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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IRV EDWARDS, M.D., MARK BELL, M.D., BRUCE HENSEL, M.D., and STEVE MARON, M.D. Plaintiffs Below, Appellants, v. GIGACQUISITIONS2 LLC, GIGCAPITAL2, INC., UPHEALTH, INC., AVI KATZ, RALUCA DINU, CHIRINJEEV KATHURIA, THE NEEDHAM GROUP, INC., and NEEDHAM & COMPANY, LLC, Defendants Below, Appellees.	:	No. 356, 2025 Court Below: Court of Chancery of the State of Delaware, C.A. No. 2024-0591-LWW **PUBLIC VERSION** **Filed: November 20, 2025**

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TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

CASES **PAGE(S)**

RULES AND STATUTES

NATURE OF PROCEEDINGS

In November 2020, Cloudbreak, a telehealth company, entered into a business combination agreement ("BCA") with a special purpose acquisition company, or SPAC, GigCapital2.[1] At the same time, GigCapital2 entered into a separate business combination agreement with UpHealth Holdings, LLC ("UpHealth"), which was founded by Dr. Chirinjeev Kathuria and held a portfolio of five other healthcare companies (the "Portfolio Companies"). After the business combinations closed, the combined companies were taken public through a "de-SPAC" transaction, with GigCapital2 emerging as UpHealth, Inc. ("New UpHealth"). Prior to entering into the UpHealth BCA, in March 2020, UpHealth hired Needham & Company, LLC ("Needham") to seek out merger partners or secure financing for the Portfolio Companies.

Plaintiffs, who were either members or option holders in Cloudbreak, commenced this action on June 3, 2024 against the Defendants-Appellees other than Needham, and three other parties not at issue on appeal. Plaintiffs filed a First Amended Verified Complaint ("FAC") on October 11, 2024, adding Needham as a defendant and alleging defendants induced them into entering into the BCA based

[1] Unless noted, this filing adds emphasis and omits internal quotation marks and citations. Appellants' Opening Brief is cited as "OB."

on alleged misrepresentations and omissions regarding the prospects of the Portfolio Companies and, therefore, the prospects of New UpHealth.

The Court of Chancery dismissed Plaintiffs' action in its entirety, and relevant for this appeal, found their claims for fraudulent inducement, negligent misrepresentation, and civil conspiracy barred by the three-year statute of limitations.[2] The court held that Plaintiffs' claims accrued no later than November 2020, when the alleged misrepresentations and omissions had been made and Cloudbreak had been induced to enter into the BCA. (Opinion 31-32.) Specifically, the Court of Chancery held:

> The plaintiffs' claims in Counts I, III, V and VI (insofar as it relates to alleged misrepresentations and omissions in diligence materials) accrued no later than November 2020. The plaintiffs were on inquiry notice by that time. But this lawsuit was not filed until June 3, 2024—more than three years later. These claims are dismissed as untimely.

(*Id.* at 42.)

On appeal, Plaintiffs assert that the Court of Chancery held that the claims at issue "accrue[d] *at the time of the misrepresentation*." (OB 15 (emphasis in

[2] Plaintiffs also asserted multiple claims based on allegations there was a delay of a few weeks in getting documentation of their shares in New UpHealth after the de-SPAC transaction, and an unjust enrichment claim against Dr. Avi Katz and GigAcquisitions2, LLC. Although those claims were not time-barred, the trial court dismissed them for other reasons. (A042.) Plaintiffs did not appeal the dismissal of those claims or the dismissal of their claims against Continental.

original).) But Plaintiffs quote the Opinion out of context. The Court of Chancery stated instead: "A fraudulent inducement claim accrues when the alleged misrepresentations were made. *That is*, a claim for fraudulently inducing a party to enter a contract accrues *no later than the date of the contract's execution*." (Opinion 15.) Consistent with Delaware law, the Court of Chancery determined that, even based on the *latest* accrual date—*i.e.*, "by no later than the date of the contract's execution"—Plaintiffs' claims were untimely. (*Id.* at 30.) The Court of Chancery's determination was *not* based on a finding that Plaintiffs' claims were untimely because they accrued as soon as the misrepresentations were made. For this reason, much of the Opening Brief is spent arguing against a strawman.

The Court of Chancery correctly rejected Plaintiffs' proposed alternative accrual dates, which are inconsistent with Delaware's occurrence rule. The Court of Chancery also correctly rejected Plaintiffs' argument that their claims were equitably tolled until certain Needham documents were made public through an unrelated lawsuit in 2023. (Opinion 29-30.) Defendants owed no duties to Cloudbreak or Plaintiffs, and nothing prevented Cloudbreak from performing its own due diligence on the Portfolio Companies.

Further, because of disclaimers in and inconsistencies between the June and October presentations upon which Plaintiffs allegedly relied, Plaintiffs were on

inquiry notice by no later than November 2020, so no tolling theory could delay the accrual of Plaintiffs' claims.

The dismissal of Plaintiffs' claims as time-barred should be affirmed.

SUMMARY OF ARGUMENT

1. **Denied.** Under Delaware's occurrence rule, a cause of action accrues at the moment of the wrongful act—not when the harmful effects of the act are felt—even if the plaintiff is unaware of the wrong. *See Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004); 10 *Del. C.* § 8106. The Court of Chancery correctly held that Plaintiffs' claims based on alleged misrepresentations and omissions that induced Cloudbreak to enter into the BCA accrued no later than the date of the contract's execution on November 20, 2020. At that time, the challenged statements had been made, and Plaintiffs had relied on them to their alleged detriment. The Court of Chancery's holding in this regard did not depart from the law and is consistent with the public policy interests reflected in Delaware's occurrence rule. *See ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 735-36 (Del. 2020).

2. **Denied.** The trial court correctly rejected Plaintiffs' argument that their claims did not accrue until the closing of the business combination on June 9, 2021, or, alternatively, the date of the member vote on June 2, 2021. In the cases Plaintiffs cite in which courts held that claims accrued at the closing of a transaction, the alleged misstatement on which the plaintiff relied was made *after* the contract was entered into but before the closing, or was made *in* the transaction agreement itself. Neither of those circumstances exist here.

As for the date of the member vote, the Court of Chancery correctly observed that Plaintiffs did not allege any post-November 2020 misstatements. Any post-November 2020 events could only be steps in execution of the transaction Plaintiffs had already committed to through the BCA. Further, Plaintiffs ask this Court to ignore the Member Support Agreement entered contemporaneously with the BCA, which contractually obligated certain Plaintiffs to vote in favor of the merger, and which Plaintiffs contend they also were fraudulently induced into signing based on the same alleged misstatements.

3. **Denied.** The Court of Chancery correctly held that Plaintiffs' claims were not equitably tolled until 2023 when certain Needham documents were produced in unrelated litigation. As the Court of Chancery determined, Plaintiffs did not meet their burden of establishing fraudulent concealment or the "inherently unknowable injuries" tolling doctrine. None of the defendants owed duties to Plaintiffs or Cloudbreak, and nothing prevented Cloudbreak from doing its own diligence into the Portfolio Companies and requesting additional information bearing on their financial wellbeing. Also, Plaintiffs were on inquiry notice by no later than November 2020. Under Delaware law, no tolling theory could delay the accrual of Plaintiffs' claims past the point of inquiry notice.

STATEMENT OF FACTS

A. The Parties

Plaintiffs Irv Edwards, Mark Bell, and Steve Maron were members in Cloudbreak, a telehealth company that "sought to improve health outcomes for non-English speaking medical patients." ((A287-89 (¶¶14-15, 17), A291-92 (¶34); *see also* A468 at A528 (Sch. A).)[3] Plaintiff Edwards also was a member of Cloudbreak's board of directors. (A291-92 (¶34).) Plaintiff Bruce Hensel was previously the Chief Medical Officer of Cloudbreak and received options in Cloudbreak as a result of his employment. (A288 (¶16).)

