directed product profile changes, such as a stand-alone 25 gauge, high CPM peristaltic vitrector.¹³²

¹³² JX-0129.

The Court agrees with CZMI and finds that the Agreement requires COGS to be incurred based upon actual production of miCOR units. The Agreement’s COGS definition includes “all direct costs and expenses *incurred* in connection with the *production* of the Applicable Products....”¹³³

Fortis attempts to explain its forward-looking interpretation with reference to language in the COGS definition regarding shipping costs that “will be incurred.” However, Fortis’ reliance on this provision is misplaced for one simple reason – shipping costs that “will be incurred” are specifically *excluded* from items that constitute COGS under the Agreement. Contrary to Fortis’ position, it follows from that provision that these sophisticated parties understood how to make the meaning of “incurred” forward-looking. The parties deliberately chose not to when drafting the definition of COGS.

To reconcile Fortis’ interpretation of the Agreement, the Court would essentially be forced to strike the language “incurred in connection with the production of Applicable Products” and introduce forward-facing language to cover costs that may, in fact, never be incurred with the production of miCOR units. However, the Court notes that the definition of COGS contains no mention of binding quotes, projections, or estimates or any other forward-facing costs. The Agreement defines COGS as direct costs and expenses “incurred in connection with production....”

Accordingly, the Court finds that the Agreement requires COGS to be incurred based upon actual production.¹³⁴

¹³³ *Id.*

¹³⁴ Fortis also offers extrinsic evidence such as negotiation history, course of conduct, and industry custom to support its interpretation of the COGS definition. However, because the Court finds that the COGS definition is unambiguous, the Court will not consider such evidence.

2. *The Agreement does not require the actual production of 50,000 miCOR units for the Product COGS Milestone to be met.*

At trial, the parties also heavily contested the number of manufactured miCOR units required to meet the Product COGS Milestone. Fortis argues that the production of any number of miCOR units is sufficient to potentially trigger the Product COGS Milestone. CZMI contends that at least 50,000 miCOR units needed to be manufactured before the Product COGS Milestone could potentially be met.

The pertinent contractual language is contained in Exhibit B of the Agreement. Exhibit B of the Agreement sets forth the COGS Projections.¹³⁵ The COGS Projections provide different COGS targets for four different manufacturing run amounts: (i) 50,000 units, (ii) 100,000 units, (iii) 500,000 units, and (iv) 1,000,000 units.¹³⁶

As an initial matter, the Court finds that Exhibit B of the Agreement is ambiguous as to the precise number of manufactured miCOR units necessary to trigger the Product COGS Milestone. The Court notes that there are two reasonable interpretations of Exhibit B.

First, Exhibit B can be interpreted to mean that “up to” 50,000 manufactured miCOR units are required to trigger the Product COGS Milestone. Under this interpretation, the manufacturing of a single miCOR unit could potentially be sufficient to meet the Product COGS Milestone. Second, Exhibit B can be interpreted to mean that “at least” 50,000 manufactured miCOR units are required to trigger the Product COGS Milestone. The problem here is that Exhibit B does not include the language “up to” or “at least.” Based upon the apparent ambiguity contained in Exhibit B, the Court looks to the extrinsic evidence offered at trial to determine the proper interpretation.

¹³⁵ See JX-0129.

¹³⁶ *Id.*

Based on the record at the Trial, the Court finds that “up to” is the correct construction. Fortis offered sufficient evidence to establish that its interpretation of Exhibit B is proper. For instance, Fortis set forth evidence that CZMI employees recognized that meeting COGS targets at low-order volumes was a “huge achievement.”¹³⁷ It follows that CZMI’s own employees recognized that meeting COGS targets at low volumes was considered much harder, rather than easier.

Further and more importantly, Fortis correctly notes that a 50,000-unit requirement would conflict with the parties’ intent to “decouple” the Product COGS Milestone from “commercialization.”¹³⁸ The parties considered manufacturing and commercialization to be two separate phases of miCOR’s life cycle.¹³⁹ If met, a large manufacturing requirement, such as 50,000 units, would seem to indicate that the parties have moved into the commercialization phase. Such a requirement appears to run afoul of the parties’ intent.

The Court further notes one additional problem with CZMI’s interpretation of Exhibit B. Under CZMI’s interpretation, the Product COGS Milestone could not be met through the production of 49,999 miCOR units but would be met with the production of 50,000 or 50,0001 miCOR units. The Court doubts that the parties intended such an arbitrary construction of Exhibit B.

