



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PATRICK FLANNERY, as)
Securityholders' Agent, on behalf of all)
Additional Payment Recipients,)
)
Plaintiff,)
) C.A. No. 2025-0547-MAA
v.)
)
LONDON STOCK EXCHANGE GROUP)
PLC, REFINITIV US LLC, LATITUDE)
MERGER SUB, INC., and MAYSTREET,)
INC.,)
)
Defendants.)

Submitted: August 10, 2026

Decided: October 16, 2026

MEMORANDUM OPINION

Defendants' Motion to Dismiss Plaintiff's Verified Complaint - DENIED.

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Adams, J.¹

¹ Sitting as a Vice Chancellor of the Court of Chancery of the State of Delaware by designation of the Chief Justice of the Supreme Court of Delaware pursuant to In re Designation of Actions Filed

INTRODUCTION

Before the Court are several disputes arising from the acquisition of a start-up business. In May 2022, Defendant Refinitiv US LLC (“Refinitiv”) acquired MayStreet, Inc. (“MayStreet”) through a merger agreement (the “Merger Agreement”). Pursuant to the Merger Agreement, Refinitiv paid up-front consideration and agreed to make earnout payments if certain post-closing milestones were achieved.

Plaintiff Patrick Flannery, acting as Securityholders’ Agent, now brings a fraud claim against Refinitiv and co-defendants London Stock Exchange Group PLC (“LSEG”) and Latitude Merger Sub, Inc. (“Latitude”). Plaintiff alleges these defendants, through a series of misrepresentations, caused MayStreet’s founders to reject available financing and instead sell MayStreet to Refinitiv. Plaintiff also brings a breach-of-contract claim against all defendants, alleging several contractual obligations were breached to prevent earnout milestones from being achieved.

Defendants now move to dismiss the Amended Complaint in its entirety pursuant to Court of Chancery Rules 9(b), 12(b)(1), and 12(b)(6). Defendants argue (1) Plaintiff fails to plead an actionable statement to support a fraud claim; (2) Plaintiff fails to properly plead scienter; (3) Plaintiff’s fraud claim is impermissibly

bootstrapped; (4) Plaintiff fails to state a claim for breach of contract; and (5) Plaintiff's claim is not ripe for adjudication.

For the following reasons, the Court finds Plaintiff pleads an actionable statement to support a fraud claim, properly pleads scienter, and does not impermissibly bootstrap a fraud claim to his breach-of-contract claim. The Court also finds Plaintiff states a breach-of-contract claim ripe for adjudication. Defendants' Motion to Dismiss the Amended Complaint is therefore **DENIED**.

FACTUAL BACKGROUND²

I. The Parties³

Plaintiff Patrick Flannery, in his capacity as Securityholders' Agent, brings this action on behalf of all Additional Payment Recipients—as defined in the Merger

² The Court recites only the facts necessary for resolution of this motion.

³ The Amended Complaint uses the terms “Defendants” and “LSEG” interchangeably to refer to LSEG, Refinitiv, and Latitude collectively with respect to pre-closing conduct. D.I. 23 [“Am. Compl.”] ¶ 18. The Amended Complaint also uses these same terms to mean all defendants in this action for post-closing conduct. *Id.* The challenge with this identification structure is it fails to provide adequate means to distinguish “LSEG” as a single entity from “LSEG” as multiple entities. For purposes of clarity, this opinion only uses the term LSEG when referring exclusively to the England public limited company or when the term is included in a quote from materials outside the Amended Complaint. The Court otherwise intends for all uses of the word “Defendants” to have the same meaning as in the Amended Complaint.

Agreement.⁴ Flannery is the former Chief Executive Officer and Co-Founder of MayStreet.⁵

Defendant LSEG is an England public limited company.⁶ LSEG holds itself out as “an essential partner to the global financial community” with “best in class global market data and feeds.”⁷ LSEG is Refinitiv’s parent.⁸ Defendant Refinitiv is a Delaware limited liability company and a wholly-owned subsidiary of LSEG.⁹ Refinitiv is the parent of wholly-owned subsidiary Latitude, a Delaware corporation.¹⁰ Pursuant to the Merger Agreement, Refinitiv acquired MayStreet through a merger with Latitude.¹¹

Defendant MayStreet is a Delaware corporation and a wholly-owned subsidiary of Refinitiv.¹² MayStreet provides capital markets data with “low latency technology, nanosecond accuracy[,] and cloud accessible data as a service solution.”¹³ MayStreet ingests raw market data directly from hundreds of trading

⁴ Merger Agreement Section 12.1 names Flannery as Securityholders’ Agent. D.I. 29 Ex. 1 [“Merger Agreement”] § 12.1(a). The Merger Agreement provides the Securityholders’ Agent with authority to act on behalf of the “Effective Time Holders,” who are defined as “the Non-Dissenting Stockholders and the holders of vested Company Options.” *Id.* §§ 12.1, 12.21. Effective Time Holders include “Additional Payment Recipients,” who are the fifteen individuals identified in Schedule 1.13. *Id.* §§ 1.13, 12.21.

⁵ D.I. 23 [“Am. Compl.”] ¶ 13.

⁶ *Id.* ¶ 14.

⁷ *Id.* ¶ 34.

⁸ *Id.* ¶ 14.

⁹ *Id.* ¶ 15.

¹⁰ *Id.* ¶ 16.

¹¹ Merger Agreement § 1.1.

¹² Am. Compl. ¶ 17.

¹³ *Id.* ¶ 23.

venues and then normalizes, enriches, and delivers the data to a variety of sophisticated market participants.¹⁴

II. Background on MayStreet

In 2012, Patrick Flannery and Michael Lehr founded MayStreet.¹⁵ MayStreet offers three primary product lines.¹⁶ The first product line is PCAP, or Pocket Capture.¹⁷ PCAP “delivers raw venue trading data with nanosecond timestamps captured in third-party cloud facilities.”¹⁸ This data delivery accurately reflects trading venue publication, which allows for refinement of trading strategies, market reconstruction, and compliance analysis.¹⁹

The second product line is Bellport.²⁰ Bellport is a “software-based feed handler . . . us[ing] the same content as PCAP.”²¹ Bellport, however, interprets the data live, along with historically captured data, and processes exchange updates in microseconds.²² These capabilities allow for normalization of historical and ongoing

¹⁴ *Id.* ¶¶ 23, 24. These sophisticated market participants included high-frequency traders, banks, hedge funds. *Id.* ¶ 24. MayStreet also serves the U.S. Securities & Exchange Commission (“SEC”). *Id.*

¹⁵ *Id.* ¶ 23.

¹⁶ *Id.* ¶ 25.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 26.

²¹ *Id.*

²² *Id.*

data across venues.²³ The third product line is Workbench.²⁴ Workbench “is a cloud-based solution facilitating the delivery and analytical applications for PCAP.”²⁵

III. MayStreet seeks Series B financing.

In 2021, MayStreet began pursuing Series B financing.²⁶ Series B financing would enable MayStreet to “complete its global exchange coverage, scale up development and sales capabilities, and substantially grow its annual revenue[.]”²⁷ New content was a critical focus for MayStreet.²⁸ MayStreet sought to add feeds from venues all over the world.²⁹ This coverage would allow MayStreet to expand its product offerings and assist MayStreet in winning bigger contracts with customers desiring access to global financial market data.³⁰

IV. LSEG makes an offer to acquire MayStreet.

After MayStreet began pursuit of Series B financing, Defendants approached MayStreet about a potential acquisition.³¹ Defendants proposed an acquisition, in lieu of financing, that would provide MayStreet with new content and the global sales reach necessary to grow MayStreet’s revenue.³² Defendants emphasized

²³ *Id.*

²⁴ *Id.* ¶ 27.

²⁵ *Id.*

²⁶ *Id.* ¶ 30.

²⁷ *Id.*

²⁸ *Id.* ¶ 32.

²⁹ *Id.* ¶¶ 32-33.

³⁰ *Id.* ¶ 33.

³¹ *Id.* ¶ 31.

³² *Id.*

MayStreet would be given access to over 550 of Defendants’ global content feeds.³³ MayStreet requested and received a list of these feeds and in turn expressed interest in the content.³⁴ As the Amended Complaint alleges, “if Defendants could not deliver this critical, additional content, then a transaction between the parties made no sense.”³⁵

On November 22, 2021, Defendants extended their first official offer to acquire MayStreet.³⁶ The offer, which included contingent consideration in the form of an earnout, was far below MayStreet’s expectations.³⁷ Flannery informed Defendants the offer was a “non-starter” and MayStreet planned to move forward with Series B financing.³⁸

Despite this rejection, Defendants continued to press for the acquisition.³⁹ Defendants assured MayStreet’s founders that Defendants would provide “the right platform for future growth” and could “enable and accelerate delivery of MayStreet[’s] business plan[.]”⁴⁰ Defendants also painted an earnout structure as

³³ *Id.* ¶¶ 31, 34.

³⁴ *Id.* ¶ 35.

³⁵ *Id.*

³⁶ *Id.* ¶ 36.

³⁷ *Id.*

³⁸ *Id.* (“What’s here is an absolute non[-]starter for [MayStreet] and our investors. We’d be selling for far less than we can raise at, and from that we keep both control and the upside.”)

³⁹ *Id.* ¶ 37.

⁴⁰ *Id.* ¶¶ 38-39.

“attractive” because it would deliver more “valuation certainty” and “remov[e] future market risk.”⁴¹

V. MayStreet counteroffers Defendants and rejects Series B financing.

On December 14, 2021, MayStreet countered Defendants’ offer.⁴² MayStreet sought more up-front consideration to alleviate earnout risk.⁴³ MayStreet also sought assurances about new content, capital, sales resources, and control.⁴⁴ Defendants, in response, committed to providing the MayStreet project with capital, leveraging sales networks to sell MayStreet products, and giving MayStreet access to global content.⁴⁵ These assurances were paired with a reemphasis on the future value creation an earnout structure presented.⁴⁶

While these discussions were ongoing, MayStreet received a Series B financing offer capable of fully funding MayStreet’s new content, sales reach, and revenue growth goals.⁴⁷ Given Defendants’ assurances, however, the MayStreet team rejected the Series B offer.⁴⁸ On February 10, 2022, MayStreet and LSEG instead entered the Project Latitude Indicative Non-Binding Term Sheet (the “Term

⁴¹ *Id.* ¶ 38.