Defendant GigCapital2 was incorporated in Delaware as a SPAC and completed its initial public offering on June 10, 2019. (A289 (¶18).) GigAcquisitions2, LLC is a Delaware limited liability company that was GigCapital2's largest and founding stockholder, also referred to as a Sponsor. (A289 (¶19).) Defendant Dr. Avi Katz served as the Sponsor's managing member and,

[3] On a motion to dismiss, trial courts may take judicial notice of extrinsic documents that are "incorporated by reference" or "integral" to the complaint. *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 320 (Del. 2004). This Court may take notice of LLC operating agreements where, as here, the causes of action are based upon the functions of the parties to the agreement. *Kahn v. Portnoy*, 2008 WL 5197164, at *4 (Del. Ch. Dec. 11, 2008) (taking judicial notice of an LLC agreement for the purposes of a motion to dismiss); *Lazard Debt Recovery GP, LLC v. Weinstock*, 864 A.2d 955, 975 (Del. Ch. Aug. 6, 2004).

before the acquisitions of Cloudbreak and UpHealth, served as GigCapital2's Chief Executive Officer, president, secretary, executive chairman, and director. (A289 (¶20).) Defendant Dr. Raluca Dinu served as a director of GigCapital2 before the acquisitions. (A289 (¶21).)

Defendant Dr. Chirinjeev Kathuria was a co-founder of UpHealth Services, which subsequently became UpHealth, and which provides a digital platform for healthcare providers, health systems, and payors. (A360.)

Defendant Needham is an investment bank that was hired by UpHealth in March 2020 to assist in finding merger partners or secure financing for the Portfolio Companies. (A293 (¶38).) Defendant The Needham Group is not alleged to have been involved in the events at issue. Needham and The Needham Group were not defendants in the original complaint and were not added until the FAC was filed on October 11, 2024. (A282.)

B. UpHealth Engages Needham.

In March 2020, UpHealth engaged Needham to assist it in finding merger partners and help secure financing or potentially take the company public. (A293 (¶38).) Among Needham's responsibilities were to assist in soliciting and preparing materials for potential investors. (*Id.*) Plaintiffs claim that in the course of this working relationship, Needham failed to independently diligence the Portfolio Companies' financials and "actively colluded with Dr. Kathuria to gerrymander the

Companies' financial projections, models, and forecasts" by including false representations in investment presentations. (A294 (¶41).) In support of these allegations, the FAC includes references to internal messages among Needham employees from May to August 2020 discussing meetings with potential investors and the drafting of investor materials. (A295-304 (¶¶43-60).)

C. The Parties Explore Potential Transactions.

Plaintiffs allege that Needham and UpHealth (represented by Dr. Kathuria) first approached Cloudbreak in May 2020 to gauge Cloudbreak's interest in a potential transaction, but Cloudbreak had declined the overtures because they believed Dr. Kathuria was not trustworthy. (A308 (¶74).)

Later that year, UpHealth approached GigCapital2, an experienced SPAC sponsor, to further advance UpHealth's objectives of taking the company public. (A205 (¶ 63).) By that point, GigCapital2 had completed its IPO and GigCapital2's management had undertaken to identify and investigate potential target businesses and opportunities for a business combination. (A289 (¶18), A305 (¶ 64).)

Plaintiffs allege that Dr. Katz (on behalf of GigCapital2) and Dr. Kathuria (on behalf of UpHealth) then approached Cloudbreak about a potential transaction in which Cloudbreak would merge with UpHealth, and that merged company would then be brought public through a merger with GigCapital2. (A308 (¶75).) The parties contemplated that at the time of the mergers UpHealth would be comprised

of five subsidiaries: Thrasys, Inc. ("Thrasys"), Behavioral Health Services, LLC ("BHS"), TTC Healthcare, Inc. ("TTC"), Glocal Healthcare Systems Private Limited and subsidiaries ("Glocal"), and Innovations Group. (A283 (¶2).)

Plaintiffs claim that during the negotiations, "Defendants" made certain oral and written representations to Plaintiffs, mostly in the form of two presentations, an "October Management Presentation"—which was allegedly provided to Cloudbreak on or around October 5, 2020—and a "June Presentation"—purportedly provided to Cloudbreak in June 2020. (A284 (¶4), A312-325 (¶¶84-104).) According to Plaintiffs, "Defendants" engaged in a "systematic effort to doctor [these] presentations, present false and unrealistic projections, and hide critical information from potential merger partners like Cloudbreak." (A284-85 (¶6).) Plaintiffs also allege that "throughout September and October 2020" Dr. Katz represented that he had "diligenced the deal and Cloudbreak could trust him that the financial numbers were sound." (A310 (¶¶78-79).) Yet the presentations contained no mention of GigCapital2. They also contained express disclaimers. The October presentation, for example, states it "is based on information and data provided by [UpHealth] which has *not* been independently verified by Needham," and that "[a]ny estimates and projections contained herein have been prepared by management of [UpHealth] and involve significant elements of subjective judgment and analysis, which may or may not be correct." (A356.)

D. Cloudbreak Enters into the BCA and Plaintiffs Edwards and Bell Enter into a Member Support Agreement.

Although the initial proposal was for Cloudbreak to be acquired by UpHealth, which would then go public through a de-SPAC merger with GigCapital2, Cloudbreak's owners allegedly "refused to work with" Dr. Kathuria and "did not trust" him. (A308-09(¶¶75-76).) Cloudbreak accordingly decided instead to enter into a business combination agreement directly with GigCapital2.

The BCA was executed effective November 20, 2020. (A037.) The BCA did not include any representations or warranties concerning UpHealth or any of the Portfolio Companies. (*See* A075-082 (Article V); *see also* A098 (§10.04 ("Entire Agreement")).) Instead, Cloudbreak negotiated a contractual remedy in the event New UpHealth did not perform as expected: if on the 540th day following the closing of the de-SPAC transaction, the stock price of New UpHealth was below a specified threshold, Dr. Kathuria and the other largest stockholder of UpHealth would deliver a portion of their shares in New UpHealth to the former Cloudbreak members. (*See* A092 (§7.15).)

As of the execution of the BCA, Cloudbreak was committed to being acquired by GigCapital2 and the formation of New UpHealth. Certain of Cloudbreak's members also were committed as of November 20, 2020 to support the consummation of the acquisition. Concurrently with the execution of the BCA, GigCapital2, Cloudbreak, and "Key Members" of Cloudbreak—including Plaintiffs

Edwards and Bell—entered into a Member Support Agreement providing that "the Key Members will vote their Units in favor of this Agreement, the Merger and the other transactions contemplated by this Agreement." (*See* A042, A047 (pp. 2, 7 (defining "Key Members")), A115 (Schedule 7.03).)

E. This Litigation and the Outcome Below.

Plaintiffs brought this action on June 3, 2024 against Defendants-Appellants and three other parties: Kayne Anderson Capital Advisors, L.P., Cloudbreak's largest investor; Nathan Locke, a Managing Partner at Kayne and a Cloudbreak director; and Continental Stock Transfer & Trust Company, New UpHealth's exchange agent. (A001 (Dkt. 1).) The initial complaint did not name Needham. (*Id.*) All defendants moved to dismiss. (A004-010, (Dkts. 13-14, 21 (motions to dismiss)); (Dkts. 24-25, 29 (opening briefs)).) In response, Plaintiffs settled with Locke and Kayne and amended their complaint. (A013 (Dkt. 38).)