Taking the preceding point in conjunction with the notion that the Product COGS Milestone was intended to be a manufacturing incentive as compared to a commercialization incentive, the Court finds the correct interpretation of Exhibit B to be that the Product COGS Milestone could be achieved based upon the production of miCOR units “up to” 50,000 units.

¹³⁷ JX-1108.

¹³⁸ JX-0102.

¹³⁹ *See id.*

Accordingly, the Court finds that the Product COGS Milestone could be achieved based upon the manufacturing of less than 50,000 miCOR units.¹⁴⁰

3. *The Product COGS Milestone was achieved in November 2023 based upon actual production of miCOR units.*

The parties dispute whether the Product COGS Milestone was achieved based upon the actual production of miCOR units. Fortis argues that it has set forth sufficient evidence to establish that the Product COGS Milestone was achieved based upon actual production of miCOR units in December 2022. CZMI contends that Fortis’ actual production theory is nothing more than “an eleventh-hour hedge” and “fails because Fortis produced no evidence that actual COGS were incurred at any Exhibit B threshold....”¹⁴¹

Pursuant to the Agreement, the Products COGS Milestone is defined as “on or before the Product COGS Deadline the COGS for the [miCOR] single-procedure disposables Product (including the device, sterilization, packaging, I/A tip, and sterile sheath) shall be below 103% of the COGS Projections.”¹⁴² “COGS Projections” is defined as the amount listed in Exhibit B attached.¹⁴³

The COGS Projections provide different COGS targets for four different manufacturing run amounts: (i) 50,000 units, (ii) 100,000 units, (iii) 500,000 units, and (iv) 1,000,000 units.¹⁴⁴ For each manufacturing run amount, Exhibit B lists a corresponding COGS target amount.¹⁴⁵

¹⁴⁰ The Court recognizes that, based upon its holding, the Product COGS Milestone could be potentially achieved by the manufacturing of a single miCOR unit. While the parties likely did not intend for the manufacturing of a single miCOR unit, the Court notes that the purpose of the Product COGS Milestone was to incentivize the production of miCOR at a specific price – not to incentivize the production of a large number of miCOR units.

¹⁴¹ Carl Zeiss Meditec, Inc.’s Answering Post-Trial Brief (“Def. Br.”) (D.I. No. 244) at 24.

¹⁴² JX-0129.

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ *See id.*

The corresponding COGS target amounts are as follows: (i) \$43.51 for 50,000 units, (ii) \$26.43 for 100,000 units, (iii) \$22.06 for 500,000 units, and (iv) \$16.83 for 1,000,000 units.¹⁴⁶

To achieve the Product COGS Milestone, miCOR needed to be manufactured for less than 103% of the aforementioned COGS target amount based upon the corresponding manufacturing run amount. There is no dispute that less than 50,000 miCOR units have been manufactured to date. Accordingly, to determine if the Product COGS Milestone was achieved, the Court must determine: (i) whether miCOR was ever manufactured for less than \$44.82¹⁴⁷ and (ii) the earliest date miCOR was manufactured at that price.

The Court finds that the Product COGS Milestone was achieved in November 2023 based upon the actual production of approximately 10,000 miCOR units at a price of \$43.21 per unit. As an initial matter, the Court notes that the evidence presented by the parties on this matter was convoluted at best. The Court does not find that the parties, at any point, provided evidence showing the precise date that a miCOR unit was produced at a price that met the Product COGS Milestone. Instead, the parties primarily relied upon charts and presentations that were created to summarize the manufacturing of miCOR over an extended period. In the analysis below, the Court does its best to ascertain the correct price and production date based upon the cumulative evidence presented at trial.

Fortis initially relies upon a spreadsheet created on or after August 26, 2025. The spreadsheet indicates that 8,893 miCOR units were manufactured by July 1, 2025.¹⁴⁸ From this, Fortis gathers that “CTI manufactured miCOR in December 2022 and throughout 2023 at costs

¹⁴⁶ *See id.*

¹⁴⁷ This number represents the following calculation: \$43.51 (the corresponding COGS Target Amount for the 50,000 manufacturing run amount) multiplied by 103%.

