No. 127177

IN THE
SUPREME COURT OF ILLINOIS

WALWORTH INVESTMENTS-LG, LLC,	) Appeal from the Illinois) Appellate Court,) First District, No. 1-19-1937
Plaintiff-Appellee,	)
v.	) There Heard on Appeal from the) Circuit Court of Cook County,) County Department, Law Division
MU SIGMA, INC. and DHIRAJ C. RAJARAM,	) Circuit No. 2016 L 002470)
Defendants-Appellants.	) Hon. Daniel J. Kubasiak and) Hon. John C. Griffin,) Judges Presiding

BRIEF OF DEFENDANTS-APPELLANTS MU SIGMA, INC and DHIRAJ C. RAJARAM

ALLAN J. ARFFA
(aarffa@paulweiss.com)
JEFFREY J. RECHER
(jrecher@paulweiss.com)
ROBERT N. KRAVITZ
(rkravitz@paulweiss.com)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

THOMAS L. KILBRIDE
(tom.k.email.acct@gmail.com)
PO Box 4266
Rock Island, IL 61204
(309) 788-2800

JOHN C. DWYER
(dwyerjc@cooley.com)
TIJANA MARTINOVIC BRIEN
(tbrien@cooley.com)
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94304
(650) 843-5000

JAMES R. FIGLIULO
(jfigliulo@fslegal.com)
PETER A. SILVERMAN
(psilverman@fslegal.com)
FIGLIULO & SILVERMAN, P.C.
10 S LaSalle St, Ste 3600
Chicago, Illinois 60603
(312) 251-4600

MARTIN S. SCHENKER
(mschenker@cooley.com)
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
(415) 693-2000

Counsel for Defendants-Appellants MU SIGMA, INC. and DHIRAJ C. RAJARAM

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NATURE OF THE ACTION

This action arises out of a company's repurchase of its stock from a sophisticated investor in 2010 pursuant to a written agreement governed by Delaware law (the "Repurchase Agreement" or "Agreement"). In that Agreement, the investor—plaintiff Walworth Investments-LG, LLC ("Walworth")—expressly represented that neither defendant Mu Sigma, Inc. ("Mu Sigma") nor any of its executives had made any representations to Walworth concerning the operation or financial condition of Mu Sigma or the value of the repurchased stock, except as set forth in the Agreement itself. Walworth also released all claims against Mu Sigma and its executives that arose out of any events occurring prior to the Agreement.

Six years later, Walworth brought this action against Mu Sigma and its CEO, claiming that those parties had made statements to Walworth *outside of the parties' Agreement* that fraudulently induced Walworth to sell its Mu Sigma stock. In a series of decisions, decided in part on the pleadings and in part on summary judgment, the circuit court enforced the provisions of the Repurchase Agreement as written and dismissed all of Walworth's claims, holding that, under Delaware law, Walworth's disclaimer of reliance on extra-contractual statements and general release barred Walworth's claims as a matter of law. The appellate court reversed, finding that the anti-reliance language and general release that Walworth agreed to should not be enforced to bar Walworth's claims as a matter of law.

This appeal raises questions as to whether the circuit court correctly dismissed two of Walworth's claims on the pleadings and the rest on summary judgment.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court erred in reversing the circuit court's ruling that the terms of the Repurchase Agreement—including Walworth's express representation that Mu Sigma and its executives had made no representations about the company's financial condition or the value of its stock except as expressly set forth in the Agreement—barred Walworth's fraud and breach of fiduciary duty claims, which were based on alleged extra-contractual statements not set forth in the Repurchase Agreement.

2. Whether the appellate court erred in reversing the circuit court's ruling that the Repurchase Agreement involved an individually negotiated transaction, as opposed to a "request for stockholder action," and, as a result, erred in ruling that Mu Sigma's CEO and Chairman may have owed an affirmative duty of disclosure to Walworth that arises under Delaware law only in the context of a "request for stockholder action."

3. Whether the appellate court erred in ruling that, based upon its other rulings, it was "premature" for the circuit court to dismiss Walworth's breach of contract and unjust enrichment claims by virtue of Walworth's general release of claims against Mu Sigma and its executives.

STATEMENT OF JURISDICTION

In decisions entered on October 8, 2018 and April 2, 2019, the circuit court entered summary judgment for defendants Mu Sigma, Inc. and its CEO Dhiraj Rajaram (together, the "Defendants") on Walworth's alleged fraudulent inducement, fraudulent concealment and negligent misrepresentation claims (collectively referred to below as Walworth's "fraud claims"), as well as Walworth's breach of fiduciary duty claim. A027-A044.[1] On August 30, 2019, after granting Walworth leave to file a second amended complaint, the circuit court then dismissed on the pleadings two additional claims that Walworth asserted (for breach of contract and unjust enrichment), thus disposing of all of Walworth's remaining claims. A045-A057.

On September 20, 2019, Walworth filed a Notice of Appeal. A097-A098; *see also* A099-A100 (amended Notice of Appeal). The appellate court had jurisdiction pursuant to Illinois Supreme Court Rule 303. On March 30, 2021, the appellate court reversed the circuit court's rulings and remanded for further proceedings. A024 (Op. ¶ 70). On June 3, 2021 (following an extension granted by this Court), Defendants filed their Petition for Leave to Appeal, with a corrected version filed on June 9, 2021, which this Court allowed on September 29, 2021. This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

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[1] Citations prefaced by "A" correspond to documents in Defendants' Appendix. Citations prefaced by "C," "SEC C," or "SUP SEC C" refer to other documents in the Record on Appeal.

STATEMENT OF FACTS

Introduction

The circuit court found that all of Walworth's claims were barred, as a matter of law, under the express language of the Repurchase Agreement. As that court found: (i) the anti-reliance language and general release in the Repurchase Agreement bar Walworth's fraud and breach of fiduciary duty claims, all of which are based on statements that Walworth alleges Mu Sigma made outside of the Agreement, and (ii) the general release in the Repurchase Agreement bars Walworth's breach of contract and unjust enrichment claims. As a result, factual details concerning the transaction and the parties' interactions, although cited by the appellate court, are irrelevant to the issues presented on this appeal. To present those issues in context, however, and to correct what Mu Sigma believes are various inaccuracies in the appellate court's decision, Defendants provide the following summary of the factual background of this matter.

The Parties

Defendant Mu Sigma is a privately-held data analytics company incorporated in Delaware and headquartered in Illinois. A073 (Second Amended Complaint "SAC" ¶ 19). Defendant Dhiraj Rajaram founded Mu Sigma and is its CEO and Chairman of its Board of Directors. A073 (SAC ¶ 20).

Walworth is an investment vehicle that Patrick G. Ryan and his family created to invest in Mu Sigma. A073 (SAC ¶ 18). Ryan is the founder and

retired Chairman and CEO of Aon Corporation, one of the largest insurance brokers in the country. A074 (SAC ¶ 23); C1673-74. His son, Patrick Ryan Jr. ("Ryan Jr."), is the founder and CEO of INCISENT Labs Group, a technology company incubator, and Chairman of the Investment Committee of Chicago Ventures, an investment company that invests in tech-enabled businesses. A074 (SAC ¶ 23); C1676-81. Ryan Jr. negotiated Walworth's investment with Mu Sigma in 2006 and the sale of Walworth's shares back to Mu Sigma in 2010 (the "Stock Repurchase"). A081 (SAC ¶ 43).

Walworth's Acquisition of Mu Sigma Preferred Shares, and Mu Sigma's Repurchase of the Shares Four Years Later

Walworth invested $1.5 million in Mu Sigma in 2006 by purchasing shares of Mu Sigma's Series B preferred stock. A075 (SAC ¶ 26). As part of a subsequent round of financing in 2008, Mu Sigma issued approximately 1.2 million more Series B Preferred shares to Walworth (without any additional investment by Walworth), bringing Walworth's total holdings in Mu Sigma to approximately 7.8 million shares. A078 (SAC ¶ 36). At that time, Walworth and Mu Sigma also entered into an Amended and Restated Investor Rights Agreement (the "Investor Rights Agreement") that, among other things, provided Walworth the right, if requested by Walworth, to detailed financial information regarding Mu Sigma. A075, A078-A079 (SAC ¶¶ 27, 37); SEC C2289 (Investor Rights Agreement § 3.1(d)).

Following Walworth's investment, Mu Sigma grew rapidly, as it had prior to the investment. By 2007, Mu Sigma generated revenues of $4.2

million, almost 20 times its revenues two years earlier. A077 (SAC ¶ 31). In 2008, the company's revenue more than tripled over the prior year, growing to $13.6 million. *Id.*; C2512 (Investor Report Feb. 2009). Then, the financial crisis hit, triggering the most severe economic downturn since the Great Depression. Though still growing, Mu Sigma missed its revenue forecasts in 2009, recording $21.3 million in revenue for the year compared to the $31.6 million it had projected. C2541 (Investor Report Jan. 2010); C2512. Additionally, the company lost its largest customer, IMS Health. C1087 (Ryan Jr. Tr. 207:6-16).

In the year leading up to the start of negotiations over the Stock Repurchase, Mu Sigma provided Walworth with detailed monthly reports containing, among other things, Mu Sigma's actual and projected revenues and earnings. A080 (SAC ¶ 39). Walworth has never challenged the accuracy of the actual or projected information contained in those reports. Indeed, the projections for 2010 revenues included in those reports turned out to be quite consistent with actual results. For example, Mu Sigma's January 2010 monthly report, provided to Walworth in February 2010, projected 2010 revenues to be just above $39 million, compared with actual revenues that year of $41.3 million. SUP SEC C262.

In March 2010, Rajaram approached Ryan Jr. about the possibility of Mu Sigma's buying back a portion of Walworth's shares. A081 (SAC ¶ 43). For approximately two months thereafter, Walworth and Mu Sigma, each

represented by counsel (Walworth by Sidley Austin and Mu Sigma by Cooley), negotiated over the proposed Stock Repurchase and the Repurchase Agreement. A058-A066 (SRA); A086 (SAC ¶ 57-58); C4156.

During those negotiations, Mu Sigma insisted on a broad, general release by Walworth of all potential claims "known and unknown" against Mu Sigma and its executives. C2450; C2453; C4156. Walworth initially objected to the release language as Walworth would continue to remain a shareholder in Mu Sigma under the terms of Mu Sigma's original proposal. C4156. As reflected in the final terms of the Repurchase Agreement, however, Walworth ultimately agreed to provide the broad, general release that Mu Sigma had requested after Mu Sigma agreed to repurchase all of Walworth's shares, rather than just a portion of them. A061 (SRA § 5).

The result was that Mu Sigma paid Walworth approximately $9.3 million for all of Walworth's shares in Mu Sigma. Walworth thus realized a more than 600% return on the $1.5 million investment it had made just four years earlier, notwithstanding the economic impact of the Great Recession. SEC C2363.

Key Provisions of the Repurchase Agreement

Walworth and Mu Sigma executed the Repurchase Agreement in May 2010. The Agreement, which is expressly governed by Delaware law (A061 (SRA §6(b)), contains three provisions particularly critical to the issues presented by this case:

Anti-Reliance Provision: First, section 3(e) of the Repurchase Agreement contains commonly-used language that Delaware courts have consistently held to constitute "anti-reliance" language. That is, the Agreement provides that Walworth (referred to in the Agreement as the "Stockholder") represented and warranted that: (i) it had received all the information it deemed necessary to evaluate the transaction; and (ii) neither Mu Sigma nor its executives had made any representations to Walworth "regarding any aspect of the sale and purchase of the Repurchased Stock [that is, the sale and purchase of all of Walworth's shares in Mu Sigma], the operation or financial condition of the Company or the value of the Repurchased Stock" except as set forth in the Repurchase Agreement itself.

Specifically, section 3(e) provides, in relevant part:

> Stockholder [Walworth] represents and warrants that: . . . (e) Disclosure of Information. Stockholder has received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock to the Company [Mu Sigma] pursuant to this Agreement. Stockholder acknowledges (i) that neither the Company, nor any of the Company's Related Parties (as defined below), has made any representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock and (ii) that the Company is relying upon the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder.[2]

[2] The Repurchase Agreement defines "Related Parties" as Mu Sigma's "current and former directors, officers, partners, employees, attorneys, agents, successors, assigns, current and former stockholders (including current and former limited partners, general partners and management companies), owners, representatives, predecessors, parents, affiliates, associates and

A059 (SRA § 3(e)).

Integration Clause: Second, section 6(g) of the Repurchase Agreement is a standard integration clause. It provides that the terms of the Repurchase Agreement supersede any prior understandings, agreements, or representations between the parties concerning the subject matter of the Agreement:

> This Agreement contains the complete agreement and understanding between the parties as to the subject matter covered hereby and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

A062 (SRA § 6(g)).

Release Provision: Third, Walworth also agreed to provide in the Repurchase Agreement a comprehensive general release of all claims—including "known and unknown" claims—against Mu Sigma and its Related Parties (including its CEO, Rajaram). Thus, section 5 of the Repurchase Agreement provides, in relevant part:

> Stockholder hereby forever generally and completely releases and discharges the Company and its Related Parties and their respective successors and assigns from any and all claims, liabilities, obligations and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular of and from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, that arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement, provided, however, that the foregoing release shall not apply to

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subsidiaries." A059-60 (SRA § 3(e)). The definition thus clearly includes Defendant Rajaram, Mu Sigma's CEO and Chairman of its Board of Directors.

> claims relating to Stockholder's right to payment by the Company.

A061 (SRA § 5).

The parties further agreed that the Repurchase Agreement was "the product of negotiations between the parties hereto represented by counsel" and would be governed by Delaware law. A061-A062 (SRA §§ 6(b), 6(d)).

In sum, the Repurchase Agreement provided that:

(i) the Repurchase Agreement contained the parties' complete agreement, superseding any prior understandings or representations, written or oral;

(ii) the Agreement was the product of negotiations between parties who were advised by counsel, and would be governed by Delaware law;

(iii) in agreeing to the Stock Repurchase, Walworth had received all of the information it deemed necessary to evaluate the parties' transaction;

(iv) in connection with that Repurchase, Walworth represented that Mu Sigma and its Related Parties—including Rajaram—had not made any representations to Walworth regarding any aspect of the Stock Repurchase, Mu Sigma's operations or financial condition, or the value of Walworth's Mu Sigma stock, except as set forth in the Repurchase Agreement itself; and

(v) pursuant to the Agreement, Walworth was releasing Mu Sigma and its Related Parties from any and all claims—"known and unknown" and

"disclosed and undisclosed"—including any claims based upon the events leading up to the Agreement.

The Chicago Sun Times Article and Walworth's Lawsuit Over Five Years Later

In October 2010, five months after the parties signed the Repurchase Agreement, the *Chicago Sun-Times* published an article regarding Mu Sigma and the growth of big data analytics. A080 (SAC ¶ 59). Walworth asserts in its pleadings that "Rajaram's deception was exposed" in this article, and that the article was a "180 degree reversal of the grim business outlook Rajaram had only a few months earlier described to Ryan Jr." C114 (¶ 39). Nonetheless, Walworth brought no action at that time.

Instead, on March 8, 2016—almost six years after the Repurchase Agreement and more than five years after the newspaper article that allegedly "exposed" the purported fraud—Walworth brought this action, citing Mu Sigma's subsequent business success and alleging that Mu Sigma and Rajaram had improperly induced Walworth to sell its stock. C85-98 (Compl. ¶¶ 33-94). A week later, Walworth filed its first amended complaint (the "Amended Complaint," or "FAC"), which became the operative complaint for most of the litigation. C102-25.

Walworth asserted seven claims in the Amended Complaint: (i) fraudulent inducement, (ii) fraudulent concealment, (iii) negligent misrepresentation, (iv) unjust enrichment, (v) breach of fiduciary duty, (vi) breach of contract, and (vii) punitive damages; and sought rescission of the

Repurchase Agreement or, in the alternative, compensatory damages. C117-24 (FAC ¶¶ 48-94 & Prayer for Relief).

All of Walworth's claims—except for its initial breach of contract claim, which Walworth later voluntarily dropped—were based on extra-contractual statements. That is, they were all based on statements regarding Mu Sigma's financial condition that Rajaram allegedly made to Ryan, Jr. during their initial discussions prior to the Stock Repurchase, but which were not set forth in the Repurchase Agreement. C117-24 (FAC ¶¶ 48-86, 92-94).

Thus, Walworth claims that, in communications between Rajaram and Ryan Jr. in "mid-March 2010," Rajaram falsely asserted, among other things, that Mu Sigma was "moving from explosive growth to steady growth" and that "there was 'no growth on the horizon.'" A081 (SAC ¶ 43). Walworth further alleges that, "[t]o induce Walworth to sell its ownership stake back to Mu Sigma, Rajaram told Ryan Jr. that Mu Sigma was losing its biggest customer." *Id.*

While not relevant to the legal issues given the Repurchase Agreement's anti-reliance and release provisions, the record in fact does not support Walworth's assertions with regard to any of these allegedly false statements. First, Mu Sigma did lose its largest customer at the time (see supra at 6). Second, Mu Sigma was indeed growing at a slower rate than it had in its earlier

years. (*See* supra at 6.)[3] And third, while the Second Amended Complaint purports to quote Rajaram as saying there was "no growth on the horizon" (A081 (SAC ¶ 43)), Ryan Jr. admitted in his deposition that Rajaram never actually said that; in fact, Ryan Jr. knew at the time, from Mu Sigma's monthly financial reports and otherwise, that Mu Sigma was still growing. C2494-96, C2498, C2503-04 (Ryan Jr. Tr. 171:10-173:17, 175:12-24, 203:19-204:3), A080 (SAC ¶ 39).

Procedural History in the Trial Court

The parties litigated the case for more than three years. The circuit court ultimately dismissed on the pleadings or granted summary judgment to Mu Sigma and Rajaram on all of Walworth's claims.

On August 1, 2016, Judge Griffin dismissed Walworth's unjust enrichment and punitive damages claims, but denied Defendants' motion to dismiss Walworth's other claims. C465. In doing so, Judge Griffin acknowledged that "some of the statements that are alleged in the complaint would not be sufficient to support a [claim] because they would be inactionable

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[3] Notwithstanding Walworth's claim that the *Chicago Sun-Times* article purportedly "exposed" Rajaram's alleged fraud, there is nothing inconsistent between the information contained in the article and Rajaram's alleged statements to Ryan Jr. earlier that year. The *Chicago Sun-Times* article indicated that Mu Sigma would reach $100 million in revenues "in the next three years." A084-085 (SAC ¶ 59). Based on the Company's 2010 revenues of $41.3 million, it would take an annualized growth rate of around 34% for Mu Sigma to reach $100 million in revenues by 2013. That rate is less than one-third of Mu Sigma's annualized growth rate of over 114% from 2007 through 2010 (during which the company's revenues increased from $4.2 million to $41.3 million).

statement[s] of opinion regarding future events." C3448 (July 14, 2016 Hr'g Tr. 74:2-6).

In May 2018, the case was reassigned to Judge Kubasiak. In October 2018, Judge Kubasiak granted Defendants' motion to reconsider certain of Judge Griffin's rulings in light of recent Delaware decisions involving anti-reliance provisions, and granted partial summary judgment in favor of Defendants on Walworth's fraudulent inducement, fraudulent concealment, and negligent misrepresentation claims. A027-A034. Judge Kubasiak held that Walworth could not sustain those claims under Delaware law because "section 3(e) of the Stock Repurchase Agreement, along with the broadly worded release clause in section 5, clearly disclaims Walworth's reliance on any information outside the contract." A032.

With respect to Walworth's claim for breach of fiduciary duty, Judge Kubasiak initially declined to grant summary judgment based on his belief that reliance was not an element of that claim. After further briefing and argument, the court granted summary judgment in Defendants' favor on Walworth's breach of fiduciary duty claim on April 2, 2019. A034-A040, A044. The court held that where, as here, a stockholder individually negotiates to sell its shares back to a company and later claims that it was wrongfully induced to do so by a fiduciary's alleged misrepresentations, the stockholder must establish that it relied upon those misrepresentations to prove a breach of fiduciary duty claim, just as with a fraud claim. A037-A039. Accordingly, the

court found that Walworth's disclaimer of reliance in the Repurchase Agreement also barred its fiduciary duty claim.

In the same ruling, the court denied Walworth's motion for reconsideration of the court's October 2018 order but granted Walworth's request for leave to file a Second Amended Complaint. C3786-3789. In its new pleading, Walworth abandoned its prior claim for breach of the Repurchase Agreement and asserted a new breach of contract claim based on the Investors Rights Agreement along with a revised unjust enrichment claim. Specifically, Walworth: (i) asserted that Mu Sigma breached the Investor Rights Agreement by not providing Walworth with monthly financial reports shortly before the Stock Repurchase;[4] and (ii) re-pleaded its previously dismissed unjust enrichment claim, basing it upon the same factual allegations as the prior fraud and breach of fiduciary duty claims on which Judge Kubasiak had already entered summary judgment. A092-A095 (SAC ¶¶ 93-106).

On August 30, 2019, the circuit court granted Defendants' motion to dismiss these two new claims, finding that they were barred by Walworth's

[4] Mu Sigma provided monthly financial reports to Walworth through the early months of 2010, until the parties' counsel began negotiating the terms of the Repurchase Agreement, so that all subsequent communications between the parties would run through counsel. C2525-27 (Rajaram Tr. 106:20-108:10). Walworth did not request any additional monthly financial reports during the negotiations over the Stock Repurchase (SEC C 2670 (Swamy Tr. 273:9-17); Walworth also expressly represented in the Repurchase Agreement that it had received all of the information that it deemed necessary for deciding whether to sell its stock. A059 (SRA § 3(e)).

express release of all claims against Mu Sigma and Rajaram. A045-A053. The circuit court also found that Walworth's unjust enrichment claim failed for two additional reasons: (i) it involved relationships governed by contract (the Repurchase Agreement and Investor Rights Agreement), and (ii) to the extent the claim was "tort based," the court had already dismissed Walworth's tort claims based on the same alleged conduct. A053-A056.

The Appellate Court's Opinion

On appeal, the appellate court reversed. The court concluded that the anti-reliance language Walworth had agreed to was "ambiguous," and, therefore, that the circuit court had erred in granting summary judgment to Mu Sigma on Walworth's fraud and breach of fiduciary duty claims. A035, A021 (Op. ¶¶ 35, 56).

The appellate court also concluded that the circuit court had erred in ruling that Mu Sigma's repurchase of Walworth's stock was an individually negotiated transaction. A020-A021 (Op. ¶ 54). The appellate court acknowledged that, in an individually negotiated transaction, Rajaram would *not* have had a "fiduciary duty of disclosure" to Walworth, which only applies where there is what Delaware cases refer to as a "request for stockholder action" (such as calling for a shareholder vote). *Id.* The appellate court ruled, however, that, because Walworth purportedly presented evidence that Mu Sigma may have earlier considered extending the repurchase offer to other stockholders—although it never did—there was a question of fact as to whether the Stock Repurchase may have been a "request for stockholder

action," rather than an individually negotiated transaction. A020-A021 (Op. ¶¶ 54-55).

The appellate court further ruled that, because of its reversal of the circuit court's other rulings as described above, the circuit court's ruling that Walworth's release barred its breach of contract and unjust enrichment claims was "premature," given that Walworth's claim that its release had been "procured by fraud" might still be viable. A023 (Op. ¶ 64).

STANDARD OF REVIEW

Defendants' appeal addresses orders granting summary judgment and dismissing counts pursuant to Sections 2-615 and 2-619 of the Illinois Code of Civil Procedure. The standard of review is *de novo*. *Gen. Cas. Ins. Co.* v. *Lacey*, 199 Ill. 2d 281, 284 (2002); *Lutkauskas* v. *Ricker*, 2015 IL 117090, ¶ 29.

SUMMARY OF ARGUMENT

The appellate court's decision is directly contrary to well-established Delaware law, which governs the written agreement at issue in this case, and even contrary to the appellate court's own precedents applying Delaware law. In particular:

First, the appellate court refused to enforce as a matter of law the "anti-reliance" language that Walworth agreed to in the Repurchase Agreement, even though Delaware courts routinely enforce anti-reliance provisions, including provisions using language nearly identical to the language at issue here. These standard provisions bring finality and certainty to commercial

agreements by restricting the parties' ability to avoid their contractual commitments by alleging fraud or other claims based on statements allegedly made outside the parties' written agreement. Yet that is precisely what Walworth seeks to do in this litigation.

Under well-settled Delaware law as to anti-reliance provisions, however, Walworth may not do so. Delaware courts have repeatedly ruled that a party to a written contract cannot represent in that contract that it is not relying on representations outside the four corners of the agreement and then reverse course and pursue claims alleging that it had, in fact, relied on alleged representations outside of that agreement.

The appellate court's decision undercuts this bedrock principle by declaring widely used anti-reliance language "ambiguous," even though the language mirrors anti-reliance language Delaware courts have approved time and time again. Indeed, as discussed below and in an appended chart (A102-A108), Delaware courts have repeatedly rejected claims like Walworth's as a matter of law in more than a half-dozen cases based on contractual provisions substantively identical to the ones at issue here. Yet, the appellate court reached the opposite conclusion and found ambiguity in contract language that is indistinguishable from language Delaware courts have found unambiguous and enforced as a matter of law. The appellate court thereby permitted claims based on alleged extra-contractual statements to proceed despite Walworth's express representation that no such statements had been made.

Second, the appellate court erred in another critical respect, reaching a conclusion that was not only contrary to Delaware precedents, but also to a prior and directly on-point appellate court decision interpreting Delaware law, *Sims* v. *Tezak*, 296 Ill. App. 3d 503 (1st Dist. 1998). Specifically, the appellate court held that, even if Walworth expressly disclaimed reliance on extra-contractual statements in the Repurchase Agreement, Walworth might still be able to assert a fraud or breach of fiduciary duty claim, because Delaware fiduciaries (such as Rajaram) have a "fiduciary duty of full disclosure" where a company makes a "request for stockholder action," such as calling for a stockholder vote. And, the appellate court ruled, Mu Sigma's repurchase of Walworth's stock *might* have been a "request for stockholder action," because Mu Sigma, at one point, had considered offering to repurchase stock from other stockholders besides Walworth, although it is undisputed that Mu Sigma never extended the offer it made to Walworth to other stockholders.

This, too, was error. As the circuit court properly recognized, Delaware law is clear that such an affirmative disclosure duty applies *only* where a company solicits shareholders as a group to take collective action, where there accordingly is no opportunity for individual negotiation. Such a duty does not apply where, as here, a company individually negotiates a transaction with a particular shareholder. Indeed, as the circuit court noted, in *Sims*, the appellate court had previously held that a stock repurchase negotiated with an individual shareholder was *not* a "request for stockholder action" to which an

affirmative disclosure duty applied. Whether Mu Sigma considered offering to repurchase stock from other stockholders is wholly irrelevant. It is undisputed that Walworth and Mu Sigma engaged in direct negotiations concerning the transaction, and that Walworth was therefore able to—and did—bargain for whatever disclosures from Mu Sigma that it deemed necessary before agreeing to the transaction.

Finally, as a result of these errors, the appellate court failed to enforce another unambiguous contract provision: Walworth's general release of claims against Mu Sigma. The appellate court wrongly concluded that, because of its other rulings, the circuit court's dismissal of Walworth's breach of contract and unjust enrichment claims on the pleadings, based on the release, was "premature." All of these rulings directly conflict with well-established law in Delaware, where the courts routinely enforce nearly identical anti-reliance provisions and releases. And, they allow Walworth, a sophisticated investor, to walk away from representations it made to Mu Sigma in what Delaware courts have called "the most inexcusable of commercial circumstances"—a "freely negotiated written contract"—by requiring Mu Sigma to defend against claims involving alleged representations that Walworth represented and warranted never existed.

The appellate court's rulings should therefore be reversed in their entirety, and the circuit court's rulings dismissing all of Walworth's claims with prejudice should be reinstated.[5]

ARGUMENT

I. THE APPELLATE COURT ERRED IN CONCLUDING THAT THE ANTI-RELIANCE LANGUAGE OF THE PARTIES' AGREEMENT DOES NOT UNAMBIGUOUSLY BAR WALWORTH'S FRAUD AND BREACH OF FIDUCIARY DUTY CLAIMS

In its Amended Complaint, Walworth asserted four claims based on statements Rajaram allegedly made outside of the Repurchase Agreement: fraudulent inducement, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty. Under Delaware law, each of these claims requires proof of reliance by Walworth to establish a basis for compensatory

[5] In its opinion, the appellate court unfairly and inexplicably characterized Walworth's claims as alleging that Mu Sigma and Rajaram "committed what is best described as a reverse 'Madoff scheme' to induce plaintiff to sell its substantial ownership in the company." A001 (Op. ¶ 1). This is an assertion that Walworth itself has never made, and for good reason. As this Court is no doubt aware, Bernard Madoff committed one of the largest financial frauds in history, swindling billions of dollars from more than 24,000 investors. That crime bears no resemblance to the transaction here, where a single, sophisticated seller willingly sold all of its shares at a significant profit, represented in its contract that it received all necessary information and that defendants had not made any extra-contractual representations regarding the financial condition of the company, and then seeks to disclaim its agreement and assert the exact opposite. The appellate court's comparison of Mu Sigma's dealings with Walworth to Madoff's massive fraud was inappropriate, and the fact that the appellate court viewed the case through this distorted lens may help explain its multiple errors, as discussed herein.

damages.[6] Based on those claims, Walworth sought compensatory damages or, alternatively, rescission of the Repurchase Agreement.

As the circuit court properly held, the express anti-reliance language in the Repurchase Agreement unambiguously bars all of those claims. By agreeing that Mu Sigma made no representations about the financial condition of the Company or the value of its stock except as set forth in the Repurchase Agreement itself, Walworth disclaimed reliance on any such extra-contractual representations. Walworth, therefore, is not permitted to come into court and claim that it was the victim of fraud or breach of fiduciary duty based on alleged extra-contractual statements, because such claims require proof of reliance, which Walworth disclaimed. As the circuit court recognized, numerous Delaware decisions bar such claims based on agreements with nearly identical anti-reliance language.

The appellate court's decision is not only incorrect as a matter of law, it would—if not reversed—undermine settled expectations as to commonly used

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[6] *See Stephenson* v. *Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983) (at "common law, fraud (or deceit)" requires proof of "plaintiff's action or inaction taken in justifiable reliance upon the representation"); *Nicolet, Inc.* v. *Hutt*, 525 A.2d 146, 149 (Del. 1987) (to "establish a prima facie case of intentional misrepresentation (fraudulent concealment)," plaintiff must prove "[a]n intent to induce plaintiff's reliance upon the concealment"); *Vichi* v. *Koninklijke Philips Elecs., N.V.*, 85 A.3d 725, 822 (Del. Ch. 2014) (to recover on a negligent misrepresentation claim, plaintiff must prove that it "suffered a pecuniary loss caused by justifiable reliance upon the false information"); *Metro Commc'n Corp. BVI* v. *Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 158 (Delaware law imposes "a requirement of reasonable reliance [for a breach of fiduciary duty claim] in the non-vote and non-tender context"); *see also* A037 (citing cases).

contract provisions. The purpose of anti-reliance provisions is to avoid litigation over after-the-fact allegations about statements allegedly made outside the parties' agreement, which is precisely what Walworth is attempting to do in this case. The appellate court's decision thus undermines the parties' expectations and would allow parties to pursue claims in Illinois courts that Delaware courts would dismiss as a matter of law.

The decision will have a major impact in this State, because many Illinois companies, including 31 of 37 Fortune 500 companies headquartered in Illinois (*see* A109-110), are incorporated in Delaware and frequently choose Delaware law as the law governing their corporate transactions. These companies expect that Delaware law will be applied the same way, regardless of where the case is filed. See *RAA Mgmt., LLC* v. *Savage Sports Holdings, Inc.*, 45 A.3d 107, 119 (Del. 2012) ("The efficient operation of capital markets is dependent upon the uniform interpretation and application of the same language in contracts or other documents."). That expectation is now in jeopardy.

A. The Circuit Court Correctly Applied Delaware Law, Which Favors the Enforcement of Anti-Reliance Provisions Agreed to by Sophisticated Parties

"Delaware prides itself on having a strongly contractarian law." *In re Altaba, Inc.*, 2021 WL 4705176, at *20 (Del. Ch. Oct. 8, 2021). It "respects the right of parties to freely contract and to be able to rely on the enforceability of their agreements," and, "with very limited exceptions, [its] courts will enforce the contractual scheme that the parties have arrived at through their own self-

ordering, both in recognition of a right to self-order and to promote certainty of obligations and benefits." *Id.* (quoting *Ascension Ins. Holdings, LLC* v. *Underwood*, 2015 WL 356002, at *4 (Del. Ch. Jan. 28, 2015)).

In particular, as Delaware courts have repeatedly recognized, "the common law ought to be especially chary about relieving sophisticated business entities of the burden of freely negotiated contracts." *ABRY Partners V, L.P.* v. *F & W Acquisition LLC*, 891 A.2d 1032, 1061-62 (Del. Ch. 2006).