The FAC named as defendants the Gig2 Defendants, Dr. Kathuria, Continental, and, for the first time, Needham. (A282.) Plaintiffs asserted claims for fraudulent inducement (Count I), negligent misrepresentation (Count III), and breach of the Delaware Deceptive Trade Practices Act (the "DTPA") (Count VII) against Dr. Kathuria, the Gig2 Defendants, and Needham; a civil conspiracy claim against Dr. Kathuria, the Gig2 Defendants, and Continental (Count VIII); a breach of contract claim against GigCapital2 based on an alleged breach of the *UpHealth*

BCA (Count II); a negligence claim against Continental (Count IV); and an unjust enrichment claim against GigAcquisitions2, LLC and Dr. Katz (Count VII).[4] In the FAC, Plaintiffs' deleted their original allegations regarding the rationale behind entering into the BCA: that the settled defendants, Locke and Kayne, "wanted the SPAC transaction so they could make a quick profit" and "pressur[ed]" other members of the Cloudbreak board and stockholders—"including Plaintiffs and Jamey Edwards—to approve the Cloudbreak BCA."[5]

All defendants moved to dismiss. The Court of Chancery dismissed the FAC in its entirety. Relevant here, the court dismissed the claims for fraudulent inducement, negligent misrepresentation, and civil conspiracy against the Gig2 Defendants, Dr. Kathuria and Needham as untimely, without reaching defendants' alternative bases for dismissal. The court then dismissed the remaining claims against Defendants-Appellees for failure to meet the reasonable conceivability standard. Plaintiffs only appeal the dismissal of their fraudulent inducement, negligent misrepresentation, and civil conspiracy claims on timeliness grounds.

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[4] Counts VI through VIII are out of order in the FAC and there are two counts labeled "Count VII."

[5] B00053 (¶¶181-183). The admissions from the original verified Complaint remain binding even if Plaintiffs remove them from the Amended Complaint. *See, e.g.*, *Kotler v. Shipman Assocs., LLC*, 2019 WL 4025634, at *11 n.141 (Del. Ch. Aug. 21, 2019) ("factual allegations in a prior pleading may be taken as admissions against the interest of the pleading party.").

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY DETERMINED THAT PLAINTIFFS' CLAIMS ACCRUED NO LATER THAN NOVEMBER 2020 WHEN THE BCA WAS EXECUTED.

A. Question Presented

Whether the Court of Chancery correctly held that Plaintiffs' claims for fraudulent inducement, negligent misrepresentation, and civil conspiracy based on alleged misrepresentations and omissions that induced them into entering the BCA accrued no later than November 2020, when the contract was executed?

B. Scope Of Review

The application of a statute of limitations is reviewed *de novo*. *Isaac v. Politico LLC*, 2025 WL 2437093, at *6 (Del. Aug. 25, 2025); *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 731 (Del. 2020) (affirming dismissal of claims as time-barred). "In reviewing the grant or denial of a motion to dismiss, [the Court] view[s] the complaint in the light most favorable to the non-moving party, accepting as true its well-pled allegations and drawing all reasonable inferences that logically flow from those allegations. [The Court does] not, however, simply accept conclusory allegations unsupported by specific facts, nor do we draw unreasonable inferences in the plaintiff's favor." *Clinton v. Enter. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009) (affirming dismissal of complaint as time-barred).

C. Merits Of Argument

Plaintiffs frame the question presented as whether the Court of Chancery erred in holding that a tort claim can accrue "even in situations where the tortfeasor's conduct has not caused an injury." (OB 17.) But this is not the Court of Chancery's holding. The Court of Chancery expressly considered "when the purported injury occurs" or "the point of injury" for Plaintiffs' claims in analyzing when those claims accrued. (Opinion 34.) Accordingly, the question before the Court on appeal is not whether the statute of limitations is triggered absent injury. The Court of Chancery did not so hold. Instead, the question is *what* constitutes the relevant injury in a fraudulent inducement, negligent misrepresentation, or civil conspiracy claim, and, in turn, *when* the relevant injury occurred and the cause of action accrued? The Court of Chancery correctly held that Plaintiffs suffered an injury, and the statute of limitations started to run, no later than November 2020, when the BCA was executed. (Opinion 29.)

1. Under Delaware's "occurrence rule," a cause of action accrues upon injury, not damages.

Delaware "is an occurrence rule jurisdiction, meaning a cause of action accrues at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action." *ISN Software Corp. v. Richards, Layton & Finger*, P.A., 226 A.3d 727, 732-33 (Del. 2020). Delaware courts have consciously "declined to adopt" the rule

in many other states, where a cause of action accrues either "when damages have been suffered or are ascertainable" or "at the time of loss." *Id.*

In other words, in Delaware, an "injury" for purposes of accrual does *not* require quantifiable damages or loss. A fraudulent inducement claim accrues "at the moment when an injury, although slight, is sustained." *Id.* The relevant injury sufficient for a fraudulent inducement claim to accrue and to trigger the statute of limitation is the lack of informed decision-making in entering into an agreement. *See, e.g.*, *Margarite v. HRN Corp.*, 1993 WL 283980, at *3 (E.D. Pa. July 21, 1993) ("[I]n fraudulent inducement, the injury is the entry into the contract and the forsaking of other contracts"); *cf. Reilly v. Horn*, 2025 WL 2781735, at *4-5 (Del. Ch. Sept. 30, 2025) (breach of fiduciary claim accrues upon "informational injury" to shareholders who were denied information).

Decades of precedent affirms that the injury for extra-contractual fraudulent inducement occurs by no later than the execution of the relevant contract. *See, e.g.*, *Sunrise Ventures, LLC v. Rehoboth Canal Ventures, LLC*, 2010 WL 363845, at *6 (Del. Ch. Jan. 27, 2010) (holding fraud claims based on actions taken in negotiating and executing agreement accrued, at the latest, when the agreement was executed); *Puig v. Seminole Night Club, LLC*, 2011 WL 3275948, at *3-4 (Del. Ch. July 29, 2011) (holding claims "must have accrued by September 22, 2004—the date that Puig entered into the SPA and the LLC Agreement ...."); *Pivotal Payments Direct*

Corp. v. Planet Payment, Inc., 2015 WL 11120934, at *4 (Del. Super. Dec. 29, 2015) ("A claim for fraudulent inducement accrues when the fraudulent statements were made, which must be on or before the date when the parties entered into the contract.");[6] *Jeter v. Revolutionwear, Inc.*, 2016 WL 3947951, at *9 (Del. Ch. July 19, 2016) (absent Plaintiff's fraudulent concealment, the fraudulent inducement counterclaims would have accrued when "the alleged contract-inducing misstatements were made"); *Optical Air Data Sys., LLC v. L-3 Commc'ns Corp.*, 2019 WL 328429, at *6 (Del. Super. Jan. 23, 2019) ("A plaintiff cannot rely on a misrepresentation made after the parties executed an agreement for a fraudulent inducement claim … [A] claim for fraudulent inducement accrues when the fraudulent statements were made, which must be on or before the date when the parties entered into the contract."); *Winkelvoss Cap. Fund, Ltd. Liab. Co. v. Shaw*, 2019 WL 994534, at *5 (Del. Ch. Mar. 1, 2019).[7]

[6] The Opinion incorrectly cites *Pivotal Payments Direct Corp. v. Planet Payment, Inc.*, 2020 WL 7028597 (Del. Ch. Nov. 3, 2020). (Opinion 30 n.137.) The correct case is *Pivotal Payments Direct Corp. v. Planet Payment, Inc.*, 2015 WL 11120934 (Del. Super. Ct. Dec. 29, 2015).