⁴² *Id.* ¶ 40.

⁴³ *Id.*

⁴⁴ *Id.* ¶¶ 40-41.

⁴⁵ *Id.* ¶ 41.

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 43.

⁴⁸ *Id.*

Sheet”).⁴⁹ The Term Sheet committed LSEG, or one of its subsidiaries, to “purchase the fully diluted issued and to-be issued equity of MayStreet, Inc.”⁵⁰

VI. Defendants and MayStreet enter due diligence and prepare for a potential merger.

For the next several months, Defendants and MayStreet continued to conduct due diligence, negotiate terms of the transaction, and create a governing business plan.⁵¹ In late February 2022, the Parties met in New York to “align on strategy, product opportunities, due diligence, business plan development, and post-closing integration.”⁵² During these meetings, Defendants represented they could and would immediately integrate Defendants’ global content in MayStreet products.⁵³ According to Plaintiff, the key takeaway from these meetings was Defendants’ content would be integrated into MayStreet products on “Day 1.”⁵⁴

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* ¶ 44.

⁵² *Id.* Prior to these meeting, Defendants created a variety of materials for “Product Vision” and “Roadmap & Timing” sessions. *Id.* In these materials, Defendants represented 1) MayStreet products would be using “LSEG[‘s global connectivity to capture 400+ multi-asset venue data;” 2) MayStreet would be provided with 7 sales specialists, 6 pre-sales specialists, global account management teams supporting specialists, the central LSEG marketing campaign, and support from the existing 24 LSEG sales and global specialists; and 3) Defendants would conduct a global sales campaign that included “[d]irect reach out to 500 existing tick history customers prioritized in order of value” and meetings with the “top 20 current Tick Data clients.” *Id.* ¶¶ 44-45. The Court notes for the second representation, it was unclear whether the term “LSEG” referred to LSEG specifically or Defendants as a whole.

⁵³ *Id.* ¶ 44. These representations were made by Defendants’ agents, which included Emma Gibson, Rob Lane, Tom Luker, Adam Engdahl, and Andrew Whitaker. *Id.* ¶ 46.

⁵⁴ *Id.*

Following these meetings, Defendants presented MayStreet with a “per product workstream breakdown” of post-closing actions Defendants would take to integrate products, add content, and generate sales growth.⁵⁵ The breakdown included timelines for when certain actions would be taken.⁵⁶ Defendants, for example, outlined the following actions were to be taken within the first ninety days post-closing: 1) Defendants would directly reach out to “500 existing tick history” customers; 2) Defendants would engage 50 Key Strategic Accounts; and 3) Defendants would meet with “top 20 current RTD” clients.⁵⁷

On April 14, 2022, Defendants further provided Flannery with a list of benefits Defendants brought to the merger.⁵⁸ These benefits included leveraging 400 feeds, adding pedigree and trust for larger clients, and marketing capabilities.⁵⁹ Flannery confirmed these benefits—content, existing contracts, removing risk for large firms, and sales/marketing—were key points for MayStreet.⁶⁰

⁵⁵ *Id.* ¶ 48.

⁵⁶ *Id.*

⁵⁷ *Id.* ¶¶ 49-51. These actions aligned with what Defendants would later identify as one pillar of their sales strategy: cross-selling to Defendants existing clients. *Id.* ¶ 58.

⁵⁸ *Id.* ¶ 53.

⁵⁹ *Id.*

⁶⁰ *Id.* ¶ 54.

VII. Refinitiv and MayStreet sign the Merger Agreement and agree to an earnout structure.

MayStreet's co-founders, relying upon Defendants' oral and written representations, eventually agreed to sell MayStreet.⁶¹ The Merger Agreement was signed on May 17, 2022, and the transaction closed on May 31, 2022.⁶² Refinitiv paid approximately \$275 million in up-front consideration and agreed to an earnout structure that could pay up to \$175 million in contingent consideration.⁶³ The earnout structure was based on a five-year performance of MayStreet, which would start being measured nineteen months after closing.⁶⁴

Earnout payments were specifically based upon MayStreet achieving certain "ASV" thresholds, which is the equivalent of annualized revenue.⁶⁵ The thresholds

⁶¹ *Id.* ¶ 61.

⁶² *Id.* ¶¶ 62-63. Though Refinitiv was the entity acquiring MayStreet, LSEG published a press release about the acquisition on May 18, 2022. *Id.* ¶ 20. The following language was included in the press release: "London Stock Exchange Group (LSEG) today announces that it has signed an agreement to acquire MayStreet, a leading market data solutions provider." *Id.*

⁶³ *Id.* ¶ 64. The earnout was payable to "Additional Payment Recipients," who are individuals referenced or identified on Schedule 1.13 of the Merger Agreement. *Id.* ¶ 13. Under the Merger Agreement, there are sixteen original Additional Payment Recipients. *Id.* ¶ 176. Some of these individuals have since resigned from their positions, meaning they have forfeited their right to earnout payments moving forward. *Id.* ¶¶ 176-177.

⁶⁴ *Id.* ¶ 64. The delay was intended to provide Defendants time to accomplish two tasks before MayStreet's performance was measured for earnout purposes. *Id.* ¶¶ 64, 94. First, to provide Defendants enough time to integrate their content into MayStreet products. *Id.* ¶ 64. Second, to provide Defendants enough time to leverage their global sales force in relation to MayStreet products. *Id.*

⁶⁵ *Id.* ¶ 65. For the final three years of the earnout period (FY25, FY26, and FY27), the earnout payments are also subject to a margin condition. *Id.* The applicable margin conditions are calculated through the following formula: "(a) the gross revenue of the Company, minus the total costs of the business of the Company . . . divided by (b) the gross revenue of the Company[.]" *Id.* ¶ 167. If the margin condition is calculated to be less than 25% in any year, no earnout payments are to be made for that year. *Id.* If the margin condition is calculated to be between 25-30% in

representing earnout milestones were derived from a five-year business plan (the “Business Plan”).⁶⁶ The Business Plan was jointly created by MayStreet and Refinitiv and approved by LSEG’s CEO and CFO.⁶⁷ The final Business Plan reflected MayStreet’s ASV levels would grow to \$44.2 million in 2023, \$68.9 million in 2024, \$95 million in 2025, \$123.6 million in 2026, and \$151 million by the end of 2027.⁶⁸

To safeguard the Additional Payment Recipients’ right to post-closing consideration, the MayStreet team negotiated “robust contractual requirements regarding Defendants’ conduct with respect to post-closing operation of the MayStreet business.”⁶⁹ These contractual requirements are mostly found in Section 1.13(c) of the Merger Agreement:

- (i) Parent shall, and shall cause the Company to, act in good faith in relation to Parent’s express obligations regarding each applicable Additional Payment, without materially limiting the rights of the Additional Payment Recipients in respect of the payment of the Additional Payment, and Parent shall, and shall use its commercially reasonable efforts to cause the Company to, carry on the Company’s business in the ordinary course,

any year, half the earnout payment is to be paid for that year. *Id.* If the margin condition is calculated to exceed 30% in any year, the full earnout payment must be paid for that year. *Id.*

⁶⁶ *Id.* ¶ 69.

⁶⁷ *Id.* The final Business Plan was appended as an exhibit to the Merger Agreement. *Id.* ¶ 73.

⁶⁸ *Id.* ¶ 76. Through ASV targets were set for each year, earnout payments were structured based on calculations, not flat payments (though earnout payments were capped at \$35 million and \$87.5 million for FY24 and FY25 respectively). *Id.* ¶ 161. Excess ASV growth in one year could therefore make up from smaller ASV growth in other years. Theoretically, if actual ASV growth for one year exceeded the target ASV enough, the totals earnout value of \$175 million could be earned in that year (assuming this was a year in which a cap was not imposed). None of the full \$175 million earnout is therefore forfeited until the earnout period ends in 2027.

⁶⁹ *Id.* ¶ 95.

- (ii) Parent shall, and shall cause the Company to, not discontinue, wind up, materially reduce the scope of, sell, liquidate or otherwise dispose of all or any material portion of the assets of the Company (taken as a whole) other than pursuant to internal reorganization or similar internal restructuring,
- (iii) Parent shall, and shall cause the Company to, not materially change the primary business of the Company that exists as of the Closing Date,
- (iv) Parent shall, and shall use its commercially reasonable efforts to cause the Company to, manage the business of the Company consistent with Parent's policies and practices of general applicability,
- (v) Parent shall, and shall cause the Company to, solely to the extent expressly set forth in, and subject to the terms and conditions of, the Business Plan, ensure the Company has an amount of working capital that is reasonably sufficient to operate its business consistent with past practice,
- (vi) Parent shall, and shall cause the Company to, maintain books and records and other financial information of the Company in reasonable detail and which shall be accurate and complete in all material respects as to enable review of the Company ASV in accordance with this Section 1.13, and
- (vii) Parent shall, and shall use its commercially reasonable efforts to cause the Company to, solely to the extent expressly set forth in, and subject to the terms and conditions of, the Business Plan, continue to develop, license, market, sell, deliver and distribute Company Products, as such Company Products may be modified from time to time.⁷⁰

⁷⁰ Merger Agreement Section 1.13(c).

Pursuant to Schedule 12.21(c) of the Merger Agreement, LSEG also committed it “will not do anything in bad faith that would distort the financial performance of the products in the jointly developed business plan.”⁷¹

VIII. The Key Terms of the Business Plan

The Business Plan was designed to increase sales growth and ASV levels. Critical to driving this sales growth was adding Defendants’ existing content coverage to MayStreet products.⁷² The Business Plan therefore called for Defendants to add 420 feeds to MayStreet products by the end of 2023.⁷³ The goal behind this term was for MayStreet products to have a total of 750 feeds before the earnout period began.⁷⁴ The Business Plan also called for certain sales and marketing efforts to be completed contemporaneously, thereby priming MayStreet for optimal performance in the earnout period.⁷⁵

⁷¹ Merger Agreement Schedule 12.21(c); Am. Compl. ¶ 211.

⁷² Am. Compl. ¶¶ 78, 87-92.