Consistent with these principles, Delaware courts have "consistently held that sophisticated parties to negotiated commercial contracts may not reasonably rely on information that they contractually agreed did not form a part of the basis for their decision to contract." *H–M Wexford LLC* v. *Encorp, Inc.*, 832 A.2d 129, 142 n.18 (Del. Ch. 2003); *see also ABRY*, 891 A.2d at 1056 ("[Delaware courts] have honored clauses in which contracted parties have disclaimed reliance on extra-contractual representations, which prohibits the promising party from reneging on its promise by premising a fraudulent inducement claim on statements of fact it had previously said were neither made to it nor had an effect on it.").

As the Delaware Supreme Court has recognized—in an opinion the circuit court relied on but the appellate court failed to mention—these decisions reflect "Delaware's public policy in favor of enforcing contractually binding, written disclaimers of reliance on representations outside of a final sale agreement." *RAA Mgmt.*, 45 A.3d at 116-17. Simply put, "[s]ophisticated

parties are bound by the unambiguous language of the contracts they sign." *Progressive Int'l Corp.* v. *E.I. DuPont de Nemours & Co.*, 2002 WL 1558382, at *1 (Del. Ch. July 9, 2002).

Delaware's public policy is grounded in the recognition that a bargained-for anti-reliance provision between two sophisticated parties represents an awareness by the individual stockholder that, while the corporation and its representatives may possess undisclosed information about the corporation, the individual stockholder is satisfied with the information provided and waives the right to seek access to additional information or to rely on additional information outside the contract in its decision-making process. *See Progressive Int'l Corp.,* 2002 WL 1558382, at *1. ("[Plaintiff] contractually agreed that it was not entering the . . . Agreement on the basis of extra-contractual representations by [Defendant]; as a result, it thereby acknowledged the unreasonableness of grounding its execution of the contract on statements of [Defendant] that were not included within the contract as binding legal promises."). The stockholder may be willing to do so in return for increased financial consideration or other benefits (such as increasing the number of shares to be repurchased), which the corporation is willing to provide in exchange for the increased certainty that it will reacquire the corporation's stock without the risk of after-the-fact litigation and the expense that litigation entails.

Accordingly, under Delaware law, "a party cannot promise . . . that it will not rely on promises and representations outside of the agreement and then shirk its own bargain in favor of a 'but we did rely on those other representations' fraudulent inducement claim." *ABRY*, 891 A.2d at 1057-58 (*quoted with approval by RAA Mgmt.*, 45 A.3d at 116). As the Delaware Court of Chancery explained in *ABRY*:

> To fail to enforce non-reliance clauses is not to promote a public policy against lying. Rather, it is to excuse a lie made by one contracting party in writing—the lie that it was relying only on contractual representations and that no other representations had been made—to enable it to prove that another party lied orally or in a writing outside the contract's four corners. For the plaintiff in such a situation to prove its fraudulent inducement claim, it proves itself not only a liar, but a liar in the most inexcusable of commercial circumstances: in a freely negotiated written contract.

891 A.2d at 1058.

Delaware's policy of enforcing disclaimers of reliance on extra-contractual statements also "recognizes another reality that is often overlooked in morally-tinged ruminations on the importance of deterring fraud. That reality is that courts are not perfect in distinguishing meritorious from non-meritorious claims." *Id.* Delaware courts thus strongly favor enforcing written anti-reliance provisions to avoid the situation where, as here, a party seeks to go back on its written representation by bringing claims premised on vague, disputed and generally oral statements:

> Permitting the procession of fraud claims based on statements that buyers promised they did not rely upon subjects sellers to a greater possibility of wrongful liability, especially because those

> statements are often allegedly oral, rather than in a writing, and thus there is often an evidentiary issue about whether the supposedly false statement ever was uttered. As important, even when a court rejects a buyer's fraud claim that is grounded in a disclaimed statement, the seller does not get the full benefit of its bargain because the costs (both direct and indirect) of the litigation are rarely shifted in America to the buyer who made a meritless claim.

Id.[7]; *see also RAA Mgmt.*, 45 A.3d at 118-19 ("*ABRY Partners* accurately states Delaware law and explains Delaware's public policy in favor of enforcing contractually binding written disclaimers of reliance on representations outside of a final agreement of sale or merger.").

As the circuit court correctly ruled, Walworth's claims against Mu Sigma do exactly what *ABRY* ruled a sophisticated party may not do, and raise the same policy concerns *ABRY* discusses. Walworth represented in writing that no representations were made to it regarding Mu Sigma's operation, financial condition, or value other than as set forth in the Repurchase Agreement itself. But it then brought fraud and breach of fiduciary duty claims alleging that, actually, there were additional representations about Mu Sigma's operation, financial condition, and stock value supposedly made to it outside of the

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[7] Walworth's allegations exemplify that problem. As noted above, one of the extra-contractual statements Walworth alleges here is that it was told there was "no growth on the horizon" for Mu Sigma. A070 (SAC ¶ 10). But Ryan Jr. admitted in his deposition that Rajaram never said that, and he (Ryan, Jr.) knew at the time, from Mu Sigma's monthly reports and otherwise, that Mu Sigma was still growing. *See* C2503-04 (Ryan Jr. Tr. 203:19-204:3) ("Those are my characterizations. They are not quotes. When I say 'no growth,' what I meant by that was . . . like no growth company type growth left."); *see also* C2494-96, C2498 (Ryan Jr. Tr. 171:10-173:17, 175:12-24) (Ryan Jr. agreeing that he had received monthly investor reports reflecting data from February 2009 through February 2010).

Agreement, largely orally, which it did in fact rely upon in entering into the Repurchase Agreement. And, Walworth brought those claims six years after it represented in the Repurchase Agreement that no such statements were made.

For all of the reasons set forth in *ABRY*, Delaware law prohibits this type of conduct: Walworth is not permitted to be a "liar" by asserting claims based on extra-contractual representations that it previously agreed—in writing, in a commercial agreement—had not been made to it and that it therefore could not have relied upon.

As we discuss next, the Repurchase Agreement satisfies the requirements of Delaware law for anti-reliance provisions and, indeed, used language substantively identical to anti-reliance provisions that Delaware courts have repeatedly enforced.

B. The Provisions of the Repurchase Agreement Satisfy Delaware's Requirements for Anti-Reliance Provisions

Delaware courts have recognized four basic principles in enforcing anti-reliance provisions:

(i) a "standard integration clause" standing alone is not sufficient to disclaim reliance on extra-contractual statements, *see Kronenberg* v. *Katz*, 872 A.2d 568, 593 (Del. Ch. 2004);

(ii) a party can disclaim reliance only on statements made *outside* the parties' agreement; it cannot disclaim reliance on statements made *in* the agreement itself, *see ABRY*, 891 A.2d at 1064;

(iii) to bar a fraud claim, the anti-reliance language should be expressed by the party that claims to have been defrauded, not by the party accused of fraud, *see FdG Logistics LLC* v. *A&R Logistics Holdings, Inc.*, 131 A.3d 842, 859-60 (Del. Ch.), *aff'd mem.*, 148 A.3d 1171 (Del. 2016); and

(iv) "magic words" are not necessary to disclaim reliance; rather, it is sufficient if an agreement defines the universe of representations that were made to the party claiming to have been defrauded, and hence the representations that party may lawfully rely upon. *Prairie Capital III, L.P.* v. *Double E Holding Corp.*, 132 A.3d 35, 51 (Del. Ch. 2015).

As the circuit court correctly ruled, the provisions of the Repurchase Agreement readily satisfied each of these "anti-reliance" requirements:

First, the Repurchase Agreement did not merely contain a standard integration clause. A062 (SRA § 6(g)). It also contained the express language in section 3(e)(i) in which Walworth acknowledged that Mu Sigma had made no representations to Walworth about the financial condition of the Company or the value of the repurchased stock except as set forth in the Repurchase Agreement itself. A059. Delaware courts have repeatedly held that the combination of a provision like section 3(e)(i) and a standard integration clause (like the one the parties agreed to in the Repurchase Agreement) "add up to a clear disclaimer of reliance on extracontractual statements." *IAC Search, LLC* v. *Conversant LLC*, 2016 WL 6995363, at *1, *7 (Del. Ch. Nov. 30, 2016), *rearg. denied*, 2017 WL 3500244 (Del. Ch. Jan. 13, 2017); *accord, Prairie Capital,*

132 A.3d at 51; *ChyronHego Corp.* v. *Wight*, 2018 WL 3642132, at *5 (Del. Ch. July 31, 2018).

In fact, as the circuit court correctly found, the anti-reliance language in the Repurchase Agreement is even stronger than the language in Delaware decisions such as *IAC Search, ChyronHego*, and *Prairie Capital*. A032. This is because, unlike in those cases, the Repurchase Agreement also contains a general release in which Walworth released Mu Sigma and its directors and officers, including Rajaram, from all claims, "known and unknown," that "arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement." A031 (quoting SRA § 5). Consistent with Delaware precedent, the presence of a release further demonstrates that the Repurchase Agreement was designed to fully preclude any claims that might later be brought and "reinforces the limiting effect" of section 3(e)(i) and the integration clause. *See IAC Search*, 2016 WL 6995363, at *7 (noting that the presence of a release further reinforces the effect of an anti-reliance provision).

Second, section 3(e)(i) of the Repurchase Agreement operates to disclaim reliance only upon statements outside of the Repurchase Agreement, not the representations contained in the Agreement itself. Specifically, section 3(e)(i) expressly provides that the Company has not made "any representation or warranty, express or implied, *except as set forth herein*, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial

condition of the Company or the value of the Repurchased Stock." A059 (emphasis added).

Third, the disclaimer in section 3(e)(i) was clearly from Walworth's point of view; that is, Walworth stated it, not Mu Sigma. Specifically, section 3 of the Repurchase Agreement, which contains Walworth's representations and warranties with respect to the Stock Repurchase (as opposed to section 4, which sets forth Mu Sigma's representations and warranties), begins with the words: "Stockholder [Walworth] represents and warrants . . . ," followed by, in section 3(e), "Stockholder acknowledges . . . ." A059 (SRA § 3). Thus, the Agreement expressly provides that all of the representations and warranties contained in Section 3, including the critical language in section 3(e)(i), are made by, and from the point of view of, Walworth (the plaintiff here).

Fourth, section 3(e)(i) clearly delineates that the universe of representations Mu Sigma made to Walworth concerning the financial condition of the Company and the value of the Repurchased Stock was limited to those expressly "set forth" in the Repurchase Agreement. A059. This is sufficient to constitute an anti-reliance clause in Delaware, where courts have repeatedly ruled that anti-reliance provisions do not have to use "magic words" or "a specific formula, such as the two words 'disclaim reliance,'" in order to be enforceable. *Prairie Capital*, 132 A.3d at 41.

In *Prairie Capital*, for example, the Delaware Court of Chancery expressly held that anti-reliance provisions do not require "magic words" and

need not reference the word "reliance" to be enforceable: "Language is sufficiently powerful to reach the same end by multiple means, and drafters can use any of them to identify with sufficient clarity the universe of information on which the contracting parties relied." *Id.* at 51. The Court in *ChyronHego* agreed, ruling that an anti-reliance provision remarkably similar to the one at issue here—with no reference to the word "reliance"—when read in conjunction with an integration clause that was also similar, was "a clear statement that no extra-contractual representations were relied upon by the parties." 2018 WL 3642132, at *5.

The then-Chancellor of the Court of Chancery, Chancellor Bouchard, endorsed *Prairie Capital*'s ruling on this issue in two decisions. In *FdG Logistics LLC* v. *A&R Logistics Holdings, Inc.*, 131 A.3d 842 (Del. Ch.), *aff'd mem.*, 148 A.3d 1171 (Del. 2016), he ruled that "[t]he language to disclaim such reliance may vary, as the Court noted in *Prairie Capital*." *Id.* at 860. Similarly, in *IAC Search*, he ruled that "it is not necessary that such a provision be 'framed negatively' in terms of what the buyer did not rely on; it is sufficient if the contract states affirmatively what the buyer did rely on." 2016 WL 6995363, at *6 (quoting *Prairie Capital*, 132 A.3d at 51).

That is exactly what the Repurchase Agreement did. To repeat, Walworth expressly acknowledged in section 3(e)(i) that Mu Sigma had not made any representations to Walworth about the financial condition of the company or the value of the repurchased stock except as set forth in the

Repurchase Agreement itself (A059 (SRA § 3(e)), while Mu Sigma acknowledged that Walworth was relying on the representations by Mu Sigma that were set forth in the Repurchase Agreement (A061 (SRA § 4(d)), none of which are alleged to have been false or misleading.

C. Delaware Courts Have Barred Fraud Claims Based on Language Indistinguishable from the Language in the Repurchase Agreement

As noted above, Delaware courts have repeatedly barred fraud claims based on anti-reliance provisions phrased the same way as the language in the Repurchase Agreement. *See, e.g., IAC Search,* 2016 WL 6995363, at *6; *Prairie Capital,* 132 A.3d at 51; *ChyronHego*, 2018 WL 3642132, at *5. *ChyronHego* is particularly relevant here. As the circuit court correctly found, the language that the Delaware Court of Chancery held to be an effective anti-reliance clause in *ChyronHego* "very closely mirrors the language seen in section 3(e) of the Stock Repurchase Agreement." A032.

In *ChyronHego*, the agreement at issue contained the following provision, which defined the universe of representations each party made to the other as limited to the representations set forth in the agreement:

> Holdings and the Buyer agree that neither the Company, any Seller nor any of their respective Affiliates or advisors have made and shall not be deemed to have made any representation, warranty, covenant or agreement, express or implied, with respect to the Company, its business or the transactions contemplated by this Agreement, other than those representations, warranties, covenants and agreements explicitly set forth in this Agreement.

2018 WL 3642132, at *5. Reading this provision in conjunction with a standard integration clause, the Court in *ChyronHego* dismissed the buyers' "dog's breakfast of extra-contractual fraud claims," finding that the anti-reliance provision constituted "a clear statement that no extra-contractual representations were relied upon by the parties." *Id.* at *5, *7.

ChyronHego is not the only such decision. Delaware courts have similarly enforced anti-reliance language phrased the same way as section 3(e) in many other cases. For example, in *Collab9, LLC* v. *En Pointe Techs. Sales, LLC*, the Delaware Superior Court ruled that the following language—which likewise limited the universe of representations made to those contained in the agreement at issue—was "a clear anti-reliance clause": "Each party acknowledges that no other party has made any representations, warranties, agreements, undertaking or promises except for those expressly set forth in this Agreement or in agreements referred to herein or therein that survive the execution and delivery of this Agreement." 2019 WL 4454412, at *5 (Del. Super. Ct. Sept. 17, 2019).

In *IAC Search, LLC*, the Court of Chancery enforced the following language, which likewise limited the universe of representations made to those set forth in a section of the agreement at issue: "The Buyer acknowledges that neither the Seller nor any of its Affiliates or Representatives is making, directly or indirectly, any representation or warranty with respect to any data rooms, management presentations, due diligence discussions, estimates,

projections or forecasts involving the Transferred Group . . . unless any such information is expressly included in a representation or warranty contained in Article III." 2016 WL 6995363, at *5-7.

Delaware courts also enforced similar language in *Keystone Assocs. LLC* v. *Fulton*, 2019 WL 3731722, at *4 (D. Del. Aug. 8, 2019); *Affy Tapple, LLC* v. *ShopVisible, LLC*, 2019 WL 1324500, at *2-4 (Del. Super. Ct. Mar. 7, 2019); *Prairie Capital*, 132 A.3d at 50-51; and *Great Lakes Chem. Corp.* v. *Pharmacia Corp,* 788 A.2d 544, 552, 556 (Del. Ch. 2001).[8] The relevant provisions and the court's rulings in those decisions, as well as the decisions discussed above, are set forth in a chart appended hereto. *See* A102-A108.

D. The Appellate Court Erred in Finding that the Disclaimer Language in the Repurchase Agreement Was "Ambiguous"

Rather than recognize, as the circuit court did, that the provisions in the Repurchase Agreement discussed above added up to a clear disclaimer of reliance by Walworth on any extra-contractual statements, and rather than enforce that disclaimer to bar Walworth's fraud and breach of fiduciary duty

[8] Similarly, in *ABRY*, the parties' agreement included the following provision: "Acquiror acknowledges and agrees that neither the Company nor the Selling Stockholder has made any representation or warranty, expressed or implied, as to the Company or any Company Subsidiary or as to the accuracy or completeness of any information regarding the Company or any Company Subsidiary furnished or made available to Acquiror and its representatives, *except as expressly set forth in this Agreement* . . . ." 891 A.2d at 1041 (emphasis added). The Court explained that, because of this "critical provision," the buyer "was careful to amend its complaint and to premise its claims solely upon alleged misrepresentations of facts that are represented and warranted in the Stock Purchase Agreement itself." *Id.*

claims as a matter of law, the appellate court wrongly found that the language of the Repurchase Agreement was "ambiguous." A013 (Op. ¶ 35). This conclusion misreads both Delaware law and the parties' Agreement.

Under Delaware law, a contract is ambiguous "only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings," and courts should not "torture contractual terms to impart ambiguity where ordinary meaning leaves no room for uncertainty." *Rhone-Poulenc Basic Chems. Co.* v. *Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992). Here, the ordinary meaning of the language in section 3(e) leaves no room for uncertainty.

Indeed, neither the appellate court nor Walworth has ever offered any interpretation of what they believe this provision means if it is not an anti-reliance provision. *See, e.g.*, SEC C 721-723 (arguing that the anti-reliance clause is ambiguous, but identifying no alternate interpretation). Having failed to offer any alternative interpretation of section 3(e), let alone a reasonable one, Walworth should not be heard to argue that section 3(e) was ambiguous. *Mickman* v. *Am. Int'l Processing, L.L.C.*, 2009 WL 2244608, at *2 (Del. Ch. July 28, 2009) (interpreting LLC agreements in one party's favor, where the other party "offered no plausible alternative interpretation").

The appellate court nonetheless concluded that the Repurchase Agreement was ambiguous "as to which party, if any, disclaimed reliance," because the appellate court believed that: the Agreement did not contain "an

unqualified disclaimer from [Walworth's] point of view that it did not rely on the extra-contractual statements allegedly made by defendants"; and, relatedly, section 3(e) of the Repurchase Agreement "only expressly refers to Mu Sigma's 'reliance' and does not have comparable language referring to [plaintiff]." A013 (Op. ¶¶ 35-36) (citation and internal quotation marks omitted).

The fundamental flaw in the appellate court's analysis is that it ignored the clear language in subsection (i) of section 3(e), in which Walworth expressly agreed that no representations concerning the financial condition of the Company or the value of the repurchased stock had been made to it except as expressly set forth in the Repurchase Agreement. There is nothing ambiguous about that provision.

Instead, the appellate court supported its finding of "ambiguity" by misreading subsection (ii) of section 3(e). In that provision, Walworth merely acknowledged that "the Company [*i.e.*, Mu Sigma] is relying upon the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder." Based on this acknowledgment, the appellate court inexplicably concluded that section 3(e) "amounts to a disclaimer by defendants of what they were representing and relying upon." A013 (Op. ¶ 35).

That conclusion is clearly incorrect. Nothing in section 3(e) amounts to a disclaimer by Mu Sigma of anything. To the contrary, Walworth expressly

acknowledged in subsection (ii) that Mu Sigma was relying on all the representations that Walworth made in section 3—including Walworth's representations that it had received all the information it considered necessary or appropriate for deciding whether to sell its stock, and that Mu Sigma had not made any representations regarding the operation or financial condition of the Company except as set forth in the Agreement itself. A059 (SRA § 3(e)).

Had the appellate court focused on the text of subsection (i) and construed that provision in accordance with Delaware law, two conclusions would have followed:

First, the language in subsection (i) clearly circumscribes the universe of representations Mu Sigma made to Walworth concerning the financial condition of the Company and the value of the repurchased stock to representations Mu Sigma made in the Repurchase Agreement itself, and nothing other than those representations. As discussed above, anti-reliance provisions under Delaware law do not have to use "magic words" like "disclaim reliance" to be effective. *See supra*. I.B. Indeed, Delaware courts have construed agreements with language virtually identical to subsection (i)—particularly when accompanied by a standard integration clause—as a disclaimer of reliance on any extracontractual statements. *See supra.* I.C.

Second, contrary to the appellate court's finding, the language of section 3(e) is plainly from Walworth's "point of view." To repeat, section 3 of the Repurchase Agreement contains Walworth's representations and warranties,

and section 3(e), in particular, expressly states that "Stockholder [i.e., Walworth] acknowledges (i) that neither the Company, nor any of the Company's Related Parties . . . has made any representation . . . [etc.]." A059 (SRA § 3(e)); *see supra.* I.B.

This language conveys precisely what Delaware law requires for a disclaimer of reliance to be from the plaintiff's "point of view." *See IAC Search*, 2016 WL 6995363, at *6 (holding that buyer's acknowledgment that seller made no extra-contractual representations "comes from the perspective of the buyer," and thus was enforceable against the buyer); *REI Holdings, LLC* v. *LienClear-0001*, 2020 WL 6544635, at *8 (D. Del. Nov. 6, 2020) (holding that buyer's representation and warranty that it had not relied upon any information from the assignor other than as set forth in the parties' written agreement was "clear anti-reliance language from the point of view" of the buyer).

Without addressing these authorities, the appellate court attempted to distinguish *ChyronHego* on the ground that the anti-reliance provision there stated that "both parties 'agree' that no extracontractual representations or warranties were made." A014-A015 (Op. ¶¶ 39-40). First of all, it is not necessary that "both parties agree." As noted above, under Delaware law, it is only necessary—and entirely logical—that the disclaimer of reliance "come from the point of view of the aggrieved party." *IAC Search*, 2016 WL 6995363, at *6 (quoting *FdG Logistics*, 131 A.3d at 860). In any event, as the preface of

the Repurchase Agreement makes clear, Walworth and Mu Sigma each did agree to all of the provisions in Repurchase Agreement, including the anti-reliance language in section 3(e). *See* A058 (SRA p.1) ("The parties hereto hereby agree as follows: . . . .").

By ignoring subsection (i) and misreading subsection (ii), the appellate court found ambiguity where none exists and, contrary to Delaware law, "torture[d] [the] contractual terms to impart ambiguity where ordinary meaning leaves no room for uncertainty." *Rhone-Poulenc*, 616 A.2d at 1196.

In sum, the language in subsection (i) of section 3(e) is a clear disclaimer from Walworth's "point of view" of reliance on any extracontractual statements. The language in subsection (ii) of section 3(e), on the other hand, is merely an acknowledgment by Walworth that Mu Sigma was relying on the representations Walworth made in section 3, including the disclaimer of reliance in subsection (i) of section 3(e). In other words, subsection (ii) merely underscores the importance of Walworth's contractual representations to Mu Sigma, including Walworth's "anti-reliance" representation. It does not in any way change the plain meaning of subsection (i) under Delaware law. (Nor does either subsection have anything to do with Mu Sigma's own representations and warranties, which are contained in section 4 of the Agreement.)

Accordingly, the appellate court found the Repurchase Agreement "ambiguous" by misreading the Agreement and by misconstruing the applicable Delaware case law.

E. The Appellate Court Erred in Three Other Respects in Analyzing Section 3(e) of the Repurchase Agreement.

Apart from erroneously concluding that section 3(e) of the Repurchase Agreement was not from Walworth's point of view and was ambiguous, the appellate court committed three additional errors in analyzing section 3(e). They are discussed, in turn, below.

1. The Appellate Court Improperly Criticized the Citing of an Unpublished Delaware Opinion

First, the appellate court erred in criticizing Defendants and the circuit court for relying on *ChyronHego*—which contains an anti-reliance provision substantively identical to the one in the Repurchase Agreement—because it is an unpublished decision. A014 (Op. ¶ 38). The appellate court did so even though it acknowledged that "an unpublished decision is precedential under Delaware law," on the theory that, "if *ChyronHego* had been filed in Illinois, it could not be cited for this purpose." *Id.* (citing Ill. S. Ct. R. 23(e) (eff. Jan. 1, 2021)).

There is no logic to that view. *ChyronHego* was *not* filed in Illinois, but in Delaware—where, as the appellate court itself recognized (A014 (Op. ¶ 38)), such decisions are precedential. *See*, *e.g.*, *Crystallex Int'l Corp*. v. *Petróleos De Venezuela, S.A.*, 879 F.3d 79, 85 n.8 (3d Cir. 2018) ("Delaware courts give such [unpublished] opinions substantial precedential weight."); *ASR 2620-2630 Fountainview, LP* v. *ASR 2620-2630 Fountainview GP, LLC*, 582 S.W.3d 556, 562 n.8 (Tex. Ct. App. 2019) ("Under Delaware law, unpublished opinions from the Court of Chancery are precedential."); *Case Financial, Inc.* v. *Alden*,

2009 WL 2581873, at *6 n.39 (Del. Ch. Aug. 21, 2009) (unpublished opinions in Delaware "have precedential value"). Indeed, the Delaware Supreme Court itself regularly cites unpublished Court of Chancery opinions. *See*, *e.g.*, *Dohmen* v. *Goodman*, 234 A.3d 1161, 1170 (Del. 2020) (citing *Latesco, L.P.* v. *Wayport, Inc.*, 2009 WL 2246793 (Del. Ch. July 24, 2009)).

Further, this Court's Rule 23(e) deals only with decisions of this State's appellate court, and does not prohibit citation of unpublished precedential decisions of courts in other states. It does not even address the issue. As a result, it is no surprise that, in fact, Illinois courts—like Delaware courts—have routinely relied on unpublished Delaware opinions. *See*, *e.g.*, *Bowling Green Sports Ctr., Inc.* v. *G.A.G. LLC*, 2017 IL App (2d) 160656, ¶ 17; *Sherman* v. *Ryan*, 392 Ill. App. 3d 712, 725, 734 (1st Dist. 2009); *Patrick* v. *Wix Auto Co.*, 288 Ill. App. 3d 846, 850 (1st Dist. 1997); *Spillyards* v. *Abboud*, 278 Ill. App. 3d 663, 672 (1st Dist. 1996).

There is a particularly good reason why courts of this State look to decisions of the Delaware Court of Chancery, both published and unpublished. As numerous courts around the country have acknowledged, "Delaware has long been recognized as the fountainhead of American corporations and . . . its Courts of Chancery are known for their expert exposition of corporate law." *In re Ivan F. Boesky Sec. Litig.*, 129 F.R.D. 89, 97 (S.D.N.Y. 1990); *see also Menezes* v. *WL Ross & Co., LLC*, 744 S.E.2d 178, 185 n.5 (S.C. 2013) ("The Delaware Chancery Court is widely recognized as the nation's preeminent forum for the

determination of disputes involving the internal affairs of the thousands of corporations and business entities conducting a vast amount of the world's commercial affairs."); *In re Facebook, Inc. S'holder Derivative Priv. Litig.*, 367 F. Supp. 3d 1108, 1120 (N.D. Cal. 2019) ("[T]he Delaware Court of Chancery unquestionably has a well-recognized expertise in the field of state corporation law" (citation and internal quotation marks omitted)). Indeed, in part due to the quality of the Court of Chancery and the consistency of its decision-making, 1.6 million business entities, including Mu Sigma, are incorporated in Delaware, including nearly 68% of Fortune 500 companies, and 31 of 37 Fortune 500 companies headquartered in Illinois.[9]

2. The Appellate Court Erred by Finding Ambiguity Because Two Judges Disagreed Whether the Anti-Reliance Language Was Ambiguous

Second, the appellate court erred by ruling that "[t]he fact that two different judges [Judge Griffin and Judge Kubasiak] reasonably interpreted the same contract language differently shows that the [Repurchase Agreement] was ambiguous." A013 (Op. ¶ 36). A contractual provision is not rendered ambiguous merely because two judges disagree as to whether it is ambiguous. Were that the case, no appellate court could ever reverse a finding of ambiguity because such an outcome necessarily would entail two different judges interpreting the same contract differently. As Justice Pucinski

[9] *See* Delaware Division of Corporations, *2020 Annual Report Statistics*, https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2020-Annual-Report.pdf (last visited January 14, 2022); A109-A110.

acknowledged in her concurring opinion, "[o]ne of the judges could just be wrong." A025 (Op. ¶ 74).

In fact, the Delaware Supreme Court has ruled that "[a] mere split in the case law concerning the meaning of a term does not render that meaning ambiguous in the Delaware courts." *O'Brien* v. *Progressive Northern Ins. Co.*, 785 A.2d 281, 289 (Del. 2001). The Delaware Supreme Court also has not hesitated to find contract language unambiguous when other judges found the same language to be ambiguous or disagreed on its meaning. *See*, *e.g.*, *Manti Holdings, LLC* v. *Authentix Acquisition Co.*, 261 A.3d 1199, 1210-12, 1232-37 (Del. 2021) (finding contract term to be unambiguous while dissent disagreed); *Chicago Bridge & Iron Co.* v. *Westinghouse Elec. Co.*, 166 A.3d 912, 926-27 (Del. 2017), as revised (June 28, 2017) (disagreeing with Court of Chancery's interpretation of a contract term and finding the term unambiguous); *Pellaton* v. *Bank of New York*, 592 A.2d 473, 478-79 (Del. 1991) (disagreeing with court below that contract was ambiguous).

3. The Appellate Court Erred in Relying on Extrinsic Evidence and in Mischaracterizing that Evidence

Third, the appellate court further erred by supporting its finding of "ambiguity," and the purported need for a jury trial, by citing to extrinsic evidence. A015-A017 (Op. ¶¶ 41-45).

Under Delaware law, where, as here, "a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract or to create an ambiguity." *Eagle Indus., Inc.* v.

DeVilbiss Health Care, Inc., 702 A.2d 1228, 1232 (Del. 1997). The appellate court erroneously did exactly that when it considered a prior draft of the Repurchase Agreement as evidence that could cause a decision maker to vary the clear terms of the final version of the Repurchase Agreement. In short, there is simply no basis for considering extrinsic evidence at all where, as here, the language at issue is unambiguous.

But even if one considers the extrinsic evidence (and this Court should not), the negotiating history that the appellate court discussed actually undermines the court's conclusion.

That history shows that, in a draft sent to Mu Sigma's counsel, Walworth's counsel changed an earlier draft of the Repurchase Agreement that contained *no* representations and warranties by Mu Sigma by adding, in what became section 4 of the Agreement, several representations and warranties attributed to Mu Sigma, as well as an acknowledgment by Mu Sigma that Walworth was relying on those representations.[10] SUP SEC C160. To harmonize section 3 with that change, Walworth's counsel removed an earlier statement that Walworth was not relying on Mu Sigma in making its decision to sell its stock, because that statement was no longer consistent with the

[10] For example, Walworth's lawyer added a representation on the part of Mu Sigma that Mu Sigma was "not currently engaged in any discussions or conversations with any third parties which the Company has reason to believe would . . . result in the sale or issuance of any capital stock of the Company at an implied valuation or purchase price greater than the implied valuation of the Repurchased Stock." SUP SEC C160 (inserting § 4(d)).

addition of contractual representations and warranties that Walworth *was* relying on. *See* SUP SEC C159.

Significantly, at the same time section 4 was added to the Repurchase Agreement, Walworth's counsel left *un*changed Walworth's representation and acknowledgment that Mu Sigma had made no "representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of [Mu Sigma] or the value of the Repurchased Stock." SUP SEC C158-59. In doing so, Walworth confirmed that it was still disclaiming reliance on any statements by Mu Sigma *not* set forth in the Repurchase Agreement.

The appellate court made two errors in considering this extrinsic evidence. First, it was error to even consider the parties' negotiating history, because the language of the Repurchase Agreement adds up to a clear and unambiguous disclaimer of reliance by Walworth on any extra-contractual statements. *See supra.* I.B-C. Second, the appellate court wrongly concluded this history somehow supported Walworth's effort to avoid the anti-reliance language of the Agreement. It does no such thing. To the contrary, as noted above, it merely reinforces Walworth's disclaimer of reliance on any extra-contractual statements.[11]

[11] The appellate court decision also cited extrinsic evidence involving an email exchange between Rajaram and one of Mu Sigma's other executives, in which the other executive commented on Rajaram's initial email to Ryan Jr. about Mu Sigma potentially repurchasing some of Walworth's stock, stating: "[y]ou tempted [him] enough without trying to oversell." A016-A017 (Op. ¶ 44).

F. The Appellate Court Erred in Attempting to Distinguish Delaware Authority Holding that Anti-Reliance Provisions Bar Fraud Claims Based on Omissions

In the circuit court, Walworth argued as a fallback position that, even if the language in section 3(e) and other provisions of the Repurchase Agreement amounted to an anti-reliance provision that prevented Walworth from asserting claims based on extra-contractual statements, its fraud claims could survive on the theory that they were not based on what Rajaram said, but rather on what he did not say. SEC C2258-60. In other words, under this alternative theory, Walworth's fraud claims allegedly were based on "omissions," not misrepresentations.

The circuit court properly rejected this effort to end run the anti-reliance provision in the Repurchase Agreement through clever wordplay. A039-A040. While the appellate court did not disagree, it erred in trying to distinguish the cases the circuit court relied upon. A017-A021 (Op. ¶¶ 46-54).

