To be Argued by:
RONALD D. LEFTON
(Time Requested: 15 Minutes)

New York Supreme Court
Appellate Division – First Department

Appellate Case No.: 2020-02285

SHILPA SAKETH REALTY INC.,

Plaintiff-Appellant,

– against –

SUDHAKAR VIDIYALA, MADHAVA REDDY UPPUGALLA and SHRI BHRAMARAMBIKAS INDUSTRYS LIMITED,

Defendants-Respondents.

BRIEF FOR DEFENDANTS-RESPONDENTS

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PRELIMINARY STATEMENT

Defendants-Respondents, Sudhakar Vidiyala ("Vidiyala"), Madhava Reddy Uppugalla ("Uppugalla") and Shri Bhramarambikas Industrys Limited ("Shri") (together, "Respondents") submit this brief in opposition to the appeal of Plaintiff-Appellant Shilpa Saketh Realty, Inc. ("Appellant" or "SSR") from the Order dismissing SSR's complaint ("Complaint") in its entirety ("Appeal"). This is an action for fraud, breach of fiduciary duty, and unjust enrichment, Plaintiff appeals from the dismissal of its Complaint pursuant to CPLR 3211(a)(1) based on documentary evidence including a general release in the context of a stock purchase agreement and CPLR 3211(a)(7) for failure to state a claim. The order of the IAS Court dated April 16, 2020 ("Order") should be affirmed with costs.

The parties were all shareholders of a generic pharmaceutical company ("InvaGen"). An unrelated third party, Cipla (EU) Limited ("Cipla"), bought InvaGen and each shareholder made tens of millions of dollars. Cipla's purchase of the parties' InvaGen shares was negotiated over an extended period and the sale documents were amended several times over the course of five months (September 2015 through February 2016). The deal was memorialized in the Amended and Restated Stock Purchase Agreement and Amendments thereto ("SPA") and related agreements, schedules, and exhibits thereto ("Transaction Documents") and in a broad general release ("Release"). SSR executed and delivered documents in

connection with the closing of the stock sale, including an Officer's Certificate affirming its representations in the SPA, and a unanimous written consent by SSR's board of directors approving the SPA and transactions contemplated thereby. Finally, SSR executed a document that set forth SSR's exact percentage allocation of the purchase price that it admittedly received (6.874%) on the same page as SSR's signature.

SSR had ample time and opportunity to review the voluminous deal documents and to hire counsel to do so on its behalf. Instead, SSR chose to enter into a complex multimillion-dollar transaction without, as Justice Ostrager noted, ever requesting to see the transaction documents before signing them.[1] [R. 11].

It is undisputed that:

(1) SSR signed the SPA, the Release and the other Transaction Documents;

(2) the SPA set forth the purchase price and the specific allocation of the purchase price that SSR and each Respondent were to receive from Cipla;

(3) in the SPA, SSR agreed to reduce its allocable share of the purchase price that it was to receive in exchange for its InvaGen shares by

[1] Notwithstanding SSR's allegations, which are taken as true for the purposes of this brief unless directly contradicted by the documentary evidence, it is Respondents' position that Appellant did receive the various Transaction Documents and had an opportunity to review them before signing. As Respondents noted in their moving brief below—despite SSR's protestations to the contrary—SSR was represented by counsel in connection with the sale of its InvaGen stock. SSR's counsel, Anthony Scott, Esq. reviewed the SPA and discussed it with InvaGen's corporate counsel, Mannat Phelps. [R. 229]. SSR did not respond to this point in its brief or affidavit of its director and officer Shilpa Reddy submitted in opposition to motion to dismiss [R.244-246].

millions of dollars and SSR acknowledged its acceptance of the 6.874% allocation in a single page document it signed; and

(4) SSR received and accepted payment of its allocated share of the purchase price pursuant to the SPA.

It is also undisputed that:

(5) the Release encompasses the very claims that SSR asks this Court to restore—claims for fraud (Claims 1-3 and 5-6), breach of fiduciary duty (Claims 4 and 7) and unjust enrichment (Claim 8). Indeed, Justice Ostrager found that, SSR's claims are all barred by the broad Release; and

(6) Contrary to the theory of fraud alleged by SSR, InvaGen's distributor, Camber Pharmaceuticals ("Camber"), was not a party to the SPA and no provision is made for any portion of the purchase price to be paid to Camber.

Appellant does not deny that the language of the Release and of the SPA precludes its claims. Instead, SSR seeks to avoid these agreements by raising a fraud in the factum argument for the first time on Appeal.[2]

SSR's Appeal rests on two pillars, both of which are entirely lacking foundation.