⁷³ *Id.* ¶ 86. Defendants specifically agreed to add 220 feeds by the end of 2022 and an additional 200 feeds in 2023. *Id.*

⁷⁴ MayStreet had 330 preexisting feeds when it was acquired. *Id.*

⁷⁵ The integration of these feeds was intended to be done alongside Defendants using their global sales reach. *Id.* ¶ 92. In an internal memorandum created in October of 2023, Defendants confirmed MayStreet’s revenue growth in the Business Plan was “supported by two key elements,” which were (1) “[c]ross-selling of products between LSEG and MayStreet,” and (2) “[o]nboarding of additional venues to Maystreet’s platform.” *Id.* ¶ 109.

IX. Defendants fail to timely add feeds in accordance with the Business Plan.

After the Merger Agreement was executed, nineteen months passed without Defendants adding a single feed to MayStreet products.⁷⁶ Defendants' network was incompatible with the low latency requirements for MayStreet products.⁷⁷ Defendants' data centers also did not have room for MayStreet servers despite Defendants previously representing enough room was available.⁷⁸

Flannery met with several of Defendants' representatives to resolve these challenges, but no meaningful solution was ever found within nineteen months post-closing.⁷⁹ Given these challenges, Flannery requested the earnout milestones be adjusted.⁸⁰ This request was denied despite LSEG's Head of Finance for Data & Feeds admitting just a week earlier that "content [would not] be onboarded anytime soon [and the] business case [would not] happen anytime soon either."⁸¹

In 2024, MayStreet's co-founders learned Defendants' Global Head of Real Time Market Data, Ken Doody ("Doody"), was not consulted pre-closing about the

⁷⁶ Am. Compl. ¶¶ 99, 102. Defendants now claim they never promised to add these feeds before 2023 despite calling the addition of the 420 feeds a "requirement" in a 2024 Post Investment Review. *Id.* ¶¶ 9, 100.

⁷⁷ *Id.* ¶ 59.

⁷⁸ *Id.* ¶¶ 55, 59, 120.

⁷⁹ While MayStreet's founders did eventually obtain approval to begin adding *some* feeds through a third party MayStreet worked with before, this approval only came in December 2022, a mere month before Defendants' deadline to add 420 feeds arrived. *Id.* ¶ 125.

⁸⁰ *Id.* ¶ 113.

⁸¹ *Id.*

feasibility of adding feeds to MayStreet products.⁸² Doody shared that had he been consulted, he would have advised Defendants what they outlined in the Business Plan was “impossible” to implement in the proposed time frame.⁸³

X. Defendants fail to implement previously proposed marketing efforts.

Defendants also failed to undertake certain marketing efforts previously represented to be done within ninety days of closing.⁸⁴ Defendants did not reach out to “500 existing tick history” customers during this timeframe, nor did Defendants engage 50 Key Strategic Accounts or meet with “top 20 current RTD” clients.⁸⁵ Plaintiff contends this was due, in part, on Defendants’ failure to incentivize their own sales teams to sell MayStreet products.⁸⁶

XI. Current projections show the chances of earnout milestones being achieved is very low.

The conduct outlined above has caused MayStreet’s revenue performance to increasingly fall behind growth projections outlined in the Business Plan.⁸⁷ MayStreet’s ASV for FY23 and FY24 was 59% and 75% below ASV targets for those respective years.⁸⁸ No payments, as a result, have been made pursuant to the

⁸² *Id.* ¶ 103.

⁸³ *Id.*

⁸⁴ *Id.* ¶ 197.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* ¶ 162.

⁸⁸ *Id.*

earnout.⁸⁹ Because ASV for FY25-27 is affected by the same factors which affected ASV in FY23-24, Plaintiff now believes the Addition Payment Recipients' right to receive post-closing consideration has been permanently impaired.⁹⁰

Defendants' own financial projections reflect this reality. In an October 2025 Earnout Update, Defendants recalibrated MayStreet's gross revenue and growth predictions for FY25, FY26, and FY27.⁹¹ Defendants admitted even under the most optimistic growth scenarios, no earnout payment would be triggered in FY25 or FY26.⁹² The Earnout Update therefore primarily discusses earnout potential for a single year—FY27.⁹³

Defendants outlined six growth scenarios for FY27.⁹⁴ In five of these scenarios, Additional Payment Recipients receive no earnout payments at all.⁹⁵ In the sixth and most optimistic scenario, Defendants project only six percent of the earnout will be achieved.⁹⁶ The growth projected in this sixth scenario, however, is directly contradicted by the projections of Defendants' own sales teams.⁹⁷

⁸⁹ *Id.*

⁹⁰ *Id.* ¶ 174.

⁹¹ *Id.* ¶ 172.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

XII. Flannery is terminated shortly after filing the Complaint.

Flannery subsequently filed this action against Defendants. Shortly after the Complaint was filed, Defendants terminated Flannery.⁹⁸ Defendants informed Flannery his role, based on a succession plan Flannery created, was redundant.⁹⁹ Flannery views this termination as retaliatory, especially because Defendants previously expressed to him that employees who “complain” were viewed as a problem and fired.¹⁰⁰

XIII. Procedural History

On May 16, 2025, Flannery, as Securityholders’ Agent, filed a Complaint against Defendants, seeking two counts: fraud and breach-of-contract.¹⁰¹ Plaintiff filed an Amended Complaint on October 21, 2025.¹⁰² On November 4, 2025, Defendants filed a Motion to Dismiss the Amended Complaint.¹⁰³ On February 24, 2026, Plaintiff filed an Answer to Defendants’ Motion to Dismiss.¹⁰⁴ On April 22, 2026, Defendants filed a Reply.¹⁰⁵ The Court heard oral argument on May 20, 2026.¹⁰⁶ On August 4, 2026, Plaintiffs filed a Notice of Supplemental Authority,¹⁰⁷ and

⁹⁸ Am. Compl. ¶ 183.

⁹⁹ *Id.* ¶ 184.

¹⁰⁰ *Id.* ¶ 183.

¹⁰¹ Compl.

¹⁰² *See generally* Am. Compl. (outlining Plaintiff’s allegations against Defendants).

¹⁰³ D.I. 28 [“MTD OB”].

¹⁰⁴ D.I. 37 [“Ans. Br.”].

¹⁰⁵ D.I. 50 [“Reply Br.”].

¹⁰⁶ D.I. 55.

¹⁰⁷ D.I. 56.

Defendants responded to the Notice on August 10, 2026.¹⁰⁸ The matter is now ripe for adjudication.

STANDARD OF REVIEW

Court of Chancery Rule 12(b)(1) requires a claim be dismissed when the Court lacks subject matter jurisdiction over the claim.¹⁰⁹ For the Court to have subject matter jurisdiction over a claim, the claim must be ripe for adjudication.¹¹⁰ In evaluating whether a claim is ripe for adjudication, the Court is permitted to consider materials outside of a complaint.¹¹¹ The plaintiff bears the burden of establishing the Court's subject matter jurisdiction over a claim.¹¹²

The standard for deciding a motion to dismiss pursuant to Court of Chancery Rule 12(b)(6) is well-settled:

(i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are “well-pleaded” if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and (iv) dismissal is inappropriate unless the “plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances[.]”¹¹³

¹⁰⁸ D.I. 57.

¹⁰⁹ CT. CH. R. 12(b)(1).

¹¹⁰ *Bebchuk v. CA, Inc.*, 902 A.2d 737, 740 (Del. Ch. 2006) (“Ripeness, the simple question of whether a suit has been brought at the correct time, goes to the very heart of whether a court has subject matter jurisdiction.”).

¹¹¹ *In re AES Corp.*, 2026 WL 1155111, at *11 (Del. Apr. 29, 2026) (citing *K&K Screw Prods., LLC v. Emerick Cap. Invs., Inc.*, 2011 WL 3505354, at *6 (Del. Ch. Aug. 9, 2011); *Maloney-Refaie v. Bridge at Sch., Inc.*, 958 A.2d 871, 882 n.29 (Del. Ch. 2008)).

¹¹² *Ropp v. King*, 2007 WL 2198771, at *2 (Del. Ch. July 25, 2007).

¹¹³ *Savor, Inc. v. FRM Corp.*, 812 A.2d 894, 896-97 (Del. 2002) (citations omitted).

Court of Chancery Rule 9(b) requires the circumstances constituting fraud be stated with particularity.¹¹⁴ Relevant circumstances include “the time, place, and contents of the false representations; the facts misrepresented; the identity of the person(s) making the misrepresentation; and what that person(s) gained from making the misrepresentation.”¹¹⁵ “Malice, intent, knowledge and other condition[s] of mind . . . may be averred generally.”¹¹⁶ “The core test is whether the claim has been plead ‘with detail sufficient to apprise the defendant of the basis for the claim.’”¹¹⁷

LEGAL ANALYSIS

I. Defendants’ Motion to Dismiss Count I is DENIED.

The Court first addresses Defendants’ Motion to Dismiss Count I of the Amended Complaint. Count I is a fraud claim brought against Defendants LSEG, Refinitiv, and Latitude.¹¹⁸ Plaintiff asserts LSEG, Refinitiv, and Latitude made various representations, with knowledge the representations were false or with reckless indifference to their truth, to induce Plaintiff into selling MayStreet.¹¹⁹

¹¹⁴ CT. CH. R. 9(b).

¹¹⁵ *Airborne Health, Inc. v. Squid Soap, Inc.*, 984 A.2d 126, 142 (Del. Ch. 2009) (quoting *Trenwick Am. Litig. Tr. v. Ernst & Young LLP*, 906 A.2d 168, 207-08 (Del. Ch. 2006), *aff’d sub nom. Trenwick Am. Litig. Tr. v. Billett*, 931 A.2d 438 (Del. 2007)).

¹¹⁶ *Abry P’rs V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1050 (Del. Ch. 2006).

¹¹⁷ *Airborne Health*, 984 A.2d at 142 (citing *Abry Partners*, 891 A.2d at 1050 (Del. Ch. 2006)).

¹¹⁸ Am. Compl. ¶¶ 186-205.

¹¹⁹ *Id.*

Plaintiff alleges the former MayStreet equity holders relied on these representations to abandon Series B financing and sell MayStreet to Defendants.¹²⁰

For a plaintiff to succeed on a fraud claim, the plaintiff must prove the following five elements:

- (1) a false representation, usually one of fact, made by the defendant;
- (2) the defendant's knowledge or belief that the representation was false, or made with reckless indifference to the truth; (3) an intent to induce the plaintiff to act or to refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of such reliance.¹²¹

At the pleading stage, the Court's role "is not to distill representations that can support a viable claim from those that cannot; instead, the Court's task is to assess whether each aggregated claim of fraud adequately pleads the essential elements."¹²²

Defendants present the Court with three main arguments to support dismissal of Count I. Defendants first argue Plaintiff fails to plead an actionable statement or omission to support a fraud claim.¹²³ Defendants next argue Plaintiff fails to properly plead scienter to support a fraud claim.¹²⁴ Defendants finally argue Plaintiff attempts to bootstrap a fraud claim to a breach-of-contract claim.¹²⁵

¹²⁰ *Id.* ¶¶ 43, 202.