Again, the appellate court's consideration of this extrinsic evidence was improper under Delaware law given the unambiguous language of the Repurchase Agreement. *See Eagle Indus.*, 702 A.2d at 1232. In any event, the emails shed no light on the proper interpretation of the Repurchase Agreement, and the concurrence rightly criticized the majority opinion for considering them. A025 (Op. ¶ 74). Nor do the emails evidence any wrongdoing or deception by Rajaram. To the contrary, every statement in Rajaram's initial e-mail (SEC C2360-61)—including a discussion of Walworth's favorable return on its investment, the sales prices of earlier repurchase transactions, the fact that Mu Sigma "weathered the recession well," and that the company was "moving from explosive growth to steady growth"—was entirely accurate.

As the circuit court found, Delaware courts have repeatedly rejected such attempts to avoid anti-reliance provisions. After all, as those courts have recognized, any representation claim can be restated as an "omissions" claim by alleging that the false statement "omitted the truth."[12] Accepting Walworth's "omissions" theory would thus entirely vitiate anti-reliance clauses.

The Delaware Court of Chancery addressed this precise issue in *Prairie Capital*. As the Court explained there, when a party agrees in writing that a specific set of written representations formed the basis for its decision to enter into an agreement, it cannot later sue on alleged "omissions":

> Recasting an allegation as an omission should not enable a party to circumvent an agreed-upon informational definition. . . . If the contract says that the buyer only relied on the representations in the four corners of the agreement, then that is sufficient. The party may prove that the representations in the four corners of the agreement were false or materially misleading, but the party cannot claim that information it received outside of the agreement, which was not the subject of a contractual representation, contained material omissions.

132 A.3d at 54-55.

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[12] *See, e.g., Prairie Capital*, 132 A.3d at 52-53 ("[A]ny misrepresentation can be re-framed for pleading purposes as an omission. If a plaintiff could escape a provision like the [anti-reliance clause] by re-framing an extra-contractual misrepresentation as an omission, then the clause would be rendered nugatory. When parties identify a universe of contractually operative representations in a written agreement, they remain in that universe. A party that is later disappointed with the written agreement cannot escape through a wormhole into an alternative universe of extra-contractual omissions.").

Adopting the reasoning of *Prairie Capital*, a Delaware federal court dismissed common law fraud claims insofar as they relied on extra-contractual omissions, explaining that "[e]very misrepresentation, to some extent, involves an omission of the truth." *Universal Am. Corp.* v. *Partners Healthcare Sols. Holdings, L.P.*, 176 F. Supp. 3d 387, 401, 403 (D. Del. 2016) (internal quotation marks omitted). More recently, another member of the Delaware Court of Chancery followed *Prairie Capital* as "controlling" to bar "Plaintiffs' fraudulent concealment and misrepresentation claims, even if those claims are based on . . . alleged omissions." *Midcap Funding X Trust* v. *Graebel Cos.*, 2020 WL 2095899, at *21 (Del. Ch. April 30, 2020).

The gravamen of *Prairie Capital* and the cases that follow it is that allowing parties who have agreed to an anti-reliance provision to sue for extra-contractual "omissions" would undermine the entire point of an anti-reliance clause—which is to define with specificity in the parties' contract the actionable statements on which the party is in fact relying.

Application of this principle is particularly appropriate here. The alleged "misrepresentation" at issue in this case involved vague statements to the effect that Mu Sigma's "growth prospects had severely dimmed." A081 (SAC ¶ 43). Walworth's "omissions" claim is, in effect, simply that Rajaram failed to say that Mu Sigma's growth prospects had *not* severely dimmed. Allowing a claim to proceed on such a basis would be an invitation to use mere wordplay to end run a bargained-for anti-reliance provision.

The rule barring the use of "omissions" claims to end-run an anti-reliance clause applies with particular force here because the Repurchase Agreement *does* address omissions. Walworth specifically represented and warranted that it "ha[d] received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock to the Company pursuant to this Agreement" (A059 (SRA § 3(e)), thus precluding a claim based on any omitted information. In addition, Walworth released Defendants from all "known or unknown" as well as "suspected and unsuspected" claims arising out of or in any way related to "events, acts, conduct *or omissions*" occurring prior to the Agreement. A061 (SRA § 5 (emphasis added)).

Significantly, in addressing Defendants' reliance on *Prairie Capital, Universal American, and Midcap Funding,* the appellate court did not question the logic of any of those cases. Instead, the appellate court attempted to distinguish this line of cases on two other grounds, both of which suffer from clear errors of law.

First, the appellate court found that, unlike in *Prairie Capital, Universal American, and Midcap Funding*, "there is no language in the [Repurchase Agreement] that specifically identified what information [Walworth] did or did not rely on in entering into the [Repurchase Agreement]." A017-A018 (Op. ¶¶ 47-48). This conclusion is plainly incorrect. As explained above, section 3(e)(i) identifies the precise universe of information

on which Walworth did and did not rely in entering into the Repurchase Agreement. Specifically, Walworth relied on the representations set forth in the Repurchase Agreement itself and not on anything outside of the Repurchase Agreement with respect to the company's financial condition or the value of its stock. *See supra.* I.B. Section 3(e)(i) did so, moreover, using language phrased the same way as provisions Delaware courts repeatedly have found sufficient to bar fraud claims based on extracontractual statements in other cases. *See supra.* I.C.

Second, after finding that *Prairie Capital, Universal American, and Midcap Funding* "involved arms-length transactions where there was no affirmative duty of disclosure," the appellate court held that the record "raises a question of fact" as to whether there was such a duty in this case. A019-A021 (Op. ¶¶ 49, 54). For the reasons explained in the next section, this conclusion is wrong as a matter of law, because Delaware law imposes such an affirmative duty of disclosure on fiduciaries only when "a request for stockholder action" is made, which did not occur here.

II. THE APPELLATE COURT ERRED IN CONCLUDING THAT MU SIGMA'S AND WALWORTH'S INDIVIDUALLY NEGOTIATED STOCK REPURCHASE MAY HAVE BEEN A "REQUEST FOR STOCKHOLDER ACTION"

The appellate court also erred in holding that, notwithstanding any anti-reliance language barring misrepresentation or breach of fiduciary duty claims, Walworth's claims might be viable because "there is a genuine issue of material fact regarding whether the [R]epurchase [T]ransaction was part of a request for stockholder action," in which case Rajaram may have had a fiduciary duty of full disclosure to Walworth. A021 (Op. ¶ 55). In so holding, the appellate court's decision was directly contrary to both Delaware law and a prior Appellate Division decision directly on point. As those decisions make clear, as a matter of law, the Repurchase Transaction was not a "request for stockholder action," and no "issue of material fact" exists as to this issue.

Under Delaware law, the duties of corporate fiduciaries change "in the specific context of the action the [fiduciary] is taking with regard to either the corporation or its shareholders." *Malone* v. *Brincat*, 722 A.2d 5, 10 (Del. 1998). As the appellate court correctly recognized, under Delaware law, "a fiduciary duty of disclosure" applies only in the context of a "request for stockholder action," such as a shareholder vote or a proxy contest; but such a duty does *not* apply in connection with an individually negotiated transaction between a corporation and one of its shareholders, even if a company official who is a fiduciary negotiates the transaction. A019-A020 (Op. ¶¶ 51-53).

As former Chief Justice Strine, then a Vice Chancellor, explained: "Even fiduciaries have no distinctive state law duty to disclose material developments with respect to the company's business in the absence of a request for 'stockholder action,'" which refers to a broad request to stockholders on such things as a stockholder vote, a tender offer, a proxy, or similar corporate communications that do not involve a negotiation with an individual stockholder. *Metro Commc'n Corp. BVI* v. *Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 153, 156 (Del. Ch. 2004) (citation and internal quotation marks omitted).

Delaware courts have repeatedly described the reason for the different treatment afforded to a "request for stockholder action" as opposed to transactions with individual stockholders. Specifically, Delaware courts have noted that the fiduciary duty of full disclosure applies only in the limited context of a "request for stockholder action" because, in those situations, individual stockholders do not have the opportunity to bargain for additional information as they do in connection with an individually negotiated transaction. As the Delaware courts have explained:

> The rule requiring calls for stockholder action to be accompanied by full and fair disclosure of all material information regarding the decision presented to the stockholders is premised on the collective action problem that stockholders, in the aggregate, are faced with when asked to vote or tender their shares. In such a situation, it would be impractical, if not impossible, for each stockholder to ask and have answered by the corporation its own set of questions regarding the decision presented for consideration. . . . These same factors do not, however, come into play when the corporation asks a stockholder as an individual to

> enter into a purchase or sale. There, the stockholder may refuse to do so until he is satisfied the corporation has given him sufficient information to evaluate the decision presented to him.

Latesco, L.P. v. *Wayport, Inc.*, 2009 WL 2246793, at *6 (Del. Ch. July 24, 2009).

Here, there can be no question that, as a matter of law, the Stock Repurchase involved an individually negotiated transaction—that is, a stock repurchase entered into between the corporation and a single, highly sophisticated shareholder, after two months of negotiations between the parties and their counsel—and, accordingly, that no "fiduciary duty of disclosure" applied.

In fact, the Illinois appellate court considered this precise issue nearly two decades ago in a case involving Delaware law and squarely held that a fiduciary duty of full disclosure did not apply to a stock repurchase transaction entered into with individual shareholders. In *Sims* v. *Tezak*, 296 Ill. App. 3d 503, 507-08 (1st Dist. 1998), the appellate court expressly held that an individually negotiated repurchase of shares from minority shareholders was not a request for "shareholder action" and therefore did not give rise to an affirmative fiduciary duty of full disclosure. The Delaware Court of Chancery cited *Sims* with approval in *Latesco*, 2009 WL 2246793, at *6 n.18.

The appellate court here not only failed to explain the reasons for its departure from *Sims*, but its opinion nowhere even mentioned that decision, even though the circuit court had expressly relied upon it (A038), and the parties discussed it at length in their briefs.

Further, while this case was pending before the appellate court, the Delaware Supreme Court reaffirmed these very principles in *Dohmen* v. *Goodman,* 234 A.3d 1161 (Del. 2020), citing with approval both *Sims* and *Latesco*. *Id*. at 1170-71 & n.42. In *Dohmen*, the Delaware Supreme Court held that no "fiduciary duty of disclosure" existed where a fiduciary negotiated with a single investor concerning his investment. *Id.* at 1171. In so holding, the Delaware Supreme Court expressly ruled that it "agree[d] with the Court of Chancery's analysis in [*Latesco*] and its decision not to impose an affirmative fiduciary duty of disclosure for individual transactions." *Id.*

In light of *Dohmen*, *Sims*, and *Latesco*, the appellate court's conclusion that the Stock Repurchase here *might* have been a "request for stockholder action" is clearly wrong. The undisputed evidence showed that: (i) the Repurchase Agreement governing the Stock Repurchase was an individually negotiated agreement solely between Mu Sigma and Walworth (A058 (SRA p. 1)); (ii) the parties expressly agreed that the Agreement was "the product of negotiations between the parties hereto represented by counsel" (A062 (SRA § 6(d)); (iii) Walworth itself cited evidence showing that its counsel bargained for and obtained representations and warranties by Mu Sigma (SUP SEC C157-62) and (iv) the allegedly misleading statements were made solely to Walworth and not to other stockholders (C112-114 (FAC ¶¶ 33-38)).

Thus, under *Dohmen*, *Sims*, and *Latesco*, there is no question that this was an individually negotiated transaction in which Walworth was free to

bargain for any information that it thought necessary to decide whether to sell its shares; as a matter of law, that type of transaction is not a "request for stockholder action."

The appellate court's ruling that the Stock Repurchase may nonetheless have been a request for stockholder action simply because Walworth "presented evidence that defendants intended to extend their repurchase offer to an unspecified number of other stockholders" (A020 (Op. ¶ 54)) cannot be squared with these controlling decisions.

Whether Mu Sigma intended to offer—or even did offer (which it did not)—the same terms to other shareholders does not change the fact that the transaction with Walworth was individually negotiated, and that Walworth had the opportunity to and did bargain for the disclosures it wanted. For the reasons *Latesco* and *Dohmen* describe—that is, the ability of the shareholder to request whatever information it wanted before entering into the transaction—the Stock Repurchase was not a "request for stockholder action," but, rather, an individually negotiated transaction. After all, it is not just undisputed, but affirmatively alleged by Walworth, that the parties here not only had an opportunity to bargain, they in fact did so. A086 (SAC ¶ 57); SEC C2363; SUP SEC C157-162; C4156-4157.

The appellate court thus erred in concluding that summary judgment could be denied on the ground that the Stock Repurchase *may* have been a "request for stockholder action," and that there was a genuine issue of material

fact that precluded ruling on this issue as a matter of law. The facts establishing that the Stock Repurchase was an individually negotiated transaction and not a "request for stockholder action" were undisputed, and the circuit court was correct in deciding as matter of law that it was not a "request for stockholder action."[13] A035, A037-A039.

For the many Illinois companies that are incorporated in Delaware and that frequently engage in similar transactions with individual investors, this erroneous appellate court ruling creates confusion as to the duties of corporate fiduciaries where there was clarity before. Unless reversed, it will stand as new precedent that is at odds with both the appellate court's own prior precedent in *Sims* and well-established Delaware law, including the Delaware Supreme Court's recent decision in *Dohmen*. For this reason as well, the appellate court's reversal of the circuit court's dismissal of Walworth's fraud and fiduciary duty claims should be reversed.

[13] Interestingly, the appellate court itself recognized that, under *Dohmen*, without proof of reliance, even if a fiduciary duty of full disclosure existed and was breached (which was not the case here), a plaintiff would not be entitled to compensatory damages, as such damages are only available with proof of reliance. As the appellate court noted, "[t]o recover compensatory damages for a breach of the fiduciary duty of disclosure, a stockholder must prove reliance, causation, and damages." A020 (Op. ¶ 52); *Dohmen*, 234 A.3d at 1168, 1175. For the reasons set forth above, Walworth cannot do that here, because of the anti-reliance language in the Repurchase Agreement.

III. THE APPELLATE COURT ERRED IN REVERSING THE TRIAL COURT'S RULING THAT WALWORTH'S RELEASE BARS ITS BREACH OF CONTRACT AND UNJUST ENRICHMENT CLAIMS

Finally, as a result of the erroneous conclusions discussed above, the appellate court erred in declining to enforce Walworth's general release of all claims against Mu Sigma and its Related Parties in the Repurchase Agreement.

As the circuit court correctly ruled, Walworth's release (in addition to supporting the dismissal of Walworth's fraud and fiduciary duty claims) unambiguously bars the breach of contract and unjust enrichment claims that Walworth asserted in its Second Amended Complaint. A049-A051. But, because the appellate court wrongly concluded that the anti-reliance provision in the Repurchase Agreement was not enforceable as a matter of law to bar Walworth's fraud claims, and because it wrongly concluded the Stock Repurchase may have been a "request for stockholder action," it mistakenly reasoned that it was "premature" for the circuit court to enforce the release, because that, too, supposedly may have been "procured by fraud." A013, A020-A021, A023 (Op. ¶¶ 35, 54, 64).

As explained above, however, the circuit court did *not* err in ruling that the anti-reliance provisions of the Repurchase Agreement barred Walworth's fraud and fiduciary duty claims. Nor did the circuit court err in finding that the Stock Repurchase was not a "request for stockholder action." Accordingly, if Walworth cannot properly assert fraud and breach of fiduciary duty claims, then the release should be applied as written to foreclose Walworth's other

claims. *See ADM Alliance Nutrition, Inc.* v. *SGA Pharm Lab, Inc.*, 877 F.3d 742, 749-50 (7th Cir. 2017) (rejecting argument that a sophisticated party can avoid a release based upon extra-contractual representations that the party had agreed it was not relying upon); *Sequel Capital, LLC* v. *Pearson*, 2012 WL 2597759, at *4-5 (N.D. Ill. July 3, 2012) (same). Indeed, this is all the more the case because Walworth's fraudulent inducement argument in regard to the release is based on the same alleged extra-contractual statements that its overall fraud claims are based on. *Compare* A088 (SAC ¶ 64), *with* A089 (SAC ¶ 72).

Accordingly, the circuit court correctly ruled that Walworth's release bars its breach of contract and unjust enrichment claims, and the appellate court erred in reversing that ruling.

Finally, Defendants respectfully also note that the circuit court correctly ruled that Walworth's unjust enrichment claim also failed for other reasons as well, under both Illinois and Delaware law. A054-A056. First, in both states, unjust enrichment claims are barred where, as here, a written agreement governs the parties' transaction. *See* A054 (citing *People ex rel. Hartigan* v. *E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992); *Dietrichson* v. *Knott*, 2017 WL 1400552, at *6 (Del. Ch. Apr. 19, 2017)). And, second, also in both states, where an unjust enrichment claim is based upon the same allegations as a claimant's fraud or other tort claims, and those claims are dismissed, then the unjust enrichment claim fails as well. *See* A054-A055 (citing *Cleary* v. *Philip Morris*

Inc., 656 F.3d 511, 517 (7th Cir. 2011) (applying Illinois law)); *see also, e.g.*, *Beck & Panico Builders, Inc.* v. *Straitman*, 2009 WL 5177160, at *7 (Del. Super. Ct. Nov. 23, 2009).

CONCLUSION

For the reasons discussed above, it is abundantly clear under applicable Delaware case law that the circuit court correctly dismissed all of Walworth's claims, and that the appellate court erred in reversing the circuit court's rulings. The appellate court's rulings should therefore be reversed in their entirety, and the circuit court's rulings dismissing all of Walworth's claims with prejudice should be reinstated.

Defendants respectfully submit that, in view of the clarity of the Delaware case law on these issues, this Court can and should consider the cases itself and reverse the appellate court's erroneous opinion. However, if the Court has any doubt as to what the applicable principles of Delaware law are and how to apply them in this case, Defendants note that the Court has the option to certify questions of law presented by this appeal for resolution by the Delaware Supreme Court, pursuant to Delaware Supreme Court Rule 41, an analogue to this Court's Rule 20(a), and that it would be appropriate for this Court to do so.

Dated: January 14, 2022

Respectfully submitted,

Defendants Mu Sigma, Inc. and Dhiraj C. Rajaram

By: /s/ *James R. Figliulo*
One of Their Attorneys

John C. Dwyer
Tijana M. Brien
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Telephone: (650) 843-5000
dwyerj@cooley.com
tbrien@cooley.com

Martin S. Schenker
Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Telephone: (415) 693-2000
mschenker@cooley.com

Thomas L. Kilbride
PO Box 4266
Rock Island, IL 61204
Telephone: (309) 788-2800
tom.k.email.acct@gmail.com

Allan J. Arffa
Jeffrey J. Recher
Robert N. Kravitz
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
aarffa@paulweiss.com
jrecher@paulweiss.com
rkravitz@paulweiss.com

James R. Figliulo
Peter A. Silverman
Figliulo & Silverman, P.C.
10 South La Salle Street, Suite 3600
Chicago, IL 60603
Telephone: (312) 251-4600
jfigliulo@fslegal.com
psilverman@fslegal.com

CERTIFICATION OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,817 words.

/s/ *James R. Figliulo*

APPENDIX

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2021 IL App (1st) 191937

No. 1-19-1937

Opinion filed March 30, 2021.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WALWORTH INVESTMENTS-LG, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 2016 L 2470
	)	
MU SIGMA, INC., and DHIRAJ C. RAJARAM,	)	The Honorable
	)	John C. Griffin and Daniel J.
Defendants-Appellees.	)	Kubasiak,
	)	Judges Presiding.

JUSTICE LAVIN delivered the judgment of the court, with opinion.
Presiding Justice Fitzgerald Smith concurred in the judgment and opinion.
Justice Pucinski specially concurred, with opinion.

OPINION

¶ 1 Walworth Investments-LG, LLC (plaintiff), a former stockholder, brought this action against Mu Sigma, Inc. (Mu Sigma), a privately held data analytics company, and Dhiraj C. Rajaram, the company's founder and chief executive officer (CEO) (collectively, defendants), alleging that they committed what is best described as a reverse "Madoff scheme" to induce plaintiff to sell its substantial ownership interest in the company.

¶ 2 The circuit court ultimately granted summary judgment to defendants on plaintiff's claims for fraudulent inducement, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty on the basis that they were precluded by antireliance language contained in the parties' written agreement. The circuit court then dismissed plaintiff's remaining claims for breach of contract and unjust enrichment, holding that they were barred by a general release provision found in the same agreement. In addition, the court held that plaintiff's unjust enrichment claim was not sustainable without the fraud claims on which it was based. For the reasons that follow, we reverse and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 The following facts were gleaned from the parties' pleadings, depositions, affidavits, and other supporting documents and were presented to the court below.

¶ 5 In 2005, Rajaram, as founder and CEO, incorporated Mu Sigma, a new data analytics company headquartered in Northbrook, Illinois. The next year, plaintiff, an investment company acting on a behalf of a prominent Chicago family, purchased over two million shares of series B preferred stock from Mu Sigma, totaling a 21% ownership stake in the company. According to plaintiff, this investment significantly aided Mu Sigma's growth over the next few years. For example, in December 2008, Mu Sigma generated gross revenues totaling nearly $14 million, which was more than 60 times the company's gross revenues of $219,000 generated the year before plaintiff invested. Additionally, Mu Sigma developed an elite clientele, which included companies like Dell, Microsoft, and Wal-Mart, among others. Meanwhile, plaintiff helped Mu Sigma secure another big investor.

¶ 6 In August 2008, Mu Sigma raised an additional $15 million through the sale of more than 8 million newly created shares of class C preferred stock for $1.72 per share. Mu Sigma also

repurchased some of Rajaram's stock shares for the same price. Around that time, plaintiff acquired over a million additional shares of series B preferred stock.

¶ 7 In October 2009, Mu Sigma made an unsolicited offer to its investors, including plaintiff, to repurchase up to 3 million shares of preferred stock for 67 cents per share. According to plaintiff, there was nothing in Mu Sigma's financial reports explaining the sudden, dramatic decrease in the company's stock value, which was less than half the price Mu Sigma paid to repurchase Rajaram's stock shares the year before. In any event, plaintiff declined the repurchase offer.

¶ 8 Nearly six months later, Rajaram approached plaintiff about repurchasing its stock shares. According to plaintiff, Rajaram said that Mu Sigma unfortunately would not be the "great success" they had hoped. Mu Sigma was losing its biggest customer, and the company's growth prospects had severely diminished. Consequently, Mu Sigma was unlikely to add new customers to offset its lost revenue. Instead, any future growth would be generated by purchasing other companies. Mu Sigma then offered to repurchase plaintiff's shares for $1.20 each. Plaintiff agreed to the proposal.

¶ 9 On May 27, 2010, the parties executed the stock repurchase agreement (SRA). Pursuant to that agreement, Mu Sigma purchased all of plaintiff's shares of series B preferred stock at $1.20 per share, for a total of $9,317,646.

¶ 10 A few months later, plaintiff learned that Rajaram had been interviewed by the Chicago Sun-Times newspaper. Contrary to what he told plaintiff, Rajaram told the Sun-Times that he predicted "huge growth" for Mu Sigma, estimating that the company would "double its revenues to $100 million *** in the next three years." When plaintiff confronted Rajaram about this

inconsistency, however, he had no explanation. And unfortunately for plaintiff, Mu Sigma's growth far exceeded Rajaram's prediction for it in the Sun-Times.

¶ 11 The reality was that Mu Sigma was thriving and experiencing incredible growth. Although Mu Sigma lost one customer, the company continued to experience rapid growth with existing clients, and it even attracted new clients, many of which were believed to be in the pipeline when Rajaram approached plaintiff about repurchasing its shares. And contrary to what Rajaram told plaintiff, Mu Sigma never purchased outside companies to generate growth. Instead, Mu Sigma grew organically, adding some of the world's largest and best-known companies as clients. By 2015, Mu Sigma was generating over $250 million in annual revenue and more than $125 million in annual cash profits.

¶ 12 In 2016, plaintiff filed the instant suit, asserting claims against defendants for fraudulent inducement, fraudulent concealment, and negligent misrepresentation. Plaintiff also asserted a claim against Rajaram for breach of fiduciary duty and claims against Mu Sigma for breach of contract and unjust enrichment.

¶ 13 Count I of plaintiff's first amended complaint alleged that defendants fraudulently induced plaintiff to sell its shares by knowingly making false statements about Mu Sigma's financial health and future prospects that they failed to correct. Counts II and III for fraudulent concealment and negligent misrepresentation alleged that defendants intentionally omitted and concealed material facts related to Mu Sigma's value, among other things, that Rajaram had a fiduciary duty to disclose in order to induce plaintiff to enter into the SRA. Count IV alleged that Mu Sigma was unjustly enriched as a result of its wrongdoing because it benefitted from the SRA to plaintiff's detriment. Count V alleged that Rajaram breached his fiduciary duty owed to plaintiff by failing to adequately disclose material information about Mu Sigma's value and

business prospects and by making false and misleading statements that induced plaintiff to enter into the SRA. Count VI alleged that Mu Sigma breached the SRA by falsely stating in the agreement that it was not engaged in any discussions or conversations with any third parties that could result in the sale or issuance of any capital stock in the company at an implied valuation or purchase price greater than the implied valuation of the stock repurchased from plaintiff. Last, count VII for punitive damages alleged that defendants' conduct was wilful and wanton.

¶ 14 Defendants moved to dismiss plaintiff's first amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)), asserting, in the main, that plaintiff's claims were barred by the SRA because the agreement contained effective antireliance language and a general release provision. The circuit court granted defendants' motion in part, dismissing, without prejudice, the unjust enrichment and wilful and wanton misconduct counts (IV and VII) that were pleaded in the first amended complaint. The court, however, denied defendants' motion as to the remaining counts (I, II, III, V and VI), concluding that defendants did not meet their burden of showing the SRA contained clear, unambiguous antireliance language or that plaintiff was aware of their alleged misconduct when it signed the agreement. The circuit court subsequently denied defendants' motion to reconsider its ruling.

¶ 15 Meanwhile, defendants filed an answer to plaintiff's first amended complaint with a counterclaim for breach of contract, alleging that plaintiff breached the SRA by filing suit.

¶ 16 In December 2017, defendants moved for summary judgment on plaintiff's fraud and fiduciary duty claims (counts I, II, III and V) pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2016)), asserting that no genuine issue of material fact existed because the SRA contained effective antireliance language, Rajaram never owed plaintiff a fiduciary duty of disclosure, and fraudulent concealment was not a recognized cause of action in Illinois. The

circuit court disagreed, concluding that the language employed in the SRA did not amount to a clear and unambiguous disclaimer of reliance from plaintiff's point of view because it "only expressly refers to Mu Sigma's 'reliance' " and "does not have comparable language referring to [plaintiff]." This raised question of facts concerning the parties' intent and which party, if any, disclaimed reliance, precluding summary judgment. Additionally, the court noted that Illinois had repeatedly recognized a cause of action for fraudulent concealment. The circuit court, therefore, denied defendants' summary judgment motion on March 29, 2018.

¶ 17 We note that thus far, Judge John C. Griffin presided over the case in the circuit court. Shortly after denying defendants' summary judgment motion, however, Judge Griffin was appointed to the Illinois Appellate Court. The case was then assigned to Judge Daniel J. Kubasiak in the circuit court.

¶ 18 Once the case had been transferred to Judge Kubasiak, defendants filed a motion to reconsider Judge Griffin's ruling that was made more than 30 days earlier, denying their summary judgment motion. Even though defendants did not assert any new facts in their motion, Judge Kubasiak granted it, concluding that plaintiff's fraud-related claims were barred because the SRA contained a sufficient antireliance provision notwithstanding that it did "not expressly contain language as to [plaintiff's] 'non-reliance.' " Judge Kubasiak then granted summary judgment to defendants on those claims (counts I through III) but denied it as to plaintiff's unjust enrichment and breach of fiduciary duty claims (counts IV and V) on the basis that reliance was not an element of those causes of action.[1] The circuit court's ruling was entered on October 9, 2018.

[1]Plaintiff's unjust enrichment claim (count IV) was never the subject of defendants' summary judgment motion or their motion to reconsider, so it is unclear why the circuit court ruled on it.

¶ 19 Defendants subsequently filed a motion to reconsider the circuit court's ruling denying summary judgment on plaintiff's unjust enrichment and breach of fiduciary duty claims (counts IV and V). In their motion, defendants asserted that plaintiff's unjust enrichment claim had previously been dismissed by Judge Griffin (see *supra* ¶ 14) and that reliance was not an element of plaintiff's breach of fiduciary claim that was nevertheless barred the SRA's general release provision. The same day, plaintiff moved for leave to file a second amended complaint pursuant to section 2-616(a) of the Code (735 ILCS 5/2-616(a) (West 2016)), seeking to replead its unjust enrichment claim that had been dismissed, assert an additional breach of contract claim against Mu Sigma, and clarify that it was pursuing punitive damages as a remedy, not as a separate cause of action.

¶ 20 Following arguments from the parties, the circuit court granted defendants' motion to reconsider, concluding that plaintiff's breach of fiduciary claim was barred by the SRA because it required proof of reliance, contrary to what the court held earlier. The circuit court also granted plaintiff leave to amend its complaint on April 2, 2019.

¶ 21 Thereafter, plaintiff filed its second amended complaint, which contained six counts. Counts I through IV preserved plaintiff's claims for fraudulent inducement, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty that were previously dismissed on summary judgment. Count V alleged that Mu Sigma breached the investor rights agreement, which was a separate contract between plaintiff and Mu Sigma, by failing to provide the financial statements and reports requested by plaintiff and by intentionally concealing such financial information from March 2010 to May 2010. Count VI reasserted plaintiff's unjust enrichment claim but against both defendants this time.

¶ 22 Defendant moved to dismiss plaintiff's second amended complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2018)), asserting that its claims for breach of contract and unjust enrichment were barred by the SRA's general release provision, and furthermore, that plaintiff failed to state a claim for unjust enrichment. The circuit court agreed and granted defendants' motion, dismissing plaintiff's second amended complaint with prejudice on August 30, 2019. The court's order stated, "[t]his is a final order disposing of the case in its entirety."

¶ 23 Plaintiff now appeals.

¶ 24 ANALYSIS

¶ 25 On appeal, plaintiff contends that the circuit court erred in dismissing its claims against defendants because there was no clear, unambiguous antireliance provision in the SRA and, furthermore, the general release provision was unenforceable as a product of fraud.

¶ 26 Before proceeding to the merits, however, we must first address this court's jurisdiction. The record on appeal does not indicate that defendants' breach of contract counterclaim was ever resolved, nor does it contain a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that was no just reason to delay either enforcement or appeal. Although this generally would deprive us of jurisdiction, it is apparent here that defendants abandoned their counterclaim by not engaging in any meaningful pursuit of it, by not objecting to the circuit court's August 30, 2019, order that disposed of the case in its entirety, and by not raising the issue on appeal. Accordingly, despite the lack of a formal resolution of defendants' counterclaim, we conclude that we have jurisdiction over this appeal. See *Cribbin v. City of Chicago*, 384 Ill. App. 3d 878, 886 (2008) ("When a party abandons a claim, and the trial court does not retain jurisdiction to

consider that claim when it enters judgment, that judgment may be considered final even if the abandoned claim is not explicitly mentioned in the judgment order.").

¶ 27 We also note the parties agree that Delaware law governs the issues on appeal related to the SRA's general release provision and alleged antireliance provision. Likewise, the parties agree that it makes no difference in the result whether Illinois or Delaware law governs the issues concerning plaintiff's unjust enrichment claim, but as they both focus almost exclusively on Illinois law, we will do the same.

¶ 28 I. Summary Judgment

¶ 29 Plaintiff first argues that the circuit court erroneously granted summary judgment to defendants on its fraudulent inducement, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty claims because the SRA did not effectively disclaim its reliance on Rajaram's alleged extra-contractual representations nor was reliance an element of its breach of fiduciary claim. Plaintiff further argues that, even if the SRA contained an effective disclaimer of reliance, it did not cover defendants' misconduct and should not be enforced in the context of a fiduciary relationship.

¶ 30 Summary judgment should not be granted unless the pleadings, depositions, and admissions on file, together with any affidavits, reveal no genuine issue of material fact such that the movants are entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Monson v. City of Danville*, 2018 IL 122486, ¶ 12. Simply put, if the record reveals a dispute as to any material issue of fact, summary judgment must be denied regardless of the lower court's belief that the movants will or should prevail at trial. *Ignarski v. Norbut*, 271 Ill. App. 3d 522, 525 (1995). "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might

draw different inferences from the undisputed facts." (Internal quotation marks omitted.) *Monson*, 2018 IL 122486, ¶ 12. Furthermore, courts must strictly construe the record against the movants. *Id.* We review the circuit court's summary judgment ruling *de novo*. *Id.*

¶ 31 The fundamental rules of contract interpretation are well settled. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). A court's primary objective in construing a contract is to ascertain and give effect to the parties' intentions as expressed through that contract's language. *Id.* If the contract's language is susceptible to more than one meaning, however, it is ambiguous. *Id.* Although a court determines whether or not a contract is ambiguous as a matter of law, the resolution of any ambiguity is a question of fact that must be decided by a jury. *Omnitrus Merging Corp. v. Illinois Tool Works, Inc.*, 256 Ill. App. 3d 31, 34 (1993); see also *Pepper Construction Co. v. Transcontinental Insurance Co.*, 285 Ill. App. 3d 573, 576 (1996) (where the parties' contract was ambiguous, the circuit court erred in resolving the issue on summary judgment).

