

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

INVITAE CORPORATION,	)	
a Delaware Corporation,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. N25C-10-310 PAW CCLD
	)	
NATERA, INC.,	)	
a Delaware Corporation,	)	
	)	
Defendant.	)	

Submitted: July 24, 2026
Decided: October 28, 2026

MEMORANDUM OPINION

Upon Defendant's Motion to Dismiss;
GRANTED.

James E. O'Neill, Esq.; Alan J. Kornfeld, Esq.; and Tavi C. Flanagan, Esq., of Pachulski Stang Ziehl & Jones LLP, *Attorney for Plaintiff Invitae Corporation.*

Ethan H. Townsend, Esq.; and Alexander T. Dickinson, Esq., of McDermott Will & Schulte LLP, *Attorneys for Defendant Natera, Inc.*

WINSTON, J.

I. INTRODUCTION

This case concerns a post-closing milestone payment under an asset purchase agreement between a buyer and a seller for assets of a women's health genetic testing business. The asset purchase agreement closed on January 17, 2024, and provided for contingent consideration of up to \$22.5 million based on retention metrics measured over a period ending 120 days after closing. After closing, buyer delivered a calculation of \$0, and seller responded through the contract's dispute process asserting entitlement to the full \$22.5 million.

Approximately one month after closing, but before the calculation process, seller filed for chapter 11 bankruptcy and later rejected the asset purchase agreement under its plan. In an adversary proceeding in Bankruptcy Court, the Bankruptcy Court held that seller's rejection of the asset purchase agreement constituted a pre-petition breach. The Bankruptcy Court, however, sua sponte abstained from deciding the consequences of that breach, holding that a Delaware state court action would better resolve the contract issues.

Seller then brought this one-count declaratory judgment action seeking interpretation of the milestone provision, and buyer moved to dismiss, arguing seller lacked standing and seller's rejection and breach excused any further performance. For the reasons discussed herein, the Court finds that Seller's breach of the asset

purchase agreement relieved buyer of its obligation to pay the contingent consideration. Accordingly, the motion to dismiss is granted.

II. **FACTUAL AND PROCEDURAL BACKGROUND**¹

A. **THE APA AND MILESTONE FRAMEWORK**

Plaintiff Invitae Corporation and Defendant Natera, Inc. entered into an Asset Purchase Agreement (the “APA”), effective and closing on January 17, 2024, through which Defendant purchased certain assets related to Plaintiff’s women’s health genetic testing business, including a customer list and related contracts.² The APA provides for a post-closing milestone payment (the “Milestone Payment”) of up to \$22.5 million to Plaintiff conditioned on meeting metrics set forth in Section

¹ For purposes of Rule 12(b)(6), the Court draws the facts from the Complaint (D.I. 1) and documents incorporated therein, and it accepts as true the well-ped facts in the Complaint. The Court may take judicial notice of the pleadings in the bankruptcy action and appeal. *See, e.g., Mera USA, LLC v. MCS Burbank, LLC*, 2026 WL 2547077, at *5 n. 63 (Del. Ch. Aug. 28, 2026) (taking judicial notice of the public record in a California action); *Aequitas Sols., Inc. v. Anderson*, 2012 WL 2903324, at *3 n.17 (Del. Ch. July 10, 2012) (taking judicial notice of a pleading filed in a California bankruptcy proceeding); *Baca v. Insight Enters., Inc.*, 2010 WL 2219715, at *1 (Del. Ch. June 30, 2010) (considering court filings in related derivative and federal securities actions); *Nelson v. Emerson*, 2008 WL 1961150, at *2 n.2 (Del. Ch. May 6, 2008) (taking judicial notice of “documents filed in the related federal court proceedings” on a motion to dismiss); *Orloff v. Shulman*, 2005 WL 3272355, at *12 (Del. Ch. Nov. 23, 2005) (taking judicial notice of pleadings in a related bankruptcy proceeding).

² Compl. ¶ 24.

2.9 of the APA.³ “[I]f the Volume Retention Percentage is greater than or equal to ninety percent (90%), then the Milestone Payment Amount shall be \$22,500,000[.]”⁴

In accordance with the APA, Defendant delivered to Plaintiff its calculation of the Milestone Payment, which it determined to be \$0.⁵ In compliance with the APA’s calculation dispute process, Plaintiff timely responded with its own calculation and asserted that the Milestone Payment should be \$22.5 million.⁶ The vast difference between the two calculations exists because: (1) Defendant disputes the applicable time period for determining the Retention Accession Amount;⁷ (2) Defendant is attempting to apply an adjustment to the Retention Accession Amount Plaintiff insists is not contractually permitted;⁸ and (3) Defendant wants to exclude certain pre-existing tests from being counted toward the Retention Accession Amount, which Plaintiff alleges is not contractually permitted.⁹ Plaintiff further alleges that Defendant has not complied with certain obligations to provide

³ *Id.* ¶¶ 2, 28.