¹⁴⁸ *See* JX-0841.

below the Agreement's COGS targets.”¹⁴⁹ The Court finds that Fortis' reliance on this spreadsheet to determine the achievement of the Product COGS Milestone is misplaced for two critical reasons. First, and most importantly, the spreadsheet only shows the number of units produced by July 1, 2025. The spreadsheet is devoid of any COGS calculations. Second and related, the spreadsheet fails to indicate the date on which the miCOR units were produced at a price under \$44.82 per unit. Therefore, the Court finds that the spreadsheet is insufficient to establish that the Product COGS Milestone was achieved.

Fortis next relies upon the November 2023 email from Mr. Bonwit. The November 2023 email indicates that, at that time, the “[c]urrent COGS” were \$43.21 at “10k” order volumes.¹⁵⁰ The Court finds that the November 2023 email constitutes the strongest evidence that CTI achieved the Product COGS Milestone. While the November 2023 email does not indicate the exact date that miCOR was produced at a price that met the COGS target amount, the email constitutes sufficient evidence that the Product COGS Milestone was achieved by November 2023 at the latest.

This finding is further supported by the internal Zeiss presentation that was shared with its shareholders in December 2023. The Zeiss presentation includes CTI COGS calculations that were “vet[ted]” by Zeiss.¹⁵¹ The Zeiss presentation indicates that, as of December 2023, miCOR was actively being manufactured at a price of \$44.45.

Accordingly, the Court finds that the Product COGS Milestone was achieved in November 2023 based upon the actual production of miCOR units.¹⁵²

¹⁴⁹ Plaintiff's Post-Trial Opening Brief (“Pl. Br.”) (D.I. No. 238) at 37.

¹⁵⁰ JX-1108.

¹⁵¹ Feb. 16 Tr. at 96:7-22.

¹⁵² The Court has scoured through the record and cannot find any evidence sufficient to indicate the precise date the Product COGS Milestone was achieved. Based upon the timing of Mr. Bonwit's email, the Court believes that the Product COGS Milestone may have, in fact, been achieved prior to November 2023. However, there is no

4. CZMI's failure to furnish the Product COGS Milestone payment constitutes a breach of the Agreement and thus, entitles Fortis to damages.

At trial, the parties did not dispute that if the Product COGS Milestone was achieved, CZMI's failure to render the Product COGS Milestone payment constitutes a breach of the Agreement.

Section 2.12(a)(iii) of the Agreement outlines the Product COGS Milestone.¹⁵³ Section 2.12(a)(iii) provides:

[w]ithin fifteen (15) Business Days following the achievement of the Product COGS Milestone, [CZMI] shall notify [Fortis] that the Product COGS Milestone has been achieved and, within ten (10) Business Days of such notice to [Fortis], [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of [Iantech's] Securityholders all or a portion of the Product COGS Milestone Amount, based on the following criteria:

- if the Product COGS Milestone has been achieved on or prior to the Product COGS Deadline, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of [Iantech's] Securityholders 100% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of January 1, 2023 through June 30, 2023, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 80% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of July 1, 2023 through September 30, 2023, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 70% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of October 1, 2023 through December 31, 2023, [CZMI] shall pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]'s Securityholders 60% of the Product COGS Milestone Amount;
- if the Product COGS Milestone has been achieved during the period of January 1, 2024 through March 31, 2024, [CZMI] shall pay, or cause to be

documentary evidence to support that inference. Therefore, the Court will assess the achievement of the Product COGS Milestone applying the date Mr. Bonwit's email was sent – November 6, 2023.

¹⁵³ JX-0129.

paid, to Paying Agent for the benefit of the [Iantech]’s Securityholders 50% of the Product COGS Milestone Amount; and

- no Product COGS Milestone Amount shall be due or payable under this Section 2.12(a)(i) if achievement of the Product COGS Milestone has not been verified by March 31, 2024..¹⁵⁴

Here, as discussed above, the Court finds that the Product COGS Milestone was achieved in November 2023. Because the Product COGS Milestone was achieved in November 2023, CZMI was obligated to “pay, or cause to be paid, to Paying Agent for the benefit of the [Iantech]’s Securityholders 60% of the Product COGS Milestone Amount.” There is no dispute that CZMI failed to render such payment.

Therefore, the Court finds that CZMI’s failure to furnish the Product COGS Milestone payment constitutes a breach of the Agreement that proximately caused damages to Fortis. Accordingly, the Court finds that Fortis is entitled to damages as to Count I of the Complaint.