¶ 32 Like Illinois, "Delaware adheres to the objective theory of contracts, i.e., a contract's construction should be that which would be understood by an objective, reasonable third party." (Internal quotation marks omitted.) *Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010). Moreover, under Delaware law, a contract must contain unambiguous antireliance language to "bar a contracting party from asserting claims for fraud based on representations outside the four corners of the agreement." *FdG Logistics LLC v. A&R. Logistics Holdings, Inc.*, 131 A.3d 842, 860 (Del. Ch. 2016). This requires that the language employed amount to a clear and unambiguous disclaimer from the aggrieved party's point of view that it did not rely on extracontractual statements in deciding to sign the contract. *Id.* In this regard, the distinction between a disclaimer of reliance from the point of view of parties accused of fraud and the point

of view of a counterparty who believes it has been defrauded "is critical *** because of the strong public policy against fraud." *Id.* "Because of that policy concern, we have not given effect to so-called merger or integration clauses that do not clearly state that the parties disclaim reliance upon extra-contractual statements." *Abry Partners V, L.P. v. F&W Acquisition LLC*, 891 A.2d 1032, 1058 (Del. Ch. Ct. 2006). Therefore, murky, unclear, or ambiguous provisions, as well as standard integration clauses without specific antireliance language, are not effective. *Id.* at 1059.

¶ 33 Here, the circuit court's ruling and the parties' respective arguments relied on three provisions in the SRA. First, the SRA contained a provision titled "Representations and Warranties of Stockholder" in section 3(e), which provided:

> "(e) *Disclosure of Information.* Stockholder [plaintiff] has received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock to the Company [Mu Sigma] pursuant to this Agreement. Stockholder acknowledges (i) that neither the Company, nor any of the Company's Related Parties (as defined below), has made any representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock and (ii) that the Company is relying upon the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder. For purposes of this Agreement, "Related Parties" shall mean current and former directors, officers, partners, employees, attorneys, agents, successors, assigns, current and former stockholders (including current and former limited partners, general

partners and management companies), owners, representatives, predecessors, parents, affiliates, associates and subsidiaries."

Next, the SRA contained a general release provision in section 5, which provided:

"*5. Release.* Stockholder hereby forever generally and completely releases and discharges the Company and its Related Parties and their respective successors and assigns from any and all claims, liabilities, obligations and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular of and from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, that arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement; provided, however, that the foregoing release shall not apply to claims relating to Stockholder's right to payment by the Company."

Third, the SRA contained a standard integration provision in section 6, which provided:

"(*g*) This Agreement contains the complete agreement and understanding between the parties as to the subject matter covered hereby and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way."

¶ 34 In its October 9, 2018, order, the circuit court concluded that section 3(e) of the SRA, coupled with the general release in section 5, sufficiently disclaimed plaintiff's reliance on defendants' alleged representations or omissions made outside the four corners of the agreement. We disagree.

¶ 35 What is absent from that language is an unqualified disclaimer from plaintiff's point of view that it did not rely on the extra-contractual statements allegedly made by defendants. Rather, section 3(e) amounts to a disclaimer by defendants of what they were representing and relying upon: "Stockholder acknowledges *** (ii) that *the Company is relying upon* the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder." (Emphasis added.) How would plaintiff know what defendants were relying on or whether or not they were relying on their own representations (or misrepresentations) contained in the agreement? Even if plaintiff did somehow know what defendants were relying on, it could not disclaim reliance for them. Thus, we conclude that the SRA's language was ambiguous as to which party, if any, disclaimed reliance, precluding summary judgment.

¶ 36 Furthermore, Judge Griffin concluded, like we have, that the SRA was ambiguous because the language employed in section 3(e) "only expressly refers to Mu Sigma's 'reliance' " and "does not have comparable language referring to [plaintiff]." Yet, Judge Kubasiak concluded that the same language sufficiently disclaimed plaintiff's reliance even though section 3(e) "does not expressly contain language as to [plaintiff's] 'non-reliance.' " The fact that two different judges reasonably interpreted the same contract language differently shows that the SRA was ambiguous. See *Eagle Industries, Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997) ("When the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings, there is ambiguity.").

¶ 37 Defendants here have conveniently ignored that these conflicting rulings refute their claim that the SRA contained an unambiguous antireliance provision. Instead, they argue that

ChyronHego Corp. v. Wight, No. 2017-0548-SG, 2018 WL 3642132, at *1 (Del. Ch. Ct. 2018), which was issued after Judge Griffin's ruling, supports their claim. It does not.

¶ 38 Initially, it should be noted that *ChyronHego* is an unpublished decision. Although an unpublished decision is precedential under Delaware law, if *ChyronHego* had been filed in Illinois, it could not be cited for this purpose. See Ill. S. Ct. R. 23(e) (eff. Jan. 1, 2021). To the extent that an unpublished decision may be cited for precedential value, there are ample Delaware published decisions that address the same issues found in *ChyronHego* that are more appropriate. We will proceed to consider defendants' claim in light of the *ChyronHego* case, but the parties would be wise to adhere to this court's procedural rules in the future.

¶ 39 In *ChyronHego*, the Delaware chancery court considered whether the parties' stock purchase agreement contained an effective antireliance provision, emphasizing that a "contract must contain language that, when read together, can be said to add up to a clear anti-reliance clause by which the plaintiff has contractually promised that *it did not rely* upon statements outside the contract's four corners in deciding to sign the contract." (Emphasis added.) *ChyronHego Corp.*, 2018 WL 3642132, at *4. The language in that agreement stated, in relevant part, that:

> "Holdings and the Buyer agree that neither the Company, any Seller nor any of their respective Affiliates or advisors have made and shall not be deemed to have made any representation, warranty, covenant or agreement, express or implied, with respect to the Company, its business or the transactions contemplated by this Agreement, other than those representations, warranties, covenants and agreements explicitly set forth in this Agreement." *Id.* at *5.

In concluding that language effectively disclaimed reliance, the court stated, as relevant here, that "[t]he first sentence is an explicit anti-reliance clause." *Id.* Notably, the language in that sentence stated both parties "agree" that no extracontractual representations or warranties were made.

¶ 40 Contrarily, here, there was no language in section 3(e) of the SRA stating that both plaintiff and Mu Sigma "agree" or "acknowledge" that no extra-contractual representations or warranties were made. Instead, section 3(e) separated them where it stated only that "Stockholder acknowledges ***" there were no extra-contractual representations or warranties made. Notably, there was no other language in the SRA from plaintiff's point of view that it disclaimed reliance on defendants' alleged misrepresentations, omissions and acts of concealment. We recognize that section 4(d) of the SRA provided that: "[Mu Sigma] acknowledges that [plaintiff] is relying upon the truth of the representations and warranties in this Section 4 in connection with the sale of the Repurchased Stock hereunder." But this potential reliance language is from Mu Sigma's point of view, not plaintiff's. See *FdG Logistics*, 131 A.3d at 860 ("The language to disclaim such reliance may vary ***, but the disclaimer must come from the point of view of the aggrieved party (or all parties to the contract) to ensure the preclusion of fraud claims for extra-contractual statements ***.").

¶ 41 Since we have determined that the SRA was ambiguous, we must consider the extrinsic evidence in this case. If a contract is "reasonably susceptible [to] two or more interpretations or may have two or more different meanings, then the contract is ambiguous and courts must resort to extrinsic evidence to determine the parties' contractual intent." (Internal quotation marks omitted.) *Sunline Commercial Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 847 (Del. 2019); see also *Eagle Industries, Inc.*, 702 A.2d at 1232 (stating that "when there is

uncertainty in the meaning and application of contract language, the reviewing court must consider the evidence offered in order to arrive at a proper interpretation of contractual terms"). This includes "evidence of prior agreements and communications of the parties." *Eagle Industries, Inc.*, 702 A.2d at 1233.

¶ 42 Here, plaintiff presented an earlier draft of section 3(e) of the SRA, containing antireliance language that was later removed at the request of plaintiff's counsel. That language stated in relevant part:

> "Stockholder acknowledges *** (ii) that Stockholder is not relying upon the Company or any of the Company's Related Parties in making its decision to sell the Repurchased Stock to the Company pursuant to this Agreement."

Had this language been included in the SRA, it almost certainly would have amounted to a clear disclaimer of reliance from plaintiff's point of view. But plaintiff specifically had it removed.

¶ 43 The prior draft of section 3(e) therefore certainly supports plaintiff's claim that it never intended to disclaim reliance on defendants' alleged extra-contractual statements and is evidence that may show there was not an effective antireliance provision in the SRA. These are questions, however, for the jury to decide.

¶ 44 Plaintiff also presented internal e-mails between Rajaram and Narayana Swamy (Swamy), an executive officer for Mu Sigma, in which Rajaram effectively admitted that he engaged in a soft "con job" to obtain plaintiff's assent to the SRA.[2] On the same day that the repurchase transaction closed (*i.e.*, May 27, 2010), Rajaram forwarded Swamy an e-mail that he

[2]It should be noted that at oral argument before this court, defense counsel rather glibly argued about how much money plaintiff made by selling its stock shares back to Mu Sigma but failed to mention that plaintiff is claiming to have been defrauded in excess of "hundreds of millions of dollars" in damages, a far cry from the approximately "9.3 million dollars" that defense counsel thought plaintiff should have been satisfied with.

had previously sent plaintiff offering to repurchase its stock shares due to Mu Sigma's supposed negative prospects, and stated:

> "I am very proud of this email...I thought I [would] send [it] to you...Most people [would] not appreciate the challenge in dealing with a tough investor."

The next day, Swamy e-mailed Rajaram, stating:

> "It [was] a brilliant [e-]mail. You tempted [plaintiff] enough without trying to oversell. That's probably the reason it worked."

¶ 45 These e-mails are relevant to show whether or not plaintiff was aware of defendants' alleged misconduct when it signed the SRA, which defendants have claimed it was, and to determine whether the SRA was enforceable if it was fraudulently procured. These too are questions for the jury to decide.

¶ 46 Defendants, nevertheless, argue that plaintiff cannot avoid the SRA's effect by alleging claims simply based on omissions or acts of concealment, rather than extra-contractual statements. In support, defendants cite a number of cases that have rejected parties' attempts that relied on omissions to avoid otherwise effective antireliance provisions in their contracts. See *Universal American Corp. v. Partners Healthcare Solutions Holdings, L.P.*, 176 F. Supp. 3d 387, 401 (D. Del. 2016); *MidCap Funding X Trust v. Graebel Cos.*, No. 2018-0312-MTZ, 2020 WL 2095899, *21 (Del. Ch. 2020); *Prairie Capital III, L.P. v. Double E Holding Corp.*, 132 A.3d 35, 51-53 (Del. Ch. 2015). We find these cases to be distinguishable from the present case for two reasons.

¶ 47 First, the antireliance language in those cases specifically identified what information the parties relied on in entering into their respective contracts. See *Universal American*, 176 F. Supp. 3d at 401 (the parties' contract provided that "[n]either parent nor the merger sub is relying or

has relied on any representations and warranties except for those expressly made by the company in this Article 3" (emphasis omitted and capitalization adjusted); *MidCap Funding*, 2020 WL 2095899, *19 (the parties' contract provided that each party agreed that "it is not entering into this Agreement in reliance upon any representations, promises or assurances other than those expressly set forth in this Agreement"); *Prairie Capital*, 132 A.3d at 50 (the parties' contract provided that, "[i]n making its determination to proceed with the Transaction, the Buyer has relied on (a) the results of its own independent investigation and (b) the representations and warranties of the Double E Parties expressly and specifically set forth in this Agreement, including the Schedules. SUCH REPRESENTATIONS AND WARRANTIES BY THE DOUBLE E PARTIES CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE DOUBLE E PARTIES TO THE BUYER IN CONNECTION WITH THE TRANSACTION"). The courts in these cases concluded that, because the parties' contracts specifically limited the scope of information on which the parties had relied, any attempt to go beyond those limits by referring to misrepresentations as "omissions" would not be permitted. See *Universal American*, 176 F. Supp. 3d at 403; *MidCap Funding*, 2020 WL 2095899, *21; *Prairie Capital*, 132 A.3d at 54-55.

¶ 48 In contrast, here, there is no language in the SRA that specifically identified what information plaintiff did or did not rely on in entering into the SRA. Although the SRA stated that defendants made no extra-contractual statements "regarding any aspect of the sale and purchase of theRepurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock," this does not sufficiently define what information plaintiff relied or did not rely on when it signed the agreement. Regardless, that language does not

amount to a clear disclaimer of reliance from plaintiff's point of view, as mentioned above (see *supra* ¶ 35).

¶ 49 Second, the cases cited by defendants involved arms-length transactions where there was no affirmative duty of disclosure. In Delaware, fraud may occur in three ways: (1) an overt misrepresentation, (2) silence or an omission in the face of a duty to speak, or (3) deliberate concealment of material facts. *Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1074 (Del. 1983). "Thus, one is equally culpable of fraud who by omission fails to reveal that which it is his duty to disclose in order to prevent statements actually made from being misleading." *Id.*

¶ 50 Plaintiff claims that Rajaram had an affirmative duty to speak based on his fiduciary duty to disclose all information that was material to the stock repurchase transaction. Defendants dispute that Rajaram owed plaintiff any such fiduciary duty.

¶ 51 Where directors communicate with stockholders in connection with a request for stockholder action, they "must disclose fully and fairly all material facts within their control bearing on the request." *Dohmen v. Goodman*, 234 A.3d 1161, 1168 (Del. 2020). This is known as the director's "fiduciary duty of disclosure" and is a specific application of the more general duties of due care and loyalty. *Id.* A breach of the fiduciary duty of disclosure occurs when the alleged omission or misrepresentation is material. *Id.* Whether the duty of disclosure is triggered, however, depends entirely on whether a request for shareholder action was made. "In the absence of a request for stockholder action, the Delaware General Corporation Law does not require directors to provide shareholders with information concerning the finances or affairs of the corporation." *Malone v. Brincat*, 722 A.2d 5, 11 (Del. 1998). Recently, in *Dohmen*, the Delaware Supreme Court clarified that a request for an individual stockholder to enter into a purchase or

sale agreement does not qualify as a request for stockholder action to which the fiduciary duty of disclosure applies. *Dohmen*, 234 A.3d at 1171.

¶ 52 Additionally, when a director breaches the duty of disclosure, his liability is considered "*per se*." *Id.* at 1168. This means that when a director requests stockholder action but fails to disclose material facts bearing on that request, the beneficiary stockholder need not demonstrate any other elements of proof, *i.e.*, reliance, causation, or damages, to succeed on a claim for breach of fiduciary duty. *Id.* This *per se* rule, however, applies only to nominal damages, not compensatory damages. *Id.* To recover compensatory damages for a breach of the fiduciary duty of disclosure, a stockholder must prove reliance, causation, and damages. *Id.* at 1175.

¶ 53 The parties here do not dispute that the duty of disclosure applies only to communications related to a request for stockholder action, nor do they dispute that individual stockholder transactions do not qualify as requests for stockholder action. They do, however, disagree on whether Mu Sigma's repurchase of plaintiff's stock constituted an individual stockholder transaction or a request for stockholder action.

¶ 54 The circuit court in this case concluded that the repurchase constituted an individual stockholder transaction, pointing out that plaintiff and Mu Sigma were the only parties to the SRA and that plaintiff acknowledged in its pleadings that individualized negotiations took place under the SRA's terms. In addition, plaintiff's claims in the first amended complaint were based on Rajaram's individual communications with plaintiff, not with a large group of stockholders. These facts, however, do not conclusively establish that Mu Sigma's repurchase of plaintiff's stock shares was an individual stockholder transaction. Moreover, plaintiff presented evidence that defendants intended to extend their repurchase offer to an unspecified number of other stockholders. Although this is not the equivalent of a request for stockholder action, it certainly

raises a question of fact as to whether the repurchase was an individual transaction or part of a larger request for stockholder action. If it was part of a larger request for stockholder action, such that Rajaram had a fiduciary duty of disclosure, then any claim for breach of that duty does not require proof of plaintiff's reliance. In turn, if reliance was not a necessary element of plaintiff's claim for breach of fiduciary duty, then the question of whether the SRA contained an effective antireliance provision had no bearing on the success or failure of that claim. See *id.* at 1168.

¶ 55 Because we have concluded that there is a genuine issue of material fact regarding whether the repurchase transaction was part of a request for stockholder action, there is necessarily a genuine issue of material fact as to whether Rajaram owed plaintiff a fiduciary duty to disclose all material information related to that transaction. If he did owe such a duty, then his failure to disclose that information, as well as his active concealment of material information, may certainly form the basis of plaintiff's fraud-related claims.

¶ 56 Based on the foregoing, we conclude that there were genuine issues of material fact, precluding summary judgment on plaintiff's fraudulent inducement, fraudulent concealment, negligent misrepresentation and breach of a fiduciary duty claims. The circuit court therefore improperly entered summary judgment in favor of defendants on those claims.

¶ 57 II. Motion to Dismiss

¶ 58 We also conclude that the circuit court erred in granting defendants' motion to dismiss plaintiff's claims for breach of contract and unjust enrichment based on the SRA's general release provision.

¶ 59 Section 2-619.1 of the Code allows the movants to combine a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2018)) with a section 2-619 motion to dismiss (735 ILCS 5/2-619) (West 2018)). *In re Application of the County Treasurer*, 2012 IL App (1st) 101976, ¶ 28.

A section 2-615 motion attacks the legal sufficiency of the nonmovant's claim, whereas a section 2-619 motion admits the legal sufficiency of its claim but asserts affirmative defenses or other matters that avoid or defeat it. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10. We review the lower court's judgment on a section 2-619.1 motion *de novo*, and we may affirm the court's judgment on any basis in the record, regardless of whether the court relied on that basis or whether its reasoning was correct. *Id.* Furthermore, we "must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993).

¶ 60 A. General Release Provision

¶ 61 Plaintiff argues that the general release was not enforceable against its breach of contract and unjust enrichment claims because Rajaram breached his fiduciary duty of disclosure by not disclosing his wrongdoings to plaintiff before it entered into the SRA. Plaintiff also argues that the release was unenforceable because it was a product of fraud.

¶ 62 In Delaware, a court may "set aside a clear and unambiguous release where there is fraud." *Alvarez v. Castellon*, 55 A.3d 352, 354 (Del. 2012). Where, as here, the plaintiff "asserts that the release itself was induced" by the defendants' fraud, the parties seeking enforcement of that release bear "the burden of proving that the released fraud claim was within the contemplation of the releasing party." (Internal quotation marks omitted.) *Seven Investments, LLC v. AD Capital, LLC*, 32 A.3d 391, 396 (Del. Ch. Ct. 2011).

¶ 63 The central theme of plaintiff's case against defendants is that they fraudulently induced it to enter into the SRA, which contains the general release provision. If plaintiff proves that defendant procured the SRA through fraud, however, then the entire agreement, including the

general release provision, presumably would be unenforceable. See *PHL Variable Insurance Co. v. Price Dawe 2006 Insurance Trust*, 28 A.3d 1059, 1067 (Del. 2011) (where there is fraud in the inducement to enter into a contract, the contract is "voidable" at the election of the innocent party).

¶ 64 Defendants' response to plaintiff's argument that the release is unenforceable as a product of fraud is twofold. First, defendants cite to a number of cases addressing when a fraud claim is released under the terms of a general release provision. These cases are inapplicable, however, because the question is not whether plaintiff's fraud claims are barred by the release, but whether the release itself was procured by fraud. Second, defendants argue that the purported antireliance provision in the SRA defeats the reliance element of plaintiff's fraudulent inducement claim. But as we have already concluded, there are genuine issues of material fact regarding whether the SRA even contained effective antireliance language, let alone which party, if any, disclaimed reliance. Because the enforceability of the general release provision depends on whether plaintiff's fraud claims are successful, the dismissal of plaintiff's breach of contract and unjust enrichment claims based on that provision was premature.

¶ 65 B. Unjust Enrichment

¶ 66 Alternatively, the circuit court dismissed plaintiff's unjust enrichment claim because the parties' relationship was governed by a contract. This too was error.

¶ 67 Where, as here, an unjust enrichment claim is based on a tort theory that the plaintiff was fraudulently induced to enter into a written agreement, it is not barred by the existence of a contract between the parties. See, *e.g.*, *Peddinghaus v. Peddinghaus*, 295 Ill. App. 3d 943, 949 (1998) ("In the present case, plaintiff bases his unjust enrichment claim on a tort theory, specifically, that defendants, through their agent ***, fraudulently induced him to sell his shares

in the *** trust. Since plaintiff's unjust enrichment claim is based on tort, instead of quasi-contract, the existence of a specific contract does not defeat his cause of action."). Here, plaintiff's unjust enrichment claim was based on defendants' allegedly fraudulent conduct that induced it to enter into the SRA. Accordingly, we conclude that the existence of the SRA did not preclude plaintiff from pursuing its unjust enrichment claim.

¶ 68 In sum, we conclude that the circuit court erred in granting defendants' section 2-619.1 motion to dismiss plaintiff's breach of contract and unjust enrichment claims. Accordingly, we reverse the circuit court's judgment dismissing those claims.

¶ 69 CONCLUSION

¶ 70 For the foregoing reasons, we reverse the circuit court's summary judgment ruling in favor of defendants on plaintiff's fraudulent inducement, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty claims and remand for further proceedings. In addition, we reverse the circuit court's judgment dismissing plaintiff's breach of contract and unjust enrichment claims and remand for further proceedings.

¶ 71 Reversed and remanded.

¶ 72 JUSTICE PUCINSKI, specially concurring:

¶ 73 While I agree that the trial court erred in granting summary judgment in favor of defendants on plaintiff's claims of fraudulent inducement, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty because the contract at issue is ambiguous, and I agree that the trial court also erred in dismissing plaintiff's claims of breach of contract and unjust enrichment where there are genuine issues of material fact as to whether the claims are barred by the general release in the contract, I feel that the opinion prepared by the majority unnecessarily goes too far into the trier of fact's realm when discussing the parole evidence.

¶ 74 First, I do not agree that two trial judges coming to different conclusions about the contract automatically means the contract is ambiguous. One of the judges could just be wrong. Second, having found that the contract is ambiguous for other reasons, I do not believe it is up to us as the reviewing court to go much farther. We should just remand and let the jury do the fact finding about what the contract actually means. The majority has delved too far into the extra contractual communications and drafting of the contract without giving the jury the chance to decide what is fact, what is true, and what is not.

¶ 75 Third, I see several questions of material fact that would preclude summary judgment on some issues and dismissal of others:

(1) does the SRA contain an effective antireliance provision applicable to some or all of Walworth's allegations?

(2) does section 3 (e) of the SRA clearly encompass all of Walworth's allegations?

(3) did Walworth effectively disclaim its reliance on Mu Sigma and Rajaram's alleged misrepresentations, omissions and acts of concealment?

(4) was the stock repurchase by Walworth an individual stockholder transaction or a shareholder transaction?

(5) did Rajaram have an affirmative fiduciary duty to disclose all information relative to the stock repurchase transaction?

(6) was the general release in the contract procured by fraud?

¶ 76 Any one of these questions should prevent summary judgment or dismissal. All of them taken together clearly require remand to the circuit court.

No. 1-19-1937

Cite as:	*Walworth Investments-LG, LLC v. Mu Sigma, Inc.*, 2021 IL App (1st) 191937
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2016-L-2470; the Hon. John C. Griffin and the Hon. Daniel J. Kubasiak, Judges, presiding.
Attorneys for Appellant:	Stephen P. Barry, of Clifford Law Offices, of Chicago, for appellant.
Attorneys for Appellee:	James R. Figliulo and Peter A. Silverman, of Figliulo & Silverman PC, of Chicago, for appellees.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Walworth Investments – LG, LLC,	)	
	)	
Plaintiff,	)	No. 2016 L 2470
	)	
v.	)	Commercial Calendar T
	)	
Mu Sigma, Inc., and Dhiraj C. Rajaram,	)	Judge Daniel J. Kubasiak
	)	
	)	
Defendants.	)	

OPINION

This cause is before the court on defendants', Mu Sigma, Inc. ("Mu Sigma") and Dhiraj C. Rajaram ("Rajaram"), motion to reconsider the March 29, 2018, order denying their motion for partial summary judgment or, in the alternative, certify a question for interlocutory appeal.

The court grants Mu Sigma and Rajaram's motion to reconsider. The court finds that Delaware law does not require that non-reliance clauses specifically list the information relied upon and not relied upon but rather only requires that non-reliance clauses clearly state their effect. Because Walworth clearly has disclaimed its reliance under the Stock Repurchase Agreement, the court grants the defendants' motion to reconsider as to counts I, II, and III of the first amended complaint. The defendants' motion for summary judgment is granted as to counts I, II, and III, and summary judgment is entered in favor of defendants Mu Sigma and Rajaram and against plaintiff Walworth as to these counts. The court limits its granting of summary judgment, however, as to counts I, II, and III, which all require a showing of reasonable reliance as an element. Because reliance is not an element for unjust enrichment and breach of fiduciary duty, the court denies the defendants' summary judgment motion as to counts IV and V.

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BACKGROUND

The following allegations are contained in the first amended complaint. In 2006, plaintiff Walworth invested in and received stock in Mu Sigma, a data analytics company founded by defendant Rajaram. Walworth sold its shares back to Mu Sigma pursuant to an agreement dated May 26, 2010. On March 8, 2016, Walworth brought the lawsuit, and a week later, filed its amended complaint. According to Walworth, the defendants misrepresented facts about "Mu Sigma's value, growth prospects, and future business plans, as well as Rajaram's motives for pursuing the repurchase transaction," thus inducing Walworth to sell its ownership stake back to Mu Sigma. Walworth's first amended complaint alleges fraudulent inducement (count I), fraudulent concealment (count II), negligent misrepresentation (count III), unjust enrichment (count IV), breach of fiduciary duty (count V), breach of contract (count VI), and punitive damages (count VII).

STANDARD OF REVIEW

The intended purpose of a motion to reconsider is to bring to the court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324 (4th Dist. 2010). However, "[t]rial courts should not allow litigants to stand mute, lose a motion, and then frantically gather material to show that the court erred in its ruling." *Id.* Legal theories and factual arguments not previously made are waived. *River Plaza Homeowners Ass'n v. Healey*, 389 Ill. App. 3d 268, 280 (1st Dist. 2009); *Bank of America v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (1st Dist. 2011). The moving party on a motion to reconsider has the burden of establishing sufficient grounds to vacate a judgment. *Day v. Curtin*, 192 Ill. App. 3d 251, 254 (1st Dist. 1989).

DISCUSSION

Motion to Reconsider

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On March 29, 2018, the court entered an order denying Mu Sigma and Rajaram's motion for summary judgment, which centered largely on whether the parties' Stock Repurchase Agreement disclaimed Walworth's reliance on any statements outside said agreement. The parties disputed whether a new Delaware case, *IAC Search, LLC v. Conversant LLC*, prevented Walworth from relying on any extra-contractual representations. 2016 WL 6995363; 2016 Del. Ch. LEXIS 176. The court previously found that the contract in *IAC Search* was distinguishable from the Stock Repurchase Agreement because the *IAC Search* contract contained a more detailed description of the information on which the plaintiff relied. Having reviewed this previous ruling and the relevant Delaware case law, the court finds that Delaware law as a whole clearly supports a finding that Walworth disclaimed reliance on any statements made outside the agreement.

Under Delaware law, the court will not bar a contracting party from asserting claims for fraud based on representations outside the four corners of the agreement unless that contracting party unambiguously disclaims reliance on such statements. 131 A. 3d 842, 860 (Del. Ch. 2016). Sophisticated parties may not reasonably rely upon representations outside of the contract, where the contract contains a provision explicitly disclaiming reliance upon such outside representations. *RAA Mgmt., LLC v. Savage Sports Holdings, Inc.*, 45 A. 3d 107, 117 (2012). To be effective, a contract "must contain language that, when read together, can be said to add up to a clear anti-reliance clause by which the plaintiff has contractually promised that it did not rely upon statements outside the contract's four corners in deciding to sign the contract." *Prairie Capital III, L.P. v. Double E Holding Corp.*, 132 A. 3d 35, 50 (Del. Ch. 2015). Nonetheless, Delaware courts have consistently respected the law's traditional abhorrence of fraud and thus "have not given effect to so-called merger or integration clauses that do not clearly state that the parties disclaim reliance upon extra-contractual statements. *ABRY Partners V, L.P. v. F&W Acquisition LLC*, 891 A.2d 1032, 1058 (Del. Ch. 2006).

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From this case law, it is clear that Delaware courts do not require non-reliance clauses to be specific in the information relied upon but rather to be clear in the effect of the clause. The court finds that *IAC Search* does not fall outside this larger body of case law, and that it did not expressly state any requirements regarding the specificity needed for a non-reliance clause to be enforceable. To the contrary, under Delaware law, "magic words" are not required to disclaim reliance, and the specific language of an agreement may vary but still add up to a clear anti-reliance clause. *Prairie Capital III, L.P.*, 132 A. 3d at 51.

Moreover, the various cases that the parties rely on essentially rely on *ABRY* as their foundation in enforcing non-reliance clauses. The court in *ABRY* noted that Delaware courts have shared a "distaste for immunizing fraud." *ABRY Partners V, L.P.*, 891 A.2d at 1061. Nonetheless, the *ABRY* court noted that "[t]hose decisions primarily involve the protection of a relatively unsophisticated party or a party lacking bargaining clout who signs a contract with a boilerplate merger clause." *Id.* Thus, the court concluded that "the common law ought to be especially chary about relieving sophisticated business entities of the burden of freely negotiated contracts." *Id.* at 1061-62. The parties do not dispute that they entered into the Repurchased Stock Agreement as sophisticated parties. Thus, keeping this in mind, and applying the reasoning set forth in *ABRY*, the court will interpret the Stock Repurchase Agreement as it was negotiated.

Section 3(e) of the Stock Repurchase Agreement states:

> **(e) Disclosure of Information.** Stockholder has received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock to the Company pursuant to this Agreement. Stockholder acknowledges (i) that neither the Company, nor any of the Company's Related Parties (as defined below), has made any representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock and (ii) that the Company is relying upon the truth of the representations and

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> warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder.

Section 5 of the Agreement, titled "Release," further states:

> **5. Release.** Stockholder hereby forever generally and completely releases and discharges the Company and its Related Parties and their respective successors and assigns from any and all claims, liabilities, obligations and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular of and from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, that arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement[.]

Section 3(e) clearly reflects that Walworth has acknowledged that it has received all the information it considers necessary or appropriate to determine whether to sell the repurchased stock, and that Mu Sigma has not made any representation or warranty regarding the sale outside the contract. Moreover, section 5 expressly releases Mu Sigma from liability for any conduct or omissions prior to the Agreement's date.

The Stock Repurchase Agreement does not expressly contain language as to Walworth's "non-reliance." Nonetheless, as stated, Delaware law does not require magic words to disclaim reliance, as long as the agreement's language adds up to a clear anti-reliance clause. *Prairie Capital III, L.P.*, 132 A. 3d at 51. In the recent case *Chyronhego Corp. v. Wight*, the Delaware chancery court found that an explicit anti-reliance clause existed in the following sentence:

> Holdings and the Buyer agree that neither the Company, any Seller nor any of their respective Affiliates or advisors have made and shall not be deemed to have made any representation, warranty, covenant or agreement, express or implied, with respect to the Company, its business or the transactions contemplated by this Agreement, other

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> than those representations, warranties, covenants and agreements explicitly set forth in this Agreement.

Chyronhego Corp. v. Wight, 2018 Del. Ch. LEXIS 258, 2018 WL 364132. Significantly, this language very closely mirrors the language seen in section 3(e) of the Stock Repurchase Agreement. The court further notes that neither the cases *IAC Search*, *Chyronhego*, and *Prairie Capital* concerned agreements that contained release clauses, as the parties' Agreement in this case does.

Accordingly, applying Delaware law, the court finds that section 3(e) of the Stock Repurchase Agreement, along with the broadly worded release clause in section 5, clearly disclaims Walworth's reliance on any information outside the contract and is therefore enforceable as to Walworth's claims against Mu Sigma and Rajaram. Reasonable reliance is an element of Walworth's claims in counts I, II, and III. *Lord v. Souder*, 748 A. 2d 393, 402 (2000) (listing the plaintiff's reasonable reliance as an element of fraudulent inducement); *Anderson v. Airco, Inc.*, 2004 Del. Super. LEXIS 210, ¶ 33 (listing the "plaintiff's response is taken in justifiable reliance on the representation" as an element of fraudulent concealment); *Vichi v. Koninkliijke Philips Elecs, N.V.*, 85 A. 3d 725, 822 (Del. Ch. 2014) listing "the plaintiff suffered a pecuniary loss caused by justifiable reliance upon the false information" as an element of negligent misrepresentation). The court has concluded that Walworth and Mu Sigma are sophisticated parties, and that they have acknowledged, in the Stock Repurchase Agreement, that Walworth is not relying upon any representations or omissions outside the Agreement. Therefore, Walworth cannot state a cause of action as to its fraudulent inducement, fraudulent concealment, and negligent misrepresentation.