⁴ APA § 2.9(b)(i)-(iii).

⁵ Compl. ¶ 27.

⁶ *Id.* ¶ 28.

⁷ *Id.* ¶ 32.

⁸ *Id.* ¶ 33.

⁹ *Id.* ¶ 34.

reasonable access to books and records relating to the sales and other data underlying the Retention Accession Amount.¹⁰

B. BANKRUPTCY PROCEEDINGS, PLAN, AND PLAINTIFF’S REJECTION OF THE APA

Plaintiff filed a chapter 11 Voluntary Petition for Bankruptcy (the “Bankruptcy Action”) in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”) on February 13, 2024, approximately one month after the APA closed.¹¹ In June of 2024, the parties engaged in motion practice regarding Defendant’s ability to setoff potential amounts due to Plaintiff under the APA against any amounts Plaintiff might owe Defendant as the result of a separate patent action.¹² Defendant filed a Motion for Relief from Stay to Effectuate a Setoff in the Bankruptcy Action, which sought authority to setoff potential amounts due to Plaintiff under the APA against amounts Plaintiff may have owed to Defendant for judgment interest on jury damages awarded from a federal patent case.¹³

The next month, Defendant sought relief to initiate a declaratory judgment action in Delaware state court to resolve the contractual interpretation dispute at

¹⁰ *Id.* ¶ 38.

¹¹ *See In re Invitae Corp.*, Case No. 24-11362 (MBK) (Bankr. D.N.J.) (hereinafter “Bankr. Dkt.”).

¹² *In re Invitae Corp.*, 671 B.R. 783, 787-88 (Bankr. D.N.J. July 2, 2025).

¹³ *Id.* at 787.

issue in the present action.¹⁴ The parties agreed to resolve these motions by incorporating language into Plaintiff’s liquidation plan preserving Defendant’s right to pursue a declaratory judgment action before a Delaware state court.¹⁵ During this time, in the amended plan, debtors expressly reserved their rights to pursue causes of action with respect to contract disputes, even if the relevant underlying executory contract was rejected by the debtors.¹⁶ Defendant did not object.¹⁷

In August of 2024, the Plan Administrator filed a supplement to its liquidation plan.¹⁸ In Schedule C of that plan, Plaintiff included the APA on a list of contracts it was rejecting.¹⁹ Pursuant to 11 U.S.C. § 365, a trustee or debtor-in-possession may assume or reject any executory contract of the debtor. The effect of rejecting such a contract is that the debtor is deemed to have breached the contract as of the day before their petition for bankruptcy was filed.²⁰ The plan reserved Plaintiff’s claims against Defendant as a “Retained Cause of Action.”

¹⁴ Op. Br. at 5; Bankr. Dkt. 711.

¹⁵ Op. Br. at 5-6; Op. Br. Ex. D ¶¶ 113-15. At this time, non-party Andrew Spirito served as the plan administrator (the “Plan Administrator”).

¹⁶ *In re Invitae Corp.*, 671 B.R. at 787.

¹⁷ *Id.*

¹⁸ Op. Br. Ex. E.

¹⁹ *Id.*

²⁰ 11 U.S.C. § 365(g); *In re Invitae Corp.*, 671 B.R. at 789 (“It is undeniable—given the undisputed facts of this case and the plain language of the Bankruptcy Code—that Debtors’ rejection of the APA in the [p]lan constitutes a breach”).

In December of 2024, Plaintiff filed an action in the Delaware Court of Chancery seeking the same declaratory judgment it seeks in this action,²¹ but it ultimately dismissed the action voluntarily without prejudice.²² On January 21, 2025, Defendant filed an adversary complaint (the “Adversary Complaint”) in the Bankruptcy Court seeking a declaratory judgment that Plaintiff rejected the APA, the rejection of the APA was a breach as of the day before Plaintiff’s bankruptcy petition was filed, and that as a result of Plaintiff’s rejection and breach, Defendant had no obligations to continue performance under the APA, including Milestone Payment.²³ Defendant also sought to enjoin Plaintiff from enforcing or adjudicating the APA.²⁴

Plaintiff moved to dismiss the Adversary Complaint, and the Bankruptcy Court determined that Plaintiff’s rejection of the APA in the plan constituted a breach.²⁵ The Bankruptcy Court found a controversy exists “concerning the effect of rejection of the APA on Defendant’s obligation to make the Milestone Payment,” but declined to exercise jurisdiction.²⁶

²¹ See *Invitae Corporation v. Natera, Inc.*, C.A. No. 2024-1284-PAF.