B. THE COURT FINDS THAT FORTIS HAS NOT SHOWN, BY A PREPONDERANCE OF THE EVIDENCE, THAT CZMI BREACHED THE AGREEMENT BY FAILING TO EXERCISE PCRE.

“An earn-out is a provision in an acquisition agreement that makes a portion of the purchase price payable to the seller if/when certain post-closing performance targets are achieved.”¹⁵⁵ Parties use earn-outs, or milestone payments, to bridge price gaps between buyers and sellers, with different considerations for each.¹⁵⁶ Buyers can mitigate valuation risk since the contingent payment is based on the seller’s actual future performance rather than its

¹⁵⁴ *Id.*

¹⁵⁵ Richard De Rose, *The Ins and Outs of Earn-Outs: A Delaware Perspective*, ABA Business Law Today (Mar. 2022), https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-march/the-ins-and-outs-of-earn-outs-a-delaware-perspective/.

¹⁵⁶ *Fortis Advisors LLC v. Johnson & Johnson*, 2024 WL 4048060, at *21-22 (Del. Ch. Sept. 4, 2024), *aff’d in part, rev’d in part Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229 (Del. 2026).

projections.¹⁵⁷ Sellers give up guaranteed cash but stand to gain a greater overall payment than they might otherwise receive upfront if defined milestones are met.¹⁵⁸

Earn-outs agreements generally allocate post-closing operational control.¹⁵⁹ Buyers prefer to freely manage the post-closing activities of the business and to minimize earnout payments.¹⁶⁰ Sellers, by contrast, would rather retain some control in the acquired business and to maximize earnout payments.¹⁶¹ The controlling agreement may provide for a contractual assurance that the buyer will devote certain “efforts” toward meeting the milestones.¹⁶² Delaware courts have interpreted “commercially reasonable efforts” clauses as requiring a party “to take all reasonable steps” toward an end.¹⁶³³⁶³

In the Complaint, Fortis alternatively claims that CZMI “failed to exert the required [PCRE] to trigger its obligation to make the full COGS Milestone Payment.” For the reasons set forth below, the Court finds that Fortis has not shown, by a preponderance of the evidence, that CZMI breached the Agreement through its purported failure to exercise PCRE towards the

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See *Himawan v. Cephalon, Inc.*, 2024 WL 1885560, at *7 (Del. Ch. Apr. 30, 2024) (discussing a buyer-friendly efforts standard where the buyer was given “complete discretion with respect to all decisions” related to purchased asset, limited only by an obligation to use commercially reasonable efforts to earnout milestones); see also *Neurvana Medical, LLC v. Balt USA, LLC*, 2020 WL 949917, at *15-16 (Del. Ch. Feb. 27, 2020) (interpreting an asset purchase agreement that gave the buyer “sole discretion and authority post-closing” to make decisions about a product, which discretion was limited by an “outward facing” commercially reasonable efforts requirement).

¹⁶³ *Williams Cos., Inc. v. Energy Transfer Equity, L.P.*, 159 A.3d 264, 272 (Del. 2017) (holding that “commercially reasonable efforts” and “reasonable best efforts” both “impose obligations to take all reasonable steps to solve problems and consummate the transaction”); *Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *87 (Del. Ch. Oct. 1, 2018) (observing the lack of support in case law “for the distinctions that transactional lawyers draw” between the various efforts clauses), *aff’d*, 198 A.3d 724 (Del. 2018) (TABLE); *Channel MedSystems, Inc. v. Boston Sci. Corp.*, 2019 WL 6896462, at *37 n.410 (Del. Ch. Dec. 18, 2019) (noting that a “commercially reasonable efforts” provision is functionally the same under Delaware law as a “reasonable best efforts provision” (citing *Akorn*, 2018 WL 4719347, at *87 & n.796)); 1 ABA Mergers and Acquisitions Committee, *Model Stock Purchase Agreement with Commentary* 213 (“[C]ase law offers little support for the position that ‘reasonable best efforts,’ ‘reasonable efforts,’ or ‘commercially reasonable efforts’ will be interpreted as separate standards less demanding than ‘best efforts.’”).

achievement of the Product COGS Milestone. The evidence presented at trial demonstrates that CZMI's efforts toward the achievement of the Product COGS Milestone were, in fact, commercially reasonable. Put simply, CZMI invested eight years' worth of time and millions of dollars into developing and selling a device that never met the expectations contemplated when the parties entered into the Agreement.