[7] Plaintiffs claim *Winklevoss* "treat[s] the statute of limitations as running after the date the misrepresentations were made." (OB 22-23.) But *Winklevoss* applied a single accrual date to fraud *and* promissory estoppel claims, and the promissory estoppel claim accrued *after* the fraudulent inducement claim. *Winklevoss*, 2019 WL 994534, at *5. Plaintiffs also misconstrue *Jeter*, in which the court held that absent fraudulent concealment, the fraudulent inducement claims would have accrued when the statements were made. 2016 WL 3947951, at *9.

Against the clarity of Delaware law, Plaintiffs are inconsistent about what constitutes "injury" for purposes of their claims. At times, Plaintiffs equate inquiry with damages. (*E.g.*, OB 18 & n.10 (asserting that "injury" is an "essential element" of a tort claim and citing cases discussing damages and remedies).[8]) Other times, Plaintiffs argue that injury occurs at the moment of detrimental reliance. (*E.g.*, OB 19.) The first proposition is wrong as a matter of law and the second *compels* the affirmance of the Court of Chancery's dismissal, as explained in Part II.C.2, *infra*.

This Court has made clear that under the occurrence rule, "injury is distinct from damages." *ISN Software*, 226 A.3d at 735. Thus, the "statute of limitations can start to run before any 'actual or substantial damages' occur"—that is, *before* the damages element of a tort cause of action may exist. *Id.* (holding legal malpractice claim accrued when clients relied on allegedly faulty advice in closing cash-out merger but before Plaintiffs incurred damages); *see also In re Coca-Cola Enters., Inc.*, 2007 WL 3122370, at *5 (Del. Ch. Oct. 17, 2007) ("[A] plaintiff's

[8] *See Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Anduril III, L.P.*, 2025 WL 1807887, at *14 (Del. Ch. June 30, 2025) (noting that for a common law tort claim, a plaintiff must prove "injury that is sufficient to warrant a remedy, such as compensatory damages," but a court may award nominal damages for a breach of fiduciary duty claim); *Bell Helicopter Textron, Inc. v. Arteaga*, 113 A.3d 1045, 1052 n.28 (Del. 2015) (noting it "makes no logical sense" to apply different states' laws to the issues of liability and damages and remedies); *Turner v. Lipschultz*, 619 A.2d 912, 916 n.6 (Del. 1992) (holding Delaware law applied to question of special damages in action arising out of automobile accident); *Bolden v. Se. Penn. Transp. Auth.*, 21 F.3d 29 (3d Cir. 1994) (affirming damages award in civil rights action).

cause of action accrues at the moment of the wrongful act—not when the harmful effects of the act are felt—even if the plaintiff is unaware of the wrong.") (collecting cases).

Plaintiffs rely heavily on a statement in *Lehman Bros. Holdings, Inc. v Kee*, 268 A.3d 178, 192 (Del. 2021) that "claims accrue when the elements of those claims have been met," but *Lehman* did not hold that a plaintiff must have incurred damages for a claim to accrue. To the contrary, *Lehman* held that the plaintiff's claim for rescission accrued "when the parties finalized the transaction based on a mutual mistake," and not when the plaintiff's damages manifested. 268 A.3d at 190-91.[9]

2. The Court of Chancery correctly determined Plaintiffs' claims accrued no later than November 2020.

The Court of Chancery correctly held "a claim for fraudulently inducing a party to enter a contract accrues *no later than* the date of the contract's execution." (Opinion 30 & n.137 (citing cases).) Plaintiffs' own argument that the relevant injury occurs "when the injured party detrimentally reacts to the tortfeasor's action"

[9] Plaintiff's claim that the Court of Chancery only cited pre-*Lehman* cases is makeweight. After *Lehman* in 2022, the Court in *In re Cote d'Azur Estate Corp.*, 2022 WL 4392938 (Del. Ch. Sep. 19, 2022) cited and quoted *Winkelvoss* for the proposition that a "claim for common law fraud accrues on the day the misrepresentation is made." *Cote d'Azur*, 2022 WL 4392938, at *48. *Cote d'Azur* also cited a footnote from *Lehman* which itself cited *Van Lake v. Sorin CRM USA, Inc.*, 2013 WL 1087583 (Del. Super. Feb. 15, 2013) and *Puig v. Seminole Night Club, LLC*, 2011 WL 3275948 (Del. Super. July 29, 2011).

(OB 19) compels the same outcome. This is so because the alleged detrimental reliance could only have occurred prior to, and by no later than, the contract's execution. Plaintiffs, as the purported recipients of the allegedly misleading information, unquestionably had relied to their detriment and suffered an injury when they made a purportedly ill-informed decision in committing to the BCA.

For this reason, the nearly 5 pages the Opening Brief devotes to arguing "[t]he Court of Chancery misapplied Delaware law by tying claim accrual to the time of misrepresentation, not injury" (OB 19-23) is a red herring. The Court of Chancery did not hold that Plaintiffs' claims accrued when the alleged misrepresentations and omissions were made in June and October 2020. Instead, the Court of Chancery determined that the latest point Plaintiffs' claims could have accrued was November 2020, when they were induced into entering into the BCA.

3. Affirmance conforms to policy determinations made by the Delaware legislature.

The Opening Brief's lengthy discussion of supposedly "undesirable policy consequences" similarly misses the mark. In support of their policy argument, Plaintiffs retreat from their argument that injury occurs at the time of detrimental reliance and return to conflating injury and damages. (*E.g.*, OB 24 (arguing claims should not accrue until "real injuries … eventually manifest" and that defendants should not be exposed to litigation where no "harm" has yet occurred).) But the

Court of Chancery correctly held Plaintiffs' claims accrued when they suffered injury, which may have been before they allegedly suffered *damages*.

The Court of Chancery's holding is consistent with the accrual rule adopted by the Delaware legislature, as explained by this Court in *ISN Software.* In *ISN Software*, the plaintiff advanced the same argument Plaintiffs recycle now, arguing its claim did not accrue until it had incurred damages because otherwise it would have been required to file a "potentially unripe claim." 226 A.3d 727 at 736. This Court rejected that argument as contrary to the occurrence rule adopted by the General Assembly. *Id.*[10]

To the extent Plaintiffs are asking the Court to reassess the merits of the General Assembly's policy determinations and override them, that is improper. As the Court explained in *INS Software*, while different policy determinations may be made by the legislature through "possible amendments to the Delaware statute as other states have done," "under the current state of Delaware law, [] regardless of complications, inefficiencies, and possible unfairness, a cause of action accrues at the time of the wrongful act, which in this case means when injury occurred and not when damages were certain." 226 A.3d at 736.

[10] Plaintiffs also rely on cases from outside of Delaware. (OB 24, n.14.) As noted, the General Assembly rejected the accrual rules reflected in those decisions and instead adopted the occurrence rule. *See ISN Software*, 226 A.3d at 736; *see also Saunders v. Lightwave Logic, Inc.*, 2025 WL 1793978, at *3 (Del. June 30, 2025).

In any event, Plaintiffs' policy argument rests on the faulty factual assumption that their claims were not "ripe" as of November 20, 2020, when the BCA was executed. (*See* OB 25.) But nothing prevented Plaintiffs from bringing suit any time after the BCA was executed to enjoin the closing of the transaction and/or rescind their commitments under the Member Support Agreement. *Cf. Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1065 n.86 (Del. Ch. 2006) (noting a buyer's fraud claim may be adversely affected if the buyer waits until after closing to bring a claim based on a false representation); *Sofregen Med. Inc. v. Allergan Sales, LLC*, 2023 WL 2034584, at *19 (Del. Super. Feb. 3, 2023) (fraudulent inducement viable excuse for nonperformance of contract).[11]

[11] Plaintiffs complain that the limitations period could expire "before the plaintiff realizes a false representation was made in the first place." (OB 24.) This is directly contrary to this Court's precedent that a claim accrues "even if the plaintiff is ignorant of the cause of action." *E.g.*, *Saunders*, 2025 WL 1793978, at *3.