²² See *Id.* D.I. 29 (establishing the action in the Delaware Court of Chancery was dismissed in October of 2025).

²³ Op. Br. Ex. A.

²⁴ *Id.*

²⁵ *In re Invitae Corp.*, 671 B.R. at 789.

²⁶ *Id.*

The Bankruptcy Court invoked the doctrine of quasi estoppel, pointing to Defendant’s prior attempts to seek a declaratory judgment in Delaware state court through its Lift Stay Motion and Defendant’s failure to object to Plaintiff’s rejection of the APA.²⁷ Specifically, the Bankruptcy Court noted that “[Plaintiff] voluntarily rejected the APA with the understanding—consistent with [Defendant’s] actions—that any dispute regarding contract interpretation, including the consequences of such rejection, would be resolved in subsequent litigation” and that Defendant could not “now assert that rejection of the APA extinguishes [Plaintiff’s] rights and claims and/or precludes [Plaintiff] from resolving the contract dispute in Delaware state court.”²⁸ The Court also noted that the dispute was the exact type of dispute Plaintiff explicitly preserved in the plan and that Defendant did not oppose it.²⁹

Defendant appealed the Bankruptcy Court’s decision to the District of New Jersey, which affirmed the decision in its entirety in April 2026.³⁰ On May 27, 2026, Defendant appealed the District Court’s decision to the Court of Appeals for the Third Circuit.³¹ Now, in bringing this one count declaratory judgment action, Plaintiff seeks a determination that its interpretation of the Milestone Payment

²⁷ *Id.* at 792.

²⁸ *Id.*

²⁹ *Id.* at 793.

³⁰ *In re Invitae Corp.*, 2026 WL 1133800 (D.N.J. Apr. 27, 2026).

³¹ D.I. 26.

provision is correct, and Defendant's interpretation is wrong.³² Defendant moves to dismiss the complaint, with its basis for dismissal arising out of Plaintiff's pre-petition material breach of the APA.³³

III. STANDARD OF REVIEW

Under Superior Court Civil Rule 12(b)(1), a party may move to dismiss a claim for "[l]ack of jurisdiction over the subject matter."³⁴ "The burden of establishing the Court's subject matter jurisdiction rests with the party seeking the Court's intervention."³⁵ When reviewing a motion to dismiss based on lack of subject matter jurisdiction, the Court may consider documents outside the pleadings³⁶ and does not need to accept Plaintiff's factual allegations as true.³⁷

Upon a Rule 12(b)(6) motion, the Court: (i) accepts all well-pleaded factual allegations as true; (ii) credits even vague allegations if they give the opposing party

³² Compl. ¶¶ 39-46.

³³ See generally Op. Br.

³⁴ Super. Ct. Civ. R. 12(b)(1).

³⁵ *Donofrio v. Peninsula Healthcare Servs., LLC*, 2022 WL 1054969, at *2 (Del. Super. Apr. 8, 2022) (citation omitted).

³⁶ *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1285 n.14 (Del. 2007) (quoting *Philips v. County of Bucks*, 1999 WL 600541, at *1 (E.D. Pa. Aug. 9, 1999) ("Unlike the standards employed in Rule 12(b)(6) analysis, the guidelines for the Court's review of a Rule 12(b)(1) motion are far more demanding of the non-movant. The burden is on the Plaintiffs to prove jurisdiction exists. Further, the Court need not accept Plaintiffs factual allegations as true and is free to consider facts not alleged in the complaint.")).

³⁷ *Id.*

notice of the claim; (iii) draws all reasonable inferences in favor of the non-movant; and (iv) denies dismissal if recovery on the claim is reasonably conceivable.³⁸ The Court does not, however, accept conclusory allegations unsupported by specific facts or draw unreasonable inferences in favor of the nonmovant.³⁹

IV. ANALYSIS

While factually and procedurally complex, Defendant's motion ultimately turns on a narrow point the Bankruptcy Court expressly left to the Delaware state courts—the effect of Plaintiff's breach of the APA on Defendant's obligation to make the Milestone Payment. For the reasons discussed below, Plaintiff's material breach relieves Defendant of its contingent obligation to make the Milestone Payment.