Nonetheless, reliance is not an element required to plead claims for unjust enrichment or breach of fiduciary under Delaware law. *Jackson Nat'l Life Ins. Co. v. Kennedy*, 741 A. 2d 377, 393 (Del. Ch. 1999) ("The elements of unjust enrichment are: (1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the absence of justification and (5) the absence

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of a remedy provided by law."); *Beard Research, Inc. v. Kates*, 8 A. 3d 573, 601 (Del. Ch. 2010) ("A claim for breach of fiduciary duty requires proof of two elements: (1) that a fiduciary duty existed and (2) that the defendant breached that duty."). Accordingly, the court will not grant the defendants' motion for summary judgment as to these counts.

Accordingly, the court grants Mu Sigma and Rajaram's motion for reconsideration and grants the defendants' prior motion for summary judgment as to counts I, II, and III. Summary judgment is entered in favor of defendants Mu Sigma, Inc. and Dhiraj C. Rajaram and plaintiff Walworth Investments – LG, LLC as to counts I, II, and III of the first amended complaint.

The court denies Mu Sigma and Rajaram's motion for summary judgment, however, as to counts IV and V.

Rule 308(a) Finding

The court has found that under Delaware law, the Stock Repurchase Agreement clearly disclaims Walworth's reliance, and so Walworth cannot establish its reasonable reliance for purposes of its fraudulent inducement, fraudulent concealment, and negligent misrepresentation claims. Therefore, there is no substantial ground for difference of opinion for purposes of Rule 308(a) certification. Further, the issue before the court is how Delaware law should be applied to the particular facts of this case, namely, the provisions of the parties' contract. As the Illinois Supreme Court has recently ruled, "[c]ertified questions must not seek an application of the law to the facts of a specific case." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21.

The court thus denies Mu Sigma and Rajaram's request for Rule 308(a) certification.

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ORDER

It is ordered:

(1) Defendants', Mu Sigma, Inc. and Dhiraj C. Rajaram, motion to reconsider the March 29, 2018, order is granted and summary judgment is granted as to counts I, II, and III of the first amended complaint; summary judgment is entered in favor of defendants Mu Sigma, Inc. and Dhiraj C. Rajaram and plaintiff Walworth Investments – LG, LLC as to counts I, II, and III; the defendants' motion for summary judgment is denied as to counts IV and V;

(2) Defendants' motion for Rule 308 certification is denied;

(3) Further report on status is set for October 12, 2018, at 9:30 a.m.

Judge Daniel J. Kubasiak

OCT - 9 2018

ENTERED,

Circuit Court - 2072

Judge Daniel J. Kubasiak, No. 2072

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Walworth Investments – LG, LLC,	)	
	)	
Plaintiff,	)	No. 2016 L 2470
	)	
v.	)	Commercial Calendar T
	)	
Mu Sigma, Inc. and Dhiraj C. Rajaram,	)	Judge Daniel J. Kubasiak
	)	
Defendants.	)	

OPINION

This cause is before the court on three motions: (1) defendants Mu Sigma and Dhiraj C. Rajaram's (collectively, "Defendants") motion for reconsideration of the court's October 9, 2018, order; (2) plaintiff Walworth Investments – LG, LLC's ("Walworth") cross-motion for reconsideration of the court's October 9, 2018, order; and (3) Walworth's motion for leave to file a second amended complaint.

First, the court grants Defendants' motion for reconsideration. The court finds that it erred in holding that reliance is not a required element of a breach of fiduciary duty claim when that claim is based on alleged misstatements or omissions made to an individual stockholder in connection with the type of stock sale transaction here. The court also finds that it erred in holding that Walworth's breach of fiduciary duty claim is not barred by the release of claims that Walworth agreed to in the May 2010 Stock Repurchase Agreement (the "SRA").

Second, the court denies Walworth's motion for reconsideration and finds that it did not err in entering summary judgment in favor of Defendants on counts I, II, and III, which all require a showing of reasonable reliance as an element. Third, the court grants Walworth's motion for leave to file a second amended complaint.

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Lastly, the court confirms that Judge Griffin previously denied summary judgment as to Walworth's unjust enrichment claim (count IV) in the court's August 1, 2016 order, which was incorrectly addressed in the court's October 9, 2018, order.

BACKGROUND

In the court's October 9, 2018, order, the court, upon reconsideration of a prior decision, granted summary judgment in favor of Defendants on Walworth's claims for fraudulent inducement (count I), fraudulent concealment (count II), and negligent misrepresentation (count III), but denied summary judgment on Walworth's breach of fiduciary duty claim (count V).

As the October 9, 2018, order explained, the parties entered into a May 26, 2010 SRA in which Walworth sold all of its shares of Mu Sigma back to the company. The court held that Walworth disclaimed reliance on any statements made outside of the SRA (section 3(e)), and expressly released Mu Sigma from liability for any conduct or omissions prior to the Agreement's date (section 5). Accordingly, the court held that Walworth's clear disclaimer of reliance barred Walworth's fraudulent inducement, fraudulent concealment and negligent misrepresentation claims, because each of those claims required proof of reliance, yet were based on alleged statements or omissions made outside of the SRA. As to count V, the court held that Walworth's breach of fiduciary claim survived because reliance was not an element of that claim under Delaware law. The motions under present consideration followed.

STANDARD OF REVIEW

The intended purpose of a motion to reconsider is to bring to the court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324 (4th Dist. 2010). However, "[t]rial courts should not allow litigants to stand mute, lose a motion, and then frantically gather material to show that the court erred in its ruling." *Id.* Legal theories and

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factual arguments not previously made are waived. *River Plaza Homeowners Ass'n v. Healey*, 389 Ill. App. 3d 268, 280 (1st Dist. 2009); *Bank of America v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (1st Dist. 2011). The moving party on a motion to reconsider has the burden of establishing sufficient grounds to vacate a judgment. *Day v. Curtin*, 192 Ill. App. 3d 251, 254 (1st Dist. 1989).

DISCUSSION

Defendants' Motion to Reconsider

The court first finds that it erred in holding that reliance is not a required element of a breach of fiduciary duty claim when that claim is based on alleged misstatements or omissions made to an individual stockholder. In its previous order, the court found that while reliance is a necessary element required to plead fraudulent inducement, fraudulent concealment, and negligent misrepresentation, "reliance is not an element required to plead claims for unjust enrichment or breach of fiduciary duty under Delaware law. *Jackson Natl's Life Ins. Co. v. Kennedy*, 741 A.2d 377, 393 (Del Ch. 1999)." The court therefore denied Mu Sigma and Rajaram's motion for summary judgment as to counts IV and V. Upon review of the parties' further briefing on the issue, the court concludes that Delaware law in fact requires that Walworth show reasonable reliance to prove its breach of fiduciary duty claim. As a result, the fiduciary duty claim is also barred by Walworth's disclaimer of reliance in the SRA.

Delaware law is clear that a plaintiff asserting a breach of fiduciary duty claim based on alleged misstatements or omissions *must show reliance*, unless the alleged misleading statement is made in connection with a "request for shareholder action," such as a shareholder vote or tender offer. *E.g., Metro Commc'ns Corp.* v. *Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 158 (Del. Ch. 2004) (Delaware law imposes "a requirement of reasonable reliance [for a breach of fiduciary duty claim] in the non-vote and non-tender context"); *Wilkin* v. *Narachi*, 2018 WL 1100372, at *14 (Del. Ch. Feb. 28, 2018) ("when shareholder action is absent, plaintiff must show reliance"); *Anglo American Sec. Fund, L.P.* v. *S.R. Global Int'l Fund, L.P.*,

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2006 WL 1494360, at *3 (Del. Ch. May 24, 2006) ("[I]n breach of fiduciary duty cases based on omissions, ... plaintiffs are required to prove reliance . . . .").[1]

This rule stems from the Delaware Supreme Court's decision in *Malone* v. *Brincat*, which held that reliance is not an element of "[a]n action for a breach of fiduciary duty arising out of disclosure violations *in connection with a request for stockholder action*." 722 A.2d 5, 12 (Del. 1998) (emphasis added). Specifically, the *Malone* court held the following:

> An action for breach of fiduciary duty arising out of disclosure violations in connection with a request for stockholder action does not include the elements of reliance, causation and actual quantifiable monetary damages. Instead, such actions require the challenged disclosure to have a connection to the request for shareholder action. The essential inquiry in such an action is whether the alleged omission or misrepresentation is material. Materiality is determined with respect to the shareholder action being sought.

Malone, 722 A.2d at 5. As then-Vice-Chancellor, now-Chief Justice Strine wrote, "[l]ater cases have logically read *Malone* as also contemplating a requirement of reasonable reliance in the non-vote and non-tender context." *Metro Commc'n*, 854 A.2d 121, 158; *accord Wilkin*, 2018 WL 1100372, at *14 (explaining that this is the rule "[u]nder *Malone v. Brincat*"). Delaware law is also clear that discussions about a stock repurchase with an individual shareholder do *not* constitute a "request for shareholder action." *E.g.*, *Sims* v. *Tezak*, 296 Ill. App. 3d 503, 508 (1st Dist. 1998) (applying Del. Law); *Latesco, L.P.* v. *Wayport, Inc.*, 2009 WL 2246793, at *6 (Del. Ch. Jul. 24, 2009). Rather, "shareholder action" refers to a broad request to shareholders in connection with a corporate event affecting a substantial number of shareholders, such as a shareholder vote or tender offer. *Metro Commc'n*, 854 A.2d 121, 157–58.

Delaware law recognizes this distinction because of the "collective action

[1] *See also Dubroff* v. *Wren Holdings, LLC*, 2010 WL 3294219, at *6 (Del. Ch. Aug. 20, 2010) ("[D]isclosure suits not involving a request for shareholder action" require "an individualized showing of reliance, causation and damages"); *A.R. DeMarco Enters., Inc.* v. *Ocean Spray Cranberries, Inc.*, 2002 WL 31820970, at *4 n.10 (Del. Ch. Dec. 4, 2002) ("When shareholder action is absent, plaintiff must show reliance, causation, and damages.").

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problem" that exists when large numbers of shareholders are asked to take action, making it "impractical, if not impossible, for each stockholder to ask and have answered by the corporation its own set of questions." *Latesco*, 2009 WL 2246793, at *6. "These same factors do not, however, come into play when the corporation asks a stockholder as an individual to enter into a purchase or sale. There, the stockholder may refuse to do so until he is satisfied the corporation has given him sufficient information to evaluate the decision presented to him." *Id.* That is precisely what happened here. (*See* SRA § 3€ ("Stockholder has received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock . . . .").) These decisions are dispositive of Walworth's breach of fiduciary duty claim. To prevail on such a claim, Walworth must prove its reasonable reliance on the alleged misstatements and omissions made by defendant Rajaram outside of the SRA. However, Walworth is legally barred from doing so given its disclaimer of that very reliance in the SRA. Thus, the claim is barred.

Walworth's arguments to the contrary are unavailing. First, under the case law noted above, Walworth is incorrect that its repurchase of shares constituted "shareholder action." The transaction was not akin to a tender offer or shareholder vote. There are no other parties to the SRA, Walworth's own brief (at 25) acknowledges individualized negotiations over the SRA's terms, and its complaint makes clear that its claims are based on one-on-one communications between Mr. Rajaram of Mu Sigma and Pat Ryan, Jr. of Walworth, not on communications to a large group of shareholders. (Compl. ¶¶ 33–34 (alleging what "Rajaram told Ryan Jr.").)

Nor can Walworth evade the requirement to show reliance by characterizing its claim as based on "bad faith," "omissions," or "deliberate concealment." *See, e.g., Metro Commc'n*, 854 A.2d 121, 159 (where a fiduciary is alleged to have "consciously and in bad faith cho[sen] to have the entity continue to withhold the facts that should have been disclosed," the plaintiff still must demonstrate "reasonable reliance"); *Anglo American*, 2006 WL 1494360, at *3 (applying reliance requirement to "breach of fiduciary duty cases based on omissions"); *Prairie Capital III, L.P.* v.

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Double E Holding Corp., 132 A.3d 35, 52–53 (Del. Ch. 2015) (disclaimer of reliance clause barred claims that information was "deliberately withheld and concealed;" disclaimer need not use the word "omissions" to be effective).

Finally, the court again notes that the SRA's release provision (§ 5) "reinforces" the disclaimer of reliance in Section 3€ of the SRA. *IAC Search, LLC* v. *Conversant LLC*, 2016 WL 6995363, at *7 (Del. Ch. Nov. 30, 2016). Walworth is incorrect that the release is somehow ineffective because, it argues, the release does not cover events on the day the SRA was signed; the release expressly covers all claims that "arose out of or are *in any way related to* events, acts, conduct or omissions occurring prior to the date of" the SRA, and thus plainly encompasses Walworth's breach of fiduciary duty claim. (Emphasis added.) Accordingly, Walworth's breach of fiduciary duty claim is barred as a matter of law. The court grants Defendants' motion for reconsideration.

Walworth's Motion to Reconsider

Next, the court denies Walworth's motion for reconsideration and finds that it did not err in entering summary judgment in favor of Defendants on counts I, II, and III, which all require a showing of reasonable reliance as an element. As set forth in the October 9, 2018, order, Delaware law is clear that Walworth's disclaimer of reliance on extra-contractual statements bars Walworth's fraud-related claims. Specifically, the SRA's non-reliance clause in Section 3(e), reinforced by the broad release in Section 5, disclaims Walworth's reliance on any representations outside the contract. As a result, Walworth's fraud-related claims, which are based on such representations, necessarily fail.

Walworth principally argues that the court "overlooked" the parties' "fiduciary relationship," which Walworth contends renders unenforceable the SRA's anti-reliance and release clauses, and that an anti-reliance clause cannot bar an "intentional fraud" claim. Walworth improperly raises these new arguments for the first time on reconsideration.

Walworth has failed to identify any Delaware decision that contemplates a

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"fiduciary exception" to the enforceability of anti-reliance clauses. To the contrary, in a decision Walworth itself cites, *Xu Hong Bin* v. *Heckmann Corp.*, the Delaware Chancery Court recognized that an anti-reliance provision *would* bar a fraudulent inducement claim against a fiduciary based on statements purportedly made outside a written agreement. 2009 WL 3440004, at *11 (Del. Ch. Oct. 26, 2009). The court finds that reasoning persuasive, particularly in view of Delaware's strong public policy, noted above, in favor of enforcing such provisions. *E.g.*, *RAA Mgmt.*, 45 A.3d at 119. Therefore, the court declines Walworth's invitation to go down that path on this point.

There is also no exception for "intentional fraud," as Walworth proposes. Fraud by definition is intentional, and Delaware law expressly recognizes that disclaimers of reliance are enforceable as to fraud claims. *See, e.g.*, *ChyronHego Corp.* v. *Wight*, 2018 WL 3642132, at *1 (Del. Ch. July 31, 2018) (holding that a contractual disclaimer of reliance is enforceable, "notwithstanding prior knowingly false statements made by one party to the other").

Accordingly, Walworth's motion for reconsideration is denied.

Walworth's Motion for Leave to File an Amended Complaint

Finally, Walworth moves for leave to file a second amended complaint. At the conclusion of an oral hearing conducted by Judge Griffin on July 14, 2016, the court granted Defendants' motion to dismiss with respect to Walworth's unjust enrichment claim, which was then dismissed without prejudice. Judge Griffin dismissed the claim because it "incorporates [paragraphs] 1 through 47...and paragraph 7 and paragraph 38 clearly allege a complaint." Thus, as Walworth's contract claim was included in the count for unjust enrichment, the count was dismissed. Yet, Judge Griffin "made clear that Plaintiff could correct this technical defect at the end of discovery," and the motion was granted without prejudice to amend it prior to the closing of discovery upon motion.

Walworth now seeks leave to amend the complaint on three grounds:

> (i) to re-plead its unjust enrichment claim to correct the technical defect that previously caused Judge Griffin to

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> dismiss that claim without prejudice; (ii) to assert an additional breach of contract claim based on information uncovered during discovery demonstrates that Mu Sigma breached an Investor Rights Agreement by intentionally concealing information that Walworth was contractually entitled to receive in the months leading up to the repurchase agreement at the center of this case; and (iii) to clarify that its request for punitive damages, which was originally pled as a cause of action, is being pursued as a remedy.

Section 2-616 provides, in pertinent part:

> "(a) At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim. 735 ILCS 5/2-616(a).

Section 2-616(b) is to be liberally construed so that controversies can be determined according to the substantive rights of the parties. *Doherty v. Cummins-Allison Corp.*, 256 Ill. App. 3d 624, 629 (1st Dist. 1993). Illinois law liberally permits parties to amend their pleadings "[a]t any time before final judgment. 735 ILCS 5/2-616 (a), (c); *see also In re Estate of Hoover*, 155 Ill. 2d 402, 416 (1993) (noting "very broad" right to amend). The decision to grant leave to amend a complaint rests within the sound discretion of the circuit court. *Ruklick v. Julius Schmid Inc.*, 169 Ill. App. 3d 1098, 1113, 523 N.E.2d 1208, 1217, 120 Ill. Dec. 297 (1988).

Defendants argue that the new pleading is untimely and would prejudice defendants. *See City of Elgin v. Cty. of Cook*, 169 Ill. 2d 53, 71 (1995). Specifically, Defendants argue that Walworth concedes it has been on notice of these potential claims for more than two years; yet, it waited to seek leave until the close of fact discovery, after 16 depositions were taken around the world. Yet, Plaintiff

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indicated its intention to amend more than two years ago, when this Court initially dismissed the unjust enrichment claim without prejudice. *See* July 14, 2016 Hr'g Tr. at 80:01-81:22; *Loyola Acad. v. S & S Roof Maint., Inc.*, 146 Ill. 2d 263, 275 (1992) (no prejudice where plaintiff provided notice of intent to amend over 1.5 years in advance and "not near any established trial date"). The parties have been on notice of Walworth's proposed amendment to the pleadings since November 27, 2018, when Walworth filed its motion for leave to amend its complaint. Further, Walworth's proposed amendments stem from information that Defendants themselves produced, and arise from the same core facts supporting Walworth's existing claims—which both parties have had ample opportunity to investigate during discovery.

The court finds that there is no reason to deny amendment here. As such, the court grants Walworth's motion for leave to file a second amended complaint.

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ORDER

It is ordered:

(1) Judge Griffin's previous denial of summary judgment as to plaintiff Walworth Investment – LG, LLC 's unjust enrichment claim (count IV) in the court's August 1, 2016, order is affirmed;

(2) Defendants Mu Sigma, Inc. and Dhiraj C. Rajaram's motion to reconsider the court's October 9, 2018, order denying summary judgment in favor of defendants Mu Sigma, Inc. and Dhiraj C. Rajaram on count V of plaintiff Walworth Investment, LG-LLC's complaint is granted;

(3) Defendants Mu Sigma, Inc. and Dhiraj C. Rajaram's motion for summary judgment as to count V of plaintiff Walworth Investment, LG-LCC's complaint is granted;

(4) Plaintiff Walworth Investment, LG-LLC's motion to reconsider the court's October 9, 2018, order denying summary judgment against plaintiff and in favor of defendants Mu Sigma, Inc. and Dhiraj C. Rajaram on counts I II, and III is denied;

(5) Plaintiff Walworth Investment, LG-LLC's is given leave to file a second amended complaint by April 23, 2019;

(6) Defendants Mu Sigma, Inc. and Dhiraj C. Rajaram are to answer or otherwise plead to plaintiff Walworth Investment, LG-LLC's second amended complaint by May 14, 2019;

(7) This case is set for a report on status on May 16, 2019, at 9:30 a.m.

Judge Daniel J. Kubasiak

APR -2 2019

ENTERED,

Circuit Court-2072

Judge Daniel J. Kubasiak, No. 2072

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Walworth Investments – LG, LLC,	)	
	)	
Plaintiff,	)	No. 2016 L 2470
	)	
v.	)	Commercial Calendar T
	)	
Mu Sigma, Inc. and Dhiraj C. Rajaram,	)	Judge Daniel J. Kubasiak
	)	
Defendants.	)	

OPINION

This cause is before the court on defendant Mu Sigma, Inc. ("Mu Sigma") and Dhiraj C. Rajaram's ("Rajaram") ("collectively, Defendants") motion to dismiss plaintiff Walworth Investments – LG, LLC's ("Plaintiff") second amended complaint pursuant to 735 ILCS 5/2-619.1.

After a thorough review of the court's previous opinions, considering the multiple hearings on the matter, and conducting in depth research on both Illinois and Delaware corporate law, the court grants Defendants' 2-619.1 motion to dismiss with prejudice.

As the court previously recognized in granting summary judgment to Defendants on Walworth's fraud and fiduciary duty claims, as well as in twice denying Walworth's motions for reconsideration of those rulings, the release in the Stock Repurchase Agreement ("SRA") "expressly covers all claims that 'arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of the SRA." Under Delaware law, the law which the parties agreed governs the interpretation of the SRA (*see* § 6(b)), general releases such as the one in the SRA are enforceable, including as to unknown claims. Accordingly, by its unambiguous terms, the same release bars Walworth's newly alleged breach of contract claim and its unjust enrichment claim under 2-619 motion standards.

Walworth's unjust enrichment claim is subject to dismissal for two additional reasons under 2-615 motion standards. As an initial matter, the unjust enrichment claim is barred as a matter of law because the parties' relationship is expressly governed by valid, written contracts. In addition, Walworth cannot avoid well-settled law by arguing that its unjust enrichment claim survives because it is "tort-based" rather than based on contract or quasi-contract. Illinois and Delaware courts have repeatedly held that, where an unjust enrichment claim is based on underlying claims of fraud or other misconduct, the unjust

enrichment claim "stands or falls" with those claims. Further, the newly provided Illinois and Delaware case law by Plaintiff in its response to support its stand-alone unjust enrichment claim simply does not apply to the facts alleged in the second amended complaint.

Accordingly, the court dismisses Plaintiff's remaining claims for breach of the 2008 Investor Rights Agreement and for unjust enrichment with prejudice.

BACKGROUND

The parties' dispute arises out of Mu Sigma's repurchase of Walworth's stock in Mu Sigma, pursuant to a May 2010 SRA. In brief, Walworth alleges that, prior to and outside of the SRA, Defendants made certain misrepresentations and omissions concerning Mu Sigma's financial condition, which induced Walworth to sell its stock for less than it was worth. Walworth also alleges that Mu Sigma failed to provide two monthly investor reports during the period when the parties were negotiating the SRA, which Walworth claims was a breach of an earlier contract, an August 2008 Investor Rights Agreement (the "IRA").

As discussed in the court's prior opinions, however, Walworth represented and warranted in the SRA that Mu Sigma did not make any representations to Walworth in connection with the stock repurchase or as to the financial condition of Mu Sigma, except for those representations expressly set forth in the SRA. Further, in the SRA, Walworth expressly released Defendants from "all claims...in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular...from all claims and demands...that arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement." (SRA § 5.) The terms of each of these provisions were specifically negotiated by Walworth, Mu Sigma and their respective lawyers.

Upon review of the SRA, the court notes that section 4(d) of the SRA only included the representation that Mu Sigma was "not currently engaged in any discussions or conversations with any third parties the Company ha[d] reason to believe would directly or indirectly result in the sale or issuance of any capital stock of the Company at an implied valuation or purchase price greater than the implied valuation of the Repurchased Stock." Had section 4(d) simply expanded Mu Sigma's representation and warranties in "Disclosure of Information," Walworth's issues may have been avoided.

Dismissal of Walworth's First Amended Complaint

Walworth filed its original Complaint on March 8, 2016, and then filed its First Amended Complaint on March 15, 2016. All of the claims in the First Amended Complaint (counts I–VII) have been dismissed or abandoned.

First, Judge Griffin, who previously presided over the case, dismissed the unjust enrichment and punitive damages claims (counts VI and VII) for failure to state a cause of action. (Aug. 1, 2016 Order.) Later, upon reconsideration of an earlier motion, the court entered summary judgment in favor of defendants on the three fraud/misrepresentation claims (counts I, II, and III) in its October 9, 2018 Opinion. Specifically, the court held that reasonable reliance was a required element of Walworth's fraud/misrepresentation claims, and those claims were therefore barred because Walworth had expressly disclaimed in the SRA any reliance on alleged statements and omissions outside of the SRA. As the court explained: "[A]pplying Delaware law, the court finds that section 3(e) [the anti-reliance provision] of the Stock Repurchase Agreement, along with the broadly worded release clause in section 5, clearly disclaims Walworth's reliance on any information outside the contract and is therefore enforceable as to Walworth's claims against Mu Sigma and Rajaram." (*Id.*)

While the court initially permitted the breach of fiduciary claim (count V) to proceed, the court later granted summary judgment in favor of Defendants as to that claim as well. (Apr. 2, 2019 Opinion at 1.) The court held as follows:

> The court finds that it erred [in its October 9, 2018 Opinion] in holding that reliance is not a required element of a breach of fiduciary duty claim when that claim is based on alleged misstatements or omissions made to an individual stockholder in connection with the type of stock sale transaction here. The court also finds that it erred in holding that Walworth's breach of fiduciary duty claim is not barred by the release of claims that Walworth agreed to in the [SRA].

(*Id.*) As to the release provision in particular, the court held that it "expressly covers all claims that 'arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of the SRA, and thus plainly encompasses Walworth's breach of fiduciary claim."

The April 2, 2019 opinion also addressed a cross-motion from Walworth to reconsider the court's prior decision to enter summary judgment in favor of Defendants as to the fraud/misrepresentation claims. The court rejected Walworth's argument that "the

court 'overlooked' the parties' 'fiduciary relationship,' which Walworth contends renders unenforceable the SRA's anti-reliance and release clauses." In a separate section of the opinion, the court granted Walworth leave to file a Second Amended Complaint. Finally, the court also denied Walworth's subsequent motion for reconsideration of the court's April 2, 2019 Opinion in its May 16, 2019 Order.

Walworth's Second Amended Complaint

In Walworth's motion for leave to file a Second Amended Complaint ("SAC"), it sought to add two claims against Mu Sigma: (1) a repleaded unjust enrichment claim "to correct the technical pleading defect" that caused Judge Griffin to dismiss it; and (2) a new breach of contract claim based on the IRA, as described above. All of Walworth's claims from the First Amended Complaint have been dismissed or dropped. Walworth's remaining claims in the SAC are: (a) a new breach of contract claim against Mu Sigma for breach of the IRA (count V); and (b) a repleaded unjust enrichment claim against Mu Sigma, together with a new unjust enrichment claim against Mr. Rajaram (count VI).

STANDARD OF REVIEW

In a 2-615 motion to dismiss, the movant challenges the legal sufficiency of a complaint based on certain defects or defenses apparent on the face of the complaint. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008). In such a motion, all well-pled facts and their reasonable inferences must be taken as true and viewed in the light most favorable to the nonmovant. *Jarvis v. S. Oak Dodge*, 201 Ill. 2d 81, 85 (2002); *Alpha Sch. Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 725 (1st Dist. 2009). "A motion to dismiss should be granted only if the plaintiff can prove no set of facts to support the cause of action asserted." *Kaiser v. Fleming*, 315 Ill. App. 3d 921, 925 (2d Dist. 2000). However, Illinois is a fact pleading jurisdiction; therefore, "a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 355 (2004). Mere conclusions of law and unsupported conclusory factual allegations are insufficient to survive a 2-615 motion to dismiss. *Alpha Sch. Bus Co.*, 391 Ill. App. 3d at 736.

A section 2-619 motion to dismiss raises defects, defenses, or some other affirmative matter, appearing on the face of the complaint, which defeat the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (1st Dist. 2008). In doing so, the motion "admits the legal sufficiency of the plaintiff's allegations." *Miner v. Fashion Enters*, 342 Ill. App. 3d

405, 413 (1st Dist. 2003). The "affirmative matter" must be apparent on the face of the complaint or be supported by affidavits or other evidentiary materials. *John Doe v. Univ. of Chi. Med. Ctr.*, 2015 IL App (1st) 133735, ¶ 37. A court must take all well-pled facts and reasonable inferences as true, and it must construe all pleadings and supporting documents in the light most favorable to the non-movant. *Caywood v.* Gossett, 382 Ill. App, 3d 124, 128 (1st Dist. 2008); Porter *v. Decatur Mem. Hops.*, 227 Ill. 2d 343, 353 (2008).

DISCUSSION

Stock Repurchase Agreement

Defendants first seek dismissal of Walworth's SAC by arguing that Walworth released its claims under the plain language of section 5 of the SRA, which provides the following:

> [Walworth] hereby forever generally and completely releases and discharges [Mu Sigma] and its Related Parties and their respective successors and assigns from any and all claims, liabilities, obligations and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular of and from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, that arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement; provided, however, that the foregoing release shall not apply to claims relating to [Walworth's] right to payment by [Mu Sigma].

The term "Related Parties" is defined in Section 3(e) of the SRA to include Mu Sigma's officers, directors, stockholders, employees, and other company representatives, and thus extends by its terms to Mr. Rajaram. As the court previously recognized, the release in the SRA "expressly covers all claims that 'arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of the SRA..." (Apr. 2, 2019 Opinion at 6; *see also* Oct. 9, 2018 Opinion; May 16, 2019 Order.)

Accordingly, the broad and comprehensive release agreed to by Walworth, a sophisticated party represented by experienced counsel, unambiguously encompasses Walworth's claims in the SAC. Each of Walworth's remaining claims in the SAC directly relate to conduct leading up to the May 2010 SRA – in the case of the breach of contract claim, Mu Sigma's alleged failure to provide two investor reports for the two months prior

to the SRA and, in the case of the unjust enrichment claim, the alleged statements and omissions made in connection with negotiating the repurchase transaction that culminated in the SRA itself. As discussed below, the court finds that the release is enforceable and that Walworth has therefore released its claims against Mu Sigma and Mr. Rajaram.

Under Delaware law, the law which the parties agreed governs the interpretation of the SRA (*see* § 6(b)), general releases are enforceable, including as to unknown claims. The Delaware Supreme Court has explained the following:

> [A] general release [is] one which is intended to cover everything—what the parties presently have in mind, as well as what they do not have in mind, but what may, nevertheless, arise. Such general releases are in common use, and their potency, if it renders them too dangerous for careless handling, is at the same time a constant boon to business and courts. Their validity is unchallenged.

Hob Tea Room v. Miller, 89 A.2d 851, 856 (Del. 1952); *see also Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1163 (Del. 2010) ("Delaware courts recognize the validity of general releases."). Thus, under Delaware law, when interpreting the scope of a release provision, "courts must read the words for what they say." *CorVel Enter. Comp, Inc. v. Schaffer*, 2010 WL 2091212, at *4 (Del. Ch. May 19, 2010). In other words, when construing the coverage of a release, "the Court's function is a limited one. It is to give meaning and substance to the words that the parties have freely chosen." *Id.* Where the language of a release is unambiguous, the Court's inquiry ends. *See id.* at *1.

Even if the court were to look beyond the four corners of the release, Walworth itself submitted documents in opposition to Defendants' Motion to Dismiss that support Defendants' interpretation that the release covers the claims at issue. In negotiating the SRA, Walworth's counsel initially sought to obtain a more limited release that did not cover "unknown" claims. (Clubok Decl. Ex. C.) As part of the parties' overall commercial transaction, however, Walworth abandoned that effort and instead agreed to the SRA's broad release that expressly covered such claims. "Under basic principles of Delaware contract law, and consistent with Delaware's pro-contractarian policy, a party may not come to court to enforce a contractual right that it did not obtain for itself at the negotiating table." *GRT, Inc.* v. *Marathon GTF Tech., Ltd.*, 2012 WL 2356489, *7 (Del. Ch. June 21, 2012). This principle applies "when the supposedly aggrieved party in fact sought the specific contractual right at issue in negotiations but failed to get it." *Id.*

Accordingly, given the unambiguous language of the release, the court finds that Walworth has released the claims it seeks to assert in the SAC.

Fiduciary Exception to the Release

Walworth again asserts that a "fiduciary exception" renders the release unenforceable absent disclosure of "any existing misconduct or claims the release would purportedly cover." The court previously denied two motions for reconsideration that Walworth filed in which it sought to invalidate the release on this ground. (*See* Apr. 2, 2019 Opinion at 6; May 16, 2019 Order ¶ 1.) The court remains unpersuaded by Walworth's argument and adheres to its prior decisions.

As an initial matter, Walworth's "fiduciary exception" argument cannot rescue its breach of contract claim, which is asserted only against Mu Sigma, or its unjust enrichment claim as against Mu Sigma because Mu Sigma did not owe Walworth any fiduciary duty. Under Delaware law, a corporation owes no fiduciary duties to its shareholders; only officers or directors do. *See, e.g., In re Wayport, Inc. Litig.*, 76 A.3d 296, 322–23 (Del. Ch. 2013) ("As a corporate entity, Wayport did not owe fiduciary duties to its stockholders."). Thus, Walworth has not provided the court with a basis on which its claims against Mu Sigma can fall outside of the scope of the SRA's release.