¹²¹ *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 269 (Del. 2026) (quoting *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983)).

¹²² *Matrix Parent, Inc. v. Audax Mgmt. Co.*, 319 A.3d 909, 937 (Del. Super. 2024) (citations omitted).

¹²³ MTD OB at 19-30; Reply Br. at 4-18.

¹²⁴ MTD OB at 30-35; Reply Br. at 18-22.

¹²⁵ MTD OB at 36-39; Reply Br. at 23-28.

A. Plaintiff pleads an actionable statement to support a fraud claim.¹²⁶

Defendants argue all the statements or omissions Plaintiff provides in support of their fraud claim are inactionable because each fall into at least one of the following six categories: 1) true statements;¹²⁷ 2) forward-looking statements;¹²⁸ 3) opinions;¹²⁹ 4) corporate optimism;¹³⁰ 5) omissions lacking a duty to disclose;¹³¹ and 6) non-particularized, conclusory allegations.¹³²

In response to Defendants' argument, Plaintiff identifies nineteen separate "extra-contractual misrepresentations" Plaintiff contends are actionable.¹³³ These alleged misrepresentations, which span from November 2021 through May 2022, were all made prior to the Merger Agreement being signed on May 17, 2022.¹³⁴ The alleged misrepresentations were made by various individuals and concerned a variety of topics related to the sale and future operation of MayStreet.¹³⁵

¹²⁶ Plaintiff, in its Answering Brief, breaks down his fraud claim into three categories: extra contractual fraud; intra-contractual fraud, and fraud by omission. AB at 12-26. Defendants, in their reply, do not differentiate between the different types of fraud alleged, and only focus on their argument that no statements or omissions in the Amended Complaint support a fraud claim. *See generally* Reply Br. As such, the Court will focus on Defendants' argument rather than parse through each of Plaintiff's specific types of fraud alleged.

¹²⁷ MTD OB at 20-22; Reply Br. at 6-8.

¹²⁸ MTD OB at 22-24; Reply Br. at 8-11.

¹²⁹ MTD OB at 24-25; Reply Br. at 11-12.

¹³⁰ MTD OB at 25-27; Reply Br. at 11-12.

¹³¹ MTD OB at 27-29; Reply Br. at 12-17.

¹³² MTD OB at 29-30; Reply Br. at 17-18. Plaintiff does not appear to dispute that any statement or omission that falls under any one of these six categories is inactionable for fraud. *See generally* Ans. Br. (containing arguments which attack Defendants' contentions on other grounds).

¹³³ Ans. Br. at 16-20.

¹³⁴ *Id.*; Am. Compl. ¶ 62.

¹³⁵ Ans. Br. at 16-20.

The Court finds some of the alleged misrepresentations actionable for fraud at the pleading stage, including Plaintiff’s claim of misrepresentation as it relates to Defendants’ capabilities to integrate content into MayStreet. For example, Plaintiff alleges the following two statements regarding this topic:

Statement 1: At these February 22 through 25, 2022 meetings, Defendants’ agents (including Emma Gibson, Rob Lane, Tom Luker, Adam Engdahl, and Andrew Whitaker) represented (as reflected in the meeting materials) that Defendants *could* and would *immediately integrate LSEG’s global content into MayStreet’s products* and dedicate, train, and incentivize sales representatives to sell MayStreet products. The key takeaway from Defendants’ representations was that LSEG’s content would start to be integrated into MayStreet’s products and sold on “Day 1.”¹³⁶

Statement 2: On May 12, 2022, Emma Gibson, LSEG’s Head of Finance, sent the proposed final version of the Business Plan This proposed final version of the Business Plan that Ms. Gibson attached to her email included LSEG’s representation that it *could add 420 feeds by year end 2023, including 220 new feeds within the first six months post-closing by December 31, 2022, and an additional 200 new feeds by December 31, 2023.*¹³⁷

Both statements represent Defendants “could” integrate new content into MayStreet products and “could” do so either immediately or within nineteen months of closing. The word “could” represents feed integration was both possible and feasible within a specific timeframe.

¹³⁶ *Id.* at 18; Am. Compl. ¶ 46 (emphasis added).

¹³⁷ Ans. Br. at 20; Am. Compl. ¶ 85 (emphasis added).

As Defendants pointed out in their Opening Brief,

Specifically, adding additional data feeds and venues to MayStreet’s products proved more technologically difficult than anticipated As a result, the parties *were unable to add additional feeds to MayStreet using Defendants’ existing infrastructure*, and the number of feeds added to MayStreet’s products post-acquisition did not match “the expectations” and “forecasts” used in the Business Plan.¹³⁸

Even though Defendants cite Plaintiff’s allegations, the paragraph expressly confirms Plaintiff has alleged Defendants *could not*, as was represented, integrate feeds into MayStreet products immediately or within nineteen months. Giving all reasonable inferences to Plaintiff at this state, these two allegations do not fall within the first inactionable category Defendants present.

These two allegations also do not fall into any other inactionable category. The statements are not forward-looking statements concerning “sales projections” or expectations for “future performance.”¹³⁹ The statements are not corporate optimism “prais[ing] the skills, experience, and resources” of the Defendants.¹⁴⁰ The statements are also not opinions, omissions, or conclusory statements—they are

¹³⁸ MTD OB at 14 (emphasis added).

¹³⁹ MTD OB at 22 (quoting *Getzler v. River Run Foods (DE), LLC*, 2024 WL 3273430, at *5 (Del. Super. July 1, 2024) (“Sales projections are forecasts of future business and those ‘predictions about the future cannot give rise to actionable common law fraud.’”); *Mooney v. E.I. du Pont de Nemours and Co.*, 2017 WL 5713308, at *6 (Del. Super. Nov. 28, 2017) (“[P]redictions about the future usually are not actionable as fraud under Delaware law. This particularly is true in the context of statements regarding management’s expectations for a company’s future performance.”))

¹⁴⁰ *Id.* at 25 (quoting *Airborne Health, Inc.*, 2010 WL 2836391, at *8).

representations made and stated with particularity.¹⁴¹ The Court therefore finds at least these two statements actionable to support a fraud claim.

To be clear, the Court’s finding here does not preclude other statements in the Amended Complaint from being found actionable, or other statements to be later found inactionable. The Court will not, at this stage, parse through each statement to determine whether it is actionable.¹⁴² For purposes of this motion, the Court highlights examples of how Plaintiff has pleaded statements actionable for a viable fraud claim.

B. Plaintiff properly pleads scienter.

Defendants contend Plaintiff fails to plead scienter to support his fraud claim.¹⁴³ According to Defendants, Plaintiff makes only conclusory attempts to plead scienter while failing to ground the attempts in fact.¹⁴⁴ Defendants argue Plaintiff offers no pre-closing facts to support a finding Defendants knew any challenged statements were false when made.¹⁴⁵ Defendants contend Plaintiff

¹⁴¹ Paragraphs forty-six and eighty-five alone identify when and in what circumstances the statements were made, who made them, and the contents of the statements. Am. Compl. ¶¶ 46, 85. Plaintiff has also pleaded what the speakers gained from the statements (MayStreet co-founders selling MayStreet to Defendants) and has generally averred each speaker’s condition of mind. Am. Compl. ¶¶ 3, 4, 59, 100, 187, 190, 193, 201.

¹⁴² *See Adviser Investments, LLC v. Powell*, 2023 WL 6383242, at *7 (Del. Ch. Sept. 29, 2023) (“While Adviser may be unsuccessful at summary judgment or at trial regarding its claims for fraud, the detailed factual allegations contained in the Complaint state actionable claims for fraud.”).

¹⁴³ MTD OB at 30; Reply Br. at 18.

¹⁴⁴ MTD OB at 30-31; Reply Br. at 22.

¹⁴⁵ MTD OB at 31; Reply Br. at 19.

instead relies heavily upon post-closing events and statements, which occurred far after the MayStreet acquisition was complete.¹⁴⁶

Defendants specifically take issue with Plaintiff's use of Doody's statements concerning the feasibility of adding new feeds to MayStreet products.¹⁴⁷ Defendants argue the Amended Complaint presents no allegation that Defendants were required to consult Doody pre-acquisition or that Defendants failed to consult other subject-matter experts.¹⁴⁸ Defendants further assert facts in the Amended Complaint suggest the opposition conclusion, and highlight the diligence Defendants undertook in forming the Business Plan.¹⁴⁹

The scienter required for fraud is well-settled. A plaintiff must show a defendant made a false representation with knowledge of its falsity or reckless indifference to its truth.¹⁵⁰ Scienter can be averred generally pursuant to Court of Chancery Rule 9(b), but Delaware courts will "not give weight to conclusory allegations not grounded in allegations of fact."¹⁵¹

¹⁴⁶ MTD OB at 31-34; Reply Br. at 19.

¹⁴⁷ MTD OB at 32-33.

¹⁴⁸ *Id.* at 33.

¹⁴⁹ MTD at 34-35; Reply Br. at 21.

¹⁵⁰ *In re Wayport, Inc. Litig.*, 76 A.3d 296, 326 (Del. Ch. 2013).

¹⁵¹ *Trenwick Am. Litig. Tr. v. Ernst & Young, L.L.P.*, 906 A.2d 168, 188 (Del. Ch. 2006) (citing *In re Tri-Star Pictures, Inc. Litig.*, 634 A.2d 319, 326 (Del. 1993)).

There is no dispute Plaintiff has averred the scienter required for fraud.¹⁵² The only dispute is whether Plaintiff's general averments are sufficiently supported by allegations of fact.

Defendants attempt to dissuade the Court from considering post-closing statements, including those made by Doody, when evaluating whether Plaintiff has properly pleaded scienter for a fraud claim. In making this argument, Defendants fail to consider how such statements, along with other facts in the Amended Complaint, allow the Court to reasonably infer Defendants made certain pre-closing statements with knowledge of their falsity or with a reckless indifference to the truth.¹⁵³

Plaintiff pleads Doody, LSEG's Global Head of Real Time Market Data, would have advised Defendants it was "impossible" to implement what Defendants were proposing in the Business Plan. Though Doody's statements were made post-closing, the statements reveal at least one institutional employee had pre-closing knowledge certain representations would be false when made. The Court can

¹⁵² See, e.g., Am. Compl. ¶ 4, 59, 190, 193.