A. PLAINTIFF, THROUGH ITS PLAN ADMINISTRATOR, HAS STANDING, BECAUSE REJECTION DOES NOT TERMINATE OR RESCIND A CONTRACT, AND PLAINTIFF EXPLICITLY RETAINED THIS CAUSE OF ACTION.

“The concept of standing, in its procedural sense, refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance.”⁴⁰ Accordingly, “[a]s a preliminary matter, a party must have standing to sue in order to invoke the jurisdiction of a Delaware court.”⁴¹ This means that standing is a

³⁸ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldg., LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896 (Del. 2002)).

³⁹ *Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871 (Del. 2020) (citing *Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1160 (Del. 2010)).

⁴⁰ *Schoon v. Smith*, 953 A.2d 196, 200 (Del. 2008).

⁴¹ *Ala. By-Prods. Corp. v. Cede & Co.*, 657 A.2d 254, 264 (Del. 1995).

threshold issue “to ensure that the litigation before the tribunal is a ‘case or controversy’ that is appropriate for the exercise of the court’s judicial powers.”⁴²

Defendant insists that the Plan Administrator does not have standing to bring this action due to Plaintiff’s rejection of the APA. Plaintiff’s rejection, however, constitutes a breach, not a termination or recession. Additionally, under the plan, Plaintiff reserved the right to bring the asserted claim. Accordingly, the Plan Administrator has standing.

“Under § 365(g), rejection of an executory contract constitutes a breach immediately before the date of filing for bankruptcy and creates a pre-petition claim for breach of contract. Nevertheless, rejection does not affect the parties’ substantive rights under the contract.”⁴³ In other words, “[r]ejection merely frees the estate from the obligation to perform, it does not make the contract disappear,” nor does it otherwise terminate or rescind the contract.⁴⁴ The applicable state law ultimately determines the legal ramification for breaching a rejected contract.⁴⁵

⁴² *Dover Hist. Soc. v. City of Dover Plan. Comm’n*, 838 A.2d 1103, 1110 (Del. 2003).

⁴³ *Cinicola v. Scharffenberger*, 248 F.3d 110, 119 n.8 (3d Cir. 2001) (citing 3 *Collier on Bankruptcy* ¶¶ 365.09, 365.09[1] (Lawrence P. King ed., 15th ed. 1999); 11 U.S.C.A. § 365).

⁴⁴ *In re Drexel Burnham Lambert Grp., Inc.*, 1992 WL 36294 (Bankr. S.D.N.Y. Feb. 26, 1992).

⁴⁵ *Hipcricket, Inc. v. mGage, LLC*, 2016 WL 3910837, at *11 (Del. Ch. July 15, 2016).

Second, under 11 U.S.C. § 1123(b)(3)(B), a chapter 11 plan may provide for retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any claim or interest. In its bankruptcy plan, Plaintiff explicitly retains its right to pursue all claims and causes of action related to Defendant's obligation to perform under the APA.⁴⁶ Plaintiff did so "notwithstanding the rejection or repudiation of any Executory Contract," including the APA.⁴⁷ The very purpose of preserving a cause of action is so the debtor can retain its ability to bring such a claim.⁴⁸

Furthermore, the primary authority Defendant cites in support of its standing argument, a case from the Southern District of Texas holding that a trustee plaintiff did not have standing to pursue post-petition breach of contract claims for a contract the debtor had rejected, does not discuss the impact of a party expressly retaining causes of action under the contract in its bankruptcy plan.⁴⁹ Because rejection of the

⁴⁶ Op. Br. Ex. A at Schedule A; *Id.* at Schedule A(i).

⁴⁷ Op. Br. Ex. A at Schedule A.

⁴⁸ *See Matter of Petrowax P.A., Inc.*, 1996 WL 544436 (Bankr. D. Del. July 31, 1996) (finding that a debtor had no standing to bring certain actions because the debtor failed to satisfy the retention requirement of 11 U.S.C. § 1123(b)(3)(B)).

⁴⁹ *Lauter v. Citgo Petroleum Corp.*, 2018 WL 801601 (S.D. Tex. Feb. 8, 2018). The Court does note that causes of action were retained in the applicable bankruptcy plan in that case, but it does not address that fact at all in its standing analysis.

APA constitutes a breach rather than a termination or rescission, and Plaintiff expressly retained the cause of action asserted here, Plaintiff has standing.