Nor can Walworth's argument avoid the application of the release to Mr. Rajaram. Delaware courts routinely recognize the enforceability of releases of corporate fiduciaries. *See, e.g., Feuer v. Dauman*, 2017 WL 4817427, at *4 (Del. Ch. Oct. 25, 2017) (enforcing release of corporate fiduciaries for "potential liability arising from prior acts"), *aff'd*, 187 A.3d 551 (Del. 2018). Here, the "fiduciary" exception that Walworth argues contradicts the well-recognized practice in Delaware of permitting corporations to enter into broad releases that allow corporations to obtain "global peace" with their investors. As the Delaware Court of Chancery has observed, it is "more or less universally the case" that, when dealing with investors, Delaware entities demand and receive releases not only of the entities themselves, but of their "directors, officers and other agents," so as to avoid the "possibility of having to defend against any additional claims." *H–M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 149 (Del. Ch. 2003). Otherwise, investors would assert the very same claim that could be asserted against a corporation against the corporation's officers or directors.

In arguing for a "fiduciary exception," Walworth again relies on one unpublished Delaware decision that it previously cited in its prior two motions for reconsideration, *Xu Hong Bin v. Heckmann Corp.*, 2009 WL 3440004 (Del. Ch. Oct. 26, 2009). As the court's

prior decisions demonstrate, *Heckmann* did not create a general rule that releases are unenforceable as against fiduciaries absent express disclosure of alleged wrongdoing by the fiduciary. Instead, *Heckmann* turns on its unique facts, and is not applicable here.

Heckmann addressed duties that apply specifically in the context of a transaction between a corporation and one of its own directors. That type of "interested director" transaction is specifically governed by a Delaware statute, 8 Del. C. § 144(a), which the *Heckmann* court cited. That statute does not apply to transactions between a corporation and a shareholder. Instead, the statute applies to transactions "between a corporation and 1 or more of its directors or officers" and provides that such transactions are not void or voidable so long as the director discloses to the board the material facts as to the director's interests in the transaction. *See id.* The *Heckmann* Court cited this statutory provision in concluding:

> Delaware law...require[s] a director to make full disclosure of his interest in a transaction before engaging in that transaction with the corporation. If the corporation is unaware that it is releasing a director of potentially fraudulent conduct then it is unaware of the director's existing personal interest in the release. *Heckmann*, 2009 WL 3440004, at *7. In citing the same language in its opposition brief, Walworth substituted the word "beneficiary" for "corporation." (Pl. Opp'n Br. at 3.) In doing so, Walworth misstated *Heckmann*'s actual holding.

Here, unlike in *Heckmann*, the SRA is not an "interested director" transaction between a director and a corporation to which it owes fiduciary duties. The SRA was an arm's-length transaction between a corporation and a shareholder and does not fall within 8 Del. C. § 144(a). The fact that the release extends to Mr. Rajaram—in the same way as Mu Sigma's other officers, directors, and stockholders, employees, and other company representatives—does not render the SRA a self-interested transaction. *See Pfeffer v. Redstone*, 965 A.2d 676, 690 (Del. 2009) (a self-interested transaction is one in which a fiduciary "appear[s] on both sides of [the] transaction or expect[s] to derive a financial benefit from it that does not devolve upon the corporation or all stockholders generally") (internal quotation marks omitted). Indeed, as one Delaware court recognized, "[t]here would be little sense in a rule providing that the presence of such prophylactic measures [*i.e.*, releases covering directors and officers] in a settlement agreement results in that agreement being treated as an interested party transaction." *H–M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 149–50 (Del. Ch. 2003). Thus, *Heckmann* simply has no application

here, where there was an arm's-length transaction between a corporation and a shareholder, not an interested-director transaction between a director and his or her corporation.

Similarly, in its post-hearing surreply brief, Plaintiff relies upon an Arkansas decision that *Heckmann* cited, *Wal-Mart Stores, Inc. v. Coughlin*, 369 Ark. 365 (2007). Yet, that decision, like *Heckmann*, addresses the disclosure duties a fiduciary owes "when entering into a transaction with the fiduciary's corporation," not transactions between a corporation and a shareholder. *Id.* at 371 (suit by corporation against director). Also, *Wal-Mart* involves Arkansas law, not applicable Delaware law.

Further, in *Heckmann*, the director had concealed gross misconduct having nothing to do with the agreement containing the release. Here, in contrast, Walworth's claims concern alleged conduct directly related to the agreement containing the release (the SRA). Indeed, contrary to Walworth's argument that its claims were not "in the contemplation of the parties" when entering into the release, its claims here fall directly within the language of the release, as both claims relate directly to the events leading up to, and the negotiation of, the SRA. Thus, the claims were squarely "within the contemplation of the parties" when they agreed to the release.[1]

Thus, the court will enforce the release as written. The release plainly covers all of Plaintiff's newly pleaded claims in the SAC, which indisputably "arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of [the SRA]." (Apr. 2, 2019 Opinion at 6.) Therefore, the court grants Defendants' motion to dismiss the breach of contract claim against Mu Sigma for the alleged breach of the IRA with prejudice.

Walworth's Unjust Enrichment Count

Defendants next argue that in addition to being released, Walworth's new unjust enrichment count fails to state a cause of action against both Defendants because the unjust enrichment count is based on conduct that is (1) governed by contract and (2) the subject of unsuccessful tort claims. Plaintiff argues in response that the unjust enrichment claim "sounds primarily in tort, not contract," and the SRA and the IRA do not give rise to

[1] Walworth's citation on this point to *E.I. DuPont de Nemours & Co. v. Fla. Evergreen Foliage*, 744 A.2d 457 (Del. 1999) is entirely inapposite. In *DuPont*, a product liability case, the court ruled that, because the recitals in the settlement agreement referred specifically to the settlement of a defective-product claim, it was "arguably ambiguous" as to whether the release was intended to be a general release covering all claims or instead only claims relating to the use of the defective product. *Id.* at 460. Here, in contrast, Walworth's release is unambiguous.

the unjust enrichment claim. Specifically, Plaintiff argues that consistent with Illinois (and Delaware) law, unjust enrichment provides an alternative, flexible "vehicle . . . to claw back some or all" of the benefits Defendants allegedly unjustly retained. *Frederick Hsu Living r. v. ODN Holding Corp.*, 2017 WL 1437308, *44 (Del. Ch. Apr. 24, 2017).

In general, where the parties' relationship is governed by contract, an unjust enrichment claim based on the same subject matter is barred. *See, e.g., People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992) ("[W]here there is a specific contract which governs the relationship of the parties, the doctrine of unjust enrichment has no application."). While the parties disagree as to whether Illinois or Delaware law governs this issue, the court notes that Delaware law is to the same effect. *See, e.g., Dietrichson v. Knott*, 2017 WL 1400552, *6 (Del. Ch. Apr. 19, 2017) ("[W]hen the complaint alleges an express, enforceable contract that controls the parties' relationship...a claim for unjust enrichment will be dismissed."). For that reason, Judge Griffin dismissed Plaintiff's unjust enrichment claim in its First Amended Complaint, on the grounds that the complaint alleged the existence of a contract and incorporated references to the contract into the unjust enrichment claim itself.

Walworth's new unjust enrichment count retains the same flaw that Judge Griffin identified. The count incorporates allegations concerning (1) the SRA, which it simply renames the "repurchase transaction," and (2) the IRA. Walworth's rewording is a change in form, not substance, and does not overcome the fact that Walworth's claim continues to involve relationships governed by contract. The unjust enrichment count expressly alleges that Defendants were "unjustly...enriched" by the "profits and benefits" defendants purportedly received from "the repurchase transaction," the very transaction governed by the SRA. (SAC ¶¶ 101–104.)

To support its argument against dismissal of the unjust enrichment count, Walworth asserts that its unjust enrichment claims are "based on tortious conduct," rather than on a "quasi-contract" theory. Walworth further explains that its "unjust enrichment claim is based on the same set of facts underlying its fraud and breach of fiduciary duty claims." (*Id.* at 7; *see also* SAC ¶ 101). Yet, this theory also fails because, as the court has previously found, Walworth does not have any viable tort claims. (Apr. 2, 2019 Opinion.) As numerous decisions have held, "if an unjust enrichment claim rests on the same improper conduct alleged in another claim, then the unjust enrichment claim will be tied to this related claim—and, of course, unjust enrichment will stand or fall with the related

claim." *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 517 (7th Cir. 2011) (applying Illinois law); *accord Ass'n Benefit Servs. Inc. v. Caremark Rx, Inc.*, 493 F.3d 841, 855 (7th Cir. 2007) ("[W]here the plaintiff's claim of unjust enrichment is predicated on the same allegations of fraudulent conduct that support an independent claim of fraud, resolution of the fraud claim against the plaintiff is dispositive of the unjust enrichment claim as well.") (emphasis omitted).

Walworth argues that, in certain circumstances, an unjust enrichment claim can be an "independent claim," or, as stated by Walworth's counsel during oral argument, a "gap filling claim" unconnected to any alleged underlying wrongdoing. However, as numerous decisions like those above have recognized, where, as here, a plaintiff does base its unjust enrichment claim on the same conduct that underlies its tort claims, the unjust enrichment claim fails if the related tort claims fail.

In *Cleary*, the Seventh Circuit made this exact point. The court acknowledged that, in *Raintree Homes, Inc. v. Vill. of Long Grove*, 209 Ill. 2d 248, 256 (2004), the Illinois Supreme Court "appear[ed] to recognize unjust enrichment as an independent cause of action." *Cleary*, 656 F.3d at 516. As the Seventh Circuit explained, in *Raintree*, the plaintiff was seeking the refund of overpaid fees under an unjust enrichment theory, where no other underlying cause of action was alleged. *Id.* But, as the Seventh Circuit further explained, in cases where an unjust enrichment claim does "rest[] on the same improper conduct alleged in another claim, then the unjust enrichment claim will be tied to this related claim—and, of course, unjust enrichment will stand or fall with the related claim." *Id.* at 517.

That is the case here, where (a) as Walworth has acknowledged, its unjust enrichment claim "is based on the same set of facts underlying its fraud and breach of fiduciary duty claims," and (b) the court has now dismissed those claims on the merits because Plaintiff could not prove reliance, which was an essential element of all of its claims. Walworth seeks to overcome this result by citing certain decisions for the proposition that unjust enrichment claims may proceed where tort claims have failed for "technical" reasons. Those decisions, however, are entirely inapposite. *E.g.*, *Maui Jim, Inc. v. SmartBuy Guru Enters.*, 2018 WL 509960, at *5–6 (N.D. Ill. Jan. 23, 2018) (lack of sufficient nexus between claims for deceptive trade practices and State of Illinois); *Triumph Packaging Grp. v. Ward*, 2012 WL 5342316, at *7 (N.D. Ill. Oct. 29, 2012) (tort claims

dismissed for lack of standing to pursue direct claims against corporation, not because they were "deficient on the merits"); *see also LVI Grp. Invs., LLC v. NCM Grp. Holdings, LLC*, 2018 WL 1559936, at *17 (Del. Ch. Mar. 28, 2018) (plaintiff had viable tort claims against other parties); *Frederick Hsu Living Trust v. ODN Holding Corp.*, 2017 WL 1437308, at *43 (Del. Ch. Apr. 14, 2017) (same). Here, in contrast, the court entered summary judgment in favor of defendants on the merits of Plaintiff's fraud-related and fiduciary duty claims because Plaintiff could not prove the essential element of reliance. As noted above, such a finding is fatal to an unjust enrichment claim based on allegations of fraud or other misrepresentations.

Accordingly, because Walworth bases its unjust enrichment claim on the same alleged conduct on which it based its fraud and breach of fiduciary duty claims, and because the court has already determined that Walworth has no viable fraud and breach of fiduciary duty claims based on that conduct, the court grants Defendants' motion to dismiss plaintiff Walworth's unjust enrichment claim with prejudice.

Leave of Court to Assert Unjust Enrichment Claim

Lastly, Defendants argue that Walworth's claim against Mr. Rajaram should also be dismissed because Walworth did not obtain leave of court to assert that claim. However, because Mr. Rajaram has been a named defendant and has been a focus of Walworth's allegations and discovery from the outset of the litigation, the court will not dismiss Walworth's unjust enrichment claim based solely on this theory.

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ORDER

It is ordered:

(1) Defendants Mu Sigma, Inc. and Dhiraj C. Rajaram's motion to dismiss plaintiff Walworth Investments – LG, LLC,'s second amended complaint is granted with prejudice;

10/1/2019 at 10:30 am
10/18/19 at 3:00 pm
12/4/2019 at 10:00 am
Judge Daniel J. Kubasiak

(2) All remaining dates in the court's May 2, 2019, order are stricken;

(3) This is a final order disposing of the case in its entirety.

AUG 30 2019
Circuit Court-2072

ENTERED,

Judge Daniel J. Kubasiak, No. 2072

STOCK REPURCHASE AGREEMENT

THIS STOCK REPURCHASE AGREEMENT ("*Agreement*") is made as of May 26, 2010, by and between WALWORTH INVESTMENTS – MU, LLC ("*Stockholder*") and MU SIGMA, INC., a Delaware corporation (the "*Company*").

RECITALS

A. Stockholder is the beneficial and record holder of 7,764,705 shares of the Company's Series B Preferred Stock.

B. Stockholder has agreed to sell all of the shares of the Series B Preferred Stock currently held by Stockholder (the "***Repurchased Stock***") to the Company, and the Company desires to repurchase the Repurchased Stock from Stockholder, for an aggregate purchase price of $9,317,646.00 (the "***Repurchase***").

C. The Board of Directors of the Company has determined that the Repurchase is in the best interests of the Company.

D. The Stockholder has determined that the Repurchase is in the best interest of the Stockholder.

E. The Company has required, as a condition to the Repurchase, that the Stockholder execute and deliver this Agreement.

AGREEMENT

The parties hereto hereby agree as follows:

1. Repurchase of Shares. Stockholder hereby sells to the Company, and the Company hereby repurchases from Stockholder, the Repurchased Stock for an aggregate purchase price of $9,317,646.00 (the "***Purchase Price***"), payable in cash.

2. Conditions to Repurchase.

(a) Upon Stockholder's execution and delivery of this Agreement, and as a condition to the obligations of the Company to consummate the Repurchase, Stockholder shall deliver to the Company (i) a duly executed Stock Assignment Separate From Certificate in the form attached hereto as **EXHIBIT A**, and (ii) the original stock certificates for the Repurchased Stock.

(b) Upon the Company's execution and delivery of this Agreement, and as a condition to the obligations of Stockholder to consummate the Repurchase, the Company shall deliver to Stockholder the Purchase Price by wire transfer of immediately available funds to an account designated by Stockholder.

3. Representations and Warranties of Stockholder. Stockholder represents and warrants that:

(a) Ownership of Shares. Stockholder has good and marketable right, title and interest (legal and beneficial) in and to all of the Repurchased Stock, free and clear of all liens, pledges, security interests, charges, contractual obligations, claims or encumbrances of any kind. Upon payment for the Repurchased Stock in accordance with this Agreement, Stockholder will convey the Repurchased Stock to the Company free and clear of all liens, pledges, security interests, charges, contractual obligations, claims or encumbrances of any kind.

(b) Organization; Authorization. Stockholder has full power and authority to enter into this Agreement. The execution, delivery and performance by Stockholder of this Agreement has been duly authorized by all requisite action by Stockholder and this Agreement constitutes a valid and binding obligation of Stockholder, enforceable against Stockholder in accordance with its terms, except as enforcement may be limited by general principles of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally. No person has any agreement, option, understanding or commitment (oral or in writing) with the Stockholder, or any right or privilege capable of becoming an agreement, option or commitment for the purchase from Stockholder of any of the Repurchased Stock.

(c) Compliance with Other Instruments. Neither the execution and delivery of this Agreement nor the consummation of any of the transactions contemplated hereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will (i) result in the creation of any mortgage, pledge, lien, security interest, encumbrance, contractual obligation or charge upon the Repurchased Stock, or (ii) be the subject of any rights of first refusal, rights of first offer, or tag along rights that have not been previously waived. Stockholder has not granted any options of any sort with respect to the Repurchased Stock or any right to acquire the Repurchased Stock or any interest therein other than under this Agreement.

(d) No Consent Required. No consent, authorization, approval, order, license, certificate or permit or act of or from, or declaration or filing with, any foreign, federal, state, local or other governmental authority or regulatory body or any court or other tribunal or any party to any contract, agreement, instrument, lease or license to which Stockholder is a party, is required for the execution, delivery or performance by Stockholder of this Agreement or any of the other agreements, instruments and documents being or to be executed and delivered hereunder or in connection herewith or for the consummation of the transactions contemplated hereby.

(e) Disclosure of Information. Stockholder has received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock to the Company pursuant to this Agreement. Stockholder acknowledges (i) that neither the Company, nor any of the Company's Related Parties (as defined below), has made any representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock and (ii) that the Company is relying upon the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder. For purposes of this Agreement, "Related Parties" shall mean

current and former directors, officers, partners, employees, attorneys, agents, successors, assigns, current and former stockholders (including current and former limited partners, general partners and management companies), owners, representatives, predecessors, parents, affiliates, associates and subsidiaries.

(f) Continuing Rights. Stockholder hereby acknowledges that it shall have no rights with respect to the Repurchased Stock, as a stockholder of the Company or otherwise, with respect to any future sale, acquisition, merger, liquidation, dissolution or other corporate event regarding the Company or its assets (any of the foregoing, a "***Corporate Event***"). Stockholder further expressly acknowledges that any such Corporate Event may result in the payment by the Company or a third party of assets, funds or other proceeds to the Company's stockholders in a manner such that the value attributed to the Company's capital stock in such Corporate Event (either in an aggregate amount or on a per share basis) may be greater than the Purchase Price.

(g) Potential Future Public Offering. Stockholder hereby acknowledges that, depending on market conditions, the Company may in the future file a registration statement with the SEC in connection with a proposed public offering of its common stock. The initial offering price in such public offering would likely be substantially greater than the average per share of the Repurchase Stock paid by the Company to Stockholder.

(h) Tax Consequences. Stockholder has had an opportunity to review the federal, state and local tax consequences of the sale of the Repurchased Stock to the Company and the transactions contemplated by this Agreement with its own tax advisors. Stockholder is relying solely on such advisors and not on any statements or representations of the Company or any of its respective Related Parties. Stockholder understands that Stockholder (and not the Company) shall be responsible for its own tax liability that may arise as a result of the transactions contemplated by this Agreement, and acknowledges that the Company and its officers and directors shall not be held liable and shall be indemnified by Stockholder for any applicable taxes, penalties and other costs associated with the Repurchased Stock.

(i) Litigation. There is no action, suit, proceeding or investigation pending or, to the Stockholder's knowledge, currently threatened against the Stockholder that questions the validity of this Agreement, or the right of the Stockholder to enter into this Agreement, or to consummate the transactions contemplated hereby. There are presently no outstanding judgments, decrees or orders of any court or any governmental or administrative agency against the Stockholder, which may affect the validity of this Agreement or the right of Stockholder to consummate the transactions contemplated hereby.

4. Representations and Warranties of the Company. The Company represents and warrants that:

(a) Organization; Authorization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has full power and authority to enter into this Agreement. The execution, delivery and performance by the Company of this Agreement has been duly authorized by all requisite action and this Agreement constitutes a valid and binding obligation of the Company, enforceable

against the Company in accordance with its terms, except as enforcement may be limited by general principles of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

(b) Compliance with Other Instruments. Neither the execution and delivery of this Agreement nor the consummation of any of the transactions contemplated hereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof conflicts with or will result in any breach or violation of or constitute a default under the provisions of any agreement, instrument or document to which the Company is a party.

(c) No Consent Required. No consent, authorization, approval, order, license, certificate or permit or act of or from, or declaration or filing with, any foreign, federal, state, local or other governmental authority or regulatory body or any court or other tribunal or any party to any contract, agreement, instrument, lease or license to which the Company is a party, is required for the execution, delivery or performance by the Company of this Agreement or any of the other agreements, instruments and documents being or to be executed and delivered hereunder or in connection herewith or for the consummation of the transactions contemplated hereby.

(d) Disclosure of Information. The Company is not currently engaged in any discussions or conversations with any third parties which the Company has reason to believe would directly or indirectly result in the sale or issuance of any capital stock of the Company at an implied valuation or purchase price greater than the implied valuation of the Repurchased Stock. The Company acknowledges that Stockholder is relying upon the truth of the representations and warranties in this Section 4 in connection with the sale of the Repurchased Stock hereunder.

5. Release. Stockholder hereby forever generally and completely releases and discharges the Company and its Related Parties and their respective successors and assigns from any and all claims, liabilities, obligations and demands of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, and in particular of and from all claims and demands of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, that arose out of or are in any way related to events, acts, conduct or omissions occurring prior to the date of this Agreement; provided, however, that the foregoing release shall not apply to claims relating to Stockholder's right to payment by the Company.

6. Miscellaneous.

(a) Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by both the Company and Stockholder. The failure of any party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

(b) This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of Delaware (without giving effect to principles of conflicts of

laws).

(c) The parties shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and as may be reasonably required to convey, transfer to, and vest in the Company, and protect the right, title, interest in, and enjoyment of, the Repurchased Stock intended to be assigned, transferred, and conveyed pursuant to this Agreement. The parties, at any time and from time to time after the date hereof, upon the reasonable request of each other, shall execute, acknowledge and deliver any and all further acts, deeds, assignments, transfers, conveyances, powers of attorney and/or assurances, and shall do any and all acts, reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

(d) This Agreement is the product of negotiations between the parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

(e) Whenever possible, each provision of this Agreement shall be interpreted in such as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction so as to best give effect to the intent of the parties under this Agreement.

(f) The representations and warranties set forth in this Agreement shall survive the execution of this Agreement regardless of any investigation or lack of investigation by the parties to this Agreement.

(g) This Agreement contains the complete agreement and understanding between the parties as to the subject matter covered hereby and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

(h) This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

[*Remainder of page intentionally left blank.*]

The parties hereto have caused this Agreement to be executed as of the date first above written.

WALWORTH INVESTMENTS – MU, LLC

By:_____
Name:_____
Title:_____

MU SIGMA, INC.

By:_____
Name: Dhiraj Rajaram
Title: CEO

The parties hereto have caused this Agreement to be executed as of the date first above written.

WALWORTH INVESTMENTS – MU, LLC

By: _____
Name: Patrick G. Ryan, Jr.
Title: President

MU SIGMA, INC.

By: _____
Name: Dhiraj Rajaram
Title: CEO

EXHIBIT A

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, WALWORTH INVESTMENTS – MU, LLC hereby sells, assigns and transfers unto **MU SIGMA, INC.**, a Delaware corporation (the "***Company***"), pursuant to a Stock Repurchase Agreement, dated _____, 2010, by and between the undersigned and the Company (the "***Agreement***"), 7,764,705 shares of the Series B Preferred Stock of the Company standing in the undersigned's name on the books of the Company represented by Certificate Nos. 1. and 2, and does hereby irrevocably constitute and appoint the Company's Secretary attorney to transfer said stock on the books of the Company with full power of substitution in the premises. This Assignment may be used only in accordance with and subject to the terms and conditions of the Agreement, in connection with the repurchase pursuant to the Agreement of shares of Preferred Stock issued to the undersigned.

Dated: _____

WALWORTH INVESTMENTS – MU, LLC

By:_____
Name:_____
Title:_____

EXHIBIT A

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED, WALWORTH INVESTMENTS – MU, LLC hereby sells, assigns and transfers unto **MU SIGMA, INC.**, a Delaware corporation (the "***Company***"), pursuant to a Stock Repurchase Agreement, dated _____, 2010, by and between the undersigned and the Company (the "***Agreement***"), 7,764,705 shares of the Series B Preferred Stock of the Company standing in the undersigned's name on the books of the Company represented by Certificate Nos. 1. and 2, and does hereby irrevocably constitute and appoint the Company's Secretary attorney to transfer said stock on the books of the Company with full power of substitution in the premises. This Assignment may be used only in accordance with and subject to the terms and conditions of the Agreement, in connection with the repurchase pursuant to the Agreement of shares of Preferred Stock issued to the undersigned.

Dated: _____

WALWORTH INVESTMENTS – MU, LLC

By: _____
Name: Patrick G. Ryan, Jr.
Title: President

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

WALWORTH INVESTMENTS - LG, LLC,	)	
Plaintiff,	)	Case No. 2016-L-002470
v.	)	
MU SIGMA, INC. and DHIRAJ C. RAJARAM,	)	Hon. Daniel J. Kubasiak
Defendants.	)	

SECOND AMENDED COMPLAINT

Plaintiff Walworth Investments - LG, LLC ("Walworth"), by and through its attorneys, brings this Complaint against Defendants Mu Sigma, Inc. ("Mu Sigma" or the "Company") and Dhiraj C. Rajaram ("Rajaram"), and alleges on personal knowledge with respect to itself and its own acts, and upon information and belief with respect to all other matters, as follows:

SUMMARY OF THE ACTION

1. This action arises out of a transaction in which Defendant Mu Sigma, a privately-held data analytics company, and its founder, CEO, and controlling majority shareholder, Defendant Rajaram, fraudulently induced Walworth to sell Walworth's sizeable ownership stake in Mu Sigma by acting in bad faith, making material misstatements, omitting material information and fraudulently concealing information about Mu Sigma's value, growth prospects, and future business plans, as well as Rajaram's motives for pursuing the repurchase transaction. But for Defendants' fraudulent actions and unjust retention of the value of Walworth's shares, Walworth would own shares in Mu Sigma worth hundreds of millions of dollars, and possibly more. To remedy this significant harm, Walworth asserts claims against Defendants for fraudulent

inducement, fraudulent concealment, negligent misrepresentation, breach of fiduciary duty, breach of contract, and/or in the alternative, unjust enrichment.

2. When he founded Mu Sigma in 2005, Rajaram was in need of start-up capital to finance his nascent, Northbrook-based business, as well as a signature investor to assist Mu Sigma in gaining access to executives working at large, established companies which might not otherwise meet with the founder of a risky start-up venture. Rajaram located an ideal target to accomplish these dual goals in Patrick G. Ryan and his family (the "Ryan Family"), a well-known Chicago family with strong relationships in the business and civic communities. Although he was loath to reduce his equity stake in Mu Sigma, Rajaram nonetheless recognized that he needed the validation that a Ryan Family investment would bring to his company.

3. In early 2006, after Rajaram's persistent marketing efforts, the Ryan Family made a $1.5 million investment in Mu Sigma through their investment vehicle, Plaintiff Walworth. Demonstrating the strategic importance of having the Ryan Family's imprimatur, Rajaram declared in a press release: "Having Pat Ryan back Mu Sigma validates our vision and provides us the support and guidance we need to take Mu Sigma to the next level." Following the investment, Rajaram touted the fact that his untested startup was backed by the Ryans to gain momentum, additional investors, and clients. Years later, in the company's own telling, the official "story" of Mu Sigma credited the Ryan Family's initial $1.5 million investment for allowing the Company to "take it to the next level."

4. But after Mu Sigma had reaped the benefits of the Ryan Family's investment—namely, the $1.5 million in start-up capital and, even more importantly, the reputational capital that allowed Mu Sigma to develop a client roster of name-brand companies (such as Microsoft,

Wal-Mart, and Dell Computer) as well as a set of institutional investors—Rajaram embarked on a scheme to oust Walworth, and its approximately 21% ownership stake, from his company.

5. Rajaram was motivated by greed and self-interest. In Rajaram's mind, Mu Sigma belonged to him and he wanted to own as much of it as possible. Rajaram has described the company as his "baby" and the "daughter [he] never had." That mentality was echoed by Rajaram's ex-wife and former Mu Sigma CEO, Ambiga Subramanian, who described Rajaram's relationship with Mu Sigma as akin to that between a father and child. Mu Sigma was Rajaram's "baby, his daughter, his son, his life."

6. By duping the Ryan Family into selling their stock back to Mu Sigma, Rajaram would further his personal goal of boosting his own ownership stake and reclaiming the equity he had previously relinquished in order to grow his company. And by repurchasing Walworth's entire interest for far less than it was worth, Rajaram's successful ruse had the effect of increasing the percentage of shares he and other remaining shareholders owned as well as increasing the value of his—and other remaining shareholders'—Mu Sigma shares. Rajaram's scheme to buy out a significant shareholder at an artificially low price by misrepresenting and concealing material information, with his primary objective of advancing his own personal interests, turned traditional fiduciary duty principles on their head.

7. In August 2009, Mu Sigma made an unsolicited offer to the Ryan Family to repurchase their stock for 67 cents per share. The Ryan Family declined this offer without even seriously considering it because, per their general investment approach, they were long-term investors.

8. A few months later, Rajaram contacted Patrick Ryan's son, Patrick Ryan Jr. ("Ryan Jr."), with a new calculated strategy to entice Walworth to sell back its shares to Mu Sigma. This

time, Rajaram told Ryan Jr. that although the Company had "weathered the recession well," they "ha[d] to adjust to the reality of the 'new normal,'" in which Mu Sigma would no longer experience explosive growth, and instead would have to rely on acquisitions to replace the Company's organic growth. Rajaram represented to Ryan Jr. that he was planning to offer a $1.20 per share value to "early investors Series A and Series B to buy their shares back into the company." According to Rajaram, the impending loss of Mu Sigma's largest customer, IMS Health, was a harbinger of the Company's grim future prospects, and, given the economic and political environments facing Mu Sigma and its potential clients, Mu Sigma was unlikely to acquire new customers to replace the lost revenue. These were lies, or at best, intentionally misleading statements.

9. Rajaram's bleak assessment of losing IMS Health as a client misleadingly failed to disclose that parting ways with IMS Health allowed Mu Sigma to pursue IMS Health's previously off-limits clients. Contrary to what Rajaram told Ryan Jr., members of Mu Sigma's sales team understood that the loss of IMS Health represented an opportunity for *more* organic growth—not a signal of declining business. Throughout 2010, the consistent message from Rajaram to his Mu Sigma sales team was to drive up the Company's organic growth, and he hired a new executive to do just that.

10. Rajaram further represented to Ryan Jr. that any future growth would come via acquisitions, rather than organically, reflecting the downward trend of the Company's growth prospects. In short, Rajaram indicated there was "no growth on the horizon" and "no upside left" for Mu Sigma. Concealing his true motives and personal interest in the transaction, Rajaram said that he was making this overture to preserve a positive relationship with the Ryan Family and giving them an early "exit" so that they could become the lead investor in his next venture, which,

rather than Mu Sigma, would be the enterprise that finally fulfilled Rajaram's goal of becoming a technology mogul.

11. What the Ryan Family did not know at the time was that all of these statements were either false or materially misleading. Indeed, Rajaram selectively disclosed only the grimmest purported facts relating to the Company's business. Meanwhile, he purposely concealed material information about Mu Sigma's performance, customer prospects, value, and plan for continued growth.

12. To ensure that the Ryan Family did not learn the true state of Mu Sigma's affairs, Rajaram explicitly instructed Mu Sigma's CFO to withhold vital financial reports in the months leading up to the transaction, and pressed Walworth to complete the transaction in haste, expressly conditioning his willingness to engage in the transaction on Walworth's ability to do so on an expedited basis. He wanted to fast-track the transaction before the Ryan Family could learn of his deception. Notwithstanding his fiduciary relationship with Walworth, Rajaram made no disclosure that he was elevating his own personal interests above those of Walworth in entering into the buyback transaction.

13. Nor did Rajaram disclose that Defendants were setting up an argument that the terms of the Repurchase Agreement, namely a boilerplate release provision and a standard clause stating that Mu Sigma had not made certain representations outside of the contract, would immunize Defendants from the fraud, breach of fiduciary duty, and other unlawful and unfair conduct perpetrated by Rajaram to induce the transaction—which misdeeds and resulting legal claims the Ryan Family could not possibly have detected at that time.

14. Rajaram's scheme achieved its desired effect. In reliance upon Rajaram's misrepresentations and omissions, and unaware of the information Rajaram had intentionally

withheld, Walworth entered into a Repurchase Agreement with Mu Sigma on May 27, 2010 (the "Repurchase Agreement"). Pursuant to the Repurchase Agreement, the Company paid Walworth $9,317,646 to redeem Walworth's entire stake of 7,764,705 shares of Series B Preferred Stock, completely eliminating Walworth's equity interest and shareholder rights, and increasing Rajaram's own significant ownership stake in the Company by retiring all of the Series B Preferred Stock—exactly as Rajaram had planned.

15. As he intended, Rajaram profited handsomely from his egregious misconduct and deception. In September 2015, Luxembourg-based researcher Rupert Hoogewerf noted that Rajaram's personal fortune was not doubling, not tripling, but growing at a rate of nearly 600% per year, and Rajaram is now listed in the Hurun Report's "Rich List" of the wealthiest Indian businesspersons.

16. Besides enriching himself, Rajaram also positioned himself to fulfill his desire to reclaim the majority ownership in Mu Sigma. With the Ryan Family and other shareholders out of his way, Rajaram today owns roughly 52% of Mu Sigma.