¹⁵³ See *Trifecta Multimedia Hldgs. Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 465 (Del. Ch. 2024) (allowing a fraud claim based on post-transaction actions to survive the motion-to-dismiss stage); *Jiggy Puzzles, LLC v. Steelhead Acq. EE, Inc.*, 2026 WL 465112, at *9 (Del. Ch. Feb. 18, 2026) (finding post-transaction evidence could be used to support then-existing falsity and intent surrounding a pre-transaction statement).

reasonably infer other individuals may have had similar knowledge when making the actionable statements.¹⁵⁴

Doody's statements also permit the Court to reasonably infer the actionable statements were made with a reckless indifference to the truth. Defendants contend seventy-one iterations of the Business Plan show how "diligent" Defendants were in forming the plan.¹⁵⁵ This contention is hard to accept when one considers the entirety of Plaintiff's complaint. With zero feeds added to MayStreet products within nineteen months of closing, it is conceivable that there was a deficiency in diligence.¹⁵⁶

Given Doody's statements, it is reasonable to infer that technological incompatibility issues with MayStreet products would have been discovered pre-closing if proper subject-matter experts were consulted. An open question therefore exists as to whether proper subject-matter experts were consulted pre-closing, leading the Court to reasonably infer actionable statements could have been made with a reckless indifference to their truth. Scienter is therefore properly pleaded.

¹⁵⁴ During oral argument, Defendants pointed out Stuart Bunyan, an individual Plaintiff identifies as making false representations about feed integration feasibility, reports to Doody. Tr. 20:15-22. If Doody could readily point out the flaws in Defendants' Business Plan propositions, it is reasonable to infer one of his subordinates, who was a member of the deal team, could have had similar knowledge that would lead him to similar conclusions as those reached by Doody.

¹⁵⁵ Reply Br. at 13.

¹⁵⁶ Am. Compl. ¶ 99.

C. Plaintiff's fraud claim is not bootstrapped.

Defendants argue Plaintiff's fraud claim is a textbook case of impermissible bootstrapping.¹⁵⁷ Defendants assert Delaware law does not permit a plaintiff to "bootstrap a claim of breach of contract into a claim of fraud merely by alleging [] a contracting party never intended to perform its obligations."¹⁵⁸ Defendants accuse the Plaintiff of bootstrapping by pointing to the extreme similarities between Counts I and II.¹⁵⁹ In other words, Defendants contend Plaintiff repackages his breach-of-contract claim into a fraud claim.¹⁶⁰

Plaintiff argues his fraud claim is not impermissibly bootstrapped for five independent reasons: 1) the Amended Complaint contains well-pleaded particularized allegations that Defendants knew contractual representations were false;¹⁶¹ 2) Counts I and II seek different damages;¹⁶² 3) Plaintiff is entitled to fraud damages that exceed damages for breach of contract;¹⁶³ 4) Defendants' conduct occurred pre-closing with the goal to induce Plaintiff to sell;¹⁶⁴ and 5) bootstrapping

¹⁵⁷ MTD OB at 36.

¹⁵⁸ *Id.* (quoting *MHS Cap. LLC v. Goggin*, 2018 WL 2149718, at *11 (Del. Ch. May 10, 2018)).

¹⁵⁹ MTD OB at 37-38; Reply Br. at 23-24.

¹⁶⁰ MTD OB at 37.

¹⁶¹ Ans. Br. at 60.

¹⁶² *Id.* at 60-62.

¹⁶³ *Id.* at 62-63.

¹⁶⁴ *Id.* at 63-64.

is logically inconsistent with Defendants’ claim that Defendants have no contractual obligations.¹⁶⁵

Delaware law prohibits a plaintiff from bootstrapping a fraud claim to a breach-of-contract claim.¹⁶⁶ As the Court of Chancery held in *Levy Family Investors, LLC v. Oars + Alps LLC*:

[T]he anti-bootstrapping rule bars a fraud claim where the plaintiff merely adds the term ‘fraudulently induced’ to a complaint or alleges that the defendant never intended to comply with the agreement at issue at the time the parties entered into it, but does not prevent a fraud claim against defendants who knew contractual representations were false and made them anyway.¹⁶⁷

The former scenario is not present here. Plaintiff’s fraud claim is distinct from his breach-of-contract claim in two key respects. First, the conduct at issue under each claim is different. Plaintiff’s fraud claim is based on pre-closing conduct, including representations made to induce Plaintiff into abandoning Series B financing and selling MayStreet.¹⁶⁸ Plaintiff’s breach-of-contract claim, by contrast, focuses on Defendants’ post-closing conduct.¹⁶⁹ This conduct includes what Defendants did, or did not do, once the MayStreet acquisition was completed.¹⁷⁰

¹⁶⁵ *Id.* at 64-65.

¹⁶⁶ *Earth Pride Organics, LLC v. Corona-Orange Foods Intermediate Hldgs., LLC*, 2024 WL 1905384, at *9 (Del. Super. April 17, 2024).

¹⁶⁷ 2022 WL 245543, at *8 (Del. Ch. Jan. 27, 2022) (cleaned up).

¹⁶⁸ *Id.*

¹⁶⁹ Am. Compl. ¶ 213.

¹⁷⁰ *Id.*

Second, the damages sought under each claim are distinct. The Amended Complaint makes clear Plaintiff's fraud claim seeks rescissory damages.¹⁷¹ Plaintiff's fraud claim is based on representations made to allegedly induce Plaintiff into selling MayStreet, and rescissory damages, the "monetary equivalent of rescission."¹⁷² Plaintiff's fraud claim thus seeks to reverse, monetarily, the transaction he was allegedly induced to enter.

By contrast, Plaintiff's breach-of-contract claim instead seeks the full value of the earnout—\$175 million—or an amount to be determined at trial.¹⁷³ These damages are based upon post-closing conduct allegedly preventing the achievement of earnout milestones. Plaintiff's breach-of-contract claim thus seeks recovery of earnout payments now supposedly unachievable because of alleged breaches by Defendants.

Plaintiff's fraud and breach-of-contract claims are based upon different conduct and seek different damages as a result. The Court therefore finds Plaintiff can maintain parallel fraud and breach-of-contract claims, as Plaintiff's fraud claim is not impermissibly bootstrapped.

¹⁷¹ *Id.* ¶ 204.

¹⁷² *In re Orchard Enters., Inc. S'holder Litig.*, 88 A.3d 1, 38 (Del. Ch. Feb. 28, 2014) (citation omitted).

¹⁷³ Am. Compl. ¶ 216.

II. Defendants’ Motion to Dismiss Count II is DENIED.

The Court next addresses Defendants’ Motion to Dismiss Count II of the Amended Complaint. Count II is a breach-of-contract claim alleging Defendants breached Section 1.13(c) and Schedule 12.21 of the Merger Agreement.¹⁷⁴ Plaintiff argues Defendants breached these provisions by failing to take certain actions Defendants promised to take.¹⁷⁵

Defendants contend Count II must be dismissed for two reasons. Defendants first argue Plaintiff fails to state a claim under Count II.¹⁷⁶ Defendants then argue even if Plaintiff states a claim, the claim is unripe, thereby depriving the Court of subject matter jurisdiction over of Count II.¹⁷⁷ For the following reasons, the Court finds Plaintiff has stated a viable breach-of-contract claim ripe for adjudication.

A. Plaintiff states a viable breach-of-contract claim.

Under Delaware law, a breach-of-contract claim has three elements: 1) the existence of a contract; 2) breach of one or more obligations under the contract; and 3) damages resulting from the breach.¹⁷⁸ Damages may be pleaded generally at the

¹⁷⁴ *Id.* ¶¶ 210-212.

¹⁷⁵ Plaintiff specifically alleges Defendants failed to take actions which Defendants previously admitted were “necessary in order to adhere to the Business Plan and satisfy their obligations to act in good faith[.]” *Id.* ¶ 213. The Amended Complaint lists over twenty actions Defendants allegedly failed to take. *Id.*

¹⁷⁶ MTD OB at 46-59; Reply Br. at 36-47.

¹⁷⁷ MTD OB at 39-46; Reply Br. at 29-36.

¹⁷⁸ *Geico Gen. Ins. Co. v. Green*, 308 A.3d 132, 140 (Del. 2022) (citing *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003)).

pleading stage, but a factual basis between the breach and the plaintiff's injury must be established.¹⁷⁹

Defendants contend Plaintiff's breach-of-contract claim fails as a matter of law and must be dismissed for four reasons: 1) LSEG was not a party to the Merger Agreement; 2) Count II is not based on any contractual obligations; 3) the Amended Complaint does not support an inference of bad faith; and 4) the Amended Complaint fails to show a lack of commercially reasonable efforts.

1. LSEG is a proper defendant under Count II.

Defendants contend LSEG is an improper defendant under Count II because LSEG is not a party to the Merger Agreement.¹⁸⁰ Defendants argue LSEG, as a non-party, is therefore incapable of breaching the Merger Agreement.¹⁸¹ Defendants assert Plaintiff ignores Delaware's reluctance to disregard corporate separateness and provides no basis to deviate from this longstanding practice.¹⁸² Defendants also contend Plaintiff relies on factually distinguishable precedent to support LSEG as a proper defendant under Count II.¹⁸³

Plaintiff counters LSEG is a proper defendant under Count II for three reasons. Plaintiff first argues the Merger Agreement expressly imposes on LSEG

¹⁷⁹ *Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967, at *4 (Del. Super. Jan. 9, 2024).

¹⁸⁰ MTD OB at 47; Reply Br. at 37.

¹⁸¹ MTD OB at 47; Reply Br. at 37.

¹⁸² MTD OB at 47.

¹⁸³ Reply Br. at 37.

many of the obligations Plaintiff purports to be breached.¹⁸⁴ Plaintiff then argues LSEG, through a variety of words and conduct, has adopted the Merger Agreement.¹⁸⁵ Plaintiff lastly argues LSEG accepted the benefits of the Merger Agreement and thus accepted obligations found within the Merger Agreement.¹⁸⁶ Many of these arguments overlap, so the Court will consolidate these arguments into a discussion about adoption.