B. PLAINTIFF’S ESTOPPEL ARGUMENTS ARE REJECTED BECAUSE THE BANKRUPTCY COURT EXPRESSLY LEFT THE CONSEQUENCES OF REJECTION TO THIS COURT.

Plaintiff raises two estoppel arguments. First, it contends that Defendant is collaterally estopped from relitigating the arguments presented here because the Bankruptcy Court already rejected them.⁵⁰ Alternatively, Plaintiff notes that the Bankruptcy Court determined Defendant’s position was barred by quasi-estoppel and argues that this Court should adopt the Bankruptcy Court’s reasoning.⁵¹

“The doctrine of collateral estoppel provides that once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.”⁵² To prevail on a collateral estoppel claim, a party must show: “(1) the same issue is presented in both actions; (2) the issue was litigated and decided in the first action; and (3) the determination was essential to the prior judgment.”⁵³

⁵⁰ D.I. 19, Pl.’s Ans. Br. in Opp’n to Def.’s Mot. to Dismiss (hereinafter “Ans. Br.”) at 6-12.

⁵¹ *Id.* at 12-13.

⁵² *Hercules Inc. v. AIU Ins. Co.*, 783 A.2d 1275, 1278 (Del. 2000).

⁵³ *Weber v. Weber*, 2015 WL 1811228, at *2.

Plaintiff fails to meet the second element. The Bankruptcy Court expressly left the central issue, what effect Plaintiff's breach has on the Milestone Payment, to a Delaware state court. Plaintiff suggests that the Bankruptcy Court ruled that Defendant could not use the rejection as a defense against the Milestone Payment, and that this Court is bound by that ruling.⁵⁴ Yet, the Bankruptcy Court's decision does not support that characterization.

Abstaining on the issue, the Bankruptcy court wrote:

[Defendant's] rejection unquestionably constitutes a breach. However, questions persist as to the parties' remaining obligations under the APA in light of such breach By way of the Delaware Action,⁵⁵ the parties can litigate this issue, and determine their respective rights and obligations under the APA, including the Milestone Payment, notwithstanding the breach caused by rejection of the APA under the Plan. Thus, this Court elects to abstain from further consideration of this pending adversary proceeding in favor of the Delaware Action.⁵⁶

Given that express abstention, it follows that the Bankruptcy Court did not "decide" whether Plaintiff's rejection and breach relieved Defendant of any Milestone Payment obligation. Therefore, Defendant is not collaterally estopped from advancing its position here.

⁵⁴ Ans. Br. at 7.

⁵⁵ At the time the Bankruptcy Court issued its opinion, Plaintiff had a substantially similar action to this action pending in the Court of Chancery, which it voluntarily dismissed three months after the Bankruptcy Court's decision.

⁵⁶ *In re Invitae Corp.*, 671 B.R. at 790-791.

Turning to Plaintiff's quasi-estoppel argument, the doctrine of quasi-estoppel "precludes a party from asserting, to another's disadvantage, a right inconsistent with a position it has previously taken. Quasi-estoppel applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit."⁵⁷ In support of its argument, Plaintiff points to the Bankruptcy Court's decision. As noted, the Bankruptcy Court invoked the doctrine, holding that:

[Defendant]—who tacitly consented to [Plaintiff's] explicit reservation of its rights and claims under the APA, notwithstanding rejection; and who actively took steps during the bankruptcy to seek declaratory relief in Delaware state court to determine the parties' rights under the contract—cannot now assert that rejection of the APA extinguishes [Plaintiff's] rights and claims and/or precludes [Plaintiff] from resolving the contract dispute in Delaware state court.⁵⁸

Defendant does not argue Plaintiff's rejection extinguished Plaintiff's right to the Milestone Payment. Instead, unlike in the Bankruptcy proceeding, Defendant's position is that Plaintiff's rejection of the APA was a material breach relieving Defendant of future performance. Because Defendant is not making the argument that the Bankruptcy court rejected, quasi-estoppel does not apply.

⁵⁷ *Pers. Decisions, Inc. v. Bus. Planning Sys.*, 2008 WL 1932404, at *6 (Del.Ch. May 5, 2008) (internal quotation marks omitted).

⁵⁸ *In re Invitae Corp.*, 671 B.R. at 792.

C. PLAINTIFF’S REJECTION OF THE APA CONSTITUTES A MATERIAL BREACH, RELIEVING DEFENDANT OF ITS CONTINGENT OBLIGATION TO PAY THE MILESTONE PAYMENT.