First, faced with the clear language of the Release, SSR for the first time on Appeal claims that it did not know it was signing a general release because it was

[2] SSR says there was "fraud in the factum" in connection with the Release, but execution of the Release was a condition of Closing the SPA and SSR's joinder in the SPA was critical to selling the shares to Cipla. Absent its signing of the SPA documents, including executing the Release, there was no transaction, no SPA, and no basis for personal jurisdiction over Shri. [R. 23]. Shri is an Indian entity with very limited U.S. contacts. If the SPA were ineffective as between SSR and Shri, Shri would be outside of the Court's jurisdiction. The SPA was the sole basis for exercising jurisdiction over Shri. [R. 6].

only provided signature pages. Then SSR self-indulgently refers to the Release as the "Purported Release." This claimed lack of knowledge is central to SSR's brief, yet it is demonstrably false. The signature page for the Release that SSR signed is clearly labeled "Signature Page to General Release." [R. 217].

Second, SSR claims that the alleged close family friendship between SSR's principals and Vidiyala relieved it of the obligation to review the Release, SPA and other Transaction Documents before signing them notwithstanding that—as SSR's Complaint admits—Vidiyala expressly directed SSR not to sign and return the signature pages to him until SSR had received the full documents. Below SSR claimed that it had no obligation to read the Transaction Documents; now, SSR asks this Court to absolve it of the obligation to even look at the very signature pages it signed.

In addition to raising a new legal argument on Appeal, SSR adds new "facts." SSR's brief goes to lengths to prop up its inadequate fraud and fiduciary duty claims by inventing an unpled conspiracy and otherwise twisting its dismissed Complaint's allegations and the affidavit submitted by SSR member Shilpa Reddy.[3] This Court should not entertain SSR's revisionist "record" and the unsupported inferences SSR

[3] SSR confusingly defines itself as "Shilpa," the first name of one of its individual principals. But SSR—or "Shilpa"—is not an individual, it is a real estate company worth tens of millions of dollars that has chosen to take advantage of the benefits of operating in a corporate form rather than leaving its principals open to individual liability.

now promotes. SSR can avoid neither its release of all claims against the other former InvaGen shareholders nor its unequivocal written agreement to accept exactly what it received as full consideration for its shares.

Even if the foregoing documentary evidence did not preclude SSR's claims under CPLR 3211(a)(1), SSR has nonetheless failed to state a claim. SSR asserts fraud claims against Shri and Vidiyala. With regard to Shri, SSR points to a single conversation that took place over breakfast between SSR's agent and Shri's principal in which SSR was allegedly told that all shareholders were accepting a reduced allocation of the purchase price so that an entity related to Shri, Camber could be compensated for its past contributions to InvaGen's success. That conversation took place months before SSR executed the second amendment to the SPA, the Release, the Officer's Certificate and other Transaction Documents. The Complaint contains neither any allegation that Shri ever repeated or otherwise reinforced those statements in the ensuing months before the February 2016 execution of the key Transaction Documents nor could SSR reasonably believe that nothing changed in the deal, particularly in light of the significant amendments made to the Transaction Documents during that period. That months passed between Shri's alleged misrepresentation and the closing date—a period during which SSR could have reviewed the Transaction Documents at any time—also makes it impossible to infer that Shri intended to deceive SSR about their contents.

With regard to Vidiyala, there is no basis to infer that Vidiyala knew of the negotiations between Shri and SSR except for the portion of the purchase price SSR agreed to receive—the very agreement that is unambiguously reflected in the share allocation schedules of the September 2015 SPA and again in its February 2016 Second Amendment. There is no allegation that SSR and Vidiyala ever discussed the allocable share percentage of any other shareholder, much less that Vidiyala ever indicated that he had accepted a reduced allocation. Vidiyala's express direction that SSR retain its signature pages until it received the Transaction Documents is antithetical to any intent to deceive SSR about their contents.

There was no fraud. SSR could not have reasonably relied on alleged misrepresentations, nor could Vidiyala or Shri have intended to deceive SSR about deal terms, that are directly contradicted by the Transaction Documents. *Assuming arguendo* that SSR relied on intentional misrepresentations, SSR suffered no pecuniary loss and has no recoverable damages; it agreed to accept the reduced allocable share that it received. As Justice Ostrager pointed out: "Plaintiff acknowledges that it was told its share allocation was being reduced by millions of dollars." [R. 10]. It makes no difference that months after SSR's conversation with Shri, when negotiations with all interested parties were finally completed and the Transaction Documents were finalized, the other InvaGen shareholders did not

ultimately accept similar reducted allocations of the sales proceeds. In any event, the SPA's merger clause precludes reliance on extra-contractual statements.