II. THE COURT OF CHANCERY CORRECTLY HELD PLAINTIFFS' CLAIMS WERE UNTIMELY.

A. Question Presented

Did the Court of Chancery correctly reject Plaintiffs' argument that their claims did not accrue until the date of the de-SPAC transaction closing, June 9, 2021, or, alternatively, the date of the Cloudbreak member vote on June 2, 2021?

B. Scope of Review

The application of a statute of limitations is reviewed *de novo*. *See Isaac*, 2025 WL 2437093 at *6; *ISN Software*, 226 A.3d at 731. "In reviewing the grant or denial of a motion to dismiss, [the Court] view[s] the complaint in the light most favorable to the non-moving party, accepting as true its well-pled allegations and drawing all reasonable inferences that logically flow from those allegations. [The Court does] not, however, simply accept conclusory allegations unsupported by specific facts, nor do we draw unreasonable inferences in the plaintiff's favor." *Clinton*, 977 A.2d at 895.

C. Merits of Argument

The Court of Chancery correctly rejected Plaintiffs' alternative accrual dates—June 9, 2021, the date the SPAC transaction closed, and June 2, 2021, the date the Cloudbreak members voted in favor of the transaction. Plaintiffs had been

induced into entering into the business combination well before June 2021, and the FAC does not allege any misstatements or omissions after November 2020.

1. The Court of Chancery correctly rejected Plaintiffs' argument that their claims did not accrue until closing.

Plaintiffs assert a categorical rule that "tort claims arising out of business transactions (like the SPAC transaction here) accrue *at the transaction's closing.*" (OB 27.) But no such categorical rule exists. Instead, when a claim accrues depends on factors including the nature of the claims (*i.e.*, breach of contract or fraudulent inducement) and where the alleged misrepresentations were made (*i.e.*, within or outside the relevant contract). *See* pp. 16-19, *supra.*

As the Court of Chancery noted, a claim may accrue at closing when the alleged false statement is contained within the transaction agreement itself. (Opinion 34.) In such circumstances, the wrongful act occurs on the date of closing because that is the date the representation is made, and the date the plaintiff is induced to act. *See Kilcullen v. Spectro Sci., Inc.*, 2019 WL 3074569, at *7 (Del. Ch. July 15, 2019) (date of "wrongful act" for fraud claim based on false representations and warranties in purchase agreement was closing date). In contrast, where, as here, the wrongful act of fraudulent inducement is premised on alleged misrepresentations made before the contract execution and not memorialized in the relevant contract, Delaware courts consistently hold—in accordance with the occurrence rule—that such a claim accrues by *no later than* contract execution. *See* pp. 16-17, *supra* (collecting cases).

Plaintiffs rely heavily on *Lehman*, but *Lehman* follows the occurrence rule. In *Lehman*, after a buyer entered into an agreement to buy property but shortly before closing, they learned that the State might have a claim to a portion of the property. 268 A.3d at 181-82. Based on a mistaken belief the State's interest was *de minimis*, the buyer went forward with closing. *Id.* at 182. Applying the occurrence rule, the Court determined that the buyer's claims accrued at closing (and not later when a court determined the State held superior title). *Id.* at 190-91. At closing, "the elements of [plaintiff's] rescission claim were satisfied" because there was a mutual mistake on which plaintiff relied in closing the transaction. As for the lender's "False Information" claim, the Court held that claim accrued at closing because the lender relied on false information in the transaction documents. Here, Plaintiffs do not allege a misrepresentation or omission within the BCA or *after* its execution. As the Court of Chancery determined, all the wrongful acts occurred, and Plaintiffs' claims accrued, no later than November 2020.

Lee v. Linmere Homes, Inc., 2008 WL 4444552 (Del. Sup. Oct. 1, 2008) likewise conforms to the occurrence rule. Contrary to Plaintiffs' suggestion, *Lee* did not involve a circumstance in which the plaintiff allegedly was fraudulently induced into entering into a contract to purchase a home, but the court held the claims did not accrue until closing. In *Lee*, plaintiffs brought a claim for *breach of a contract* to build a single-family residence and claims for fraud based on representations

made *after* closing (which the defendant did not argue were untimely). *Id.* at *1, *3. The court held the plaintiffs' breach of contract claim accrued at closing, when the contractor delivered a defective home. *Id.* at *3. That is consistent with cases holding that a breach of contract claim accrues as of the date of the breach. *See, e.g.*, *id.* at *3 ("A claim of a breach of contract begins to accrue at the time of the breach.") (citing *Nardo v. Guido DeAscanis & Sons, Inc.*, 254 A.2d 254, 256 (Del. Super. 1969); *Worrel v. Farmer's Bank State of Delaware*, 430 A.2d 469 (Del. 1981) ("a right of action accrues … at the time the contract is broken").

At bottom, Plaintiffs advocate for a rule that a fraudulent inducement claim does not accrue until closing by once again conflating *injury* with *damages*. The Opening Brief makes this plain: Plaintiffs argue their claims accrued "when the SPAC transaction closed on June 9, 2021" because their "injuries materialized" when "Cloudbreak was sold, *the true value of Plaintiffs' equity was lost*, and Defendants realized the fruits of their fraudulent scheme." (OB 2.)

But Plaintiffs' ultimate loss of equity was not their injury for claim accrual purposes. As black-letter Delaware law holds, "the concept of injury for purposes of accrual does not require that a plaintiff have suffered quantifiable damages . . . It is enough that there has been an injury, *however slight*, to the plaintiff's legal rights . . . *[even if] the actual or substantial damages do not occur until a later date*." *Lebanon Cnty. Employees' Ret. Fund v. Collis*, 287 A.3d 1160, 1196 (Del. Ch.

2022). The relevant injury is Plaintiffs' allegedly ill-informed entry into the BCA (and the contemporaneous Member Support Agreement). Regardless of what additional *damages* Plaintiffs contend they suffered when the transactions closed, Plaintiffs suffered an injury sufficient for accrual purposes when they relied on the alleged misstatements in entering into the BCA. Accordingly, the Court of Chancery correctly rejected Plaintiffs' argument that their claim did not accrue until closing.

2. The Court of Chancery correctly rejected Plaintiffs' alternative argument that their claims did not accrue until the member vote.

Tacitly conceding their primary theory's stark deviation from black-letter Delaware law, Plaintiffs propose an equally erroneous backup theory: to delay the accrual of their claims until the June 2, 2021 member vote, supposedly the point "when Cloudbreak's members decisively voted to approve the merger and consummate the SPAC transaction." (OB 2.) The Court of Chancery correctly rejected this theory because "Plaintiffs have not pleaded that they relied on post-November 2020 statements in casting their votes." (Opinion 35-36.) That certain conditions to closing occurred after November 2020 is irrelevant. Plaintiffs did not plead a separate "*wrongful act*" after November 2020 that would have restarted the limitations clock.

Plaintiffs' theory that there was no detrimental reliance until the member vote—and their related assertion that the BCA was "non-binding" until that vote—

are both contradicted by the FAC and the documents incorporated by reference. Plaintiff Edwards *was on the Board that executed the BCA in November 2020*. (A328 (¶¶110, 112-13); *see also* A418; A495(§3.01).) Plaintiffs themselves contend Edwards detrimentally relied on the alleged misrepresentations no later than November 2020 in voting in favor of the BCA.[12]

Further, Plaintiffs Edwards and Bell executed the Member Support Agreement contemporaneously with the BCA on November 20, 2020.[13] *Plaintiffs admitted at oral argument before the Court of Chancery that they were allegedly induced into signing the Member Support Agreement.*[14] That alleged inducement (*i.e.*, injury) occurred in November 2020. Because of the Member Support Agreement, these Plaintiffs were contractually obligated to vote in favor of the transaction on June 2, 2021. They were not making a new decision at that time; they were simply fulfilling a contractual obligation.