1. PCRE's meaning under the Agreement

Section 2.12(c)(ii) of the Agreement requires CZMI and its "Affiliates" to use Parent Commercially Reasonable Efforts ("PCRE") to "achieve each of the Milestones."¹⁶⁴ The Agreement defines PCRE as:

the expenditure of efforts and resources, consistent with commercially reasonable efforts to accomplish such objective as would be reasonable for a similarly situated company with revenues comparable to the revenues of Parent to use with respect to the development, commercialization, marketing and sales of its products (A) at a similar stage of development or product life, (B) with similar market potential (including based upon the then current assessment of (x) the products' comparative uniqueness and expected superiority, (y) assumed market penetration in the relevant segment/regional markets, and (z) whether the cost of production is in line with the Product COGS Milestone and, if not the variance therefrom), (C) marketing and distribution in markets similar to those in which the Applicable Products are projected to be marketed, and (D) margin, as reasonably determined by Parent from time to time (without taking into account other competitive internal programs of such company or payments made or to be made pursuant to this Agreement).¹⁶⁵

Based upon the language contained in Section 2.12(c)(ii), the PCRE clause imposes an objective, "outward-facing definition" which "applies an industry standard requirement or looks to other participants in the industry to define the diligence obligations of the buyer."¹⁶⁶ The PCRE clause

¹⁶⁴ See JX-0128.

¹⁶⁵ *Id.*

¹⁶⁶ *Neurvana Med., LLC*, 2020 WL 949917, at *16.

here thus creates “a standard based on the effort that companies similarly situated in the market employ, or would employ.”¹⁶⁷

2. *Fortis has failed to establish that CZMI’s efforts to trigger the Product COGS Milestone were commercially unreasonable compared to similarly situated companies.*

As outlined above, it was Fortis’ burden at trial to establish that CZMI’s efforts to achieve the Product COGS Milestone fell below commercially reasonable efforts that would be exerted by a “similarly situated company.” The Court finds that Fortis failed to meet its burden.

a. Fortis fails to identify a similarly situated company.

Initially, the Court finds that Fortis fails to identify any “similarly-situated” company against whom CZMI’s efforts could be compared. The companies Fortis’ expert proffered as valid comparisons are not comparable companies based upon the instant facts. Specifically, Fortis offered the expert testimony of Mr. Gordon who attempted to compare Alcon, B&L, and J&J to CZMI. The problem with using Alcon, B&L, and J&J as comparator companies in this context is twofold.

In the cataract sector, Alcon, B&L, and J&J have five, seven, and twenty-five times the market share of CZMI, respectively.¹⁶⁸ CZMI is considered a relatively small player in the cataract removal industry when compared to these companies.¹⁶⁹ More importantly, the products offered by these companies are not similar to miCOR. Specifically, the products offered by Alcon, B&L, and J&J are all updated versions of traditional Phaco machines. MiCOR, by comparison, is a new and unique technology that CZMI was developing and commercializing for the purpose of disrupting the traditional phacoemulsification market.

¹⁶⁷ *Himawan*, 2024 WL 1885560, at *12 n. 173.

¹⁶⁸ Feb. 12 Tr. at 116:16-117:9; Feb. 16 Tr. at 211:22-212:16.

¹⁶⁹ *See* Feb. 11 Tr. at 53:5-11

Accordingly, the Court finds that Fortis failed, at the outset, to identify a similarly situated company based upon the instant facts.

b. CZMI's efforts to trigger the Product COGS Milestone were objectively commercially reasonable.

As described above, Fortis has failed to establish that CZMI acted in a commercially unreasonable manner towards the achievement of the Product COGS Milestone. Instead, the Court finds that evidence presented at trial confirms that CZMI acted in an objectively commercially reasonable manner towards the achievement of the Product COGS Milestone. That evidence is discussed in detail below.

i. CZMI invested eight years and millions of dollars of resources into miCOR.