SSR also asserts breach of fiduciary duty claims against Shri and Vidiyala. But there was no such fiduciary relationship particularly in connection with the negotiated re-allocation of the sales proceeds among them. To the extent that SSR alleges that Vidiyala was the "Minority Stockholder Representative" ("MSR"), that limited role existed only by reason of and after the execution of the SPA—not before. There were no fiduciary duties and no affirmative duties prior to contract execution and SSR undisputedly received exactly what it agreed to take. Further, the SPA's merger clause explicitly disavows any fiduciary or special relationship among the parties related to the Transaction and SSR's released its breach of fiduciary duty claims.

SSR also fails to state a claim for unjust enrichment against any Respondent. The undisputed existence of a contract governing the Transaction is determinative. Moreover, SSR has alleged neither why the Respondents' retention of the sale proceeds would be unfair nor how Respondents' receipt of those proceeds was at SSR's expense. Notably, unjust enrichment is SSR's only claim against Uppugalla. SSR seeks to deprive him of his contractual benefits notwithstanding its failure to allege any action by Uppugalla or even that he knew of the other Respondents' alleged miscommunications to SSR. It would be manifestly unjust to do so.

SSR is bound by the SPA and the Release and cannot set them aside by alleging prior collateral oral conversations that contradict the unambiguous language of the executed agreements.

Accordingly, this Court should affirm Justice Ostrager's dismissal of the Complaint in its entirety with prejudice.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

(1) Whether the IAS Court properly dismissed the Complaint pursuant to CPLR 3211(a)1 and 7? It did.

(2) Whether the Complaint fails to state causes of action for fraud and breach of fiduciary duty because of the failure of reasonable reliance on alleged oral statements contrary to a written detailed purchase and sale agreement executed by Appellant? Appellant's claims are insufficient.

(3) Whether Appellant's claims are barred by the parol evidence rule because they seek to vary the terms of an unambiguous written agreement? They are so barred.

(4) Whether Appellant's claims for breach of fiduciary duty are further insufficient because no fiduciary duty existed with regard to the dispute at issue regarding an agreement among the shareholders *inter se* pertaining to the reallocation of the proceeds of sale of the underlying business? No fiduciary duty was implicated in connection with Appellant's claims.

STATEMENT OF FACTS

A. The Parties Sold Their InvaGen Shares In A Multimillion Dollar Transaction Set Forth In Detailed Agreements That Bind Both Parties And Nonparties To This Case

This dispute arises out of the sale of InvaGen, a generic pharmaceuticals company located on Long Island. At the time of the sale, Appellant SSR and Respondents Vidiyala, Uppugalla, and Shri together owned 100% of InvaGen's issued and outstanding shares. Shri, an Indian company, was the majority shareholder with 72 of the 100 shares. SSR and Respondents Vidiyala and Uppugalla were minority shareholders, holding 9, 11 and 8 shares respectively. [R. 3, 23-24].

Vidiyala and Uppugalla worked at InvaGen, including substantial work with its distributor, Camber. In addition to their InvaGen shareholdings, both had accrued stock options convertible into additional InvaGen shares and valuable written employment agreements with InvaGen. [R. 162].

SSR, a Long Island real estate corporation, is co-owned by siblings Shilpa and Saketh Reddy. Aside from its shareholdings, SSR did not have other equity or contractual interests in InvaGen. At the time of the Transaction, Shilpa Reddy was a medical student and Saketh Reddy was in college. Their father, Dr. Reddy, was SSR's agent, including for the Transaction. [R. 3, 23-24, 26-27].[4]

[4] Dr. Reddy was a co-founder of InvaGen and formerly its CEO. [App. Brf. 10; R. 310, 315].

In February 2016, Cipla (a foreign company that is not a party here) acquired 100% of SSR's and Respondents' InvaGen shares pursuant to the SPA. [R. 3]. Cipla's purchase was effected through a Stock Purchase Agreement dated September 4, 2015, as amended by an Amended and Restated Stock Purchase Agreement also dated and effective as of September 4, 2015 ("original SPA"), as further amended by Amendment No. 1 thereto dated December 18, 2015 ("First Amendment"), Amendment No. 2 thereto dated February 17, 2016 ("Second Amendment"), and Amendment No. 3 thereto dated September 15, 2017 ("Third Amendment"). [R. 4, 24, 44]. Shilpa Reddy executed the original SPA and its amendments on signature pages captioned with the name of each agreement she signed. [R. 153, 295, 203, 302].

The SPA was one of many interrelated agreements involved in Cipla's purchase of InvaGen stock. The Transaction Documents reflect the culmination of months of negotiation, not only among nonparty Cipla and the litigants here, but also among other nonparties. [R. 24, 284-289 (Index Of Closing Documents, listing "signing" and "closing" documents, including agreements with nonparties Cipla, Hetero, Hetero Drugs, Hetero Labs, Ascent, Exelan and Camber in addition to the Parties here.)]