A general principle of contract law is that only a party to a contract may be sued for a breach of that contract.¹⁸⁷ Under Delaware law, a party to a contract does not need to be a signatory.¹⁸⁸ A non-party may become party to a contract, and is “thus bound by it, by either expressly or implicitly adopting” the contract.¹⁸⁹ Such adoption can only occur, however, when the contract itself contemplates future adoption by non-signatories.¹⁹⁰

Adoption can either be explicit or implicit. A non-signatory expressly adopts a contract when the non-signatory makes statements confirming the non-signatory is bound by the contract. A writing by the non-signatory, which acknowledges a

¹⁸⁴ Ans. Br. at 65-66.

¹⁸⁵ *Id.* at 66-67.

¹⁸⁶ *Id.* at 67-68.

¹⁸⁷ *Gotham Pr’s, L.P. v. Hallwood Realty Pr’s, L.P.*, 817 A.2d 160, 172 (Del. 2002).

¹⁸⁸ *Am. Legacy Found. v. Lorillard Tobacco Co.*, 831 A.2d 335, 343 (Del. Ch. 2003).

¹⁸⁹ *Id.* at 343-44.

¹⁹⁰ *Id.* at 344.

contractual obligation, may be sufficient to establish express adoption if the writing reflects the “non-signatory’s explicit intent and consent to be bound.”¹⁹¹

A non-signatory implicitly adopts a contract through conduct.¹⁹² When determining whether adoption by implication has occurred, the Court considers all circumstances, including the “subject matter of the contract, the [non-signatory]’s acts and words, [and] whether [the non-signatory] acquiesced in the terms of the contract, performed its obligations, or accepted its benefits.”¹⁹³

The fact that LSEG was not a signatory to the Merger Agreement is not in dispute. The Court therefore proceeds by examining whether LSEG adopted the Merger Agreement.

a. The Merger Agreement contemplates adoption by non-signatories.

A non-signatory’s adoption of a contract can only occur when the contract itself contemplates future adoption by non-signatories.¹⁹⁴ Whether the Merger Agreement contemplates future adoption by a non-signatory is thus a logical starting point for the Court’s analysis.

In many ways, LSEG’s adoption of and consent to the Merger Agreement was a natural prerequisite to completing the acquisition of MayStreet. For example, the

¹⁹¹ *Id.* at 349.

¹⁹² *Id.*

¹⁹³ *Id.* at 349 n.59 (citation omitted).

¹⁹⁴ *Am. Legacy Found.*, 831 A.2d at 344.

Merger Agreement expressly provides LSEG would not act in bad faith. Such a provision would be rendered meaningless without adoption from LSEG.¹⁹⁵ Another example is the final Business Plan, which was effective only upon approval by LSEG's CEO and CFO. There would be little reason to negotiate such a requirement if LSEG's adoption of and consent to the Merger Agreement, which appended the Business Plan, was not contemplated.

Thus, the Court can draw a reasonable inference the Merger Agreement, along with its original signatories, contemplated future adoption by a non-signatory—LSEG. In making such a determination, the Court cautions such a finding should not be taken to mean every agreement a wholly-owned subsidiary enters contemplates its parent's approval. Every agreement must be examined individually to make such a determination, and in this case, the circumstances suggest LSEG's adoption was specifically contemplated.

b. LSEG expressly and impliedly adopted the Merger Agreement.

The Court next determines whether LSEG expressly or impliedly adopted the Merger Agreement. Based on the pleadings, it is reasonably conceivable LSEG adopted the Merger Agreement expressly *and* implicitly. For example, Plaintiff pleads LSEG board materials referred to adding feeds pursuant to the Business Plan

¹⁹⁵ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010).

as a “requirement.”¹⁹⁶ Plaintiff also points to LSEG’s press releases about the MayStreet acquisition, including an announcement reading: “[LSEG] today announces that it has signed an agreement to acquire MayStreet[.]”¹⁹⁷

These statements establish that it is reasonably conceivable LSEG adopted the Merger Agreement. LSEG cannot credibly make “corporate separateness” arguments now after publicly taking credit for the MayStreet acquisition when it was convenient to do so. LSEG also cannot rebuff obligations it previously recognized. The Court therefore finds it reasonably conceivable LSEG adopted the Merger Agreement, making LSEG a proper defendant under Count II.

2. Count II does not lack a contractual basis.

Defendants contend Plaintiff’s breach-of-contract claim is not based on any contractual obligations in the Merger Agreement.¹⁹⁸ Specifically, Defendants argue the twenty-one alleged breaches Plaintiff identifies in the Amended Complaint have nothing to do with any obligation in the Merger Agreement.¹⁹⁹ Defendants also assert the Business Plan contains assumptions, not binding promises, which were subject to change or evolution.²⁰⁰

¹⁹⁶ *Id.* ¶¶ 100, 117.

¹⁹⁷ *Id.* ¶ 20. The Amended Complaint also points out that LSEG’s CEO and CFO made public comments to analysts and investors about the benefits of the acquisition for LSEG. *Id.* ¶67

¹⁹⁸ MTD OB at 48; Reply Br. at 38.

¹⁹⁹ MTD OB at 48.

²⁰⁰ Reply Br. at 38-40.

Defendants either fundamentally misunderstand Plaintiff’s breach-of-contract claim or provide an unconvincing alternative view of obligations under the Merger Agreement. Plaintiff’s claim is based on obligations imposed under Section 1.13(c) and Schedule 12.21(c) of the Merger Agreement.²⁰¹ The twenty-one alleged breaches Defendants reference are allegations of *how* these provisions were breached.²⁰² Defendants may dispute these allegations, but Count II, at the very least, has a contractual basis.

3. The Amended Complaint supports a permissive inference of bad faith.

Defendants contend the Amended Complaint lacks allegations supporting an inference Defendants acted in bad faith.²⁰³ Based on the language of the Merger Agreement, Defendants argue such a pleading failure is fatal to Count II.²⁰⁴ Defendants highlight Section 1.13(c) imposes an obligation to “*act in good faith* in relation to [Refinitiv]’s express obligations regarding each applicable [earnout payment].”²⁰⁵ Defendants also highlight Schedule 12.21(c) imposes an obligation to “*not do anything in bad faith* that would distort the financial performance of the products in the jointly developed [B]usiness [P]lan.”²⁰⁶

²⁰¹ Am. Compl. ¶¶ 210-213.

²⁰² *Id.* ¶ 213.

²⁰³ MTD OB at 55; Reply Br. at 42.

²⁰⁴ MTD OB at 55.

²⁰⁵ Merger Agreement Section 1.13(c)(i) (emphasis added).

²⁰⁶ Merger Agreement Schedule 12.21(c) (emphasis added).

Defendants assert the Amended Complaint supports a finding Defendants acted in good, not bad faith,²⁰⁷ specifically: 1) Defendants’ senior management team attempted to understand the content integration challenges;²⁰⁸ 2) Defendants’ senior management team met with Flannery to resolve the content integration challenges;²⁰⁹ and 3) Defendants pivoted from the Business Plan and allowed MayStreet to use a third-party vendor to assist in adding feeds.²¹⁰ Defendants reason that, because these facts negate an inference of bad faith, Count II must be dismissed.

Plaintiff argues the Amended Complaint contains several facts sufficient to establish Defendants acted in bad faith. Plaintiff first points to Defendants’ “disdain” for complying with a central premise of the transaction—adding feeds in a timely manner.²¹¹ Plaintiff next points to a post-closing comment by Defendants that the earnout structure “served its purpose.”²¹² Plaintiff then points to Defendants’ failure to review and revise the Business Plan, including the earnout milestones.²¹³ Plaintiff finally points to his allegedly retaliatory termination.²¹⁴

“[F]or a contractual bad faith claim to survive a motion to dismiss, the plaintiff must only allege ‘facts related to the alleged act taken in bad faith, and a plausible

²⁰⁷ MTD OB at 55; Reply Br. at 44.

²⁰⁸ MTD OB at 55-56.

²⁰⁹ *Id.* at 56.

²¹⁰ *Id.*

²¹¹ Ans. Br. at 49.

²¹² *Id.*

²¹³ *Id.* at 49-50.

²¹⁴ *Id.* at 50-51.

motivation for it.”²¹⁵ This minimal pleading standard “give[s] the defendant notice of the claim being made against it.”²¹⁶ “To plead a buyer’s intent to avoid an earnout, ‘intent’ can be inferred from well-pleaded allegations in a complaint, with the understanding that allegations of intent ‘need only be averred generally.’”²¹⁷

The Court finds Plaintiff has met this minimal standard. The Amended Complaint contains several allegations upon which a reasonable inference of bad faith can be drawn. While the Court will not discuss every allegation supporting a permissive inference of bad faith, the Court finds two allegations persuasive.

First, Plaintiff alleges Defendants refused to restructure the earnout milestones or the terms surrounding them.²¹⁸ This refusal came despite Defendants’ awareness of MayStreet’s content integration challenges, which directly affected implementation of the Business Plan upon which earnout milestones were calculated. Even after Defendants’ own projections suggested it would be practically impossible for Plaintiff to receive *any* earnout payments, the refusal to

²¹⁵ *Stewart v. BF Bolthouse Holdco, LLC*, 2013 WL 5210220, at *7 (Del. Ch. Aug. 30, 2013) (quoting *Clean Harbors, Inc. v. Safety-Kleen, Inc.*, 2011 WL 6793718, at *7 (Del. Ch. Dec. 9, 2011)).

²¹⁶ *FMLS Hldg. Co. v. Integrus BioServices, LLC*, 2023 WL 7297238, at *9 (Del. Ch. Oct. 30, 2023) (quoting *Clean Harbors*, 2011 WL 6793718, at *7).

²¹⁷ *Id.* (citing *Lyons Ins. Agency, Inc. v. Kirtley*, 2019 WL 1244605, at *4 (Del. Super. 2019)).

²¹⁸ Am. Compl. ¶ 113.

restructure was maintained.²¹⁹ Delaware courts have previously drawn inferences of bad faith from earnout restructuring refusals under similar circumstances.²²⁰

Second, Plaintiff alleges Defendants failed to perform certain sales and marketing efforts within the first ninety days post-closing. The Amended Complaint alleges the following:

Defendants promised in the first 90 days post-acquisition to directly reach out to “500 existing tick history customers,” meet with the “top 20 current Tick Data clients,” “[e]ngage 50 KSA [Key Strategic Accounts],” and meet “20 current RTD clients.” However, Defendants failed to perform any of these actions within the first 90 days post-closing or at any time thereafter.