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[12] Plaintiffs also acknowledged this in their briefing before the Court of Chancery. (A658 (stating that "the Board of Directors (including Plaintiff Edwards" voted in favor of the transaction on November 20, 2020 *and* that he "relied on the SPAC Defendants' presentations" in connection with that vote).)

[13] A603-04, A608-10; A042, A047 (pp. 2, 7), A115 (Schedule 7.03); Opinion 35 n.160. Plaintiff Hensel was not a member of Cloudbreak and therefore was not entitled to vote. (A288 (¶16).) Plaintiff Maron was a minority interest holder so his vote was not necessary. (A292 (¶ 34).)

[14] B01387 ("THE COURT: But your clients were allegedly induced to sign the member support agreement. ATTORNEY GHOSH: Yes.").

In an effort to avoid the obvious implications of the Member Support Agreement, Plaintiffs assert on appeal that it cannot be considered on a motion to dismiss. (OB 32.) But Plaintiffs did not raise that argument below, and it accordingly is waived. *See, e.g.*, Del. Supr. Ct. R. 8; *SARN SD3, LLC v. Czechoslovak Grp. A.S.*, 362 A.3d 1170, 1201 (Del. 2024). In any event, Plaintiffs are wrong. The Member Support Agreement was Exhibit A to the BCA, which is incorporated by reference in the FAC and the full contents of which may be considered on a motion to dismiss. *See In re Gen. Motors (Hughes) Shareholder Litig.*, 897 A.2d 162, 169 (Del. 2006).

Rejecting Plaintiffs' erroneous theories of accrual—theories that either deviate from established Delaware law or depend on a distorted view of facts Plaintiffs themselves concede—the Court of Chancery correctly determined that Plaintiffs' claims accrued by no later than the BCA's execution in November 2020.

III. THE COURT OF CHANCERY CORRECTLY DETERMINED THAT THE STATUTE OF LIMITATIONS WAS NOT TOLLED.

A. Question Presented

Did the Court of Chancery correctly determine that Plaintiffs' claims were not tolled until certain Needham documents were made public in 2023?

B. Scope of Review

The application of a statute of limitations is reviewed *de novo*. *See Isaac*, 2025 WL 2437093, at *6; *ISN Software*, 226 A.3d at 731. "In reviewing the grant or denial of a motion to dismiss, [the Court] view[s] the complaint in the light most favorable to the non-moving party, accepting as true its well-pled allegations and drawing all reasonable inferences that logically flow from those allegations. [The Court does] not, however, simply accept conclusory allegations unsupported by specific facts, nor do we draw unreasonable inferences in the plaintiff's favor." *Clinton*, 977 A.2d at 895.

C. Merits of Argument

1. The Court of Chancery correctly determined that Plaintiffs did not establish tolling as to any of the defendants.

Plaintiffs argue their claims are not time-barred because they "could not have known" the statements in the June and October presentations allegedly were false until 2023 when certain Needham documents were made public. (OB 36.) The Opening Brief argues that two tolling doctrines are relevant: "inherently unknowable

injury" and "fraudulent concealment." (OB 35.) As with their briefing below, however, "Plaintiffs conflate these distinct tolling doctrines." (Opinion 38.) As the Court of Chancery observed, fraudulent concealment involves "an affirmative act of concealment by a defendant … intended to put a plaintiff off the trail of inquiry." (Opinion 37.) *See also In re Dean Witter P'ship Litig.*, 1998 WL 442456, at *5 (Del. Ch. July 17, 1998); *Firemen's Ret. Sys. v. Sorenson*, 2021 WL 4593777, at *10 (Del. Ch. Oct. 5, 2021) (noting that an affirmative act is required for tolling under the fraudulent concealment doctrine and that "mere silence is insufficient"). Plaintiffs do not allege an affirmative act of concealment. Their theory most closely aligns with—but ultimately fails to satisfy—the inherently unknowable injuries doctrine.

The "inherently unknowable injury" tolling doctrine requires Plaintiffs to show the injury is "inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of." *Serviz, Inc. v. ServiceMaster Co.*, 2022 WL 1164859, at *5 (Del. Super. Ct. Apr. 19, 2022) (quoting *Wal-Mart Stores*, 860 A.2d at 319). The doctrine applies "only in exceptional circumstances in which discovery of the existence of a cause of action at the time of injury was a practical impossibility." *Tropical Nursing, Inc. v. Accord Health Serv., Inc.*, 2006 WL 3604783, at *3 (Del. Super. Dec. 7, 2006). *See also Kaufman v. CL McCabe & Sons, Inc.*, 603 A.2d 831, 835 (Del. 1992) (inherently unknowable injury doctrine is a "narrowly confined" exception to the statute of limitations).

Plaintiffs have not met their burden to show that the "inherently unknowable injury" doctrine (or any other tolling exception) applies. This case resembles *Krahmer v. Christie's, Inc.*, 903 A.2d 773 (Del. Ch. 2006), which held tolling did not apply where an auction house sold an allegedly fake work of art to the plaintiffs who had no specific reason to question its authenticity. The court noted the auction house acted as the agent of the consignors, not the purchasers, and did not owe a duty to the purchasers. *Id.* at 781. The court further noted the purchasers were not "blamelessly ignorant" because a prudent buyer "can safeguard his or her investment by verifying its authenticity with an independent third party appraisal." *Id.*

Here, as the Court of Chancery observed, none of the defendants owed any duties to Cloudbreak or Plaintiffs, who were their counterparties in arms'-length negotiations and represented by sophisticated counsel. Dr. Katz was acting on behalf of Gig2 and Dr. Kathuria and Needham were acting on behalf of UpHealth. (Opinion 40.) Additionally, as in *Krahmer*, nothing prevented Plaintiffs from doing their own diligence into the Portfolio Companies. Plaintiffs complain that they were "uniquely reliant on Defendants' representations" because the Portfolio Companies were private and some operated internationally. (OB 37.) But there is nothing unique about a transaction with a private company or a company with overseas operations. Nothing prevented Plaintiffs (or Cloudbreak's majority investor, Kayne)

from retaining their own advisors (or declining to do the deal if they could not perform adequate diligence).

Additionally, even where tolling applies (none does here), "it lasts until a plaintiff is put on inquiry notice of facts that ought to make it *suspect* wrongdoing." *Gallagher Indus. LLC v. Addy*, 2020 WL 2789702, at *13 (Del. Ch. May 29, 2020) (emphasis in original). The Court of Chancery also correctly determined that express disclaimers in the June and October presentations—as well as patent inconsistencies between the two presentations—sufficed to put plaintiffs on inquiry notice, therefore precluding tolling after November 2020. (Opinion 41-42.)

In Plaintiffs' own words, the June and October presentations contained materials that reflected "glaring" "inconsistencies" and "impossibility"[15] on issues they claim to be material.[16] As showcased below, the "inherently contradictory" information in the two presentations should have put Plaintiffs on inquiry notice.[17]

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[15] A649, A652.

[16] *See* A295 (¶ 44), A297 (¶ 48), A316 (¶ 92), A 326 (¶ 106), A685.

[17] Contrary to Plaintiffs' characterization, the Chancery Court's determination on inquiry notice did not rest on "the falsity of certain material representations made by Defendants [that] could only be proved by comparing those representations with others made in presentations that *were never shared with Cloudbreak*." (OB at 36).

Moreover, while Plaintiffs assert "certain" of other alleged misrepresentations may not have been apparent from a comparison of the presentations, (OB 34), "[a] plaintiff need not be aware of all the aspects of the allegedly wrongful conduct" to be on inquiry notice. *Gallagher*, 2020 WL 2789702, at *13.