17. As a result of Defendants' misconduct, described in greater detail below, Plaintiff Walworth seeks (i) an order declaring the Repurchase Agreement voided and/or the rescission of the Repurchase Agreement and the return to Walworth of all shares of Mu Sigma tendered pursuant to that transaction, including any shares resulting from stock splits subsequent to May 27, 2010, or rescissory damages in an amount equal to the difference between the present value of the shares tendered by Walworth in the repurchase transaction, including the value of shares resulting from stock splits subsequent to May 27, 2010, and the price received by Walworth in May 2010, or rescissory damages in an amount equal to the difference between the May 2010 value of the shares tendered by Walworth in the repurchase transaction and the price received by Walworth in May

2010; (ii) pre- and post-judgment interest; (iii) the costs of this action, including attorneys' fees; (iv) punitive damages; and (v) such other relief as this Court deems appropriate, including, but not limited to, restitution, the imposition of a constructive trust, or another form of disgorgement.

THE PARTIES

18. Plaintiff Walworth is a limited liability corporation organized under the laws of Delaware, which was utilized by the Ryan Family to invest in Mu Sigma.[1] When the Ryan Family agreed to invest in Mu Sigma through Walworth in April 2006 (when Mu Sigma had scarcely $65,000 in gross revenues), it instantly became the Company's largest investor. By May 27, 2010, the date of the repurchase transaction, Walworth held 7,764,705 shares of Mu Sigma's Series B Preferred Stock, which translated to ownership of approximately 21.3% of the Company.

19. Defendant Mu Sigma is a closely-held corporation that is incorporated in Delaware and headquartered in the Village of Northbrook, Cook County, Illinois. Mu Sigma utilizes advanced statistical techniques to provide data-driven business analytic services to its clients. Mu Sigma currently employs more than 3,500 people globally and has opened offices throughout the United States and in India.

20. Defendant Rajaram is the founder of Mu Sigma, and at all relevant times served as Mu Sigma's Chief Executive Officer and Chairman of the Company's Board of Directors, and at all relevant times was the largest shareholder of the Company.

JURISDICTION AND VENUE

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[1] Walworth was originally incorporated under the name Walworth Investments - Mu LLC, and on June 9, 2010, filed a Certificate of Amendment to its Certificate of Formation with the State of Delaware, changing its name to Walworth Investments - LG, LLC.

21. This Court has jurisdiction over the subject matter of this action pursuant to Article VI, § 9 of the Illinois Constitution. This Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 (a) and (b).

22. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because Defendant Rajaram resides in Cook County, Defendant Mu Sigma maintains its primary place of business in Cook County, and the majority of events giving rise to this action occurred in Cook County.

STATEMENT OF FACTS

Rajaram Solicits an Investment from the Ryan Family

23. The Ryan Family has been a longstanding leader in the business and civic communities both in Chicago and nationwide. A successful entrepreneur, Patrick Ryan founded his own insurance company—which eventually became Aon Corporation—in 1964. He served as chairman and CEO of the Chicago 2016 Olympic bid committee, owns a large minority interest in the Chicago Bears, and is a member and former chairman of the board of trustees at Northwestern University, where two major athletic facilities are named in honor of the Ryan Family. Patrick Ryan's wife, Shirley Welsh Ryan, is a philanthropist—devoting much of her time to pediatric medical research—and sits on several boards. Their son, Ryan Jr., started his career as a teacher on Chicago's West Side, and founded an inner-city charter school and training program for school leaders. He later graduated from the Chicago Police Academy and served several years as a narcotics investigator in Chicago. In addition to his civic endeavors, Ryan Jr. is the founder of two software companies, and has assisted in overseeing certain of the Ryan Family's personal investments.

24. After Rajaram was introduced to Ryan Jr. by a mutual acquaintance in June 2005, Rajaram fervently solicited an investment from the Ryan Family to help grow his new company, Mu Sigma, which, as he described, would "provide a Chicago-based data analytic driven solution

for businesses." In addition to receiving much needed capital to fund the Company's growth, Rajaram was looking for investors to give his nascent company an aura of credibility—and he found those investors in the Ryan family.

25. During the following months, Rajaram continued to sell the Ryan Family on his company, portraying Mu Sigma as standing on the forefront of the fast growing industry of big data analytics. Among other things, Rajaram provided updates on new clients and potential clients, the names of clients willing to provide references regarding Mu Sigma's services, and information about the expected growth in the industry.

The Ryan Family, Through Walworth, Agrees to Invest in Mu Sigma

26. Based on Rajaram's selling efforts, and after diligence and discussions, the Ryan Family agreed to invest in Mu Sigma through an investment company, Walworth. On April 18, 2006, Walworth and Mu Sigma executed a Series B Preferred Stock Purchase Agreement (the "Initial Investment Agreement"), under which Walworth purchased 2.2 million shares of Series B Preferred Stock for a total price of $1.5 million, or an implied per share value of 68 cents. Upon execution of the Initial Investment Agreement, Walworth became the sole holder of Series B Preferred Stock, reflecting an approximate 21% stake in the Company, and the single largest outside investor in Mu Sigma at that time.

27. Concurrent with the Initial Investor Agreement, the parties executed an Investor Rights Agreement. That Agreement granted Walworth unique and valuable rights vis-à-vis other current shareholders, such as veto rights over certain corporate transactions, the right to appoint a director, and a right of first refusal for any new issuance of stock or securities.

28. Contemporaneously, the parties executed an Equity Incentive Agreement, under which Walworth obtained the right to purchase additional Series B preferred shares according to

a formula based upon the amount of revenue earned from "Ryan Client Transactions" originating from the Ryan Family's clients or contacts.

29. Not only did the Ryan Family's investment infuse critical cash into the growing company, it served an even more important purpose for a young, unknown, and inexperienced entrepreneur like Rajaram—it provided an invaluable imprimatur for his early-stage analytics company to allow it to compete against much larger and more established companies for the business of America's leading corporations. Having a connection to the Ryan Family, with its reputation and standing in the business community, sent an important signal to those corporations that Mu Sigma was a stable and legitimate counterparty. Rajaram himself touted this notion repeatedly in client and investor pitches alike—including in a Company press release: "Having Pat Ryan back Mu Sigma validates our vision and provides us the support and guidance we need to take Mu Sigma to the next level." Elsewhere, Rajaram touted the fact that his startup was backed by the Ryan Family—whom he described as "very credible investors"—to gain momentum, additional investors, and clients. And even years later, the "story" of Mu Sigma presented in a profile it prepared for Rajaram acknowledged that it was the Ryan Family's initial $1.5 million investment that allowed the Company to "take [it] to the next level." In short, simply by associating itself with the Ryan Family, Mu Sigma gained a mantle of credibility that allowed it to compete for clients and for sources of capital that might otherwise have written off the Company as a risky and unstable business partner.

Mu Sigma Begins to Grow

30. The Ryan Family's initial investment came at a critical time for Mu Sigma. In the 13-month period leading up to that investment (from January 1, 2005 to January 31, 2006), the Company generated scarcely $219,000 in gross revenues. With the infusion of the Ryan Family's cash, the Company increased its headcount and scaled up its overseas operations, which proved

fundamental to growing its client base. In a press release announcing the Ryan Family investment, Rajaram stated that his goal was for the Company to be able to support fifteen Fortune 500 companies, and reported that "the cash infusion" from the Ryan Family would "allow[] Mu Sigma to comfortably meet its growth plans."

31. Rajaram's assessment proved to be accurate. Over the next few years, Mu Sigma grew rapidly. In 2007, Mu Sigma generated revenues of $4.2 million—almost 20 times the Company's revenues only two years earlier. And in 2008, revenues tripled to close to $14 million. Thanks to the Ryan Family's backing, Mu Sigma was not only growing its revenues—the size and caliber of its client base was expanding too. By the end of 2008, the Company's client list included household names Microsoft, IBM, and Allstate Insurance, among others. In fact, Patrick Ryan directly facilitated several client introductions on Rajaram's behalf, including at Aon, CDW Corporation, State Farm, and Abbott Laboratories. Today, Mu Sigma employs more than 3,500 people globally, maintains offices in Seattle, New York, San Francisco, and Austin, and services a global portfolio of clients that includes more than a hundred Fortune 500 companies.

Walworth Exercises Its Shareholder Rights to Block Rajaram's Preferred Investors

32. In or around 2008, Mu Sigma sought additional capital to fuel its continued growth. Rajaram wanted to raise the money from Rajat Gupta and Gupta's investment firm. In Rajaram's view, Gupta would be an excellent investor for Mu Sigma because he was famous in his native India for having reached the apex of the American business community as the former chief executive of management consultancy firm McKinsey & Company, and as a Goldman Sachs board member. However, the Ryan Family had misgivings about this plan (which concerns were validated when Gupta was arrested on insider trading charges a short time later), and exercised Walworth's right to block the issuance of new shares to Gupta.

33. Rajaram was incredibly upset. He did not like the fact that his decision to bring in Gupta as an investor had been blocked.

34. Ryan Jr. promised Rajaram that he would help find another investor for the Company. That promise was kept, and on August 8, 2008, the Company raised $15 million in exchange for issuing 8,735,150 newly-created Class C Preferred Stock to an investor at a per-share price of $1.72. This transaction was consummated in a Series C Preferred Stock Purchase Agreement (the "Series C SPA").

35. Without notifying Walworth, Rajaram changed the structure of the Series C issuance so that a portion of the proceeds of the sale was used to repurchase Rajaram's personal shares—meaning that some of the money raised in the transaction went into Rajaram's pocket rather than into the Company to fuel its growth. In exchange for his own shares in 2008, Rajaram obtained the same $1.72 per share price being realized for the sale of the newly-issued Series C shares.

36. Nonetheless, contemporaneous with the Series C SPA, Mu Sigma and Walworth entered into an agreement that terminated Walworth's Equity Incentive Agreement in exchange for the issuance of 1,164,705 shares of Series B Preferred Stock to Walworth. This agreement brought Walworth's total holdings to 7,764,705 shares of Series B Preferred Stock, which represented approximately 20.1% of the total number of outstanding shares of the Company.

Walworth Obtains and Exercises Important Information Rights

37. Pursuant to the same termination agreement, Walworth and Mu Sigma also terminated their existing investor rights agreement. In its stead, the parties entered into a new Investor Rights Agreement, executed on August 28, 2008 (the "Investor Rights Agreement" or "IRA"). Among other things, the Investor Rights Agreement included the following terms:

(i) To the extent requested by a Major Investor [defined as an investor that "own[s] not less than 10% of the Common Stock of the Company (on an as-converted basis) (as adjusted for stock splits and combinations)"]...as soon as practicable after the end of each fiscal year of the Company, and in any event within 90 days thereafter, the Company will furnish such Major Investor a balance sheet of the Company, as at the end of such fiscal year, and a statement of income and a statement of cash flows of the Company, for such year, all prepared in accordance with U.S. [GAAP] consistently applied (except as noted therein or as disclosed to the recipients thereof) and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants selected by the Board. IRA § 3.1(b).

(ii) To the extent requested by a Major Investor, the Company will furnish such Major Investor, as soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, and in any event within 30 days thereafter, a balance sheet of the Company as of the end of each such quarterly period, and a statement of income and a statement of cash flows of the Company for such period and for the current fiscal year to date and comparisons of such statements for the previous fiscal year, prepared in accordance with U.S. [GAAP] consistently applied (except as noted therein or as disclosed to the recipients thereof), with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made. IRA § 3.1(c).

(iii) To the extent requested by a Major Investor, the Company will furnish such Major Investor, as soon as practicable after the end of each month, and in any event within 30 days thereafter, a balance sheet of the Company as of the end of each such month, and a statement of income and a statement of cash flows of the Company for such month and for the current fiscal year to date, including a comparison to plan figures for such period, prepared in accordance with U.S. [GAAP] consistently applied (except as noted thereon), with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made. IRA § 3.1(d).

(iv) So long as an Investor (with its affiliates) shall own not less than 10% of the Common Stock of the Company (on an as-converted basis) (as adjusted for stock splits and combinations) (a "Major Investor"), the Company will furnish each such Major Investor to the extent requested by such Major Investor at least 30 days after the approval by the Board of the Company's annual budget and operating plans for such fiscal year (and as soon as available, any subsequent written revisions thereto). IRA § 3.1(e).

38. Prior to 2008, Walworth had made clear its interest in receiving timely, up-to-date information about Mu Sigma's financial performance and business prospects from the Company. On March 28, 2007, for example, Ryan Jr. reminded Rajaram of the "monthly updates you agreed

to" provide, and requested that, if on that particular occasion Rajaram could not timely tender such information, "[a]t a minimum pls at least send me a bullet point paragraph on where [Mu Sigma is] with each customer, where revenue, expenses and cash are." Beyond the monthly updates, Ryan Jr. and Rajaram had an understanding that Rajaram would personally update Walworth and supply Walworth with any other information needed to stay abreast of performance and developments at Mu Sigma, including any strategic information discussed at Board of Director meetings.

39. Consistent with its interest in receiving timely information, Walworth requested that Mu Sigma provide the categories of information required by Sections 3.1(b)-(e) of the Investor Rights Agreement. Thus, in March 2009, Rajaram instructed his CFO to send the "monthly reporting to the entire board including Pat Ryan." In turn, Mu Sigma's CFO sent the Company's February 2009 monthly financial report to Ryan Jr., and promised in his cover email: "I will be sending you these reports on a monthly basis from now on." Mu Sigma regularly provided this monthly reporting to Walworth until March 2010, when these disclosures abruptly stopped.

Mu Sigma Makes an Open Offer to Repurchase Stock

40. On October 7, 2009, Mu Sigma made an unsolicited offer to its investors, including the Ryan Family, to repurchase up to 3,000,000 shares of the Company's preferred stock at a price of 67 cents per share. The offered price appeared remarkably low given that it came only fourteen months after the Series C SPA that sold preferred stock at $1.72 per share and the contemporaneous repurchase of shares from Rajaram at the same $1.72 per share price. The $0.67 price implied a valuation of approximately $31 million—down 61% from the $80 million valuation implied by the Series C sale.

41. Nothing in the financial reports provided to investors around the time of the October 2009 repurchase offer explained why the Company suddenly valued its stock at less than half the

price it paid to repurchase shares from Rajaram and other insiders at the time of the Series C issuance.

42. The Ryan Family declined to participate in the stock repurchase because they were planning to be long-term investors in the Company. They had no "interest in selling" at that time and "didn't even explore the offer."

Rajaram and Mu Sigma Fraudulently Induce the Ryan Family to Sell Walworth's Stake

43. Rajaram was undeterred. Just six months after his failed attempt to repurchase the Ryan Family's stock at the artificially low price of $0.67 per share, Rajaram approached Ryan Jr. in mid-March 2010 with new and surprising information about the Company's outlook. This time, Rajaram maintained it had become clear to him that Mu Sigma would not be the success they had both hoped. To induce Walworth to sell its ownership stake back to Mu Sigma, Rajaram told Ryan Jr. that Mu Sigma was losing its biggest customer and that Mu Sigma's business was "plateauing." Rajaram further maintained that Mu Sigma's growth prospects had severely dimmed, explaining that the Company was unlikely to continue to add new customers given the economic and political environments that Mu Sigma and its potential clients were facing. In the story Rajaram told Ryan Jr., Mu Sigma was "moving from explosive growth to steady growth" and would "have to adjust to the reality of the 'new normal' that the economy presents to us." During a telephone conversation shortly thereafter, Rajaram continued to claim that Mu Sigma's business had changed and that it was time for the Ryan Family to sell, warning that there was "no growth on the horizon" and "no upside left" for the Company.

44. Rajaram also purported to explain his motives for approaching Ryan Jr. Rajaram told Ryan Jr. that he valued his relationship with the Ryan Family and was trying to "take care of" them, and that in order to preserve their relationship he wanted to take advantage of the Company's cash position to offer his early investors a liquidity opportunity, so that the Ryan Family and others

would not have their capital be tied to a company that was not growing. Rajaram had frequently told Ryan Jr. of his aspiration to be a wealthy and powerful CEO of a successful Indian-centric company, in the mold of the well-known IT services company Wipro. Rajaram claimed that Mu Sigma no longer had the potential to help him achieve this dream. Rajaram said that it would have to be his next company, and he wanted the Ryan Family to be the lead investor in that new venture.

45. Against this backdrop, Rajaram expressed the view that Mu Sigma would not "be his big success," and thus invited the Ryans to be "lead investors in [his] next company."

46. Based on these representations, Rajaram proposed that the Company repurchase Walworth's shares at a price of $1.20 per share, so that the Ryan Family would remain on good terms with Rajaram and would be inclined to lend support to his future ventures. Given the Company's bleak outlook and the prospect of a better investment opportunity to come, Rajaram "strongly encourag[ed]" the Ryan Family to sell.

47. In his initial outreach to Ryan Jr., Rajaram noted that he planned on making a similar offer to other early investors. In fact, a March 29, 2010 Mu Sigma Board Note stated that the Company expected some of the other "existing non-strategic stockholders" to also sell their shares back to Mu Sigma. And Mu Sigma's counsel expressed to Walworth that Mu Sigma's repurchase offer was intended to apply to "one or a small number of stockholders."

48. In complete contradiction of the gloomy picture he painted the Ryan Family, Rajaram was privately telling others something very different. Unbeknownst to the Ryan Family, Rajaram boasted in an internal April 2010 e-mail to his employees that Mu Sigma "represent[ed] the new order of what a new age services company [would] look like," and was "poised for explosive growth." Consistent with these glowing statements, Rajaram told a potential new hire who he was wooing to become Mu Sigma's next CFO that Mu Sigma was performing so well he

expected its valuation to more than double in the next three years, stating: "[O]ur company should have a fair value of about $200MM today ... I believe we can take it to about $500 MM in the next 3 years."

49. To be sure, Mu Sigma was continuing to grow, and continuing to add new customers and increase revenue from existing customers—more than enough to offset the loss of even their largest customer. In contrast with the dreary picture of Mu Sigma's future prospects that Rajaram expressed to Ryan Jr., Mu Sigma's internal records reveal that 2010 was a year of explosive growth for the Company. To start, losing IMS Health as a customer did not foretell worse things to come but represented an opportunity for Mu Sigma to pursue business opportunities with IMS Health's own customers. Mu Sigma was setting new records for growth in March 2010, and Mu Sigma's former Director of Finance has admitted that "Mu Sigma was continuing to grow and in fact setting new records for growth . . . in April 2010." Mu Sigma maintained that growth throughout 2010 by bringing on over 20 new name-brand clients, expanding the size of its sales team, and focusing non-sales employees on expanding revenues and clients. And in fact, internal Mu Sigma documents indicate that 2010 was the Company's highest growth year between 2008 and 2013.

50. None of this can be explained as an innocent mistake. Rajaram's goal has always been to own more than 50% of Mu Sigma so that he could have control of the company. In a stunning moment of candor, Rajaram himself admitted that, in spite of his obligation to be honest, he had intentionally made misstatements to the Ryan Family, bragging to his wife and CFO shortly after completing the stock repurchase with the Ryan Family that he was "proud" of his email to Ryan Jr., which contained misleading statements about the Company's financial condition and performance, because they "started the ball rolling for us." The CFO applauded Rajaram's

successful ruse, agreeing that he had "brilliant[ly] tempted [Ryan Jr.] enough without trying to oversell."

51. Beyond mischaracterizing the loss of IMS Health as a client and Mu Sigma's financial health, Rajaram also failed to disclose to Walworth that he (1) wanted to take Mu Sigma public in three to four years, (2) valued the Company at $200 million in April 2010—which would have corresponded to a purchase price of four times more than the $1.20 per share that the Ryans received, (3) had no "next company" in mind that would represent a more lucrative investment for the Ryans, and (4) still believed Mu Sigma would be the company that would establish his legacy.

52. Moreover, in further abdication of his fiduciary duties, Rajaram ensured that information about Mu Sigma's true performance was intentionally concealed from the Ryan Family. In the months leading up to the repurchase transaction, Rajaram instructed Mu Sigma's CFO to stop sending monthly investor reports to the Ryan Family. Rajaram's objectives were clear (and unbeknownst to Plaintiff at the time). The March 2010 monthly revenue report that Rajaram instructed not be sent to Ryan Jr. demonstrated that, for the first time in the Company's history, monthly revenues had exceeded $3 million, every business unit was exceeding projections, and Mu Sigma was experiencing month on month growth of 16%. Similarly, the April 2010 monthly revenue report that was improperly withheld from the Ryan Family reflected that the Company outperformed its projections in the first quarter of 2010. In other words, these suppressed reports contradicted Rajaram's dour portrayals of Mu Sigma's state of financial affairs.

53. While the pessimistic information conveyed by Rajaram came as a surprise to the Ryan Family, particularly given that it appeared the Company had been continuing to progress and to meet and exceed its goals, the Ryan Family ultimately agreed to Rajaram's proposal. They did so because they believed in and trusted Rajaram. After all, Rajaram was the Chairman and CEO

of Mu Sigma who owed fiduciary duties to all shareholders. What the Ryan Family did not know, and could not have known given Rajaram's efforts to intentionally conceal information and otherwise mislead them, was that Rajaram's portrayal of the dismal state of the Company was a fabrication designed to induce Walworth to sell its ownership stake under false pretenses, so that Rajaram and other Company insiders could reap the benefits of booming growth projected by Mu Sigma management.

54. As it turns out, this was not the first time Rajaram and other Mu Sigma employees had caused rightful owners of Mu Sigma to sell their shares or stock options for less than fair value. In one instance, Rajaram instructed Mu Sigma's CFO to prevent a former employee from exercising his Mu Sigma stock options at all "so that he does not own our stock." That former employee, under threat from Rajaram of a long protracted legal battle, ultimately entered into a settlement with Mu Sigma and released his stock option rights for less than they were worth. And Rajaram himself misled another former employee by leading him to believe, if he did not sell his stock immediately, he would suffer detrimental tax consequences in a later repurchase. Rajaram's pattern of cheating and lying to his investors shows that he will stop at nothing to enrich himself and, ultimately, own as much of Mu Sigma as he can.

55. Rajaram's false and misleading statements and omissions induced Walworth into the repurchase transaction. Despite the fiduciary relationship between Rajaram and Walworth, Rajaram did not inform Walworth of the deceptive means he employed to induce the repurchase transaction.

56. Ryan Jr. trusted Rajaram completely. Because of this trust, and their fiduciary relationship, Walworth accepted the $1.20 price chosen by Rajaram and did not try to negotiate a higher price.

57. However, Walworth did negotiate with Mu Sigma certain terms of the parties' written agreement. For example, one provision of the final, agreed-upon contract stated:

> Stockholder acknowledges (i) that neither the Company, nor any of the Company's Related Parties (as defined below), has made any representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock and (ii) that the Company is relying upon the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder.

An earlier version of the same provision had contained language stating "that Stockholder [Walworth] is not relying upon the Company or any of the Company's Related Parties in making its decision to sell the Repurchased Stock to the Company pursuant to the Agreement." But Walworth insisted that Mu Sigma delete that language from the final agreement, given that the Ryan Family unquestionably *was* relying upon Rajaram and Mu Sigma in deciding to sell back its shares.

58. On May 27, 2010, after agreeing on final contract terms, Walworth and the Company executed the Stock Repurchase Agreement, whereby the Company redeemed 7,764,705 shares of Series B Preferred Stock, which represented the entirety of the shares of the Company's stock held by Walworth, who was the sole holder of the class of Series B shares. In consideration for the stock, the Company paid Walworth $9,317,646 in cash, representing a per-share price of $1.20 — 32% less than Rajaram had caused the Company to pay for the repurchase of a portion of his own holdings only a few months earlier.

59. Just months after he induced Walworth to sell its shares, Rajaram brazenly crowed about Mu Sigma's prospects in an interview with the Chicago Sun-Times. In direct conflict with what he had told Ryan Jr. in private, Rajaram bragged publicly that he predicted "huge growth as data becomes ubiquitous, estimating that Mu Sigma w[ould] double its revenues to $100 million

and eventually employ 2,000 to 3,000 in the next three years." Regrettably, given Mu Sigma's status as a private company, the Ryan Family had no ability to determine at the time whether Rajaram's statements to the Sun-Times were misquoted, mere puffery, or evidence of something sinister.

60. The turning point that Rajaram warned Ryan Jr. would slow the Company's growth never came to fruition and the Company continued to experience rapid growth with existing clients and to attract new clients, many of which were already in the pipeline at the time that Rajaram made his false statements and omissions to Ryan Jr. Similarly, the bulking-up through acquisitions Rajaram claimed would be necessary for the Company's continued growth never occurred. Instead, the Company continued to grow its core business organically, just as it had before the repurchase transaction—not just adding clients, but adding some of the world's largest and well-known companies as clients. By 2015, Mu Sigma had grown to more than $250 million in annual revenue, and was generating more than $125 million per year in cash profits. And at least one publication has recently reported that the Company today may be worth over $1.5 billion.

COUNT I[2]

(Fraudulent Inducement)

61. Walworth realleges the allegations contained in paragraphs 1 through 60 as if set forth fully herein.

62. Count I is asserted against Defendants Mu Sigma and Rajaram.

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[2] Plaintiff repleads this Count to preserve it for appeal. *See Ottawa Sav. Bank v. JDI Loans, Inc.*, 374 Ill. App. 3d 394, 399-400 (2d Dist. 2007). For the sake of clarity, Plaintiff has updated the paragraph references contained therein to reflect the factual allegations of Plaintiff's Second Amended Complaint.

63. Rajaram and Mu Sigma made false affirmative representations of material fact, which are referenced herein at ¶¶ 6-13, 40-53, and 59-60 (concerning the valuation and business prospects of the Company); ¶¶ 8-10, 43, 48-49, and 51-52 (concerning the Company's client and contract pipeline); and ¶¶ 2, 4-6, 10, 12-16, 50-52, and 54 (concerning Rajaram's motive and purpose for the transaction).

64. Despite an affirmative duty to do so, Defendants omitted to state certain true material facts necessary to correct their affirmative misrepresentations, which are referenced herein at ¶¶ 6-13, 40-53, and 59-60.

65. Defendants knew that the foregoing misleading misrepresentations and omissions were false, and/or Defendants were reckless in their indifference as to the truth of such representations.

66. Defendants intended to induce Plaintiff to rely upon their false statements and omissions of material fact.

67. Walworth justifiably and reasonably relied upon Defendants' false and misleading representations and failure to disclose material information.

68. As a result of the foregoing conduct, Plaintiff suffered damages in excess of $50,000, in an amount to be determined at trial.

COUNT II[3]

(Fraudulent Concealment)

69. Walworth realleges the allegations contained in paragraphs 1 through 60 as if set forth fully herein.

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[3] Plaintiff repleads this Count to preserve it for appeal. *See Ottawa Sav. Bank v. JDI Loans, Inc.*, 374 Ill. App. 3d 394, 399-400 (2d Dist. 2007). For the sake of clarity, Plaintiff has updated the

70. Count II is asserted against Defendants Mu Sigma and Rajaram.

71. Rajaram owed Walworth a duty arising from his fiduciary obligations as a director and officer of Mu Sigma, and also arising from the relationship of trust and confidence between Rajaram and Ryan Jr.

72. Despite an affirmative duty to do so, Defendants omitted to state certain true material facts relating to the Repurchase Agreement, which are referenced herein at ¶¶ 6-13, 40-53, and 59-60.

73. Rajaram and Mu Sigma actively concealed material facts relating to the value of Mu Sigma, including but not limited to, information relating to certain clients of Mu Sigma, and certain financial information related to the growth and valuation of the Company.

74. Through their fraudulent omissions and the concealment of material information, Defendants intended to induce Walworth into the Repurchase Transaction.

75. Walworth justifiably relied on the accuracy, truthfulness, and completeness of Defendants' representations relating to the Repurchase Transaction.

76. Defendants actively and fraudulently concealed material facts from Walworth, and took steps to actively dissuade Walworth from further investigation regarding material facts relating to the Repurchase Agreement.

77. As a result of the foregoing conduct, Plaintiff suffered damages in excess of $50,000, in an amount to be determined at trial.

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paragraph references contained therein to reflect the factual allegations of Plaintiff's Second Amended Complaint.

COUNT III[4]

(Negligent Misrepresentation)

78. Walworth realleges the allegations contained in paragraphs 1 through 60 as if set forth fully herein.

79. Count III is asserted against Defendants Mu Sigma and Rajaram.

80. Rajaram and Mu Sigma made false affirmative representations of material fact, which are referenced herein at ¶¶ 6-13, 40-53, and 59-60 (concerning the valuation and business prospects of the Company); ¶¶ 8-10, 43, 48-49, and 51-52 (concerning the Company's client and contract pipeline); and ¶¶ 2, 4-6, 10, 12-16, 50-52, and 54 (concerning Rajaram's motive and purpose for the transaction).

81. Despite an affirmative duty to do so, Defendants omitted to state certain true material facts necessary to correct their affirmative misrepresentations, which are referenced herein at ¶¶ 6-13, 40-53, and 59-60.

82. Defendants made the foregoing misrepresentations and omissions with the intent to induce Walworth to enter into the Repurchase Transaction.

83. Walworth justifiably relied on the truth and completeness of Defendants' false and misleading representations.

84. As a result of the foregoing conduct, Plaintiff suffered damages in excess of $50,000, in an amount to be determined at trial.

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[4] Plaintiff repleads this Count to preserve it for appeal. *See Ottawa Sav. Bank v. JDI Loans, Inc.*, 374 Ill. App. 3d 394, 399-400 (2d Dist. 2007). For the sake of clarity, Plaintiff has updated the paragraph references contained therein to reflect the factual allegations of Plaintiff's Second Amended Complaint.

COUNT IV[5]

(Breach of Fiduciary Duty)

85. Walworth realleges the allegations contained in paragraphs 1 through 60 as if set forth fully herein.

86. Count IV is asserted against Rajaram.

87. As an officer and director of Mu Sigma, Rajaram owed Walworth fiduciary duties, including the duties of loyalty and due care.

88. Rajaram was obligated by his duty of loyalty to avoid acting in his own self-interest to the detriment of Walworth as stockholder, and was further obligated to fully and fairly disclose all information to Walworth in all dealings with Walworth.

89. As a Director and Officer of Mu Sigma, Rajaram possessed material inside information regarding the Company's business prospects and the Company's value, as well as material inside information regarding the status of the Company's plans for conducting an initial public offering or other major strategic transaction. Rajaram, instigated, approved and/or facilitated the approval of the Repurchase Transaction without adequate disclosure of such information to Walworth.

90. Rajaram made false and misleading statements to Walworth, and further omitted material information necessary to prevent his statements from becoming misleading, so as to induce Walworth to enter into the Repurchase Agreement. Through the Repurchase Agreement,

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[5] Plaintiff repleads this Count to preserve it for appeal and because Plaintiff intends to seek reconsideration of this Court's April 2, 2019 grant of summary judgment as to this Count. *See Ottawa Sav. Bank v. JDI Loans, Inc.*, 374 Ill. App. 3d 394, 399-400 (2d Dist. 2007). For the sake of clarity, Plaintiff has updated the paragraph references contained therein to reflect the factual allegations of Plaintiff's Second Amended Complaint.

Rajaram caused the Company to acquire Walworth's stock at a price that was grossly unfair to Walworth.

91. In doing so, Rajaram breached his duty of loyalty to Walworth, and sought to profit personally at the direct expense of Walworth. By permitting the Company to acquire Walworth's stock at a grossly undervalued price, Rajaram increased his proportional ownership interest in the Company and his proportional share of any profits that would be realized through an IPO or other strategic transaction.

92. As a result of the foregoing conduct, Plaintiff suffered damages in excess of $50,000, in an amount to be determined at trial.

COUNT V

(Breach of Contract - Investor Rights Agreement)

93. Walworth realleges the above allegations contained in paragraphs 1 through 60 as if set forth fully herein.

94. Count V is asserted against Defendant Mu Sigma.

95. Walworth and Mu Sigma were parties to the Investor Rights Agreement, executed on August 28, 2008. Among other things, the Investor Rights Agreement provided:

> (i) To the extent requested by a Major Investor [defined as an investor that "own[s] not less than 10% of the Common Stock of the Company (on an as-converted basis) (as adjusted for stock splits and combinations)"]...as soon as practicable after the end of each fiscal year of the Company, and in any event within 90 days thereafter, the Company will furnish such Major Investor a balance sheet of the Company, as at the end of such fiscal year, and a statement of income and a statement of cash flows of the Company, for such year, all prepared in accordance with U.S. [GAAP] consistently applied (except as noted therein or as disclosed to the recipients thereof) and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants selected by the Board. IRA § 3.1(b).
>
> (ii) To the extent requested by a Major Investor, the Company will furnish such Major Investor, as soon as practicable after the end of the first, second and third quarterly

accounting periods in each fiscal year of the Company, and in any event within 30 days thereafter, a balance sheet of the Company as of the end of each such quarterly period, and a statement of income and a statement of cash flows of the Company for such period and for the current fiscal year to date and comparisons of such statements for the previous fiscal year, prepared in accordance with U.S. [GAAP] consistently applied (except as noted therein or as disclosed to the recipients thereof), with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made. IRA § 3.1(c).

(iii) To the extent requested by a Major Investor, the Company will furnish such Major Investor, as soon as practicable after the end of each month, and in any event within 30 days thereafter, a balance sheet of the Company as of the end of each such month, and a statement of income and a statement of cash flows of the Company for such month and for the current fiscal year to date, including a comparison to plan figures for such period, prepared in accordance with U.S. [GAAP] consistently applied (except as noted thereon), with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made. IRA § 3.1(d).