The SPA called for Cipla to pay $500 million in exchange for all InvaGen shares. [R. 4, 24, 46]. It then allocated the net proceeds from the $500 million

among the shareholders according to each shareholders' "Allocated Share," defined as "for each Stockholder, the percentage set forth next to such Stockholder's name on the Allocated Share Schedule." [R. 18, 46]. The Allocated Share Schedule is referenced in the table of contents to the original SPA and the same schedule is also Exhibit I to the Second Amendment. [R. 4, 43, 170, 207].

The Schedule provides:

Stockholder Name	Share Percentage
Shri Bramarambikas Industrys Ltd.	72.346%
Sudhakar Vidayala	12.62%
Madhava Reddy Uppugalla	8.16%
Shilpa Saketh Realty Inc.	6.874%

[R. 170].

The SPA distinguishes between the shares held by each shareholder and their "Allocated Share" of the purchase price. [*Cf, e.g*. R. 162 (Capitalization Schedule showing share ownership by shareholder), R. 170 (Allocated Share Schedule showing purchase price allocation by shareholder)].

Section 2.01 addresses the "Purchase and Sale of Company Stock," setting out the number of InvaGen shares held by each shareholder and explaining that the purchase price is to be allocated among the shareholders according to their

"Allocated Share"—i.e., not according to the number of shares each shareholder held. [R. 62].

Also from the beginning, the SPA provided that once Cipla agreed to pay $500 million to acquire 100% of the InvaGen shares, the allocation of the purchase price was left to be negotiated among the shareholders. [R. 62].[5]

Camber is not a party to the SPA. And nothing in the SPA or its Allocated Share Schedule suggests that Camber would receive any of the purchase price.

From the beginning, the SPA also contained a merger clause, precluding consideration of any matters outside of the SPA and the other Transaction Documents.

> This Agreement and the other Transaction Documents contain the entire agreement of the parties respecting the sale and purchase of the Company and supersedes all prior agreements among the parties respecting the sale and purchase of the Company.

[R. 144].

The Parties acknowledged that, with respect to the sale of their InvaGen shares, they were engaged in arm's-length negotiations and had no fiduciary or other special relationship with any other party:

[5] SSR alleges that as part of Cipla's acquisition, each shareholder would be entitled to a *pro rata* share of the purchase price equal to their ownership percentage. [R. 24]. But this is directly contradicted by the SPA's distinction between each shareholder's ownership share and each shareholder's Allocated Share of the purchase price. [*Cf,* R. 162, 170].

> Furthermore, the parties each hereby acknowledge that this Agreement and the other Transaction Documents *embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations*; all parties to this Agreement specifically acknowledge that *no party has any special relationship with another party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's-length transaction*.

The merger clause was never amended and is included in the final SPA. [R. 144 (emphasis added); R. 171-207, 290-304]

The SPA also assigned Vidiyala the role of MSR, which is very limited. As set forth in the SPA text and in its signature block, Vidiyala was MSR only for the purposes of the specified provisions all of which relate to ensuring that specific SPA terms are complied with after execution, and not imposing any extracontractual obligations. [R. 44, 154]. SSR received exactly what the SPA provided. [R. 25, 28, 170, 207, 218].

B. The Complaint Alleges Limited Communications Between Execution Of The Original SPA And The Closing

The Complaint alleges that sometime between October and December 2015—*i.e.* between the execution of the original SPA and its First Amendment—SSR's agent, control person, and father of SSR's two stockholders, Dr. Reddy, had breakfast at the home of Shri's principal, Bandi Parthasaradhi Reddy ("Bandi"). [R. 26]. SSR alleges that, at that meeting, Bandi told Dr. Reddy that (1) $100 million of the $500 million InvaGen purchase price should be allocated to Camber for its

contributions to InvaGen, (2) that Camber's participation was necessary to the deal (*infra*), and (3) the other shareholders were also accepting reduced allocations. During this discussion Dr. Reddy agreed to reduce SSR's allocation. [R. 26-27]. No one else was present at this meeting.

According to the timeline alleged, between two and four months passed after that Autumn 2015 meeting. [R. 24]. Then sometime in February 2016, when Vidiyala saw Dr. Reddy at SSR's offices, Vidiyala allegedly stated that SSR would receive 9% of $400 million and that the extra $100 million from the purchase price was "going to Camber." [R. 27]. Next, Vidiyala "as the Minority Stockholder Representative, facilitated the execution of the closing documents in 2016" by emailing Dr. Reddy "only the signature pages for various closing documents relating to the purchase of the Company's shares." [R. 27]. In that email, "Vidiyala provided no explanation of the closing documents and simply requested that Dr. Reddy obtain Plaintiff's signatures and retain the original signatures until he furnished the original closing documents." [R. 27]. Instead of holding onto the signature pages until Dr. Reddy received the full closing documents as directed, Shilpa Reddy somehow obtained the signature pages, executed them and emailed the "signature packet" to Vidiyala. [R. 28].