Dean Witter, 1998 WL 442456, at *7-9 & n.67 (limitations "begin[] to run when plaintiffs should have discovered the general fraudulent scheme"; rejecting tolling because investors would have discovered the alleged misconduct if they had "bothered . . . to read past the first page" of annual report containing "inherently contradictory information").

June Presentation[18]	**October Presentation**[19]
Slide 7 describes UpHealth as composed of seven portfolio companies: Thrasys, Glocal, MedQuest, Transformations, BHS, UMEDEX, and S-Square.	Slide 6 describes UpHealth as composed of just four companies: Thrasys, Glocal, MedQuest, and Transformations.
Slide 19 shows graphic of UpHealth companies—including BHS, UMEDEX, and S-Square.	Slide 24 shows graphic of UpHealth companies—without BHS, UMEDEX, or S-square.
Slides 48, 58-60 present four pages of information exclusively on BHS, UMEDEM, and S-Square.	No slides dedicated to BHS, UMEDEX, or S-Square.
Slide 62 shows chart of financial data for UpHealth, including BHS, UMEDEX, and S-Square.	Slide 37 shows chart of financial data without BHS, UMEDEM, or S-Square.
Slide 21 indicates $14.9 million in 2019 revenue for Thrasys.	Slide 41 indicates $16.6 million in 2019 revenue for Thrasys.
Slides 24 and 25 indicate $25.2 million in 2019 revenue for Transformations and $8.7 million in 2019 revenue for BHS.	Slide 45 indicates $34 million in 2019 revenue for Transformations and does not include a corresponding figure for BHS.

[18] B00093.

[19] A355

In addition to the inherent contradictions, the June and October presentations also each contain express disclaimers, stating that they "involve[d] significant elements of subjective judgment and analysis, ***which may or may not be correct***." (A356; B00101 at Needham 00092118). As the Court of Chancery correctly held, "[t]hese disclaimers would have put the plaintiffs on notice of potential inaccuracies in the presentations and that they should conduct their own analysis." (Opinion at 41.)

While the Court of Chancery's decision should be affirmed as to all defendants, Plaintiffs have failed to establish tolling as to each defendant group for additional reasons.

2. Plaintiffs did not establish that any tolling exception applies to the Gig2 Defendants.

The Opening Brief tacitly concedes that Plaintiffs' tolling argument, which relies entirely on Needham documents, does not support tolling as to their claims against the Gig2 Defendants. (OB 37.) GigCapital2 had no relationship with Needham, and the Needham documents say nothing about any of the Gig2 Defendants or the due diligence GigCapital2 conducted related to UpHealth prior to the BCA. There is no allegation any of the Needham documents on which Plaintiffs' tolling argument relies were provided to the Gig2 Defendants. Needham's internal communications do not mention any of the Gig2 Defendants and there is no allegation Needham shared the views of these employees with GigCapital2.

Indeed, the Needham documents were not mentioned anywhere in the original Complaint. This further demonstrates that Plaintiffs did not need the Needham documents to be on inquiry notice of their putative claims against the Gig2 Defendants. The Opposition expressly states that "*Needham's active participation in the fraudulent scheme* was inherently unknowable to Plaintiffs until 2023, when previously confidential documents were disclosed in a litigation involving Needham." (OB 38 (italics in original; underlining added).) These documents revealed nothing regarding the Gig2 Defendants.

Additionally, the reasons Plaintiffs list for why they "could not have done their own diligence"—that is, that "each of the Portfolio Companies was private, none engaged in any meaningful public reporting, and some operated and were incorporated internationally" (OB 37)—were equally true for the Gig2 Defendants. Dr. Katz and GigCapital2 were outsiders to UpHealth and the Portfolio Companies. Thus, either (1) the allegedly false statements in the presentations were not discoverable through due diligence and the alleged statements by Dr. Katz were not false or (2) the false statements were discoverable through due diligence and *they also were discoverable through due diligence by Cloudbreak*, and thus were not "inherently unknowable." *See Krahmer*, 903 A.2d at 781.

Finally, the timing and extent of GigCapital2's due diligence related to UpHealth was not "inherently unknowable" until *2023* because it was disclosed in

GigCapital2's *February 8, 2021* Proxy. The Proxy disclosed that "[b]etween October 1 and 23, 2020" GigCapital2 conducted "*limited diligence* on UpHealth," but was "engaged in discussions with other potential targets for it to acquire for its initial business combination." (B00981.) The Proxy further disclosed that it was not until November 4, 2020, that "GigCapital2 and DLA began to engage in an in-depth diligence review of UpHealth, and the 5 companies with which it has entered definitive acquisition agreements." (B00982.) This sufficed to put Plaintiffs on notice that GigCapital2 had not performed due diligence regarding the October presentation before it was provided to Cloudbreak.[20]

3. Plaintiffs did not establish that any tolling exception applies to Dr. Kathuria.

As they relate to Dr. Kathuria, Plaintiffs' claims are untimely because Plaintiffs' inquiry notice—based on the express disclaimers and inherent contradictions in the June and October presentations[21]—is not excused based on their

[20] The Proxy also disclosed that UpHealth had ***reduced*** its projected revenues and EBITDA in response to comments from GigCapital2—indicating GigCapital2 did ***not*** agree with any prior projections UpHealth may have provided to Cloudbreak. (B00879.) UpHealth also announced pro forma combined financial results on March 31, 2021, for the year-ended December 31, 2020, and on May 6, 2021, for the quarter ended March 31, 2021. (*See* B01192 & B01201.) To the extent these actual results differed from the projections in the October 2020 presentation, this too put Plaintiffs on inquiry notice.

[21] Notably, the FAC never establishes that the June and October presentations should be attributed to Dr. Kathuria. It does not allege Needham was Dr. Kathuria's personal agent nor can it because UpHealth retained Needham. The other collusion

alleged later-in-time discovery of Needham's role. *Gen-E, LLC v. Lotus Innovations, LLC*, 2022 WL 2063307, at *4 (Del. Super. Ct. Apr. 21 2022) (limitations period does not extend past inquiry notice, "even though there may be other types of fraud alleged or other participants in the fraud identified").

Also, Plaintiffs assert that "the reputation of the alleged fraudster affects the inquiry notice analysis" (A669), and allege that because of Needham's supposed status as "a prominent," "established, [and] highly regarded" "leading" "global investment bank," they had no reason to suspect Needham's role until 2023. (A293-95 (¶¶38-42), A305 (¶62), A311-12 (¶83); A668, A699.) By contrast, they claim to have "*distrusted*" Dr. Kathuria and to have "rejected [Dr.] Kathuria's advances" from the outset of the negotiations (as early as May 2020). (A653, A680; A308-09(¶75).) Plaintiffs' logic that differences in "reputation" means they had no inquiry notice of Needham necessarily means the alleged "serial fraudster,"[22] Dr. Kathuria,

theory collapses on the face of the FAC because it relies on certain internal Needham messages reflecting Needham employees' second or third-hand perceptions of Dr. Kathuria, not Dr. Kathuria's own statements (let alone statements made to or relied upon by Plaintiffs). Otherwise, the FAC contains only two allegations arguably tied to Dr. Kathuria personally—both inactionable because, apart from falling outside the limitations period, they are permissible statements of future predictions or personal opinions. (*See* A448-450, 855; p. 42, *infra*.)