As an initial matter, Fortis does not attempt to dispute that CZMI rendered inadequate funding to miCOR during the relevant period. The Court finds that evidence shows miCOR received substantial funding between 2019 and 2024. Specifically, during this period, miCOR received approximately \$68,500,000 in funding from CZMI with a total investment that exceeded \$200,000,000.¹⁷⁰ In fact, CZMI's investment in CTI actually increased between 2019 and 2023 along with the research and development budget.¹⁷¹ Notably, CTI never reached its budget allocation in any year from 2019-2024.¹⁷²

Fortis, however, does dispute that CZMI provided CTI with "a substantial sales force" and adequate marketing for miCOR.¹⁷³ Fortis' position is contradicted by the evidence. Specifically, miCOR was given its own "dedicated" sales team.¹⁷⁴ Importantly, no other CZMI product was given its own "dedicated" sales team. Fortis' own witness, Mr. Walsh, expressly

¹⁷⁰ JX-1544, ¶ 216 (citing JX-1486-1492).

¹⁷¹ Feb. 13 Tr. at 145:12-18; 158:16-159:19; JX-1486; JX-1487; JX-1488; JX-1489; JX-1490; JX-1491; JX-1492.

¹⁷² Feb. 13 Tr. at 145:12-18.

¹⁷³ JX-1560 (identifying "sales" team); Feb. 17 Tr. at 10:21-12:13.

¹⁷⁴ *See id.*

approved the sales team structure for miCOR.¹⁷⁵ Moreover, the current head of CTI, Ms. von Kries, testified that the miCOR sales for the last two years did not justify adding any additional sales representatives.¹⁷⁶

Based upon this evidence, the Court finds that miCOR was adequately funded throughout the relevant period. The Court further finds that CZMI invested sufficient resources into miCOR that were not provided to other CZMI products, including a “dedicated” sales team. Accordingly, the Court finds that CZMI’s actions in this context were objectively commercially reasonable.

ii. CTI chose not to launch miCOR after receiving 510(k) clearance.

Fortis further suggested at trial that, by not launching miCOR after receiving 510(k) clearance from the FDA in July 2020, CZMI did not exert PCRE in an attempt to achieve the Product COGS Milestone. However, as described in more detail below, miCOR’s receipt of 510(k) approval did not equate to market readiness.

As recognized by Fortis’ own witnesses, “sometimes [510(k)] clearance is used strategically.”¹⁷⁷ CTI took a “different approach” to regulatory approval by not following the Zeiss Product Development Process (“ZPDP”).¹⁷⁸ In the ZPDP, regulatory approval is “the last element of that product” once the “product [is] finalized” and ready to “commercialize.”¹⁷⁹ Instead of approaching the launch of miCOR pursuant to ZPDP, Mr. Clauson, Mr. Walsh, and Mr. Rein agreed not to launch miCOR after receiving 510(k) in 2019 and 2020 because miCOR was still not market ready.¹⁸⁰

¹⁷⁵ JX-1905.0002.

¹⁷⁶ Feb. 13 Tr. at 234:4-18

¹⁷⁷ Feb. 11 Tr. at 52:4-7.

¹⁷⁸ Feb. 13 Tr. at 213:11-215:23.

¹⁷⁹ *Id.*

¹⁸⁰ JX-0383A; Feb. 13 Tr. at 215:18-23; Feb. 11 Tr. at 181:19-182:18. JX-0190; JX-0310.

Additionally, CTI failed to complete the required testing of its design changes to meet regulatory requirements for EU approval of the updated miCOR version submitted in May 2021. While CTI blamed Zeiss for this delay, the record indicates that CTI had been warned about this potential outcome for over a year prior to the submission.¹⁸¹

Based on this evidence, the Court finds that the initial delay of miCOR's launch following 510(k) approval was the fault of CTI – not CZMI. Accordingly, the Court finds that this evidence is insufficient to demonstrate that CZMI was acting in a commercially unreasonable manner towards the achievement of the Product COGS Milestone.

iii. miCOR's shortcomings delayed the anticipated launches.

The Court also finds that the evidence demonstrates that CZMI acted in a commercially reasonable manner towards the achievement of the Product COGS Milestone due to the limitations of miCOR. As presented at the Trial, the Court finds that miCOR's drawbacks were a significant reason for delaying the launch. Indeed, the parties attempted to fix miCOR's drawbacks for an extended period to no avail.

Contrary to Fortis' position, CZMI was not "creat[ing] barriers" to miCOR's launch by July 2021. In June 2020, the parties agreed to move miCOR's launch until ASCRS 2022. By that time, the COVID-19 epidemic had put a halt to clinical testing in Panama for approximately one year.