Vidiyala was not at the Autumn 2015 meeting between Dr. Reddy and Bandi and there is no allegation that he knew of anything that was discussed at that meeting.

There is also no allegation that Vidiyala or Uppugalla ever said that they had agreed to accept a reduction in their own allocable shares of the purchase price or that SSR ever asked them about it. Nor is there any allegation that Bandi knew of the alleged February 2016 communications between Dr. Reddy and Vidiyala.

At some time between the meeting with Bandi and the Closing, a number of other Transaction Documents were negotiated, finalized and executed, including the SPA's Second Amendment and the Release. [R. 171-207, 208-209, 214-217, 218].

C. SSR Executes The Second Amendment, The Release And An Officer Certificate As Required To Close The Transaction

In February, 2016, in connection with the Closing—several months after SSR's agent met with Shri's agent in India—SSR executed the Second Amendment to the SPA, the Release, and the "Shilpa Saketh Realty Inc. Officer Certificate" dated February 17, 2016 ("Officer Certificate"). [R. 26, 171, 203, 210-211, 214, 217]. The signature pages for the Second Amendment, Release and Officer Certificate each contain text that ties the signature page to the document to which it belongs. [R. 171, 203 ("[*Signature Page to Amendment No. 2 to A&R InvaGen SPA]"*; R. 210-211 ("The undersigned has executed and delivered this Officer's Certificate as of the date written below. February 17, 2016" and "[*Signature Page to Officer's Certificate]"*); R. 214, 217 ("[*Signature Page to General Release]"*)]

Delivery of SSR's Officer Certificate was a requirement of Closing the Transaction. [R. 68-71]. There, SSR confirmed its representations and warranties,

including that the SPA was a valid and binding agreement. [R. 208]. It also attached a unanimous written consent of SSR's board approving the transaction [R. 210-213].

Regardless of whatever Dr. Reddy might have reported to SSR about his alleged contacts with Bandi and Vidiyala, the documents are clear. If Dr. Reddy had the impression that all shareholders had agreed to a reduced share allocation and that Camber would be receiving $100 million of the purchase price, that understanding was contradicted by the documents that Shilpa Reddy signed on SSR's behalf after Dr. Reddy's alleged conversations. [R. 171-209, 214-218]. There is no allegation of any communication, much less a misrepresentation, made to Shilpa or Saketh Reddy.

The Transaction Documents show that, although SSR owned 9% of InvaGen's stock, at some point before the Closing SSR agreed to reduce its Allocable Share of the purchase price to 6.874%. [R. 24, 26-27].

- SSR confirmed its acceptance of 6.874% of the purchase price in a document where Shilpa Reddy's signature is on the same page as the allocable share percentage. [R. 218]. SSR cannot argue that it did not knowingly agree to receive 6.874% of the purchase price in exchange for its InvaGen shares.

- "Exhibit I to the Purchase Agreement Closing Date Payment—Stockholder Allocations" reiterates the precise allocation from the Allocated Share Schedule. [R. 207]. SSR acknowledges that its review of the Second Amendment is what prompted this Action—more than three years after SSR executed it. [R. 29].

The documents also show that Camber was never a party to the SPA (though it is a party to various supporting agreements) and was not to receive any

consideration from Cipla in the SPA.[6] The SPA identifies the parties to receive cash consideration as the former InvaGen shareholders, not Camber. [R. 39, 170-171, 207]. Notably, the first paragraph of SSR's Officer Certificate lists the SPA's parties, while Camber's name appears nowhere, further evidencing that SSR knew Camber was not a party and could not be receiving a portion of the acquisition price Cipla paid.[7] [R. 208].

SSR's execution and delivery of the General Release was also a requirement for Closing the Transaction. [R. 72]. In it, SSR released Respondents from the very claims it now asks this Court to restore.

The Release language is expansive:

> Releasor knowingly and voluntarily releases and forever discharges the Company and its affiliates, and their respective *current and former equityholders*, directors, officers, employees, agents, representatives, successors and assigns (collectively, the "Released Parties") from any and all claims…or liabilities of any nature whatsoever in law and in equity, *both past and* present (through the date

[6] Yet, Camber's participation was necessary to the deal. [*See, e.g.* R. 56 (including Camber's inventory in the definition of "Net Working Capital" used throughout the SBA) and R. 287 (listing "Camber Transition Term Sheet and Inventory Transfer Agreement" among the required closing documents)]

[7] SSR asserts that there was supposed to be a direct payment to Camber. [R. 26-27]. SSR thereby ignores the common ownership and affiliation between Camber and Shri and the work Respondents did for Camber as InvaGen's distributor. [R. 19, 22]. Camber's contribution to InvaGen was valuable [R. 26-27]; its participation was necessary to the Transaction [*see, e.g.* n.8 *supra*]; and the consideration Camber received was not a direct payment. [R. 39, 170-171, 207-208]. Rather, Camber's assets were included in InvaGen's valuation and its compensation for the Transaction was paid out primarily to its affiliated entity, Shri, and to Vidiyala and Uppugalla who had contributed to Camber's work. [R. 56, 207].