Both Parties acknowledge that feed integration ran into technology compatibility challenges, delaying feed integration past timelines outlined in the Business Plan.²²¹ Defendants, however, fail to offer any explanation for why the above outlined sales and marketing efforts were not timely undertaken amidst the content integration challenges.²²² At the pleadings stage, and in the absence of such an explanation, it is reasonably conceivable such inaction was done nefariously.

When the Court places these two allegations together, along with Flannery’s alleged retaliatory termination, the Amended Complaint establishes an adequate

²¹⁹ *Id.* ¶ 172.

²²⁰ *See Rheault v. Halma Hldgs., Inc.*, 2023 WL 8005318, at *11 (D. Del. Nov. 7, 2023) (finding a refusal to restructure an earnout agreement after the earnout payments became impossible to achieve after the buyer took certain actions).

²²¹ Am. Compl. ¶ 83; MTD OB at 14.

²²² *See generally* MTD OB; Reply Br. (providing no explanation for why non-feed-related tasks provided for in the Business Plan were not timely completed).

basis for the Court to reasonably infer Defendants acted in bad faith. The Amended Complaint also presents a plausible motivation for the alleged bad faith—Defendants sought to avoid paying post-closing consideration in the form of an earnout.²²³ The Court therefore finds Count II should not be dismissed for failure to allege bad faith.

4. The Parties’ competing interpretations of Defendants’ obligation to use “commercially reasonable efforts” must be resolved in later proceedings.

Defendants contend the Amended Complaint lacks allegations to support a finding Defendants failed to take commercially reasonable efforts.²²⁴ In briefing, however, the Parties appear less focused on the Amended Complaint and more focused on the scope of Defendants’ obligation to use commercially reasonable efforts.²²⁵ This dispute stems from differing interpretations of contractual language found in Merger Agreement Section 1.13(c). The Court will use Merger Agreement Section 1.13(c)(vii) to illustrate the contention between the Parties:

*Parent shall, and shall use its commercially reasonable efforts to cause the Company to, solely to the extent expressly set forth in, and subject to the terms and conditions of, the Business Plan, continue to develop, license, market, sell, deliver and distribute Company Products, as such Company Products may be modified from time to time.*²²⁶

²²³ Am. Compl. ¶¶ 172-73, 185.

²²⁴ MTD OB at 57.

²²⁵ MTD OB at 57-59; Ans. Br. at 31-32; Reply Br. at 45-47.

²²⁶ Merger Agreement Section 1.13(c)(vii) (emphasis added).

The first comma and the first fourteen words of the provision (italicized above) are at issue. Plaintiff proposes the Court read the provision as follows:²²⁷ Parent shall, subject to the terms and conditions of the Business Plan, continue to develop, license, market, sell, deliver and distribute Company Products. Parent shall *also* use commercially reasonable efforts to cause the Company to, subject to the terms and conditions of the Business Plan, continue to develop, license, market, sell, deliver and distribute Company Products.

Defendants propose the Court read the provision differently and in the following manner:²²⁸ Parent shall use commercially reasonable efforts to, subject to the terms and conditions of the Business Plan, continue to develop, license, market, sell, deliver and distribute Company Products. Parent shall *also* use commercially reasonable efforts to cause the Company to, subject to the terms and conditions of the Business Plan, continue to develop, license, market, sell, deliver and distribute Company Products.

In other words, Plaintiff proposes a reading that imposes on Defendants an obligation unqualified by a commercially reasonable efforts standard. Defendants propose a reading where all their obligations are qualified by a commercially reasonable efforts standard. Plaintiff argues Defendants' interpretation ignores the

²²⁷ Ans. Br. at 31-32.

²²⁸ Reply Br. at 45-47.

construction of the provision, while Defendants argue Plaintiff's interpretation violates contract interpretation principles by producing "an absurd result."²²⁹

The Court finds both sides make compelling points that produce reasonable contractual interpretations. At the motion-to-dismiss phase, the Court will not choose between these reasonable interpretations.²³⁰

The Court also finds addressing the issue later to be appropriate because neither interpretation would be dispositive on this motion. Plaintiff has alleged Defendants engaged in a variety of conduct that would invoke the commercially reasonable efforts standard under both interpretations offered by the Parties. Delaware courts have repeatedly held that determining whether parties used commercially reasonable efforts "is an inherently factual inquiry that is not readily amenable to resolution at the pleadings stage."²³¹

B. The Court has subject matter jurisdiction over Count II because the claim is ripe for adjudication.

Defendants contend the Court lacks subject matter jurisdiction over Count II because the claim is unripe.²³² Defendants, relying heavily on the precedent set in *VT Shareholder Representative, LLC v. Edwards Lifesciences Corporation*,²³³ argue

²²⁹ Ans. Br. at 31-32; Reply Br. at 46.

²³⁰ *LGM Hldgs., LLC v. Schurder*, 340 A.3d 1134, 1143-44 (Del. 2025) (quoting *VLIW Tech., LLC*, 840 A.2d at 615) ("When interpreting a contract on a motion to dismiss, the trial court cannot choose between two differing reasonable interpretations of ambiguous provisions.") (cleaned up).

²³¹ *In re WeWork Litigation*, 2020 WL 6375438, at *9 (Del. Ch. Oct. 30, 2020) (citations omitted).

²³² MTD OB at 39; Reply Br. at 29.

²³³ 2023 WL 8597956 (Del. Ch. Dec. 12, 2023), *aff'd* 2024 WL 3594457 (Del. July 31, 2024).

1) the facts involved are not “presently defined, static, and concrete;”²³⁴ 2) the claim relies upon “uncertain and contingent events” that could never materialize;²³⁵ and 3) future events may still “obviate the need for judicial intervention.”²³⁶

Plaintiff counters that Defendants’ reliance on *VT* is misplaced, asserting the facts in this case more closely resemble those present in *Shareholder Representative Services LLC v. Alexion Pharmaceuticals, Inc.*²³⁷ Plaintiff contends litigation here, like in *Alexion*, is unavoidable.²³⁸ Plaintiff asserts Defendants’ failure to use contractually obligated efforts made earnout targets impossible to meet moving forward, as illustrated by Defendants’ own projections.²³⁹

Our Supreme Court has provided the following guidance on determining whether a claim is ripe:

A ripeness determination requires a common[-]sense assessment of whether the interests of the party seeking immediate relief outweigh the concerns of the court in postponing review until the question arises in some more concrete and final form. Generally, a dispute will be deemed ripe if litigation sooner or later appears to be unavoidable and where the material facts are static. Conversely, a dispute will be deemed not ripe where the claim is based on uncertain and contingent

²³⁴ MTD OB at 40-42 (quoting *VT*, 2023 WL 8597956, at *6-7; *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 481 (Del. 1989)) (cleaned up). See Reply Br. at 29-31 (making similar arguments).

²³⁵ MTD OB at 42-44 (quoting *VT*, 2023 WL 8597956, at *6). See Reply Br. at 29-31 (making similar arguments).

²³⁶ MTD OB at 44-46 (quoting *VT*, 2023 WL 8597956, at *6). See Reply Br. at 29-31 (making similar arguments).

²³⁷ 2021 WL 3925937 (Del. Ch. Sept. 1, 2021). Ans. Br. at 53-54.

²³⁸ Ans. Br. at 54.

²³⁹ *Id.* at 54-56.

events that may not occur, or where future events may obviate the need for judicial intervention.²⁴⁰

“To determine whether a case is ripe, courts make a practical determination of ‘whether the parties’ conflicting contentions present a genuine and substantial controversy between parties having adverse legal interests.’”²⁴¹ Courts will make a practical determination of “whether the parties’ conflicting contentions present a genuine and substantial controversy between parties having adverse legal interests.”²⁴² Importantly, the Court will “weigh[] various interests including the plaintiff’s interest in a prompt response, the plaintiff’s hardship upon further delay, conservation of judicial resources, and the likelihood that new facts will impact the determination.”²⁴³

In earnout disputes, the plaintiff will oftentimes bring an action prior to the end of the earnout period. Thus, the court will find an action is ripe for review when the “eventual litigation appears to be unavoidable.”²⁴⁴ The court, however, “cannot accelerate an embryonic matter to a stage traditionally justiciable if doing so would produce an advisory opinion along the way.”²⁴⁵ Facts are required to be static and

²⁴⁰ *XL Specialty Ins. Co. v. WMI Liquidating Tr.*, 93 A.3d 1208, 1217-18 (Del. 2014) (cleaned up).

²⁴¹ *VT S’holder*, 2023 WL 8597956, at * 7 (quoting *Energy P’rs, Ltd. v. Stone Energy Corp.*, 2006 WL 2947483, at *6 (Del. Ch. Oct. 11, 2006)).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* (citing *Rollins Int’l Inc. v. Int’l Hydronics Corp.*, 303 A.2d 660, 662 (Del. 1973)).

²⁴⁵ *Id.* (citing *Humanigen, Inc. v. Savant Neglected Diseases, LLC*, 2021 WL 4344172, at *8 (Del. Super. Sept. 23, 2021)).

concrete because if not, “it runs the risk not only of granting an incorrect judgment, but also of taking an inappropriate or premature step in the development of the law.”²⁴⁶

Each of these concerns are addressed in the *VT* decision, which presents the proper analytical framework for determining ripeness in the earnout context.²⁴⁷ The Court therefore adopts *VT*’s analytical framework, which consists of three stages, to determine whether this action is ripe for judicial review.²⁴⁸ These stages are briefly outlined below.

In *VT*, the Court first identified the obligation at issue and the conduct purported to have breached the obligation. In *VT*, that obligation was to use “commercially reasonable efforts” to achieve earnout milestones within a ten-year earnout period.²⁴⁹ The *VT* defendant was alleged to have breached this obligation by prioritizing development of a product directly in competition with another product tied to the achievement of earnout milestones.²⁵⁰

²⁴⁶ *Id.* (citing Stroud, 552 A.2d at 480).

²⁴⁷ *VT* was eventually appealed to, and affirmed by, the Supreme Court of Delaware. *VT S’holder Representative, LLC v. Edwards Lifesciences Corp.*, 2024 WL 3594457 (Del. 2024). The Supreme Court’s decision did not address *Alexion*, which was decided prior to and directly addressed by *VT*. The Court therefore finds it more appropriate to adopt the analysis in *VT* for the present dispute between the Parties.