(iv) So long as an Investor (with its affiliates) shall own not less than 10% of the Common Stock of the Company (on an as-converted basis) (as adjusted for stock splits and combinations) (a "Major Investor"), the Company will furnish each such Major Investor to the extent requested by such Major Investor at least 30 days after the approval by the Board of the Company's annual budget and operating plans for such fiscal year (and as soon as available, any subsequent written revisions thereto). IRA § 3.1(e).

96. Walworth validly exercised its right to receive the information outlined in Sections 3(b), (c), (d), and (e) of the Investor Rights Agreement.

97. Mu Sigma breached Sections 3(b), (c), (d), and (e) of the Investor Rights Agreement by failing to provide the requested information, including by intentionally concealing such information between mid-March 2010 and the consummation of the repurchase transaction.

98. As a direct and proximate result of the Defendant's conduct, Plaintiff suffered damages in excess of $50,000, in an amount to be determined at trial.

COUNT VI

(Unjust Enrichment)

99. Walworth realleges the allegations contained in paragraphs 1 through 12, 15 through 36, 38, 40 through 56, and 59 through 60 as if set forth fully herein.

100. Count VI is asserted, in the alternative, against Defendants Mu Sigma and Rajaram.

101. Defendants engaged in wrongful conduct by acting intentionally to deceive Walworth into entering into the repurchase transaction. Defendants acted in bad faith and made material misstatements and omissions that were intended to induce Walworth into the repurchase transaction, and they likewise—for the same improper purpose—actively concealed material information that Rajaram had a fiduciary obligation to provide Walworth. Further, the decision by Rajaram and other members of Mu Sigma's Board of Directors to knowingly repurchase Walworth's shares at less than their fair value was improper.

102. As the intended and expected result of their wrongdoing, Defendants profited and benefited, to Walworth's detriment, by underpaying Walworth for its Series B shares, which resulted in Rajaram and other shareholders owning a greater percentage of shares than they did prior to the repurchase transaction and which also resulted in each of those shares owned by Rajaram and other shareholders being worth more than they were prior to the repurchase transaction.

103. Defendants have voluntarily accepted and retained those profits and benefits without justification.

104. Defendants have unjustly retained those benefits and profits, and thereby have been enriched at the direct expense of Walworth.

105. Defendants' retention of those benefits violates and offends fundamental principles of fairness, justice, equity, and good conscience.

106. Walworth has no adequate remedy provided by law and is therefore entitled to restitution.

JURY DEMAND

Walworth respectfully demands trial by jury as to all questions so triable.

PRAYER FOR RELIEF

WHEREFORE, Walworth respectfully requests that judgment be entered:

a) Declaring the Repurchase Agreement voided and ordering the rescission of the Repurchase Agreement and the return to Walworth of all shares of Mu Sigma, Inc. tendered pursuant to that transaction, including any shares created as a result of subsequent stock splits; or

b) Awarding damages in an amount equal to the difference between the present value at the time of judgment of the shares tendered by Walworth in the Repurchase Agreement, including the value of any shares created as a result of subsequent stock splits, and the price received by Walworth; or

c) Awarding damages in an amount equal to the difference between the actual value of the shares tendered by Walworth in the Repurchase Agreement as of May 27, 2010 and the price received by Walworth; and

d) Awarding pre- and post-judgment interest;

e) Awarding Walworth expenses in this matter, including its attorneys' fees;

f) Awarding Walworth punitive damages based on Defendants' willful and wanton misconduct;

g) Awarding Walworth such other and further relief as this Court deems just and equitable, including, but not limited to, restitution, the imposition of a constructive trust, or another form of disgorgement.

Dated: April 23, 2019

Robert A Clifford
rac@cliffordlaw.com
Monica David
mdavid@cliffordlaw.com
CLIFFORD LAW OFFICES P.C.
120 North LaSalle, 31st Floor
Chicago, Illinois 60602
Telephone: (312) 899-9090
Facsimile: (312) 251-1160
Attorney No. 32640

/s/ Andrew B. Clubok

Andrew B. Clubok (*admitted pro hac vice*)
andrew.clubok@lw.com
Stephen P. Barry (*admitted pro hac vice*)
stephen.barry@lw.com
LATHAM & WATKINS LLP
555 11th St. NW, Suite 1000
Washington, D.C. 20001
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
Firm ID No. 39770

John P. Del Monaco (*admitted pro hac vice*)
john.delmonaco@kirkland.com
Alex Stone Zuckerman (*admitted pro hac vice*)
alex.zuckerman@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Plaintiff
Walworth Investments – LG, LLC

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — LAW DIVISION

WALWORTH INVESTMENTS-LG, LLC,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 2016-L-002470
	)	
MU SIGMA, INC. and	)	
DHIRAJ C. RAJARAM,	)	
	)	
Defendants-Appellees.	)	

NOTICE OF APPEAL

WALWORTH INVESTMENTS-LG, LLC (hereinafter referred to as Plaintiff-Appellant), by its attorneys, Clifford Law Offices, P.C., hereby appeals to the Appellate Court of Illinois, First Judicial District, from an Order entered by the Honorable Daniel J. Kubasiak, on **August 30, 2019**, of final dismissal with prejudice of the instant cause in favor of Defendants-Appellees, MU SIGMA, INC., and DHIRAJ C. RAJARAM (hereinafter referred to as Defendants-Appellees), and against Plaintiff-Appellant; the **May 16, 2019** Order denying Plaintiff-Appellant's Motion for Reconsideration of the Court's April 2, 2019 Opinion and Order; the **April 2, 2019** Opinion and Order granting Defendants-Appellees' Motion for Reconsideration of the Court's October 9, 2018 Order, granting Defendants-Appellees' Motion for Summary Judgment as to Count V of the First Amended Complaint, and denying Plaintiff-Appellant's Cross-Motion for Reconsideration of the Court's October 9, 2018 Order; the **October 9, 2018** Opinion and Order granting Defendants-Appellees' Motion for Reconsideration of the Court's March 29, 2018 Order and granting Defendants-Appellees' Motion for Summary Judgment on Counts I, II, and III of the First Amended Complaint; the **August 1, 2016** Order entered by the Honorable John C. Griffin

granting Defendants-Appellees' Motion to Dismiss Count IV of Plaintiff-Appellant's First Amended Complaint; and from any other adverse rulings or orders in this case and from all orders and rulings leading and/or contributing all the foregoing.

On appeal, Plaintiff-Appellant will ask that said Orders be reversed and that the case be remanded for further proceedings consistent with this Court's Opinion or Order, and for such further, additional, or alternative relief as Plaintiff-Appellant may be entitled to on appeal.

Dated: September 20, 2019

/S/ Robert A. Clifford
Attorney for the Plaintiff-Appellant

Robert A. Clifford
rac@cliffordlaw.com
Monica David
mdavid@cliffordlaw.com
CLIFFORD LAW OFFICES P.C.
120 North LaSalle, 31st Floor
Chicago, Illinois 60602
Telephone: (312) 899-9090
Facsimile: (312) 251-1160
Attorney No. 32640

Andrew B. Clubok (admitted pro hac vice in Circuit Court)
andrew.clubok@lw.com
Stephen P. Barry (admitted pro hac vice in Circuit Court)
stephen.barry@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street N.W., Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

John Del Monaco (admitted pro hac vice in Circuit Court)
john.delmonaco@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Plaintiff-Appellant Walworth Investments-LG, LLC

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9/27/2019 10:34 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2016I002470
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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT — LAW DIVISION

WALWORTH INVESTMENTS-LG, LLC,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 2016-L-002470
	)	
MU SIGMA, INC. and	)	
DHIRAJ C. RAJARAM,	)	
	)	
Defendants-Appellees.	)	

AMENDED NOTICE OF APPEAL

WALWORTH INVESTMENTS-LG, LLC (hereinafter referred to as Plaintiff-Appellant), by its attorneys, Clifford Law Offices, P.C., hereby appeals to the Appellate Court of Illinois, First Judicial District, from an Order entered by the Honorable Daniel J. Kubasiak, on **August 30, 2019**, of final dismissal with prejudice of the instant cause in favor of Defendants-Appellees, MU SIGMA, INC. and DHIRAJ C. RAJARAM (hereinafter referred to as Defendants-Appellees), and against Plaintiff-Appellant; the **May 16, 2019** Order denying Plaintiff-Appellant's Motion for Reconsideration of the Court's April 2, 2019 Opinion and Order, and granting Defendants-Appellees' Motion to Strike the Declaration of Jack B. Jacobs, and striking said Declaration from the record; the **April 2, 2019** Opinion and Order granting Defendants-Appellees' Motion for Reconsideration of the Court's October 9, 2018 Order, granting Defendants-Appellees' Motion for Summary Judgment as to Count V of the First Amended Complaint, and denying Plaintiff-Appellant's Cross-Motion for Reconsideration of the Court's October 9, 2018 Order; the **October 9, 2018** Opinion and Order granting Defendants-Appellees' Motion for Reconsideration of the Court's March 29, 2018 Order and granting Defendants-Appellees' Motion for Summary

Judgment on Counts I, II, and III of the First Amended Complaint; the **August 1, 2016** Order entered by the Honorable John C. Griffin granting Defendants-Appellees' Motion to Dismiss Count IV of Plaintiff-Appellant's First Amended Complaint; and from any other adverse rulings or orders in this case and from all orders and rulings leading and/or contributing to all of the foregoing.

On appeal, Plaintiff-Appellant will ask that said Orders be reversed and that the case be remanded for further proceedings consistent with this Court's Opinion or Order, and for such further, additional, or alternative relief as Plaintiff-Appellant may be entitled to on appeal.

Pursuant to Rule 7 of this Court and Supreme Court Rule 303(b)(5), Plaintiff-Appellant has filed this Amended Notice of Appeal for the purpose of clarifying its intent to appeal not only from the portion of the May 16, 2019 Order that denies Plaintiff-Appellant's Motion for Reconsideration of the Court's April 2, 2019 Opinion and Order, but also from the portion of the May 16, 2019 Order granting Defendants-Appellees' Motion to Strike the Declaration of Jack B. Jacobs, and striking said Declaration from the record.

Dated: September 27, 2019

/S/ Robert A. Clifford
Attorney for the Plaintiff-Appellant

Robert A. Clifford
rac@cliffordlaw.com
Monica David
mdavid@cliffordlaw.com
CLIFFORD LAW OFFICES P.C.
120 North LaSalle, 31st Floor
Chicago, Illinois 60602
Telephone: (312) 899-9090
Facsimile: (312) 251-1160
Attorney No. 32640

Andrew B. Clubok (admitted pro hac vice in Circuit Court)
andrew.clubok@lw.com

Stephen P. Barry (admitted pro hac vice in Circuit Court)
stephen.barry@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street N.W., Suite 1000
Washington, D.C. 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

John Del Monaco (admitted pro hac vice in Circuit Court)
john.delmonaco@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Plaintiff-Appellant Walworth Investments-LG, LLC

Anti-Reliance Language Comparison Chart

Source	Anti-Reliance Language	Holding
Mu Sigma Stock Repurchase Agreement, §§ 3(e), 6(g)	**Section 3** "Stockholder represents and warrants that: … (e) Stockholder has received all the information it considers necessary or appropriate for deciding whether to sell the Repurchased Stock to the Company[1] pursuant to this Agreement. Stockholder acknowledges (i) that neither the Company, nor any of the Company's Related Parties (as defined below), has made any representation or warranty, express or implied, except as set forth herein, regarding any aspect of the sale and purchase of the Repurchased Stock, the operation or financial condition of the Company or the value of the Repurchased Stock and (ii) that the Company is relying upon the truth of the representations and warranties in this Section 3 in connection with the purchase of the Repurchased Stock hereunder." **Section 6(g)** "This Agreement contains the complete agreement and understanding between the parties as to the subject matter covered hereby and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way."	**N/A**
Collab9, LLC v. En Pointe Techs. Sales, LLC, 2019 WL 4454412, at *5 (Del. Super. Ct. Sept. 17, 2019)	**"12.8 Complete Agreement.** This Agreement and the Transaction Agreements contain the complete agreement among the parties and supersede any prior understandings, agreements, or representations by or among the parties, whether written or oral, including without limitation that certain Exclusivity Agreement dated February 25, 2015 by and among Seller, Purchaser and PCM. Each party acknowledges that no other party has made any representations, warranties, agreements, undertaking or promises except for those expressly set forth in this	**"The Court finds that Section 12.8 is in substance a clear anti-reliance clause**. The contractual provision in *ChryonHego* stated that the parties had not made 'any representation, warranty, covenant or agreement, express or implied…other than those representations, warranties, covenants and agreements explicitly set forth in this Agreement.' This language is substantively identical to Section 12.8, which provides: 'Each party acknowledges that no other party has made any representations, warranties, agreements, undertaking or promises except for those expressly set forth in this

[1] For the Court's convenience, the chart has color-coded highlighting to help identify provisions from the cited case law which are substantively similar to the main provisions of the Stock Repurchase Agreement's anti-reliance and integration clauses.

	Agreement or in agreements referred to herein or therein that survive the execution and delivery of this Agreement."	Agreement or in agreements referred to herein or therein that survive the execution and delivery of this Agreement.' In this case, **Section 12.8 is a combined integration and anti-reliance provision. Section 12.8 is unambiguous. The parties clearly expressed their intent to preclude reliance on representations made prior to the effective date of the APA.**"
Keystone Assocs. LLC v. *Fulton*, 2019 WL 3731722, at *4 (D. Del. Aug. 8, 2019)	"The parties each acknowledge and represent that no promise, representation, or inducement not contained in this Agreement has been made to them and that this Agreement contains the entire understanding between the parties with respect to the subject matter hereof."	"Because **paragraph 4 of the Subscription Agreement functions as an anti-reliance clause, Plaintiffs cannot rely on extra-contractual statements**, such as the February 6, 2016 email, to establish a claim for common law fraud or negligent misrepresentation in connection with the 2016 purchase of the Elkhorn Units"
Affy Tapple, LLC v. *ShopVisible, LLC*, 2019 WL 1324500, at *3-4 (Del. Super. Ct. Mar. 7, 2019)	"6.5. CLIENT UNDERSTANDS AND AGREES THAT THE LIMITED EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6 ARE EXCLUSIVE, AND SHOPVISIBLE SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SITE, SYSTEM, SHOPVISIBILE MATERIALS, ECOMMERCE SERVICES AND ANY OTHER TECHNOLOGY OR SERVICE PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE. SHOPVISIBLE MAKES NO RESPRESENTATION THAT THE OPERATION OF ANY OF THE FOREGOING WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY OF THEM WILL PROVIDE SPECIFIC RESULTS. SHOPVISIBLE DOES NOT WARRANT THAT ANY INTEGRATION WITH CLIENT'S AND, AS APPLICABLE, CLIENT'S PARTNERS' SYSTEMS, EVEN IF SUPPORTED BY SHOPVISIBLE, WILL BE COMPLETE, ACCURATE, OR ERROR-FREE. CLIENT FURTHER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE	"Section 6.5 of the MSA is **more than a standard integration clause. It explicitly states that Affy Tapple agrees that the warranties provided in the MSA are the exclusive warranties**. The provision was drafted with sufficient clarity to establish that there was an understanding that Affy Tapple could not rely upon any implied warranties, or any express warranties outside of the MSA."

	LIMITATIONS CONTAINED IN THIS AGREEMENT, INCLUDING SECTIONS 6 AND 12, THE FEES AND CHARGES CHARGED BY SHOPVISIBLE HEREUNDER WOULD BE HIGHER."	
ChyronHego Corp. v. Wight, 2018 WL 3642132, at *5 (Del. Ch. July 31, 2018)	"Holdings and the Buyer agree that neither the Company, any Seller nor any of their respective Affiliates or advisors have made and shall not be deemed to have made any representation, warranty, covenant or agreement, express or implied, with respect to the Company, its business or the transactions contemplated by this Agreement, other than those representations, warranties, covenants and agreements explicitly set forth in this Agreement. Without limiting the generality of the foregoing, the Buyer agrees that no representation or warranty, express or implied, is made with respect to any financial projections or budgets; provided, however, that this Section 4.7 shall not preclude the Buyer Indemnified Parties from asserting claims for Fraud or indemnification in accordance with ARTICLE VII."	"Read in conjunction with the integration clause, this is a clear statement that no extra-contractual representations were relied upon by the parties. **The first sentence is an explicit anti-reliance clause**. The first clause of the second sentence preserves that clause, and emphasizes that no reliance is made on financial projections or budgets. The second clause of the second sentence makes clear that nothing in Section 4.7 precludes claims under Article VII for fraud or indemnification."
IAC Search, LLC v. *Conversant LLC*, 2016 WL 6995363, at *5 (Del. Ch. Nov. 30, 2016)	Seller representation: "Neither the Seller nor any of its Affiliates or Representatives is making any representation or warranty of any kind or nature whatsoever, oral or written, express or implied (including but not limited to, any relating to financial condition, results of operations, assets or liabilities of the Transferred Group), except as expressly set forth in this Article III, as modified by the Disclosure Schedules, and the Seller hereby disclaims any such other representations and warranties." Buyer representation: "The Buyer is a sophisticated purchaser and has made its own independent investigation, review and analysis regarding the Transferred Group and the transactions contemplated hereby, which investigation, review and analysis were conducted by the Buyer together with expert advisors, including legal counsel, that it has engaged for such purpose.	"Although this 'release' clause reinforces the limiting effect of the acknowledgement provision in the *Abry* agreement, and its absence here makes this case a closer call than *Abry*, **the combined effect of the Buyer's Acknowledgement Clause and the integration clause in Section 10.6 of the Agreement nonetheless add up in my opinion to a clear anti-reliance clause to bar fraud claims based on extra-contractual statements made during due diligence.** That is because the integration clause defines the universe of writings reflecting the terms of IAC's agreement to purchase the Transferred Group, and the Buyer's Acknowledgement Clause explains in clear terms from the perspective of the buyer the universe of due diligence information on which IAC did and did not rely when it entered into the Agreement."

	The Buyer acknowledges that neither the Seller nor any of its Affiliates or Representatives is making, directly or indirectly, any representation or warranty with respect to any data rooms, management presentations, due diligence discussions, estimates, projections or forecasts involving the Transferred Group, including, without limitation, as contained in the Confidential Information Packet dated August 2013 and any other projections provided to Buyer, unless any such information is expressly included in a representation or warranty contained in Article III. Nothing in this Section 4.7 is intended to modify or limit any of the representations or warranties of the Seller set forth in Article III." "This Agreement (including the Exhibits and Schedules hereto), the Ancillary Agreements and the Confidentiality Agreement constitute the entire understanding and agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the parties with respect to the subject matter hereof and thereof."	
Prairie Capital, 132 A.3d 35 (Del. Ch. 2015)	**Exclusive Representations Clause.** "The Buyer acknowledges that it has conducted to its satisfaction an independent investigation of the financial condition, operations, assets, liabilities and properties of the Double E Companies. In making its determination to proceed with the Transaction, the Buyer has relied on (a) the results of its own independent investigation and (b) the representations and warranties of the Double E Parties expressly and specifically set forth in this Agreement, including the Schedules. SUCH REPRESENTATIONS AND WARRANTIES BY THE DOUBLE E PARTIES CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE DOUBLE E PARTIES TO THE BUYER IN CONNECTION WITH THE TRANSACTION, AND THE BUYER UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE EXPRESS OR	"The Exclusive Representations Clause is not framed negatively. It does not say that the Buyer did not rely on any representations other than those set forth in the SPA. Instead it is framed positively. It represents affirmatively that the Buyer only relied on the representations and warranties in the SPA. If a party represents that it only relied on particular information, then that statement establishes the universe of information on which that party relied. Delaware law does not require magic words. **In this case, the Exclusive Representations Clause and the Integration Clause combine to mean that the Buyer did not rely on other information. They add up to a clear anti-reliance clause."**

	IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY RELATING TO THE FUTURE OR HISTORICAL FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OR PROSPECTS OF DOUBLE E AND THE SUBSIDIARIES) ARE SPECIFICALLY DISCLAIMED BY THE DOUBLE E PARTIES." **Integration Clause.** "This Agreement ... set[s] forth the entire understanding of the Parties with respect to the Transaction, supersede[s] all prior discussions, understandings, agreements and representations and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any Party in connection with the negotiation of the terms hereof."	
ABRY Partners V, L.P. v. *IF&W Acquisition LLC,* 891 A2d 1032 (Del. Ch. 2006)	"Acquiror acknowledges and agrees that neither the Company nor the Selling Stockholder has made any representation or warranty, expressed or implied, as to the Company or any Company Subsidiary or as to the accuracy or completeness of any information regarding the Company or any Company Subsidiary furnished or made available to Acquiror and its representatives, except as expressly set forth in this Agreement ... and neither the Company nor the Selling Stockholder shall have or be subject to any liability to Acquiror or any other Person resulting from the distribution to Acquiror, or Acquiror's use of or reliance on, any such information or any information, documents or material made available to Acquiror in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the transactions contemplated hereby."	**"This is a critical provision. It operates to define what information the Buyer relied upon in deciding to execute the Agreement. By its plain terms, the Buyer promised that neither the Company nor the Seller had made any representation or warranty as to the accuracy of any information about the Company except as set forth in the Agreement itself.** The Buyer further promised that neither the Seller nor the Company would have any liability to the Buyer or any other person for any extra-contractual information made available to the Buyer in connection with the contemplated sale of the Company. Because of this provision, the Buyer was careful to amend its complaint and to premise its claims solely upon alleged misrepresentations of facts that are represented and warranted in the Stock Purchase Agreement itself."
Progressive Int'l Corp. v. *E;I. Du Pont de Nemours & Co.*, 2012 WL 1558382 (Del. Ch. July 9, 2002)	"This LICENSE and any attached schedules and exhibits, constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supercedes all prior and contemporaneous agreements, representations, and understandings of the Parties. Each of the Parties acknowledges that no other party, nor any agent	"In the License Agreement's integration clause, Progressive made two clear promises that preclude its claim for rescission as a matter of law. First, Progressive promised that DuPont had not made any representation, promise, or warranty "whatsoever, express or implied," outside the License Agreement's text concerning the

	or attorney of any other party, has made any promise, representation, or warranty whatsoever, express or implied, and not contained herein, concerning the subject matter hereof to induce the Party to execute or authorize the execution of this LICENSE, and acknowledges that the Party has not executed or authorized the execution of this instrument in reliance upon any such promise, representation, or warranty not contained herein...."	subject matter of that contract to induce Progressive to enter into the Agreement.2 Second, Progressive promised that it was not executing that Agreement in reliance upon any statement or representation of DuPont not contained within the text of the Agreement. **Having agreed that DuPont had not made any non-contractual representations to induce Progressive to sign the Agreement and having agreed that it had not relied upon any such representations in deciding to sign the Agreement, Progressive could not reasonably base its decision to sign that Agreement on statements of DuPont that were not incorporated in the text of the Agreement.** Stated differently, Progressive contractually agreed that it was not entering the License Agreement on the basis of extra-contractual representations by DuPont; as a result, it thereby acknowledged the unreasonableness of grounding its execution of the contract on statements of DuPont that were not included within the contract as binding legal promises. **To enable Progressive to proceed with its rescission claims would allow it to escape the plain language of a commercial contract it voluntarily chose to sign, and renege on a contractual promise it made to DuPont. Even assuming the facts are as Progressive has stated them to be, its unambiguous decision to foresake reliance on any representations not contained in the License Agreement renders its allegations of reasonable reliance unsustainable as a matter of law. Sophisticated parties are bound by the unambiguous language of the contracts they sign."**
Great Lakes Chem. Corp. v. Pharmacia Corp, 788 A.2d 544, 556 (Del. Ch. 2001)	**"Section 6.10**. *Confidential Memorandum, Etc.* The Buyer agrees that, except as expressly provided in this Agreement or the Transaction Agreements, neither the Sellers, the Company nor any other person or entity will have or be	"A reading of the disclaimers makes it plain that except where the Purchase Agreement otherwise specifically provides, Great Lakes agreed to prohibit itself from relying on any forecasts or predictions furnished by

	subject to any liability to the Buyer ... resulting from the distribution to the Buyer, or the Buyer's use of the [Descriptive Memorandum] and any information, document, or material made available to the Buyer in certain "data rooms," management presentations or any other form in expectation of the transactions contemplated by this Agreement. In connection with the Buyer's investigation of the Company, the Buyer may have received from or on behalf of the Sellers certain projections, including projected statements of operating revenues and income from operations of the Company. The Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that the Buyer is familiar with such uncertainties, that the Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying [them]), and that the Buyer has received no representation or warranty from either Seller with respect to such estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying [them]). **Section 4.29**. "Except as set forth in this Article 4 or in the Disclosure Schedule or the exhibits hereto, neither Seller makes any representation or warranty, express or implied, to Buyer or its affiliates ... relating to itself, Company, the other Seller ... including, without limitation, any representation or warranty as to value, merchantability, fitness for a particular purpose or for ordinary purposes, or any other matter." **Descriptive Memorandum.** "[n]one of [the sellers] make any express or implied representation or warranty as to the accuracy or completeness of the information contained herein or made available in connection with any further investigation of the Company;"	Pharmacia that were not otherwise the subject of a warranty in that Agreement . . . Were this Court to allow Great Lakes to disregard the clear terms of its disclaimers and to assert its claims of fraud, the carefully negotiated and crafted Purchase Agreement between the parties would similarly not be worth the paper it is written on. **To allow Great Lakes to assert, under the rubric of fraud, claims that are explicitly precluded by contract, would defeat the reasonable commercial expectations of the contracting parties and eviscerate the utility of written contractual agreements. For those reasons, I conclude that in these circumstances, Delaware law permits explicit contract disclaimers to bar Great Lakes' fraud claims**. Because the parties' contractually agreed-to disclaimers extinguish the fraud claims being asserted here, Counts I and III will be dismissed."

No. 127177

IN THE
SUPREME COURT OF ILLINOIS

WALWORTH INVESTMENTS-LG, LLC,	) On Petition for Leave to Appeal) from the Illinois Appellate Court,) First District, No. 1-19-1937
Plaintiff-Respondent,	)
v.	) There Heard on Appeal from the) Circuit Court of Cook County,) County Department, Law Division
MU SIGMA, INC., and DHIRAJ C. RAJARAM.,	) Circuit No. 2016 L 002470
Defendants-Petitioners.	) Hon. Daniel J. Kubasiak, and) Hon. John C. Griffin, Judges Presiding

AFFIDAVIT TO PETITION FOR LEAVE TO APPEAL OF DEFENDANTS-PETITIONERS MU SIGMA, INC. AND DHIRAJ C. RAJARAM

The undersigned certifies that in June of 2021, he reviewed the list of Fortune 500 companies to determine how many were headquartered in Illinois (available at https://fortune.com/fortune500/2020/search/?hqstate=IL). Thereafter, the undersigned reviewed the publicly-available Articles of Incorporation for each company headquartered in Illinois, available on the Delaware Secretary of State's website. Out of the 37 Fortune 500 companies headquartered in Illinois, 31 are incorporated in Delaware. They are as follows:

1. Walgreens Boots Alliance, Inc.
2. The Boeing Company
3. Archer-Daniels-Midland Company
4. Caterpillar Inc.
5. The Allstate Corporation
6. United Airlines Holdings, Inc.
7. Deere & Company
8. AbbVie Inc.

9. US Foods Holding Corp.
10. The Kraft Heinz Company
11. McDonalds Corporation
12. CDW Corporation
13. Tenneco Inc.
14. Illinois Tool Works Inc.
15. Discover Financial Services
16. LKQ Corporation
17. Baxter International Inc.
18. Navistar International Corporation
19. Conagra Brands, Inc.
20. Univar Solutions Inc.
21. Anixter International Inc.
22. Motorola Solutions, Inc.
23. Ulta Beauty, Inc.
24. Old Republic International Corporation
25. Arthur J. Gallagher & Co.
26. Dover Corporation
27. Packaging Corporation of America
28. Northern Trust Corporation
29. R.R. Donnelley & Sons Company
30. Ingredion Incorporated
31. Fortune Brands Home & Security, Inc.

My firm has the underlying documents supporting these findings.

/s/ ***Peter A. Silverman***

Certification

Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ ***Peter A. Silverman***

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EXHIBIT C	06/19/2018	C 2029-C 2053 V2
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MOTION TO CONDUCT CERTAIN DISCOVERY AFTER DEADLINE	11/30/2018	C 3490-C 3571 V3
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B. Secured Common Law Record, Volume 2 of 2

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REPLY IN SUPPORT OF MOTION	02/13/2019	SEC C 2745 V2-SEC C 2757 V2
REPLY IN SUPPORT OF MOTION 2	02/13/2019	SEC C 2758 V2-SEC C 2770 V2
DECLARATION IN SUPPORT OF MOTION	05/02/2019	SEC C 2771 V2-SEC C 2823 V2
EXHIBITS	05/03/2019	SEC C 2824 V2
DECLARATION IN SUPPORT OF OPPOSITION TO MOTION	05/28/2019	SEC C 2825 V2-SEC C 2842 V2

IV. SUPPLEMENT TO THE RECORD

Description	Date Filed	Record Page(s)
SUPPLEMENT TO THE COMMON LAW RECORD SECTION	--	SUP C 3-SUP C 9
SUPPLEMENT TO THE REPORT OF PROCEEDINGS SECTION	--	SUP R 10-SUP R 18
SUPPLEMENT TO THE EXHIBITS SECTION	--	SUP E 0

IV. SUPPLEMENT TO THE RECORD—Continued

A. Common Law Record

Description	Date Filed	Record Page(s)
REQUEST FOR PREPARATION OF SUPPLEMENTAL SECURED RECORD ON APPEAL	01/14/2020	SUP C 4-SUP C 5
ORDER TO PREPARE SUPPLEMENTAL SECURED RECORD ON APPEAL (Secured)	01/13/2020	SUP C 6
PLAINTIFF APPELLANT'S UNOPPOSED MOTION FOR ORDER TO SUPPLEMENT SECURED RECORD ON APPEAL (Secured)	01/09/2020	SUP C 7
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT (Secured)	02/16/2018	SUP C 8
DECLARATION OF JOHN DEL MONACO IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (Secured)	02/16/2018	SUP C 9

V. SUPPLEMENT TO THE SECURED RECORD

Description	Date Filed	Record Page(s)
SECURED SUPPLEMENT TO THE COMMON LAW RECORD SECTION	--	SUP SEC C 3-SUP SEC C 297
SECURED SUPPLEMENT TO THE REPORT OF PROCEEDINGS SECTION	--	SUP SEC R 298-SUP SEC R 855
SECURED SUPPLEMENT TO THE EXHIBITS SECTION	--	SUP SEC E 0

V. SECURED RECORD—Continued

A. Common Law Record

Description	Date Filed	Record Page(s)
ORDER TO PREPARE SUPPLEMENTAL SECURED RECORD ON APPEAL	01/13/2020	SUP SEC C 4-SUP SEC C 5
PLAINTIFF APPELLANT'S UNOPPOSED MOTION FOR ORDER TO SUPPLEMENT SECURED RECORD ON APPEAL	01/09/2020	SUP SEC C 6-SUP SEC C 24
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT	02/16/2018	SUP SEC C 25-SUP SEC C 55
DECLARATION OF JOHN DEL MONACO IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT	02/16/2018	SUP SEC C 56-SUP SEC C 297

No. 127177

IN THE
SUPREME COURT OF ILLINOIS

WALWORTH INVESTMENTS-LG, LLC,	) Appeal from the Illinois) Appellate Court,) First District, No. 1-19-1937
Plaintiff-Appellee,	)
v.	) There Heard on Appeal from the) Circuit Court of Cook County,) County Department, Law Division
MU SIGMA, INC. and DHIRAJ C. RAJARAM,	) Circuit No. 2016 L 002470
Defendants-Appellants.	) Hon. Daniel J. Kubasiak, and) Hon. John C. Griffin,) Judges Presiding

NOTICE OF FILING and PROOF OF SERVICE

The undersigned, being first duly sworn, deposes and states that on January 14, 2022, there was electronically filed and served upon the Clerk of the above court **Brief of Defendants-Appellants Mu Sigma, Inc. and Dhiraj C. Rajaram**. Service will be accomplished by email as well as electronically through the filing manager, File & Serve Illinois, to the following counsel of record:

ANDREW B. CLUBOK
(andrew.clubok@lw.com)
MELISSA ARBUS SHERRY
(melissa.sherry@lw.com)
STEPHEN P. BARRY
(stephen.barry@lw.com)
CAROLINE A. FLYNN
(caroline.flynn@lw.com)
LATHAM & WATKINS LLP
555 Eleventh St, NW
Suite 1000
Washington, DC 20004

JOHN DEL MONACO
(John_delmonaco@kirkland.com)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022

ROBERT A. CLIFFORD
(rac@cliffordlaw.com)
MONICA DAVID
(mdavid@cliffordlaw.com)
CLIFFORD LAW OFFICES, P.C.
120 North LaSalle Street
Suite 3100
Chicago, Illinois 60602

/s/ James R. Figliulo

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.