> of this General Release) and *whether known or unknown, suspected, or claimed against any of the Released Parties that the Releasor…may have, relating in any way to or in connection with events occurring or circumstances existing relating to the Company*…

R. 214, §(a) (emphasis added).

The Release expressly covers implied and unknown claims.

> In signing this General Release, the Releasor acknowledges and intends that it shall be effective *as a bar to each and every* one *of the Claims herein above mentioned or implied*. The Releasor expressly consents that this General Release *shall be given full force and effect* according to each and all of its express terms and provisions, *including those relating to unknown and unsuspected Claims* …

[R. 215, §(c) (emphasis added)]

It also remains effective even in the event of the post-execution discovery of pre-execution misrepresentations:

> The Releasor acknowledges and agrees that the Releasor *may hereafter discover facts different from or in addition to those now known, or believed to be true*, regarding the subject matter of this General Release and further acknowledges and agrees that this General Release *shall remain in full force and effect, notwithstanding the existence of any different or additional facts*.

[R. 215, §(e) (emphasis added)].

Finally, by signing the Release, SSR "represent[ed] and agree[d]" that it:

> HAS READ THIS GENERAL RELEASE CAREFULLY;

> UNDERSTANDS ALL OF ITS TERMS AND KNOWS THAT IT IS GIVING UP IMPORTANT RIGHTS;
>
> VOLUNTARILY CONSENTS TO EVERYTHING IN IT; [and]
>
> HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE EXECUTING THIS GENERAL RELEASE…

[R. 216 (emphasis in original)][8]

The signature page that SSR signed expressly states that it is for the Release: "Signature Page to General Release." [R. 217].

Following the Closing, SSR received the payments due to it pursuant to the terms of the SPA and retains them still. [25, 28, 170, 207, 218]

In violation of the Release, SSR's claims against all Respondents—the "former equityholders" named in the Release—are premised on its alleged pre-Closing agreements with Shri and Vidiyala.

The plain insufficiency of SSR's allegations, coupled with the passage of time from when the claims accrued (during which time SSR accepted the benefits of the transaction), the absence of reasonable reliance, and the unambiguous and dispositive documentary evidence, including the SPA and the Release, renders the

[8] As Justice Ostrager notes, the Release was only five pages. SSR certainly could have obtained and read it, as Vidiyala suggested. [R. 10 ("Indeed, the Court notes that although the overall Transaction Documents may have been voluminous, the General Release is a separately executed document—which Plaintiff separately signed—and is only five pages long.")].

Complaint insufficient and calls for this Court to affirm Justice Ostrager's dismissal with prejudice.

ARGUMENT

Dismissal is warranted for failure to state a claim where, even given the liberal construction afforded to pleadings at the motion to dismiss stage, the facts as alleged do not fit within any cognizable legal theory. CPLR 3211(a)(7). Dismissal should be granted where a release covers the subject matter of the claims, and where the documentary evidence presented refutes the claims. CPLR 3211(a)(1), (5); *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011). Although courts must generally accept a complaint's allegations as true, allegations that are "either inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration." *Herman v. Greenberg,* 221 A.D.2d 251 (1st Dep't 1995).

POINT I. THE DOCUMENTARY EVIDENCE DISPOSES OF SSR'S CLAIMS

SSR effectively concedes that its claims are barred by the unambiguous language of the broad general Release and of the SPA. SSR does not question Justice Ostrager's holding that the "expansive" Release: "broadly released all claims that it might have against the other stockholders-defendants." Quoting language from the Release, Justice Ostrager noted that "Inclusion of this type of language in a general release has repeatedly been held to effectively release fraud and breach of fiduciary

duty claims." R. 8 (citing *Centro,*17 N.Y.3d at 276, *Pappas v. Tzolis*, 20 N.Y.3d 228 (2012) and *Long v. O'Neil*, 126 A.D.3d 404, 408 (1st Dep't 2015)).

SSR further concedes that Shilpa Reddy signed each of the signature pages in her role as an SSR officer. [R. 26, 28, 208-209]. There is no challenge to either the authenticity of her signature or to her authority to bind SSR to the Transaction Documents.