Following the easing of COVID-19 related restrictions, CTI further delayed moving forward from clinical testing during MPTs until CTI was able to address miCOR's significant drawbacks.¹⁸² This is supported by several documents. For example, around this time, Mr. Burger sent a draft of a "Minimal Disruptive Product" criteria that included: (i) "strong clinical

¹⁸¹ See JX-0550, Feb. 12 Tr. at 82:19-84:19.

¹⁸² JX-0658.

benefits v. phaco” and “acceptable procedure time for all grades cataract;” and (ii) “acceptable coaxial I/A in performance & handling for all procedure steps.”¹⁸³ Mr. Burger and Mr. Walsh subsequently created a presentation indicating that miCOR did not meet that criteria including: (i) “clinical outcome superiority...vs. phaco” and “procedure time in all grades of cataract compared to phaco” and (ii) “optimized coaxial I/A.”¹⁸⁴ Thus, both CTI and CZMI recognized the potential consequences of rushing miCOR to market, when the product was, in fact, not ready to market.

To address these concerns, the parties undertook several years’ worth of effort to handle hard cataracts and develop the I/A handpiece that CTI and CZMI agreed were the two “critical” issues that needed to be addressed.¹⁸⁵ Notwithstanding the apparent efforts undertaken to make miCOR “market-ready,” the parties recognized that “they [still] needed more time to launch” even as late as April 2024.¹⁸⁶

Based upon the above evidence, the Court finds that miCOR’s own deficiencies were the main cause of the delay of miCOR’s launch. The Court finds that CZMI exerted commercially reasonable efforts to remedy the apparent issues with miCOR, and thus, potentially achieve the Product COGS Milestone.

iv. Feedback from KOLs indicated that miCOR’s launch should be delayed.

Related to the preceding subsection, the record also indicates that “Key Opinion Leaders” (“KOLs”) recognized that miCOR was not ready to go to market and that a delay in launching miCOR was warranted.

¹⁸³ JX-1849.

¹⁸⁴ JX-1853.

¹⁸⁵ Feb. 11 Tr. at 128:17-131:4 (citing JX-0730.001) (“sequence of delays” that was “not what [Zeiss] wanted to see” included two critical points that required improvement (hard cataracts and I/A handpiece)

¹⁸⁶ Feb. 17 Tr. at 4:4-5:15.

For example, in September 2022, CZMI received feedback from KOLs on miCOR’s ability to handle hard cataracts that was “sadly not positive.”¹⁸⁷

Moreover, in February 2023, another KOL, Dr. Liz Yeu, reported a “need for additional accessories, like the soft, bent tip for I/A,” that Phaco was still faster than MICOR, especially with a “dense nucleus,” that “[p]roof needs to show the benefit of miCOR vs Phaco,” and that miCOR was “NOT ready for primetime.”¹⁸⁸

The Court finds that this evidence further supports the conclusion that CZMI acted in a commercially reasonable manner towards the achievement of the Product COGS Milestone through its delay of miCOR’s launch to address the drawbacks of miCOR.

3. CMZI’s alleged prioritization of Quatera over miCOR does not constitute a breach of CZMI’s PCRE obligation.

At trial, Fortis presented evidence that CZMI’s alleged prioritization of Quatera over miCOR constitutes a breach of CZMI’s PCRE obligation. Not so. The Court notes that the alleged prioritization of Quatera is irrelevant to the Court’s consideration of the PCRE claim. Moreover, even when such conduct is considered, the Court finds that CZMI’s conduct towards Quatera as compared to miCOR does not constitute a breach of CZMI’s PCRE obligation towards the achievement of the Product COGS Milestone.

a. CZMI’s conduct towards Quatera as compared to miCOR is irrelevant.

The parties dispute whether CZMI’s conduct towards Quatera as compared to miCOR is relevant for purposes of determining whether CZMI breached its obligation to exercise PCRE towards the achievement of the Product COGS Milestone. Fortis argues that the Agreement “expressly excludes other ‘competitive internal programs’” from the list of permissible factors

¹⁸⁷ JX-0793; Feb. 11 Tr. at 55:1-10; 106:4-107:6.