The Bankruptcy Court confirmed when the APA was breached, and that Plaintiff breached the APA by rejecting it. The Bankruptcy Court held that under Section 365 of the Bankruptcy Code, Plaintiff’s rejection of the APA “constitutes a breach” deemed to have occurred the day before it filed its petition for bankruptcy.⁵⁹ It expressly left to Delaware courts the determination of “the parties’ remaining obligations under the APA in light of such breach,” including “the question of when Defendant’s obligation to make the Milestone Payment arose.”⁶⁰ Plaintiff does not dispute, and in fact, at oral argument conceded that its rejection constitutes a material breach. Instead, Plaintiff argues that its entitlement to the Milestone Payment arose at Closing.

The structure and timing of the Milestone Payment framework confirm the obligation was contingent, executory, and post-petition. Section 2.9 of the APA makes the Milestone Payment payable only if certain “terms and conditions” are met after Closing, including specified retention thresholds, determined by a Retention Accession Amount measured over a 30-day period ending 120 days, are met after

⁵⁹ *Id.* at 793.

⁶⁰ *Id.*

Closing.⁶¹ Because the APA closed on January 17, 2024, that 30-day period was to run from April 16, 2024, to May 16, 2024. This was well after Plaintiff filed for bankruptcy and breached the APA on February 13, 2024, and February 12, 2024, respectively. The conditions that trigger a Milestone Payment did not merely arise post-petition; they arose after Plaintiff's breach. Under Delaware law, Defendant had no obligation to continue performing contingent, future-facing duties under a contract already deemed to have been materially breached by Plaintiff. A party's material breach of contractual obligations excuses the nonbreaching party's performance under Delaware law.⁶²

Plaintiff's effort to recast the Milestone Payment as a vested, pre-petition entitlement, the calculation of which was the only remaining question, fails on the pleadings. The APA expressly identifies the Milestone Payment as contingent, not fixed. The section detailing the Milestone Payment itself is titled "Contingent Consideration."⁶³ The APA predicates the Milestone Payment amount on a

⁶¹ APA § 2.9(d). Section 2.9 of the APA provided that Invitae could receive a Milestone Payment only if the Volume Retention Percentage was above 50%.

⁶² *Level 4 Yoga, LLC v. CorePower Yoga, LLC*, 2022 WL 601862, at *27 (Del. Ch. Mar. 1, 2022) (quoting *Brasby v. Morris*, 2007 WL 949485, at *4 (Del. Super. March 29, 2007)).

⁶³ See APA § 2.9. See *New Start Holdings, LLC v. Zhou*, 2024 WL 4039440, at *22 (Del. Ch. Sept. 4, 2024) ("A [contract] section's title may be looked to in determining its meaning, because headings and titles provide context and can inform the meaning of the sections they label. While contract headings are not controlling evidence of the meaning of a contract's substantive provisions, they may be

contractually defined calculation tied to performance that definitionally could not be completed at the time of Closing. Plaintiff's representations to the contrary are unconvincing because "[i]f a plaintiff's complaint alleges a fact that is unambiguously contradicted by an integral document incorporated into the complaint and there are no other facts in that document supporting the allegation, the Court need not accept as true the fact as alleged in the complaint."⁶⁴

No further factual development is needed, and the Court may resolve this dispositive legal question at the pleading stage. The APA's Milestone Payment mechanics and timing as set out in Section 2.9 and its related definitions, the Closing and petition dates, and the Bankruptcy Court's finding that Plaintiff's rejection constituted a breach of the APA are undisputed. Given those facts, it is not reasonably conceivable that Plaintiff can enforce a post-petition, contingent obligation that depended on performance and calculation after Plaintiff's repudiation. Dismissal under Rule 12(b)(6) is therefore appropriate.

considered to support the interpretation of a substantive provision.") (internal quotations omitted).

⁶⁴ *Orman v. Cullman*, 794 A.2d 5, 16 n.9 (Del. Ch. 2002).

V. **CONCLUSION**⁶⁵

For the forgoing reasons, the Court grant's Defendant's motion to dismiss because Plaintiff's rejection of the APA constituted a breach of the agreement.

IT IS SO ORDERED.

/s/ Patricia A. Winston

Patricia A. Winston, Judge

⁶⁵ The Court need not reach Defendant's arguments in the alternative requesting a stay on the proceedings because, in granting its motion to dismiss, Defendant's request for stay is rendered moot.