SSR's appeal depends on this Court holding that SSR, a corporate entity, should be excused from its contractual obligations in a $500 million dollar deal because SSR could not be expected to have looked at anything related to the SPA because the company's adult principals "trusted" one of the Respondents (with whom they never directly discussed the Transaction) as a family friend.

SSR's claims fail because of the Release and the express terms of the SPA, including the merger clause and the allocated share schedule, which unambiguously sets forth the percentage of the purchase price each shareholder would receive. Each shareholder's Allocated Share of the purchase price appears in two schedules to the SPA and is cross referenced throughout the SPA's text.

The four cases Appellant cites for the uncontested proposition that dismissal based on documentary evidence is only warranted where the evidence conclusively resolves the factual issues, establishes the defense, and is "unambiguous, authentic, and undeniable," are all distinguishable. They involved an array of documents

which the courts deemed insufficient for CPLR 3211(a)(1) and (7) purposes. In three of the four cases the documentary evidence was not a contract;[9] in the fourth the contract was ambiguous on the issue on which defendants sought to rely.[10] None of these cases rejected unambiguous executed contracts as insufficient documentary evidence.

A. The Release, SPA's Allocation Of The Purchase Price And Merger Clause All Decisively Preclude SSR's Claims

1. SSR Released Every Claim It Sought To Resurrect Below

A general release is a complete bar to any claim to which it applies and an unambiguous release is a 'jural act' that binds the signatories. *Centro,* 17 N.Y.3d at 276. Like the release at issue here, a release "may encompass unknown claims, including unknown fraud claims, if the parties so intend[,]" as well as claims based on fiduciary duties. *Id.*

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[9] *See* App. Brf. 20-21; *Weil Gotshall & Manges v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267, 271 (1st Dep't 2004) (the documents including 700 pages of testimony were "most unusual" on motion to dismiss and did not qualify as "documentary evidence" pursuant to CPLR 3211); *Feldshteyn v. Brighton Beach 2012, LLC*, 153 A.D.3d 670 (2d Dep't 2017) ("letters, summaries, opinions, and/or conclusions of the defendants and/or the Hospital's agents and employees…clearly do not reflect an out-of-court transaction and are not 'essentially undeniable.' Thus, they are not 'documentary evidence' within the intendment of CPLR 3211(a)(1)"); *Fontanetta v. Doe*, 73 A.D.3d 78 (2nd Dep't 2010) ("letters, summaries, opinions, and/or conclusions of the defendants" did not amount to documentary evidence).

[10] *Artis v. Random House, Inc.*, 34 Misc.3d 858, 862 (Sup. Ct. N.Y. Cty. 2011) (the confidentiality agreement plaintiff signed did not resolve the core issue of whether defendant was plaintiff's sole employer and plaintiff did not sign or adopt defendant's unilateral stipulation on the point).

As Justice Ostrager held, "[b]ecause the alleged misrepresentations and omissions are directly related to the terms of the broad Release, [SSR] has not alleged a fraud *separate and distinct* from that contemplated by the Release as required under *Centro*." [R. 11 (and noting that the Release covers all "circumstances related to the company" including "[t]he misrepresentations and omissions … about the share allocation upon closing")]. The "expansive" Release SSR executed "broadly released all claims that it might have against the other stockholders-defendants."

The broad Release language reflects the parties understanding that the terms of their relationship—and rights *vis à vis* one other—were fully reflected in the SPA. By executing the Release, SSR released "any and all claims…both past and present…whether known or unknown, suspected or claimed" against all of the Respondents. [R. 214]. The Release "shall be a bar" not only to those Claims "mentioned," but also to any that may be "implied" and any "unknown and unsuspected Claims." [R. 214]. This language alone would be enough to bar Appellant's fraud and breach of fiduciary duty claims, but the Release gets more specific. It applies where "the Releasor may hereafter discover facts different from or in addition to those now known, or believed to be true" and it remains in effect "notwithstanding the existence of any different or additional facts." [R. 214-217].

Justice Ostrager explained, the "[i]nclusion of this type of language in a general release has repeatedly been held to effectively release fraud and breach of fiduciary duty claims." [R. 8]; *see also Centro,* 17 N.Y.3d at 276–80; *Pappas v. Tzolis*, 20 N.Y.3d 228, 232-233 (2012); *Long v. O'Neill*, 126 A.D.3d 404, 408 (1st Dep't 2015); *Kafa Investments, LLC v. 2170-2178 Broadway, LLC*, 39 Misc.3d 385, 391 (Sup. Ct. New York Cty. 2013), *aff'd,*114 A.D. 433 (1st Dep't 2014). Releases also preclude unjust enrichment claims covering the same subject matter. *Patterson v. Calogero*, 150 A.D.3d 1131, 1132–33 (2nd Dep't 2017).

This Court should affirm Justice Ostrager's holding that the Release bars SSR's claims and his dismissal of the Complaint.