¹⁸⁸ JX-0896; Feb. 17 Tr. at 154:21-156:21.

that [CZMI] can consider in fashioning it[s] efforts with respect to miCOR.”¹⁸⁹ CZMI takes the position that such a consideration is irrelevant “because the PCRE clause is outward facing and does not consider CZMI’s efforts in connection with one of its products compared to another.”¹⁹⁰

The Agreement’s PCRE clause provides that one of the relevant factors in determining whether CZMI exerted PCRE is “margin, as reasonably determined by Parent from time to time (without taking into account other competitive internal programs of such company or payments made or to be made pursuant to this Agreement).”¹⁹¹

Here, the Court finds that CZMI’s conduct towards Quatera as compared to miCOR is irrelevant. Fortis attempts to create in the Agreement a duty that CZMI was prohibited from considering Quatera’s effect on miCOR. As an initial matter, the language advanced by Fortis is contained in a parenthetical that only modifies the last factor – the margin of a similarly situated company. The language does not apply uniformly to the rest of the PCRE clause. Fortis assertion that CZMI somehow “bargained away its ability to consider miCOR’s effect on Quatera” is not persuasive when considering the fact that CTI was aware that Quatera would be bundled with miCOR at the time the Agreement was executed.¹⁹²

Accordingly, the Court finds that CZMI’s conduct towards Quatera as compared to miCOR is irrelevant pursuant to the PCRE clause.

b. Even if relevant, CZMI’s conduct towards Quatera as compared to miCOR does not constitute a breach of CZMI’s PCRE obligation.

Even assuming the relevancy of CZMI’s conduct towards Quatera as compared to miCOR, the Court finds that such conduct does not constitute a breach of CZMI’s PCRE

¹⁸⁹ Pl. Br. at 45-46.

¹⁹⁰ Def. Br. at 42.

¹⁹¹ JX-0129.

¹⁹² See JX-0147.

obligation. CZMI apparently always had a goal of creating a complete, bundled portfolio and entering the market with a “full lens extraction solution” including miCOR and Quatera. CZMI and Fortis’ own witnesses understood that the market introduction of Quatera would not be successful without the introduction of miCOR (and vice versa). As recognized by Fortis’ own witness, Mr. Clauson, “[t]he problem [CZMI] face[s] with Quatera, [CZMI] will face with miCOR. [CZMI] needs the full lens extraction solution to take market share.”¹⁹³

As such, the record makes clear that the launch of miCOR would likely have been unsuccessful without a corresponding launch of Quatera. It follows that CZMI was not “prioritizing” Quatera over miCOR and instead was making reasonable business decisions to conform with their business plan and make the launch of both products as successful as possible. Therefore, the Court finds that CZMI’s conduct towards Quatera as compared to miCOR does not constitute a breach of CZMI’s PCRE obligation.

Accordingly, the Court finds that Fortis has not shown, by a preponderance of the evidence, that CZMI breached the Agreement by failing to exercise PCRE in connection with the achievement of the Product COGS Milestone.

C. DAMAGES

The Court finds that Fortis has demonstrated damages proximately caused by CZMI’s breach of the Agreement through its failure to render the Product COGS Milestone Payment. Fortis has proved, by a preponderance of the evidence, that it suffered damages in the amount of \$15,000,000.00. The Court arrives at this amount based upon the following calculation: \$25,000,000 (the Product COGS Milestone Amount) multiplied by 60% (the appropriate multiplier based upon the achievement of the Product COGS Milestone in November 2023).¹⁹⁴

¹⁹³ JX-1206.

¹⁹⁴ See JX-0129.

The Court does not find that Fortis is entitled to damages based upon the alleged breach of CZMI's obligation to exercise PCRE towards the achievement of the Product COGS Milestone. The Court finds no liability on this issue. Therefore, the Court will not address or award damages in connection with the alleged breach of CZMI's PCRE obligations toward the achievement of the Product COGS Milestone.

VI. CONCLUSION

The Court holds that Fortis has established, by a preponderance of the evidence, that CZMI breached the Agreement through its failure to render the Product COGS Milestone Payment based upon CTI's achievement of the Product COGS Milestone in November 2023. The Court further holds that Fortis has not proved, by a preponderance of the evidence, that CZMI breached its obligation pursuant to the Agreement to exercise PCRE toward the achievement of the Product COGS Milestone.

Judgment shall be entered in favor of Fortis on Count I of the Complaint. Damages are initially set at \$15,000,000.00 with the right of Fortis to file post-trial motions related to pre-judgment interest and other expenses that may have been incurred throughout this litigation.

IT IS SO ORDERED

Dated: September 23, 2026
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress