IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

ROMAN ZRAZHEVSKIY and TATIANA MIRONOVA,

Plaintiffs,

v.

WHITE RIVER ENERGY CORP., a Nevada corporation, JAY PUCHIR, an individual, and e3 TAX, LLC d/b/a e3 FAMILY OFFICE, a Missouri limited liability company,

Defendants.

Case No. 5:26-cv-05135-DCF

DEFENDANTS WHITE RIVER ENERGY CORP. AND JAY PUCHIR'S BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AND, IN THE ALTERNATIVE, TO STAY

INTRODUCTION

Plaintiffs may have a contract-and-fraud dispute with White River Energy Corp. ("White River") about the tax credits they purchased through a Tax Credit Purchase Agreement (TCPA). They do not have the sprawling fifteen-count case they have pleaded. The First Amended Complaint (FAC) overreaches in ways the governing documents and controlling law do not permit: it presses contract claims on behalf of a spouse, Tatiana Mironova, who never signed the Agreement; it sues a corporate officer on derivative theories based on impermissibly conclusory speculation of commingling, diversion, personal use of corporate assets, undercapitalization, or unity of interest; it repackages a single contract claim as separate warranty "counts"; it asserts a negligent-misrepresentation theory that the governing tort law does not recognize; it asks this Court to declare federal-tax rights the Declaratory Judgment Act bars it from declaring; and it demands indemnity before the contractual conditions for indemnity have occurred.

This is a narrowing motion. White River does not seek dismissal of Count I's core breach-of-contract theory, which rests on the Agreement's Section 3 representations. It does ask the Court to dismiss all claims against Mr. Puchir; to dismiss Plaintiff Mironova from the counts relating to a contract she did not sign; to dismiss or narrow the duplicative, remedial, and legally foreclosed theories in Counts II, III, IV, and VI, and the federal-tax portion of Count VIII; to dismiss Count V (fraud in the inducement) to the extent it rests on e3-only statements, forward-looking opinions, post-sale developments untethered to pre-sale knowledge, or extra-contractual assurances barred by Sections 4.6(c) and 11; to dismiss or stay the premature indemnity theory within Count I; and to limit the requests for attorney's fees and punitive damages that the surviving contract theories cannot support. What remains — a focused breach-of-contract dispute against White River, plus any fraud theory Plaintiffs can replead with the particularity Rule 9(b) requires — is the case the parties actually have.

BACKGROUND

On March 28, 2024, Plaintiff Roman Zrazhevskiy signed a Tax Credit Purchase Agreement (the "Agreement" or "TCPA") with White River to purchase $1,000,000 in face value of "Native American Tribe Trust Fund" federal income tax credits for $600,000. FAC ¶¶ 33–36, 40. The Agreement defines the "Buyer" as "Roman zrazhevskiy" (sic) alone; Ms. Mironova is not a party and did not sign it. The Agreement is governed by Nevada law and requires suit in the state or federal courts in Washington County, Arkansas. FAC Ex. A (ECF No. 27-1) § 9. It contains White River's representations regarding ownership and authority to sell, *id*., §§ 3.1, 3.2, 3.5; a buyer acknowledgment, *id*., § 4.6; a two-step indemnification structure, *id*., §§ 5.1(a)–(b), 5.4; an entire-agreement clause, *id*., § 11; and a no-third-party-beneficiaries clause, *id*., § 8.

An Addendum from Defendant e3, executed the same day, identifies e3 Tax, LLC as White River's "distribution network" (FAC ¶¶ 41, 52, Addendum, FAC Ex. C (ECF No. 27-3) at 2) and states that e3's "fees for services are included in this current price offering." *Id.*, ¶ 52. An e3-transmitted, e3-branded "Background on this Opportunity" document mentioned some contingent possibilities — a Washington, D.C. firm was "in the process" of due diligence and would issue a tax opinion "if possible," a private letter ruling was on an "unknown" timeline, and a warranty mechanism was one White River was "working to create" — though the same document also contains the hard present-tense statements Plaintiffs invoke, such as that the Credits were "issued … by the U.S. Treasury." Background, FAC Ex. C (ECF No. 27-3) at 18–19. Because the FAC refers to and relies on each of these documents, FAC ¶¶ 33, 39, 41, 52, 106, these documents are now part of the First Amended Complaint under Federal Rule of Civil Procedure 10(c) and may be considered on this Motion without converting it. See Fed. R. Civ. P. 10(c).

Most of the public developments on which Plaintiffs rely to allege representation and false inducement in their March 2024 purchase — the March 21, 2025 IRS statement to the Senate Finance Committee, the August 7, 2025 Internal Revenue Manual update, the Cherokee Nation letter, and the April 14, 2025 letter from two United States Senators to the Acting IRS Commissioner, see FAC ¶¶ 42–45, 77 — all postdate the March 2024 purchase. The FAC does not plead nonconclusory facts showing that any actions, suits, or proceedings of the kind TCPA § 3.5 addresses existed or were threatened before closing — the pre-closing facts a claim that Section 3.5 was false would require.

LEGAL STANDARD

To survive dismissal, a complaint must plead "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," *Iqbal*, 556 U.S. at 678, and the Court examines the "well-pleaded facts alleged in the complaint, not the legal theories of recovery or legal conclusions identified therein," *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014). Allegations of fraud must additionally satisfy Rule 9(b)'s particularity requirement — the "time, place and contents" of the misrepresentation, the identity of the speaker, and what was obtained. *Commercial Prop. Invs., Inc. v. Quality Inns Int'l, Inc.*, 61 F.3d 639, 644 (8th Cir. 1995); *Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 920 (8th Cir. 2001).

On a Rule 12(b)(6) motion the Court may consider documents "necessarily embraced by the complaint" — those whose contents are alleged and whose authenticity is undisputed — without converting the motion. *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1150–51 (8th Cir. 2012). "In a case involving a contract, the court may examine the contract documents in deciding a motion to dismiss," and may do so "even if contract documents not attached to the complaint refute" the claim. *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017); *accord Gorog v. Best Buy Co.*, 760 F.3d 787, 791-92 (8th Cir. 2014). Where a document contradicts a conclusory allegation, the document controls. *Zean*, 858 F.3d at 527 (considering documents that refuted the complaint's conclusory allegation of lack of consent).

ARGUMENT

I. The Court May Consider the Agreement, Addendum, and Offering Materials.

The FAC quotes the Agreement (¶¶ 33–40, Ex. A), the Addendum (¶¶ 41, 52, Ex. C), and the "Background" offering materials (¶ 106, ECF 27-3 at 18). Plaintiffs' allegations are contradicted by the very documents they invoke — most notably any suggestion that Ms. Mironova may enforce the Agreement, when the Agreement names only Roman Zrazhevskiy as the Buyer. Those contradictions are resolved in favor of the documents.

In their FAC, Plaintiffs have attached the Agreement, the Mutual Non-Disclosure Agreement, Ex. B, and the DocuSign transaction records to the First Amended Complaint, ECF Nos. 27-1, 27-2, and 27-3 at 23–27, so those documents are part of the pleading under Rule 10(c) and may be considered without any incorporation analysis.

II. All Claims Against Jay Puchir Should Be Dismissed.

The claims against Mr. Puchir should be dismissed for a reason that appears on the face of the FAC: it pleads no direct misrepresentation count against him. Counts V (fraud in the inducement) and VI (negligent misrepresentation) — the only misrepresentation counts — are pleaded against White River alone. FAC ¶¶ 101, 115. The counts that do name Mr. Puchir — unjust enrichment (Count IV), alter ego (Count VII), declaratory relief (Count VIII), and civil conspiracy (Count XIII) — are all merely derivative of misrepresentation, conclusory, or both.

A. Mr. Puchir is not a party to the Agreement.

Signing the Agreement in a corporate capacity would not, in any event, make Mr. Puchir personally liable on it. But the FAC does not have even that much right. It alleges in two places that Mr. Puchir signed the Agreement. FAC ¶ 3 (describing him as White River's "CFO and signatory"); FAC ¶ 31 (the Agreement was "drafted by White River and signed by White River's

Chief Financial Officer Jay Puchir"). The Agreement itself says otherwise: White River executed it through its Chief Executive Officer, Randy May. FAC Ex. A (ECF No. 27-1) at 8. Where a document attached to and relied on by the complaint contradicts an allegation, the document controls. *Zean*, 858 F.3d at 526–27. Elsewhere the FAC accepts that Mr. May signed, and instead speculates — on information and belief, and without particularized facts — that White River "substituted" Mr. May for Mr. Puchir "to attempt to shield Puchir from personal exposure." FAC ¶ 64. That averment is entitled to no presumption of truth. At most, the pleadings and the documents show Mr. Puchir acting in a corporate capacity — as White River's CFO and notice contact — not as a party to the Agreement in his own right. The document controls, and in any event no count of the FAC asserts personal contractual liability against him.

B. The unjust-enrichment claim (Count IV) alleges no benefit to Mr. Puchir.

Unjust enrichment requires a benefit conferred on the defendant. *LeasePartners Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997). The FAC says Plaintiffs wired the $600,000 to White River's account, not to Mr. Puchir. FAC ¶ 40. The allegation that Mr. Puchir received any part of it thus rests on the speculation of "information and belief", with no supporting facts (¶ 98), which *Iqbal* does not credit. A conclusory allegation of that kind does not satisfy Rule 12(b)(6). *Ash v. Anderson Merchandisers, LLC*, 799 F.3d 957, 961 (8th Cir. 2015) (affirming dismissal where the plaintiffs alleged "upon information and belief" that the defendants were an integrated enterprise but "failed to set forth any facts to support the legal conclusion"); *Watkins v. City of St. Louis*, *Mo.*, 102 F.4th 947, 953 (8th Cir. 2024) ("Conclusory assertions that are unsupported by facts will not satisfy this pleading standard."). Defendants do not contend that pleading on information and belief is improper as such; the defect is that no facts are pleaded behind the belief. The benefit Plaintiffs identify — the $600,000 they wired —

was conferred on White River, not Mr. Puchir: it went to White River's corporate account (¶ 98), and Mr. Puchir's alleged control of that account as White River's CFO (¶ 122) is not the same as personal receipt of the funds or a "benefit" to him; the money enriched the corporation. Where the benefit is realized by the corporation, reaching a corporate officer for it requires piercing the corporate veil. *Cf. Johnson v. Ross*, 419 F. App'x 357, 362 (4th Cir. 2011) (unpublished) (even assuming the corporation was unjustly enriched, that "does not, without more, give rise to liability on the part of [the officer] as an individual," because "to wrest the benefit from him would require [the court] to pierce the corporate veil"). The claim that Mr. Puchir was himself enriched therefore depends entirely on Plaintiffs' alter-ego theory — treating him and White River as one — and fails right along with it, as shown below. Plaintiffs' allegation that Mr. Puchir obtained a benefit from their purchase bears none of the required indicia of plausibility; it is a bare assertion. Count IV fails as to Mr. Puchir.

C. The alter-ego claim (Count VII) is improperly conclusory.

Under Nevada law a person acts as the alter ego of a corporation "only if": "(a) The corporation is influenced and governed by the person; (b) There is such unity of interest and ownership that the corporation and the person are inseparable from each other; and (c) Adherence to the notion of the corporation being an entity separate from the person would sanction fraud or promote a manifest injustice." Nev. Rev. Stat. § 78.747(2). The Legislature has further directed that "[t]he question of whether a person acts as the alter ego of a corporation must be determined by the court as a matter of law." *Id.* § 78.747(3). That disposes at the threshold of any suggestion that alter ego is too fact-bound to resolve on the pleadings: Nevada assigns the question to the Court, and *Iqbal* still requires pleaded facts rather than labels. *See Ene v. Graham*, 140 Nev. Adv. Op. 26, 546 P.3d 1232, 1234 (2024) (applying the same three

elements to an LLC under NRS 86.376 and reversing an alter-ego determination); *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 903–04, 8 P.3d 841, 846–47 (2000).

In the face of these properly exacting standards, the FAC pleads only titles and common executive authority — that Mr. Puchir is the CFO, signs agreements, controls bank accounts and communications, and that White River is SEC-reporting delinquent — followed by the now-familiar "on information and belief" speculations of imagined beneficial ownership, commingling, diversion, and undercapitalization. FAC ¶¶ 51, 122–128. Those are the *conclusions* the statute requires, not the facts that support them. Conclusory alter-ego allegations do not survive Rule 12(b)(6): conclusory averments and a formulaic recitation of the veil-piercing elements — including allegations made on "information and belief" without supporting facts — are not entitled to the presumption of truth. *Iqbal*, 556 U.S. at 678–79. The averments fail the second element — unity of interest and ownership — in particular. Plaintiffs plead Mr. Puchir's control — not the "unity of interest and ownership" the statute demands (NRS 78.747). The FAC's allegation that Mr. Puchir beneficially owns a substantial equity interest is conclusory and pleaded only on information and belief; it identifies no specific stock grant, transfer, insider entity, or diverted dollar, and no particular corporate-formality failure tied to him. The "commingled," "diverted," and "undercapitalized" averments are the labels of the standard, not facts, and get no presumption of truth. *Iqbal*, 556 U.S. at 678. Nevada law is explicit that control and office-holding are not enough. "A mere showing that one corporation is owned by another, or that the two share interlocking officers or directors is insufficient to support a finding of alter ego," and "[n]or is mere mutuality of interest sufficient to make such a showing, without evidence of a commingling of funds or property interests, or of prejudice to creditors." *Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*, 95 Nev. 463, 466, 596 P.2d 227, 229

(1979). Where the only element established was that an individual "influenced and governed the corporation" because he "served as president and director" and "appear[ed] to have been the sole person acting on its behalf," the Nevada Supreme Court held the unity-of-interest element unproven. *Ecklund v. Nev. Wholesale Lumber Co.*, 93 Nev. 196, 198–99, 562 P.2d 479, 480 (1977). Undercapitalization together with lax formalities did not suffice either. *Rowland v. Lepire*, 99 Nev. 308, 318, 662 P.2d 1332, 1338 (1983). *SEC-reporting delinquency is not commingling, and a CFO title is not the personal use of corporate assets. The count should be dismissed.*

Plaintiffs may answer that alter ego is fact-intensive and cannot be resolved on the pleadings, relying on *Gardner v. R&O Constr. Co.*, No. 77261, 2019 WL 2743371 (Nev. June 26, 2019). *Gardner* is an unpublished order, persuasive only under NRAP 36(c), and it holds only that a reverse-piercing claim may be pleaded before judgment; it turned on a complaint that alleged particular transfers and a particular takeover of management. *Id.* at *2. It does not relieve a plaintiff of pleading facts, and it cannot displace NRS 78.747(3).

D. The conspiracy claim (Count XIII) is derivative and unparticularized.

Whether Nevada or Arkansas law governs this tort claim is a threshold question. A federal court applies the forum State's choice-of-law rules, *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941), and Arkansas applies the choice-influencing-considerations approach to tort claims, *Wallis v. Mrs. Smith's Pie Co.*, 261 Ark. 622, 628-29, 550 S.W.2d 453, 456-57 (1977); *Gomez v. ITT Educ. Servs., Inc.*, 348 Ark. 69, 76, 71 S.W.3d 542, 546 (2002). Section 9 of the TCPA selects Nevada law for the contract, and a contractual choice-of-law clause reaches a related tort claim where the claim is "closely related to the interpretation of the contracts." *Nw. Airlines, Inc. v. Astraea Aviation Servs., Inc.*, 111 F.3d 1386, 1392 (8th Cir. 1997) (holding that a

Minnesota clause did reach tort claims that "stem from" the defendant's alleged failure to perform "as required under the contracts"). The conspiracy count is not of that kind: it turns on an alleged agreement among the Defendants, not on the construction or performance of the Agreement. Arkansas law is therefore at least a serious candidate to govern it. As shown below, however, the Court need not decide the question, because the count fails under either State's law.

The elements of civil conspiracy under Arkansas law are (1) a combination of two or more persons who, by concerted action, intend to accomplish an unlawful objective to harm another; (2) an overt act in furtherance; and (3) resulting damages, *Mason v. Funderburk*, 247 Ark. 521, 446 S.W.2d 543, 548 (1969); *Born v. Hosto & Buchan, PLLC*, 2010 Ark. 292, 372 S.W.3d 324, 331 (2010). Nevada's standard is materially the same. The Court need not decide which State's law governs: where the object is fraud, an underlying actionable fraud is a necessary predicate, and fraud allegations must satisfy Rule 9(b). *Abels*, 259 F.3d at 920.

But as to Mr. Puchir, the FAC does not plead with particularity ***when*** he agreed to a fraudulent objective, ***what*** he agreed to do, or ***what*** pre-closing act he personally took to induce Plaintiffs; it merely alleges his corporate role, post-sale communications, and group conduct — not a particularized fraudulent agreement with White River or e3. Nor does the FAC allege Mr. Puchir's specific intent to defraud with the particularity Rule 9(b) requires. The claim against Mr. Puchir thus independently fails on Rule 9(b) grounds and should be dismissed. Moreover, the intracorporate-conspiracy doctrine defeats the claim under either State's law. Nevada holds that "[a]gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). Arkansas is the same. *Faulkner v. Ark. Children's Hosp.*,

347 Ark. 941, 962, 69 S.W.3d 393, 407 (2002) ("a corporation cannot conspire with itself"); *Dodson v. Allstate Ins. Co.*, 345 Ark. 430, 446, 47 S.W.3d 866, 876 (2001) (no civil conspiracy where the alleged coconspirators stand in a principal-agent or employer-employee relationship). The FAC pleads only that Mr. Puchir acted as White River's CFO; it pleads no facts showing that he acted as an individual for his own advantage rather than the corporation's.

The count should be narrowed as to White River. Setting aside the impermissible intracorporate leg — if Arkansas law governs, White River cannot conspire with its own officer, above — the only remaining combination is White River and e3, yet the FAC pleads no particularized agreement between them to accomplish an unlawful objective. It alleges a legal distribution relationship (the Addendum) and parallel, group conduct, not a meeting of the minds to defraud. It also fails to allege "concerted action" toward an unlawful end, rather than one inferred from a commercial relationship. Moreover, a civil conspiracy is not actionable in itself; it requires an underlying tort. *Mason*, 446 S.W.2d at 551. The conspiracy therefore rises or falls with the fraud it restates. To the extent the fraud claim against White River is dismissed under Rule 9(b) (Part VII), the conspiracy predicated on it should be dismissed as well; and at a minimum Count XIII should be dismissed against White River to the extent it is predicated on a fraud theory dismissed under Rule 9(b), or seeks to hold White River directly liable for statements attributable only to e3 absent a pleaded agreement, agency, authorization, or ratification.

E. The declaratory claim (Count VIII) against Mr. Puchir is derivative.

Count VIII seeks a declaration that Mr. Puchir is White River's alter ego. FAC ¶ 132. That request adds nothing to Count VII and fails for the same reasons. A declaratory claim that merely restates a coexisting claim is redundant and may be dismissed as an unnecessary and

uneconomical use of the declaratory remedy. *Capitol Indem. Corp. v. Haverfield*, 218 F.3d 872, 874-75 (8th Cir. 2000). The Declaratory Judgment Act is discretionary, *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995); 28 U.S.C. § 2201(a), and a district court may routinely dismiss a declaratory count that duplicates a coexisting substantive claim, *MASTR Asset Backed Sec. Tr. 2006-HE3 v. WMC Mortg. Corp.*, 843 F. Supp. 2d 996, 1001 (D. Minn. 2012). "Indeed, courts do not hesitate to dismiss declaratory judgment claims when those claims allege duties and obligations under the terms of the contract and asks the court to declare those terms breached." *Id*. (cleaned up). That describes Plaintiffs' count here. The count also independently fails to the extent it seeks a declaration regarding federal taxes. *See infra* Part IX.

III. Plaintiff Mironova Should Be Dismissed From the Contract Counts (I–III).

The Agreement defines the "Buyer" as Roman Zrazhevskiy alone, and only he signed it. Section 8 provides that "[n]othing in this Agreement, expressed or implied, is intended to confer on any person other than the Parties or their respective heirs, successors and assigns any rights, remedies, obligations, or other liabilities under or by reason of this Agreement." A non-party may enforce a contract only if it was made for her benefit; "The fact that [s]he might only have incidentally benefited by the performance of the agreement is insufficient." *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 380, 566 P.2d 819, 824 (1977); *see Olson v. Iacometti*, 91 Nev. 241, 245, 533 P.2d 1360, 1363 (1975) (a stranger to the contract who benefits only incidentally cannot enforce it). Ms. Mironova alleges only that she is Mr. Zrazhevskiy's spouse, a "joint owner" of the funds, and "the joint principal in interest in the transaction". FAC ¶ 21. That pleads, at most, a community-property interest in a recovery — not status as a contracting party. Counts I through III all allege breaches of the Agreement and of the duties it creates. Ms. Mironova cannot assert them, and she should be dismissed from those counts.

The FAC adds four further grounds for Ms. Mironova's standing — a joint 2023 tax return and joint-and-several tax liability, community-property co-ownership of the purchase funds, intended-beneficiary status, and her status as an e3 client. FAC ¶ 22. None makes her a party to the Agreement. A joint return and a community-property interest show, at most, that she shares in any recovery Mr. Zrazhevskiy obtains; they do not make her a signatory or supply contract standing. The joint 2023 return and any joint-and-several liability arise from 26 U.S.C. § 6013(d)(3) and run to the United States, not from the Agreement; and Plaintiffs are Texas residents, FAC ¶¶ 20–21, so Texas marital-property law supplies the answer. Property acquired by contract in one spouse's name alone is presumed to be that spouse's sole-management community property, Tex. Fam. Code Ann. § 3.104(a), and the non-managing spouse may not sue on it. *Wells v. Dotson*, 261 S.W.3d 275, 285 (Tex. App.—Tyler 2008, no pet.) (a spouse "lacks standing to bring suit on the option contract because [her husband] has the sole authority to bring an action related to such sole management community property"); *Bell v. Moores*, 832 S.W.2d 749, 753–54 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (adopting the rule that the marital relationship alone does not empower one spouse to sue for community property under the other's sole management, and holding that the intervening wife "lacked standing"). In all events, co-ownership of the funds used as consideration is an interest in an asset, not privity in the Agreement, and it does not make a non-signatory a party or an intended beneficiary. She is not a third-party beneficiary: the Agreement names only Roman Zrazhevskiy as Buyer, and Section 8 shows that the parties knew how to confer rights in the Agreement, and they conferred rights expressly on no one but the "Parties" and their representatives, successors, and assigns. *Lipshie*, 93 Nev. at 380 (only a contracting party or an intended beneficiary may enforce a contract; an incidental benefit does not suffice). The intent to benefit must appear from the

Agreement as a whole; a provision merely permitting reliance or an incidental benefit is not enough. *Boesiger v. Desert Appraisals, LLC,* 444 P.3d 436, 441 (Nev. 2019); *see Robins Dry Dock & Repair Co. v. Flint,* 275 U.S. 303, 307 (1927) (a stranger suing on a contract "must at least show that it was intended for his direct benefit"). And her status as an e3 client bears on her claims against e3, not on the White River contract. Ms. Mironova should be dismissed from Counts I–III. This dismissal reaches only her contract claims and does not decide any non-contract theory she may separately assert.

Two clarifications. First, Defendants do not contend that Ms. Mironova lacks Article III standing. Her joint and several liability on the 2023 return, FAC ¶ 22, is an injury in fact. Whether she may enforce an agreement she did not sign is a merits question under Rule 12(b)(6), not a jurisdictional one. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014). Second, NRS 12.020 — which permits a married couple to "sue jointly on all causes of action belonging to either or both of them" — does not supply what is missing. It is a joinder provision, and joinder in federal court is governed by Rules 17 through 21. It also concedes the premise: the cause of action on the Agreement belongs to Mr. Zrazhevskiy, and allowing a spouse to be joined as a co-plaintiff on his claim is not the same as giving her a claim of her own.

IV. The Duplicative Express-Warranty Count (II) Should Be Dismissed.

Count II (breach of express warranty) repeats the same Section 3 representations, the same alleged breach, and the same $600,000 in damages as Count I (breach of contract). Because Count II pleads no injury distinct from Count I, it adds nothing and should be dismissed as duplicative, and the Court need not decide whether an express-warranty claim may ever be maintained separately. It is thus merely a restatement of one element of the single cause of action

stated in Count I, not an independent claim. *Bond v. Thruston*, 60 Nev. 19, 25–26, 98 P.2d 343, 346 (1940) (separately pleading part of a single cause of action is "merely a separation of the two parts of the same cause of action," not a different claim). Rule 8(d)(2) permits pleading in the alternative, but it does not entitle a plaintiff to two counts and two recoveries for one breach of one set of representations. Count II should be dismissed as duplicative of Count I.

Plaintiffs' FAC adds a citation to *Whiting-Turner Contracting Co. v. Mollerup Glass Co.*, No. 2:25-cv-00111-ART-DJA (D. Nev. Jan. 23, 2026), for the proposition that an express-warranty claim may be pleaded separately from breach of contract. FAC ¶ 88. That unpublished district-court order does not bind this Court and does not save Count II. Count II still rests on the identical Section 3 representations, the identical alleged breach, and the identical $600,000 in damages as Count I; it identifies no distinct warranty, distinct breach, or distinct injury. A separate label for one part of a single cause of action is not a separate claim. *Bond v. Thruston*, 60 Nev. at 25–26. More fundamentally, that order announces no rule that an express-warranty claim is separately maintainable; it declined to dismiss a breach-of-warranty claim only because the governing product warranty was ambiguous as to whether it disclaimed the loss at issue — a UCC goods warranty unlike Count II's re-labeling of the Agreement's Section 3 representations. 2026 WL 184720, at *4, *6 (D. Nev. Jan. 23, 2026). Indeed, the same order dismissed the plaintiff's implied-covenant claim — without prejudice and with leave to amend — because "[t]his is a dispute about the interpretation of a contractual term, not the bad faith performance" of the defendant. *Id.* at *7.

V. The Unjust-Enrichment Count (IV) Is Barred as to White River by the Express Contract.

Unjust enrichment is unavailable where an express written contract, like the TCPA, governs the same subject matter. *LeasePartners*, 113 Nev. at 755, 942 P.2d at 187. Unjust enrichment is a non-contract claim, so Arkansas law governs it — and Arkansas is the same: an express contract covering the subject matter forecloses the claim. *Lowell Perkins Agency, Inc. v. Jacobs*, 250 Ark. 952, 958, 469 S.W.2d 89, 92 (1971) ("there can be no 'unjust enrichment' in contract cases"); Arkansas treats that as a general rule subject to exceptions not present here. *See Campbell v. Asbury Auto., Inc.*, 2011 Ark. 157, 381 S.W.3d 21, 36–38 (2011) (recognizing exceptions to the rule and reversing summary judgment because "the mere existence of a contract does not always foreclose a claim of unjust enrichment"). Plaintiffs have pleaded Count IV "solely in the alternative pursuant to Federal Rule of Civil Procedure 8(d)," FAC ¶ 97, and acknowledge that Nevada "generally does not permit unjust-enrichment recovery where an express written contract governs the same subject matter," *id.* ¶ 100. White River therefore does not ask the Court to dismiss Count IV outright as against White River. It asks the Court to hold Plaintiffs to the limit they have accepted: Count IV states no claim against White River unless and until the Agreement is held void, rescinded, or unenforceable, and Plaintiffs may not recover on both Count I and Count IV. Dismissal without prejudice to that extent is the appropriate disposition. Against Mr. Puchir, Count IV fails outright for the additional reasons set forth in Part II.

VI. The Implied-Covenant Count (III) Should Be Dismissed or Narrowed.

Plaintiffs allege that White River breached the implied covenant of good faith and fair dealing by "drafting and inserting" Sections 5.1(b) and 5.4 into the Agreement, FAC ¶ 95(a)–(b), and disagreeing with Plaintiffs about how to handle their contract demands, *id.*, 95(c)-(d). But

"[a]s a general principle, there can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the actions being challenged, and the defendant acts in accordance with the express terms of the contract." 23 *Williston on Contracts* § 63:22 (4th ed.), *quoted in Virgin Valley Water Dist. v. Paradise Canyon, LLC*, 141 Nev. Adv. Op. 19, 567 P.3d 962, 970 (2025). Plaintiffs do not allege that Defendants, by drafting and inserting or disagreeing with Plaintiffs, somehow failed to act in accordance with the express terms of the contract (which had not been executed and was not binding during the drafting and insertion). Plaintiffs do not allege a breach of performance but, rather, attack the bargain itself. But the implied covenant governs post-contract performance, not the parties' formation of the deal before the contract (let alone the covenant) came into existence, and the covenant cannot rewrite the express terms they accepted. *Hilton Hotels Corp. v. Butch Lewis Prods.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991) (covenant breached where a party performs "in a manner that is unfaithful to the purpose of the contract"); *A.C. Shaw Constr. v. Washoe County*, 105 Nev. 913, 914–15, 784 P.2d 9, 10 (1989) (covenant implied "in [the contract's] performance and its enforcement"). The implied covenant therefore cannot create liability because a party later dislikes the conditions it accepted, nor can it rewrite express terms. *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006) (courts "will not rewrite contract provisions that are otherwise unambiguous" or "increase the legal obligations of the parties where the parties intentionally limited such obligations"); *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001) (a court is "not free to modify or vary the terms of an unambiguous agreement").

To the extent Count III sounds in tort, it fails for the independent reason that Nevada confines the tortious implied-covenant claim to relationships with a "special element of reliance"

— those "between insurers and insureds, partners of partnerships, and franchisees and franchisers" — not an arm's-length sale. *Ins. Co. of the West v. Gibson Tile Co*., 122 Nev. 455, 461–62, 134 P.3d 698, 702 (2006) (an action in tort for breach of the covenant "arises only 'in rare and exceptional cases' when there is a special relationship between the victim and tortfeasor," and such a relationship is "characterized by elements of public interest, adhesion, and fiduciary responsibility"); *Torres v. Nev. Direct Ins. Co*., 131 Nev. 531, 541, 353 P.3d 1203, 1210 (2015) (tortious breach of the implied covenant requires a special relationship, such as that between an insurer and insured). The Court should dismiss the tortious theory and the "drafting and inserting" subparts, and the remaining subparts — including those premised on White River's exercise of discretion under Sections 5.1 and 5.4 — should be dismissed as duplicative of Count I, or in the alternative narrowed, because they challenge conduct the Agreement's express terms permit and merely restate the contract claim. And an implied-covenant claim "cannot be based on the same conduct establishing a separately pled breach of contract claim." *Whiting-Turner*, 2026 WL 184720, at *7 (dismissing an implied-covenant claim, without prejudice, where the dispute was "about the interpretation of a contractual term, not the bad faith performance" of the defendant).

VII. The Fraud Count (V) Should Be Narrowed Under Rule 9(b).

To plead fraud in the inducement, Nevada requires a false representation, knowledge that the representation was false, intent to induce, justifiable reliance, and damages. *Barmettler v. Reno Air, Inc*., 114 Nev. 441, 446–47, 956 P.2d 1382, 1386 (1998). Because this is a Rule 12(b)(6) motion, the question is not whether Plaintiffs could ultimately prove fraud by clear and convincing evidence, but whether they have pleaded each element with the particularity Rule 9(b) requires. As pleaded, Count V fails Rule 9(b) as to every statement it invokes except White

River's own Section 3 representations of existing fact. The statements attributable to e3, the opinions and forward-looking estimates, the post-sale IRS developments, and the extra-contractual assurances are not actionable and should be dismissed; and, as shown below, the FAC pleads no non-conclusory facts of pre-sale knowledge of falsity or intent to induce even as to the Section 3-based theory. First, false representation of existing fact: Rule 9(b) requires Plaintiffs to identify a specific White River statement of existing or past fact that was false, yet — as the table below shows — most of the statements they invoke are e3's, or are opinions, estimates, and forward-looking predictions that are not statements of fact. *Cf. Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992).

Second, falsity and scienter: consistent with the speculation that has dogged Plaintiffs' allegations from the start, the FAC alleges White River's knowledge only conclusorily and admits it's "imputed" (¶ 108), and the principal non-conclusory basis it offers for falsity — or the knowledge of it — is post-sale IRS developments, which do not plausibly show that any pre-sale statement was false when made or known to be false at closing. *Barmettler*, 114 Nev. at 446–47, 956 P.2d at 1386; *Greenwood v. Dittmer*, 776 F.2d 785, 790 (8th Cir. 1985) ("The fact that [defendants'] opinions. . . turned out to be erroneous is insufficient, standing alone, to support a fraud judgment"). Plaintiffs' theory of falsity asks the Court to infer contemporaneous knowledge from later regulatory developments without pleading facts connecting the two — an inference Rule 9(b) does not permit. The FAC pleads no non-conclusory facts that Defendants knew of a problem with the Credits, as opposed to being mistaken about them. That is speculation, not a pleaded fact.

Plaintiffs' one pre-closing fact does not change the analysis. The FAC quotes White River's April 16, 2025 press release for the statement that "our attorney formally requested a

legal opinion on the validity of these credits by the US Treasury in July 2023, which was never responded to by the US Treasury." FAC ¶ 79(a). That a company sought a confirming opinion and received no answer is not knowledge that its representations were false; it is the absence of an answer. The FAC pleads no fact showing that anyone at White River drew, before the March 28, 2024 closing, the inference Plaintiffs now urge, and Rule 9(b) does not permit the Court to supply it. *Trooien*, 608 F.3d at 1029.

Third, intent to induce: though intent may be averred generally, the FAC ties no non-conclusory intent by White River — as distinct from e3 — to any actionable statement of existing fact that White River itself made; the December 2023 statements the FAC now adds are, as shown below, e3-directed sales estimates, a disclaimer of knowledge, or the Section 3 contract representations. Fourth, justifiable reliance: to the extent the theory rests on assurances outside the Agreement, reliance was not justifiable because the alleged assurances contradict the TCPA's Section 3 representations and the Section 4.6(c) acknowledgment. *Road & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390–91, 284 P.3d 377, 381–82 (2012) (holding a fraud claim "fails as a matter of law" where the alleged misrepresentation "contradicts the express terms of the parties' integrated contract"). Each failure is developed below.

One word on the form of this relief. Defendants do not ask the Court to carve a single claim into pieces. *See Rennenger v. Aquawood, LLC*, 183 F.4th 997, 1003–04 (8th Cir. 2026) (*quoting Signal Funding, LLC v. Sugar Felsenthal Grais & Helsinger LLP*, 136 F.4th 718, 724 (7th Cir. 2025)). They ask the Court to do what the Eighth Circuit has approved under Rule 9(b): to test each alleged misrepresentation, and each defendant to whom it is attributed, against the particularity requirement, and to permit the case to go forward only on those that satisfy it. *Trooien v. Mansour*, 608 F.3d 1020, 1029–30 (8th Cir. 2010) (testing each alleged

misrepresentation separately under Rule 9(b), affirming dismissal of the misrepresentation claims on that statement-by-statement basis, and affirming dismissal of all such claims against one defendant where the complaint "failed … to attribute any of the alleged misrepresentations" to him). District courts in this Circuit do the same. *E.g., Sally v. H&M Hennes & Mauritz LP*, No. 4:23-cv-01451-CMS, 2026 WL 472764, at *4, *7 (E.D. Mo. Feb. 19, 2026) (dismissing claims under Rule 9(b) "to the extent the claims rely on" a subset of the alleged representations).

e3's purchaser-facing tax advice, the contingent tax-opinion, private-letter-ruling, and warranty statements, the projected ROI and price-appreciation figures, and the post-sale regulatory developments cannot support a fraud claim against White River satisfying Rule 9(b), as the table below explains: each is either (1) non-actionable opinion or a forward-looking estimate, *Bulbman*, 108 Nev. at 111; *Clark Sanitation, Inc. v. Sun Valley Disposal Co.*, 87 Nev. 338, 341–42, 487 P.2d 337, 339 (1971); *Greenwood*, 776 F.2d at 789-90; (2) a statement not attributable to White River absent pleaded agency, *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997) (a party claiming apparent authority "must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable"); or (3) a post-sale development that cannot bear on falsity or scienter measured as of the time the pre-sale statement was made, *Barmettler*, 114 Nev. at 446–47, 956 P.2d at 1386. None of these categories supports a fraud claim against White River. The alleged misrepresentations fall into six categories:

Alleged statement (¶)	Speaker	Timing	Disposition
§3 written reps — ownership, authority, no proceedings (¶¶36, 103)	White River	Pre-sale	These are the only statements by White River itself that could support fraud — and they are not pleaded with particularity. Even these are not tied to particular facts of falsity when made, White River's knowledge, or intent to induce; as pleaded they fail Rule 9(b).
"Already in the tax code"; "near 100% certain" (¶¶54–	e3 advisers	Pre-sale	Not chargeable to White River on the facts pleaded. These are e3's statements; absent

57)			particularized facts of agency, authorization or ratification, they cannot support fraud against White River. Rule 9(b). *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997); *Tsouras v. Sw. Plumbing & Heating, Inc.*, 94 Nev. 748, 751, 587 P.2d 1321, 1322 (1978) (an agent's own assertions of authority do not establish it).
Credits "issued … by the U.S. Treasury"; Cherokee "exchange" (¶¶28, 30; Background)	White River (¶¶28, 30); e3 (Background)	Pre-sale	Plaintiffs allege these were false when made (¶ 91), but plead only later IRS developments (which say nothing of White River's state of mind in any event) as the basis for White River's alleged knowledge of falsity. Falsity and knowledge of falsity are measured as of the time each statement was made, *Barmettler*, 114 Nev. at 446–47, 956 P.2d at 1386; post-sale IRS positions do not, without more, show that a pre-sale statement was false when made. Greenwood, 776 F.2d at 790. To the extent it rests on the e3-transmitted, e3-branded "Background" document, Plaintiffs still must plead facts showing White River prepared, authorized, adopted, or ratified the particular statements.
Tax opinion "if possible"; PLR timing "unknown"; "estimated" ROI (Background)	e3 materials	Pre-sale	Statement by e3. Not actionable as pleaded. Contingent, forward-looking estimates and opinions are not representations of existing fact, and reliance on them was not justifiable.
"White River will repay" if credits not accepted (Background)	e3 advisers	Pre-sale	Statement by e3. Sounds in contract, not fraud. The entire-agreement clause (FAC Ex. A § 11) displaces this Background statement, and FAC Ex. A § 5.1(b) governs any repayment obligation and its ripeness. A broken promise is not fraud absent facts showing no intent to perform when made. *Bulbman*, 108 Nev. at 112.
Treasury/Bloomberg, IRS-Senate, IRM update, DOJ inquiry (¶¶42–45)	Various	Post-sale	Insufficient by themselves to plead contemporaneous scienter. Post-sale developments do not show what Defendants knew or intended at closing absent facts tying them to pre-sale knowledge. Greenwood, 776 F.2d at 790; *Barmettler*, 114 Nev. at 446–47, 956 P.2d at 1386 (falsity and knowledge of falsity are elements measured as of the time the representation was made).

Measured element by element, the FAC — even as amended — still falls short at each. Apart from the signed TCPA itself, it does not identify, for each alleged White River statement, the particular speaker, time, place, content, and basis for attribution Rule 9(b) requires, and it lumps White River together with e3 instead of pleading the nature of each defendant's alleged

participation in the fraud. *Streambend Props. II, LLC v. Ivy Tower Minneapolis, LLC*, 781 F.3d 1003, 1013 (8th Cir. 2015). Nor does it plead particular facts that White River knew any Section 3 representation was false when made, or that White River intended to induce reliance; even under Rule 9(b)'s general standard for state of mind, those averments must be plausible and not conclusory. Rule 9(b) also requires the "who, what, when, where, and how" of the alleged fraud. *Great Plains Trust Co. v. Union Pac. R.R.*, 492 F.3d 986, 995 (8th Cir. 2007); *Drobnak v. Andersen Corp.*, 561 F.3d 778, 783 (8th Cir. 2009) (information-and-belief pleading does not satisfy Rule 9(b) where the supporting facts are within the plaintiff's own access). The specific defects below confirm the point.

The First Amended Complaint's new allegations about a December 15, 2023 due-diligence call (FAC ¶¶ 59–64) do not cure these defects. The statements the FAC now attributes to that call include an estimate that "20-25% of the $50 Million has been spoken for," a disclaimer that he was "not sure if the tax credits can be used for previous tax years," a statement that White River was "not looking to advertise" the program, and, as summarized in writing by e3, assertions about a Treasury transfer, Cherokee Nation involvement, a planned repayment, a discounted offering, and a planned private-letter-ruling engagement. Some of these are e3's written summaries rather than direct statements by Mr. Puchir to Plaintiffs; some are estimates, disclaimers, or future plans that are not actionable statements of existing fact; and the present-fact assertions — the Treasury transfer, Cherokee Nation involvement, and White River's ownership or authority — overlap with the Section 3 representations and still require particularized facts of contemporaneous falsity and scienter, which Count V does not plead. Finally, Plaintiffs now allege the purchaser-facing misrepresentations against White River "only to the extent White River made, supplied, authorized, approved, or ratified them," FAC ¶ 104,

and admit those alleged misrepresentations came from e3's "Background" materials and "purchaser communications." That hedge underscores the need to plead attribution with particularity; it does not itself supply the agency, authorization, or ratification facts Rule 9(b) requires.

First, the FAC impermissibly blends pre-closing and post-closing facts. Plaintiffs purchased the credits in March–April 2024, but their scienter allegations rest largely on December 2024 and later events (the December 2024 Treasury statement, the March 2025 IRS statement to the Senate Finance Committee, the August 2025 Internal Revenue Manual update, and the January 2026 Senate letter). FAC ¶¶ 42–45, 108. Post-sale developments do not, without facts connecting them to White River's pre-closing knowledge, plead the contemporaneous scienter fraud requires: a representation is fraudulent only if it was false when made, *Barmettler*, 114 Nev. at 446–47, 956 P.2d at 1386, and "[t]he mere failure to fulfill a promise or perform in the future … will not give rise to a fraud claim absent evidence that the promisor had no intention to perform at the time the promise was made," *Bulbman*, 108 Nev. at 112, 825 P.2d at 592. And Rule 9(b) requires Plaintiffs to plead the who, what, and when of a misrepresentation.

Second, Plaintiffs cannot attribute e3's statements to White River without pleading agency, apparent authority, or ratification with particularity. The most specific pre-closing representations — that the credits were "already in the tax code" and that e3 was "near 100% certain" of IRS acceptance — came from e3's advisers. FAC ¶¶ 54–57. Apparent authority is not presumed. A party asserting it "must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable." *Great Am.*, 113 Nev. at 352, 934 P.2d at 261. And an agent's own assertions of authority do not supply it. *Tsouras v. Sw. Plumbing & Heating, Inc.*, 94 Nev. 748,

751, 587 P.2d 1321, 1322 (1978). The Addendum supports a distribution relationship. It does not, by itself, plead that e3 had actual or apparent authority to make tax-law assurances on White River's behalf, or that White River ratified each purchaser-facing statement by e3's advisers. A principal is bound only by acts within its agent's actual or apparent authority, and apparent authority flows from the principal's own conduct, not the agent's representations. *Nev. Nat'l Bank v. Gold Star Meat Co.*, 89 Nev. 427, 429–30, 514 P.2d 651, 653 (1973). Rule 9(b) does not generally govern agency allegations, but where the same circumstances are claimed to establish both the fraud and the agency, the particularity requirement reaches those allegations too. *BP Chems. Ltd. v. Jiangsu Sopo Corp.*, 285 F.3d 677, 687 (8th Cir. 2002); *Abels*, 259 F.3d at 916. Plaintiffs may sue e3 for e3's advice, but Rule 9(b) does not permit them to convert that advice into White River's fraud.

Third, several alleged "representations" are contingent or forward-looking — that a tax opinion would issue "if possible," that a private letter ruling was forthcoming on an "unknown" timeline, and projected "return on investment" figures "based on success of the program." Fraud requires a statement of fact. Estimates and opinions "based on past experience" are not actionable in fraud. *Bulbman,* 108 Nev. at 111, 825 P.2d at 592. *Clark Sanitation*, 87 Nev. at 341–42 (an estimate "is an opinion" upon which reasonable persons may differ); *accord Greenwood*, 776 F.2d at 790 (erroneous predictions "insufficient, standing alone, to support a fraud judgment").

Moreover, to the extent Nevada's parol-evidence and integration principles apply, a fraud theory cannot contradict the Agreement's express terms — the Section 11 entire-agreement clause and the Section 4.6(c) acknowledgment of non-reliance. *Road & Highway Builders*, 128 Nev. at 390-91, 284 P.3d at 381-82. Section 4.6(c) and the Agreement's express terms foreclose

the fraud and negligent-misrepresentation theories to the extent they rest on assurances the Agreement squarely contradicts. The Buyer agreed that it had "independently and without reliance upon the Seller … made its own analysis and decision to enter into this Agreement," "except that the Buyer has relied upon the Seller's express representations, warranties and covenants in this Agreement." FAC Ex. A § 4.6(c). Under Nevada law a fraud claim "fails as a matter of law" when it "contradicts the express terms of the parties' integrated contract." *Road & Highway Builders*, 128 Nev. at 386, 284 P.3d at 378. White River does not contend that Section 4.6(c) operates as a freestanding bar to a misrepresentation claim — Nevada holds that integration and waiver clauses alone do not bar such claims, *Blanchard v. Blanchard*, 108 Nev. 908, 912, 839 P.2d 1320, 1322–23 (1992) — but the fraud and negligent-misrepresentation counts fail insofar as they rest on extra-contractual assurances that vary the Section 3 representations, the Section 11 entire-agreement clause, and the Section 4.6(c) acknowledgment. Sections 4.6(c) and 11 defeat only reliance on assurances outside the Agreement; neither bars a fraud theory resting on White River's own Section 3 representations, which fails, if at all, for the Rule 9(b) and scienter reasons above. Nevada has not decided whether a true non-reliance clause bars a fraud claim, but Section 4.6(c) is materially different from an ordinary integration clause. It does not merely recite that the writing is the entire agreement; it recites that the Buyer proceeded "without reliance upon the Seller" — an express, bargained-for disclaimer of reliance on anything outside the Agreement. It is therefore not the integration clause held insufficient in Epperson v. Roloff, 102 Nev. 206, 211, 719 P.2d 799, 802 (1986), or the integration-and-waiver clause in Blanchard; it is a disclaimer of reliance, and to the extent Plaintiffs' fraud rests on assurances outside the Agreement, Section 4.6(c) defeats justifiable reliance on them.

Courts in other jurisdictions have enforced a specific, bargained-for disclaimer of reliance between sophisticated, counseled parties, while declining to give the same effect to a general integration clause. *See Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 179–81 (Tex. 1997); *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 60 (Tex. 2008); *Reperex, Inc. v. Coldwell Banker Commercial*, 2018 UT 51, ¶¶ 24–27, 428 P.3d 1082, 1088–89 (Utah 2018); *Keller v. A.O. Smith Harvestore Prods., Inc.*, 819 P.2d 69, 73–74 (Colo. 1991); *Colorado Coffee Bean, LLC v. Peaberry Coffee Inc.*, 251 P.3d 9, 18–22 (Colo. App. 2010). The Agreement fits these cases' rationale: the Buyer represented that it had the "knowledge and experience in financial and business matters" to evaluate the transaction and an "opportunity to consult with its legal, accounting and tax professionals." FAC Ex. A § 4.6(a), (d).

By its terms, Section 4.6(c) preserves reliance on "the Seller's express representations, warranties and covenants in this Agreement" — the Section 3 representations anchoring Count I and the surviving part of Count V — but it defeats justifiable reliance on assurances outside the Agreement: the "Background" projections, the tax-opinion and private-letter-ruling contingencies, and e3's oral assurances. To the extent Count V (fraud) or Count VI (negligent misrepresentation) rests on assurances outside the Agreement, reliance on them was not justifiable, and both counts fail to that extent.

Taken together, these defects leave Count V inadequately pleaded: the statements other than White River's own Section 3 representations are not actionable, and the Section 3-based theory pleads no White River misrepresentation shown to be false when made, no facts of pre-closing knowledge or intent to induce, and no reliance the Agreement did not foreclose. Count V should therefore be narrowed: every theory other than one resting on White River's own Section 3 representations of existing fact should be dismissed for failure to satisfy Rule 9(b). White River

does not seek dismissal of a Section 3-based fraud theory merely because it also sounds in contract.

VIII. The Negligent-Misrepresentation Count (VI) Should Be Dismissed or Narrowed.

The tort choice-of-law question is genuinely contestable, but the Court need not resolve it to dismiss or narrow Count VI: if Arkansas law governs, the tort is not recognized and Count VI fails; if Nevada law governs, Count VI should be dismissed or narrowed because Plaintiffs plead no duty independent of the TCPA and Count V and merely recast the same alleged falsity and loss as negligence. A federal court sitting in diversity applies the forum State's choice-of-law rules, *Klaxon*, 313 U.S. 487, and Arkansas applies Professor Leflar's choice-influencing considerations to tort claims, *Wallis*, 261 Ark. at 628-29, 550 S.W.2d at 456-57.

Arkansas law is at least a serious candidate under those rules, because the alleged misrepresentations issued from White River's Arkansas headquarters and the Agreement's Section 9 clause does not, on its narrower reading, reach a free-standing negligent-misrepresentation tort — as distinct from the fraud-in-the-inducement claim in Count V, which concerns the Agreement's execution and validity and is governed by Nevada. *See Benchmark Elecs., Inc. v. J.M. Huber Corp*., 343 F.3d 719, 726–27 (5th Cir. 2003) (applying Texas law; persuasive only). *Nw. Airlines* is not to the contrary: the tort claims there arose from the defendant's performance under the contracts, 111 F.3d at 1392, whereas Count VI rests on information allegedly supplied before the Agreement existed. The Court need not resolve the question.

If Arkansas law governs, Count VI fails outright because Arkansas has declined to recognize the tort. "We decline to recognize the tort of negligent misrepresentation." *South County, Inc. v. First W. Loan Co*., 315 Ark. 722, 725–26, 871 S.W.2d 325, 326 (1994); *accord*

Receivables Purchasing Co. v. Eng'g & Prof'l Servs., Inc., 510 F.3d 840, 842–43 (8th Cir. 2008). If Nevada law governs, Count VI should still be dismissed because Plaintiffs plead no information supplied in a professional-information capacity distinct from White River's role as the seller and contracting counterparty; the claim is a negligence label on the same contract-and-fraud theory. Nevada's negligent-misrepresentation tort follows Restatement (Second) of Torts § 552, which reaches only false information supplied for the "guidance of others" in their business transactions. *See Bill Stremmel Motors, Inc. v. First Nat'l Bank*, 94 Nev. 131, 134, 575 P.2d 938, 940 (1978) (adopting Restatement (Second) of Torts § 552). Plaintiffs plead only representations White River made as the seller of the credits, not information supplied to guide others in a separate transaction, and they identify no duty independent of the TCPA and the fraud alleged in Count V. In all events, Count VI duplicates the falsity and loss alleged in Counts I and V.

IX. The Federal-Tax Portion of Count VIII Is Barred by the Declaratory Judgment Act.

Count VIII asks the Court to declare that "the Agreement does not require Plaintiffs, as a contractual prerequisite to obtaining relief from White River, to pursue or continue any IRS administrative process, Tax Court proceeding, refund claim, or appeal as a condition of recovering their money." FAC ¶ 132(c); *see also* FAC, Prayer for Relief ¶ E. So framed, that request asks the Court to construe the parties' private bargain, and White River does not ask the Court to refuse it on that footing. But to the extent Count VIII or Prayer ¶ E is read to seek a declaration of what federal tax law requires of Plaintiffs, the Declaratory Judgment Act withholds that power: it authorizes relief "except with respect to Federal taxes" (other than § 7428 actions). 28 U.S.C. § 2201(a). "The congressional antipathy for premature interference with the assessment or collection of any federal tax also extends to declaratory judgments." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 732 n.7 (1974); *Alexander v. "Americans United" Inc.*, 416 U.S.

752, 759 n.10 (1974). The Court may construe the parties' private duties under Sections 5.1(b) and 5.4 if it chooses, but it should at minimum dismiss Count VIII to the extent it seeks a declaration with respect to federal taxes, IRS procedures, or Tax Court obligations. Any remaining declaratory issues (voidness, restitution, alter ego) duplicate Plaintiffs' other claims seeking coercive relief — that is, relief operating directly on the defendant (breach, rescission, restitution, and alter ego), as distinct from a bare declaration of rights — and may be dismissed in the Court's discretion or limited to the parties' private contract duties.

X. Count I Is Divisible: the Indemnity Theory Should Be Dismissed or Stayed.

White River does not seek dismissal of Count I's theory that the Section 3 warranties were breached. It does seek dismissal or a stay of the distinct theory that White River breached by "failing… to indemnify Plaintiffs upon the IRS's effective rejection of the Credits." FAC ¶ 85. The Agreement's tax-credit indemnity is not triggered by an "effective rejection." It is triggered only where the IRS "makes a final binding determination, and the United States Tax Court confirms such determination in whole or in part and the times to appeal have expired." FAC Ex. A (ECF No. 27-1) § 5.1(b). For "any dispute or disagreement with respect to the applicability or indemnifiable amount," the same subsection prescribes a two-step selection of an independent "Tax Firm," and provides that "[i]f the Selection Firms fail to select the Tax Firm within such period, either Party may bring an action in a court of competent jurisdiction (subject to the other provisions of this Agreement) to litigate the dispute or disagreement." *Id.* That fallback is not in play. The Agreement contemplates court litigation over an indemnifiable amount only after the Tax Firm process has been invoked and has failed, and Plaintiffs plead none of it: not the triggering sequence of a final binding IRS determination, Tax Court confirmation and expiration of appeals; not the designation of Selection Firms; and not any

failure by those firms to select a Tax Firm. Plaintiffs' own allegations and the incorporated Agreement show those conditions have not occurred. Rule 9(c) permits a plaintiff to "allege generally that all conditions precedent have occurred or been performed," and requires a defendant denying occurrence to do so "with particularity." Defendants have so denied. Plaintiffs, however, have not alleged occurrence even generally: they allege the opposite. An unexcused failure of a condition precedent defeats the contract claim. *Baker Grp., L.C. v. Burlington N. & Santa Fe Ry. Co., 451 F.3d 484, 490 (8th Cir. 2006) (affirming judgment* as a matter of law after trial *where* the *contract*'s *conditions precedent to recovery were not satisfied). Nor does the "Background" document create an independent, immediate-refund right, and for several independent reasons. First, the document is from e3, not Defendants. Second, it states that any repayment would occur "per Section 5.1-5.3 of the Purchase Agreement" (Background, FAC Ex. C (ECF No. 27-3) at 18–19), routing the parties back to the signed indemnity procedure.* Third, Section 11 provides that the Agreement "constitutes the entire Agreement between the Parties and supersedes all prior oral and written agreements between the Parties hereto with respect to the Transaction," which forecloses any contention that a prior writing between White River and Mr. Zrazhevskiy created a separate and immediate repayment obligation. The Court should dismiss the Section 5.1(b) indemnity theory as premature or, in the alternative, stay adjudication of that indemnity subclaim pending completion of the contractual process.

Plaintiffs' new allegation that the Section 5.1(b) condition "cannot ripen in [their] favor" because the IRS has disallowed the Credits (FAC ¶¶ 62, 72) confirms rather than cures the problem. The parties bargained for a defined "ripening" sequence—a final IRS determination, Tax Court confirmation, and expiration of appeals—as a condition precedent to any repayment

obligation. Plaintiffs plead the futility of that process, not its occurrence; but the alleged futility of a bargained-for indemnity process is not itself a present breach of Section 5.1(b), and at minimum warrants a stay or dismissal without prejudice of the indemnity subclaim until the contractual process is satisfied or excused. Fed. R. Civ. P. 9(c); *Baker Grp.*, 451 F.3d at 490. Plaintiffs' "impossibility" or futility framing does not change the analysis. The excuse-of-impossibility doctrine relieves a promisor whose own performance has become objectively impossible; it does not convert an unmet condition precedent to the defendant's payment obligation into a present breach. Plaintiffs cite no authority converting the alleged futility of a bargained-for tax-contest process into a present Section 5.1(b) breach; at minimum, that supports dismissal without prejudice or a stay, not an immediate indemnity claim — least of all where the asserted impossibility is the very IRS determination the parties made the trigger.

Section 5.1(a) does not supply a separate, presently enforceable claim. The general indemnity reaches "any losses incurred by the Buyer arising from any breach by the Seller of any of the Seller's representations, warranties and/or covenants contained herein." FAC Ex. A (ECF No. 27-1) § 5.1(a). Whatever it may ultimately require, it is coextensive with Count I's damages claim for breach of the same Section 3 representations: it identifies no separate injury and supports no separate recovery, and it does not make the Section 5.1(b) tax-credit indemnity ripe.

White River is mindful that a Rule 12(b)(6) motion "doesn't permit piecemeal dismissals of parts of claims." *Rennenger*, 183 F.4th at 1003–04 (*quoting Signal Funding*, 136 F.4th at 724). The relief sought here is not of that kind. As to the Section 5.1(b) indemnity theory, White River asks for dismissal without prejudice or, alternatively, a stay on ripeness grounds — relief that turns on the occurrence of a contractual condition and on the Court's discretion to manage

its docket, not on carving up a claim. As to Section 3.6, it asks only for a ruling that Plaintiffs may not recover the same loss twice.

The First Amended Complaint also adds a new breach theory within Count I: that White River breached Section 3.6's representation that it "has no liability or obligation to pay fees or commissions to any broker, finder, or agent with respect to the Transaction," because White River later paid e3 commissions and fees. FAC ¶ 84. Even accepting that allegation, Plaintiffs plead no damages from the Section 3.6 representation that are separate from, and not duplicative of, the $600,000 they already seek on every other count. Section 3.6 concerns White River's own broker arrangements; to recover on it, Plaintiffs must plead and prove a distinct causal loss — such as a documented overpayment — rather than repackage the same no-credits injury. To the extent Plaintiffs rely on the alleged $100,000 spread between the December 2023 form price and the March 2024 Addendum price, that spread is a question of pricing under the Addendum Mr. Zrazhevskiy initialed; it is not a fee or commission owed "to any broker, finder, or agent" within the meaning of Section 3.6. White River reserves its position on the construction of the Agreement's recital and the Addendum, which is not a question this Motion asks the Court to decide. Plaintiffs identify no separate damages flowing from the Section 3.6 representation, and a warranty breach causing no loss beyond the damages already sought on the other counts states no separate, non-duplicative claim; to proceed on Section 3.6, Plaintiffs must plead and prove a causal loss distinct from the $600,000 they seek elsewhere. Damages are an element: breach of contract requires "damage as a result of the breach," and breach of an express warranty requires that "the breach was the proximate cause of the loss sustained by the plaintiff." *Whiting-Turner*, 2026 WL 184720, at *3, *6 (reciting the Nevada elements of breach of contract and of breach of express warranty, each of which requires a resulting loss to the plaintiff). At minimum, any

Section 3.6 theory should be limited to non-duplicative, causally distinct damages, and should not support a second recovery of the same $600,000 no-credits injury.

XI. The Fee and Punitive-Damages Requests Should Be Pruned.

Nevada follows the American Rule: attorney's fees are not recoverable absent a statute, rule, or contract, and fees incurred prosecuting a two-party contract dispute are not "special damages." *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 174, 444 P.3d 423, 424 (2019). The TCPA contains no fee-shifting clause for this dispute. The Court should therefore dismiss Plaintiffs' request for the "costs of pursuing rescission and restitution" (¶ 114) and any other fee request unsupported by statute, rule, or contract. The FAC demands attorney's fees in its prayers, *see* FAC, Prayer for Relief ¶ G (demanding fees "to the extent permitted by law, contract, or the Court's equitable authority"), without identifying any statute, rule, or contractual provision that authorizes them.

Punitive damages are likewise unavailable on the contract-based counts. Nevada authorizes exemplary damages only for "the breach of an obligation not arising from contract." Nev. Rev. Stat. § 42.005(1) (authorizing punitive damages only for "the breach of an obligation not arising from contract," on clear and convincing proof of oppression, fraud, or malice); Cain v. Price, 134 Nev. 193, 198, 415 P.3d 25, 30 (2018) (discussing the showing required for punitive-damages discovery under NRS 42.005). Plaintiffs seek punitive damages only on Counts V, IX, XIII, and XIV. FAC, Prayer for Relief ¶ D. White River therefore asks only that the demand rise or fall with those counts: if the fraud theories are narrowed under Rule 9(b) and the conspiracy count is dismissed as to White River, nothing remains against White River to which a punitive-damages demand could attach. Punitive damages are in any event unavailable on the contract, quasi-contract, and declaratory theories. Because a demand for fees or punitive

damages is a remedy rather than an independent claim, any standalone request should be dismissed and the remedy allowed to fall with the dismissed counts.

CONCLUSION

For the foregoing reasons, White River and Mr. Puchir respectfully request that the Court dismiss all claims against Mr. Puchir; dismiss Ms. Mironova from Counts I–III; dismiss the duplicative express-warranty count (Count II) as duplicative of Count I; dismiss Count III to the extent it rests on contract formation or drafting, on a tortious bad-faith theory, or on conduct duplicative of Count I; dismiss Count IV without prejudice as to White River, holding that it states no claim against White River unless and until the Agreement is held void, rescinded, or unenforceable and that Plaintiffs may not recover on both Count I and Count IV; dismiss Count V (fraud in the inducement) to the extent it rests on e3-only statements, forward-looking statements, post-sale developments not tied to pre-sale knowledge, or extra-contractual assurances barred by Sections 4.6(c) and 11; dismiss Count VI if Arkansas law governs and, alternatively, narrow it under Nevada law; dismiss the federal-tax portion of Count VIII; dismiss without prejudice the Section 5.1(b) indemnity theory within Count I or, in the alternative, stay it unless and until the conditions precedent in Section 5.1(b) are satisfied and the dispute-resolution process prescribed by that subsection is completed, exhausted, or excused; limit any Section 3.6 broker-commission theory to non-duplicative, causally distinct damages; dismiss the civil-conspiracy count (Count XIII) as to Mr. Puchir and, as to White River, to the extent it is predicated on a fraud theory dismissed under Rule 9(b), or seeks to hold White River directly liable for statements attributable only to e3 absent a pleaded agreement, agency, authorization, or ratification; limit the requests for attorney's fees and punitive damages to those the surviving claims permit; and grant such other relief as is just.

Dated: September 3, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 3, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record who are registered CM/ECF users.

By: */s/ Michael J. Wynne**
Michael J. Wynne

**Admitted Pro Hac Vice*