[22] A283 (describing Dr. Kathuria as "a serial fraudster," "oblivious," "delusional," and "some who would 'lie through his teeth'").

whom they never trusted and refused to engage with as early as May 2020, put them on inquiry notice.[23]

Accordingly, Plaintiffs' purported distrust in Dr. Kathuria—coupled with the express disclaimers and inconsistencies within the presentation materials (*see* pp. 7, 10, 33, 35, 38-39, *supra*))—establishes inquiry notice by no later than November 2020. Plaintiffs wrongly "assume[] that a sophisticated party can uncritically accept rosy depictions of obvious warning signs" and the Court should not now "shield [them] from the consequences of its own lackadaisical approach to protecting its multimillion-dollar investment." *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 152 (Del. Ch. 2004).

4. Plaintiffs did not establish that any tolling exception applies to Needham.

The essence of Plaintiffs' claims against Needham is that Needham misrepresented financial figures of the Portfolio Companies in presentations to Cloudbreak—*i.e.*, that Needham "doctored the October 2020 presentation to hide Umedex, BJS [*i.e.*, BHS], and S2 and inflate the revenues of Thrasys and Transformations" by combining revenues for BHS with Transformations, and revenues for Umedex and S2 with Thrasys (A320)—and that Plaintiffs were

[23] On appeal, Plaintiffs double down on the distinction in reputation between Needham and Dr. Kathuria. (OB 37-40.)

unaware of this until 2023.[24] (OB 39.) But as the Court of Chancery correctly determined, neither the inherently unknowable injury nor fraudulent concealment doctrines can save Plaintiffs' late-filed claims against Needham because Plaintiffs were on inquiry notice before the BCA was executed.

Indeed, as discussed *supra* at 34, Plaintiffs had the conflicting June and October presentations on which they base their claim all along. A325; A352. Those inherent inconsistencies put Plaintiffs on inquiry notice.

Moreover, among the "set of diligence materials" sent to Cloudbreak "[i]n October 2020" (OB 11), was Needham's financial model showing that the combined UpHealth company would include both Transformations and BHS and the separate revenue figures for each. (*See* B00171.) Thus, far from concealing anything, Needham provided Cloudbreak with detailed financial information in connection with the October presentation. Plaintiffs also had access to audited financial statements for the Portfolio Companies in the May 13, 2021 prospectus for New UpHealth, including audited 2019 revenue figures for Thrasys and Transformations, which were lower than the unaudited figures in the October presentation. (*See* B00043 (¶¶ 81, 140-141).) *See Pomeranz v. Museum Partners, L.P.*, 2005 WL 217039, at *12-13 (Del. Ch. Jan. 24, 2005) (finding plaintiffs on inquiry notice

[24] UpHealth decided not to acquire Umedex or S2, and they were not included in the UpHealth BCA. (*See* B00176.)

"when they received the September 30, 2000 financials which provided a striking contrast to the comparatively sunnier, earlier disclosures").[25] In sum, Plaintiffs were on inquiry notice of their claim that Needham "doctored the October 2020 presentation" more than three years before they filed their original Complaint, and certainly more than three years before bringing claims against Needham in the FAC.

As to Plaintiffs' allegations that the June and October presentations contained other inaccurate information about the Portfolio Companies' businesses, the presentations' extensive disclaimers make clear that that information had not been verified by Needham. (*See* pp. 9-11, *supra*.) The presentations further state that Needham provides no "guarantee or warranty (express or implied) or assumes any responsibility with respect to the authenticity, origin, validity, accuracy or completeness of the information and data contained" therein. (*E.g.*, A356.)

Needham's reputation as a respected investment bank does not excuse Plaintiffs' failure to make any inquiry as to the clear differences between the June and October presentations, or between the presentations and Needham's financial model or the audited financial statements, or conduct any due diligence at all.

[25] Plaintiffs' original Complaint included the allegation, omitted from the FAC, that Plaintiffs were fraudulently induced to sell Cloudbreak based in part on misrepresentations in the May 13, 2021 prospectus. (B00024-25 (¶81).) The admission that Plaintiffs relied on the May 2021 prospectus remains binding. *See Kotler, LLC*, 2019 WL 4025634, at *11 n.141 (factual allegations in a prior pleading may be taken as admissions against the interest of the pleading party).

Plaintiffs' reliance on *Microsoft Corp. v. Amphus, Inc.*, 2013 WL 5899003, at *20 (Del. Ch. Oct. 31, 2013), is unavailing because there "[t]he Information Statement did not convey any information that should have led Microsoft to believe that the KPMG report was unreliable."

As to the remaining snippets of internal Needham messages that were publicly filed in an unrelated case in 2023, the complete, accurate text of the messages refute the argument that they revealed an "inherently unknowable" scheme to defraud Plaintiffs. For example, Plaintiffs cite messages describing "Dr. Kathuria as 'ludicrous' and suffering from '[d]elusions of grandeur.'" (OB 8.) But those remarks were referring to Dr. Kathuria's claim that "he knows Jeff [Bezos]," (B00170), which has nothing to do with the valuation of UpHealth or the Portfolio Companies, or with Plaintiffs. As to the August message stating that Dr. Kathuria "lied through his teeth" during an investor meeting (A304 (¶ 60)), the FAC does not allege Plaintiffs participated in the meeting (not surprisingly, as Plaintiffs were not investors in UpHealth; Cloudbreak had passed on an opportunity to combine with UpHealth in May, and Dr. Kathuria did not reach out to Cloudbreak again until September). (A308 (¶¶73-75).) Nor does the message by a junior analyst that "ridiculed Dr. Kathuria's $1.2 billion valuation of the Portfolio Companies" reveal any fraudulent scheme. (OB 8.) The October presentation clearly showed the basis of its $1.1 billion valuation for the combined Portfolio Companies, and that valuation

is supported by GigCapital2's agreement to an arms'-length transaction at a similar valuation. The junior analyst's messages were based on the fact that private placement investors had passed on the opportunity to invest in UpHealth, a fact apparent to everyone in November 2020—Plaintiffs included.[26]

Plaintiffs' argument for tolling based on fraudulent concealment fails for the same reason: they were on inquiry notice. *See, e.g.*, *In re Dean Witter*, 1998 WL 442456, at *5 ("Where there has been fraudulent concealment from a plaintiff, the statute is suspended until his rights are discovered or until they could have been discovered by the exercise of reasonable diligence") (citations omitted). Plaintiffs' attempt to turn the disclaimers in the Needham presentations into an "an actual artifice" that prevented them "from gaining knowledge of the facts" or put them "off the trail of inquiry," *id.*, is nonsensical. To the contrary, the disclaimers let Plaintiffs

[26] Plaintiffs cite *BTIG, LLC v. Palantir Technologies*, 2020 WL 95660, at *5 (Del. Super. Ct. Jan. 3, 2020), holding the statute of limitations was tolled until "previously secret documents" became public, which revealed an alleged scheme to undercut BTIG's brokered deal of Palantir stock. Among other differences (including the contrast between the June and October presentations provided to Plaintiffs, and the disclaimers they contained), *BTIG* "present[ed] a situation that seemingly involves good faith and fair dealing," based on a duty Palantir purportedly owed to BTIG. 2020 WL 95660, at *6. The *BTIG* court contrasted that situation to the one in *Krahmer* "where the auction house's only duty was to the owner of the artwork and not to the [purchasers]." *Id.* at *5. As the Court of Chancery correctly noted, here as in *Krahmer* and unlike *BTIG*, Defendants "were acting on behalf of a counterparty bargaining across the table from Cloudbreak and the Plaintiffs." (Opinion 40 n.184.)

know they should conduct their own due diligence. The sole case cited by Plaintiffs, *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1147-49 (Del. 2025), did not involve such a disclaimer.

CONCLUSION

The Court of Chancery's ruling should be affirmed. If the ruling is not affirmed, the case should be remanded to the Court of Chancery to consider Defendant's other arguments for dismissal of Plaintiff's fraudulent inducement, negligent misrepresentation, and civil conspiracy claims.

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