²⁴⁸ The Court acknowledges the similarities between *Alexion* and *VT* but also notes how the two cases are not in complete alignment from an analysis perspective. Because the Supreme Court never addressed *Alexion*, the Court largely addresses *Alexion* only to the extent it aligns with *VT*. In all other respects, the Court will refer to the *VT* decision unless distinction from *Alexion* is meaningful for analysis.

²⁴⁹ *VT S’holder*, 2023 WL 8597956, at *8.

²⁵⁰ *Id.* at *4.

Second, the Court determined whether the injury caused by the alleged breach could be remediated before the earnout period was over. In *VT*, earnout milestones remained achievable because clinical trials necessary to achieving the milestones were completable before the ten-year earnout period closed.²⁵¹ These clinical trials were not shown to be stopped or cancelled, meaning any injury caused by past conduct could still be remediated by future conduct.²⁵²

The last stage was for the Court to determine whether the plaintiff showed there was a reasonable likelihood milestones would not be achieved. The *VT* plaintiff failed to make such a showing.²⁵³ The plaintiff did not allege complete abandonment of clinical trials, nor had the plaintiff provided sufficient evidence to support milestones being unachievable.²⁵⁴ The Court therefore found the plaintiff's claim to be unripe.

1. Plaintiff's breach-of-contract claim is ripe for adjudication.

- a. Plaintiff's claim is based on obligations that have already arisen and past conduct purported to breach these obligations.

The Court starts by identifying the obligations at issue in Plaintiff's breach-of-contract claim. Two are relevant to this discussion. The first obligation, found in Section 1.13(c), is the obligation to "develop, license, market, sell, deliver and

²⁵¹ *Id.* at *8.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

distribute Company Products[.]”²⁵⁵ The second obligation, found in Schedule 12.21(c), is the obligation “not to do anything in bad faith that would distort the financial performance of the products in the jointly developed [B]usiness [P]lan.”²⁵⁶

The first obligation is imposed for the period “between the Closing Date and the end of APY5.”²⁵⁷ The second obligation can be reasonably inferred to last for that same period.²⁵⁸ Plaintiff’s breach-of-contract claim is thus based on two obligations that have already arisen. This aligns with the facts in both *Alexion* and *VT*, where breach-of-contract claims were based on efforts standards that arose before the claims were brought.²⁵⁹

The Court next examines the conduct at issue. Plaintiff identifies twenty-one examples of past conduct which purportedly breached the obligations outlined above.²⁶⁰ Thus, whether this conduct constituted a breach of either obligation can be determined from static facts on a record developed from currently available

²⁵⁵ Merger Agreement § 1.13(c)(vii). The Court again notes that the Parties disagree about whether this obligation is qualified by a commercially reasonable efforts standard. The ripeness analysis does not change whether the obligation is or is not qualified.

²⁵⁶ Merger Agreement Schedule 12.21(c).

²⁵⁷ Merger Agreement § 1.13(c).

²⁵⁸ This inference is reasonable because Schedule 12.21(c) was executed contemporaneously with the Merger Agreement and is an earnout-specific obligation. Merger Agreement Schedule 12.21(c).

²⁵⁹ *Alexion*, 2021 WL 3925937, at *1; *VT S’holder*, 2023 WL 8597956, at *2.

²⁶⁰ Am. Compl. ¶ 213.

evidence.²⁶¹ This again aligns with both *Alexion* and *VT*, both of which involved claims based on past conduct related to clinical trials.²⁶²

b. Earnout milestones remain achievable.

The Court next determines whether the earnout milestones remain achievable. The answer is yes. The earnout milestones were negotiated to be based on ASV, the functional equivalent of annualized revenue.²⁶³ Because there are no caps on earnout payments in the final two years of the earnout period, it remains possible not just some, but all contingent consideration the Parties negotiated will be earned.²⁶⁴

This analysis highlights the difference between the *Alexion* and *VT* decisions. In *Alexion*, the court reasoned that whether milestones could still be achieved was immaterial to ripeness analysis.²⁶⁵ Under this reasoning, future achievement of milestones only spoke to damages resulting from a breach of contract.²⁶⁶ The *Alexion* court's decision therefore did not consider whether the *Alexion* defendant's deficient efforts could still be remediated by future conduct.²⁶⁷

²⁶¹ *Alexion*, 2021 WL 3925937, at *6.

²⁶² *Id.* at *3; *VT S'holder*, 2023 WL 8597956, at *2.

²⁶³ Am. Compl. ¶ 65.

²⁶⁴ *Id.* ¶ 161.

²⁶⁵ *Alexion*, 2021 WL 3925937, at *7.

²⁶⁶ *Id.*

²⁶⁷ The Court agrees with *Alexion* that future achievement of a milestone speaks to damages for a ripe breach-of-contract claim. But the Court declines to adopt the reasoning that achievability of milestones has no bearing on ripeness analysis. If the future achievement of earnout milestones is not considered in ripeness analysis, the Court is unable to adequately balance the interests in immediate relief with concerns about postponing review until a more concrete and final form manifests.

In *VT*, this Court conversely addressed these concerns by examining whether earnout milestones remained achievable. The *VT* court recognized there were no allegations that trials necessary to achieving the earnout milestone were abandoned.²⁶⁸ It therefore remained possible trials would still be conducted, leading to a potential situation where earnout milestones would be achieved.²⁶⁹ Such a development would have obviated the need for judicial intervention early in the earnout period. The Supreme Court agreed.²⁷⁰

Guided by *VT*, future achievement of milestones could obviate the need for judicial intervention at this time. While Plaintiff does allege Defendants abandoned the Business Plan,²⁷¹ complete abandonment is not reflected in the Amended Complaint. For example, Defendants not only met with Flannery to try and resolve integration challenges, but also approved feeds being added by a third party.²⁷² These facts may not be sufficient to prevent a permissive inference of bad faith, but they do show at least some efforts remain ongoing.

²⁶⁸ *VT S'holder*, 2023 WL 8597956, at *12.

²⁶⁹ *Id.* at 9.

²⁷⁰ *Edwards*, 2024 WL 3594457 at *1.

²⁷¹ Am. Compl. ¶¶ 169.

²⁷² *Id.* ¶¶ 113-15, 125.

- c. The Plaintiff has shown it is reasonably likely that the milestones will not be achieved.

The Court finally determines whether the Plaintiff has shown it is reasonably likely the milestones, despite still being achievable, will not be achieved. The Plaintiff has successfully made such a showing.

Plaintiff has presented facts to support a finding that it is reasonably likely the earnout milestones will not be achieved. Plaintiff invokes Defendants' own projections to display this low likelihood.²⁷³ Plaintiff pleads Defendants outlined six separate growth scenarios, with only one scenario projecting Plaintiff receiving *any* post-closing consideration.²⁷⁴ Even in this scenario, which the Defendants' own sales teams project will not occur, Plaintiff would only earn six percent of the total earnout payments.²⁷⁵

In *VT*, the Court held the plaintiff failed to show a reasonable likelihood milestones would not be achieved.²⁷⁶ While the facts in this case are distinguishable from those in *VT*, the Court notes Defendants' projections do closely resemble 10-Q evidence the *VT* trial court never saw before making its decision.²⁷⁷

²⁷³ Am. Compl. ¶ 172.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *VT S'holder*, 2023 WL 8597956, at *8.

²⁷⁷ On appeal, the VT plaintiff filed a supplemental brief with additional evidence arising after the trial court's decision was issued. *Edwards*, 2024 WL 3594457 at *1. The evidence was a 10-Q filing by the VT defendant which presented, among other things, the probability of achieving a milestone moving forward was zero percent. *Id.*

As the Supreme Court of Delaware held, it is impossible to know how the 10-Q evidence would have changed the *VT* decision, if at all.²⁷⁸ But the circumstances here are different, as similar evidence is available before a ripeness determination has been issued. Plaintiff has presented evidence from those in the best position to project future milestone achievement—the Defendants themselves.²⁷⁹ The Court finds the Defendants’ own projections demonstrate it is reasonably likely the milestones will not be achieved.

Plaintiff also presented facts to support a finding that it was Defendants’ allegedly deficient conduct which made it reasonably likely the milestones would not be achieved. The earnout milestones in this case are achievement of certain ASV thresholds.²⁸⁰ These ASV thresholds were calculated based upon the jointly created Business Plan, which provided Defendants with nineteen months post-closing to implement key portions of the Business Plan before the earnout period even began.²⁸¹

The earnout milestones were thus calculated under the assumption that certain portions of the Business Plan, such as adding 420 feeds or completing certain marketing efforts, would be in place when the earnout period began. But because

²⁷⁸ *Id.* at *2.

²⁷⁹ Am. Compl. ¶ 172.

²⁸⁰ *Id.* ¶ 65.

²⁸¹ *Id.* ¶ 64.

Defendants failed to implement several key portions of the Business Plan in these nineteen months, the conditions under which ASV began being measured were drastically different than the conditions anticipated.²⁸² Phrased differently, many of the assumptions upon which ASV milestones were calculated never materialized, making it far less realistic milestones could be achieved within the earnout period.²⁸³

Defendants attempt to combat these facts by pointing to remedial measures taken following the nineteen-month period. Defendants argue these measures have led to year-over-year growth projections for ASV, which show promise that milestones will still be achieved.²⁸⁴ While there may be growth in ASV moving forward, this growth starts from a smaller starting point because of implementation failures. Plaintiff has therefore established a direct connection between Defendants' conduct and the low likelihood of milestone achievement moving forward. Plaintiff's claim is therefore ripe for adjudication.

CONCLUSION

The Court finds Plaintiff pleads an actionable statement to support a fraud claim, properly pleads scienter, and does not impermissibly bootstrap a fraud claim to his breach-of-contract claim. The Court also finds Plaintiff states a breach-of-

²⁸² *Id.* ¶¶ 160-164.

²⁸³ *Id.* ¶ 172.

²⁸⁴ MTD OB at 1-2, 15-16, 41, 45.

contract claim ripe for adjudication. Defendants' Motion to Dismiss the Amended Complaint is therefore **DENIED**.

IT IS SO ORDERED.

/s/ Meghan A. Adams

Meghan A. Adams, Judge