2. The SPA's Merger Clause Bars SSR's Claims

SSRs claims flow from an alleged pre-contract statement that all shareholders were accepting reduced share prices in recognition of the value added to InvaGen by Camber. For SSR's claims to survive, the Court would have to ignore the fact that SSR received the exact amount it agreed to receive [R. 218] and look beyond the SPA to consider alleged pre-contractual negotiations about the sale of SSR's interest in InvaGen. But the SPA's merger clause provides that the SPA is a "Complete Agreement" "containing the entire agreement of the parties respecting the sale and purchase of the Company and supersedes all prior agreements among the parties respecting the sale and purchase of the Company." As the Court of Appeals has

held, "where a contract contains a merger clause, a court is obliged "to require full application of the parol evidence rule in order to bar the introduction of extrinsic evidence to vary or contradict the terms of the writing." *Schron v. Troutman Sanders LLP*, 20 N.Y.3d 430, 433-4 (2013) (internal quotations omitted).

The SPA's merger clause goes further, specifically requiring the parties to reject (1) any claimed reliance on extracontractual statements and (2) any claimed fiduciary obligation among the parties in connection with the sale and purchase of the Company:

> …Furthermore, the parties each hereby acknowledge that this Agreement and the other Transaction Documents embodies the justifiable expectations of sophisticated parties derived from arm's length negotiations; all parties to this Agreement specifically acknowledge that no party has any special relationship with another party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's length transaction.

[R. 144, §11.10].

In *Xi Mei Jia v. Xi Mei Jia v. Intelli-Tec Sec. Servs*, this Court affirmed the dismissal of the complaint, because the alleged pre-contractual agreement arose from the plaintiff's status as a shareholder and "[t]hus, any such agreement was extinguished when the estate sold its shares free and clear of all other rights and would have been superseded pursuant to the letter agreement's merger clause." 114 A.D.3d 607, 608 (1st Dep't 2014). Additionally, the merger clause, "foreclose[d] [plaintiff's] reliance upon any representation not contained in the letter agreement

and cannot serve as a basis for her fraud claim." *Id.* Here, too, there can be no justifiable reliance on any pre-SPA representation, because SSR represented in the merger clause that the SPA embodied the "justifiable expectations of sophisticated parties derived from arm's length negotiations." [R. 144].

Similarly, SSR cannot claim a breach of fiduciary duty since, in the merger clause, SSR "acknowledge[d] that no party has any special relationship with another party" and therefore no fiduciary relationship. [R. 144]. *Lynn v. Maida*, 170 A.D.3d 573, 574-575 (1st Dep't 2019) (affirming dismissal of breach of fiduciary duty claim where contracts "clearly state that [defendant] is not their agent, co-venturer or representative" and because "neither the fact that [defendant] represented plaintiffs vis-à-vis clients nor the fact that plaintiffs were friends with defendants creates a fiduciary relationship"). *Lopinyukelis II, LLC v. Merch. Capital Funding, LLC*, 38 Misc. 3d 1226(A) (Sup. Ct. Kings Cty. 2013) (dismissing breach of fiduciary duty claims where contract provision provided that "that no fiduciary relationship exists between plaintiff and [defendant] with respect to the subject matter of the agreement").

3. The SPA Established SSR's Allocable Share of the Purchase Price

SSR's claims are intrinsic to and contradicted by the SPA. They seek to vary the express allocation of the sales proceeds by imposing conditions that are themselves contrary to the SPA's unambiguous language. In essence SSR argues

that Camber, a separate entity not a party to the SPA, was to receive a substantial portion of the purchase price. That is plainly contrary to the terms of the SPA that identifies the parties, to whom the proceeds go, and in what percentage. The SPA shows the decrease in SSR's share and the increase in the share of the other shareholders. [R. 170, 207]. Thus, SSR's claims go directly to the terms of the SPA it agreed to and executed. As "the documentary evidence flatly contradicts [the] causes of action," SSR's claims must be dismissed. *Xi Mei Jia v. Intelli-Tec Sec. Servs., Inc.*, 114 A.D.3d 607, 608 (1st Dep't 2014).

The SPA governs SSR's sale of its shares. [R. 39-218]. It vitiates SSR's claims. The Complaint recognizes this. For example, its jurisdiction and venue allegations rely on the SPA. [R. 23, 144]. Notably absent is any contract claim. SSR is bound by the clear and unambiguous SPA cannot now go outside the writing retroactively to achieve a better deal.

> Interpreting a contract is the process of determining from the words and other objective manifestations of the parties what must be done or forborne by the respective parties in order to confirm to the terms of their agreements. The best evidence of what parties to a written agreement intend is what they say in their writing. …[w]here the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract[.]

Tomhannock, LLC v. Roustabout Res., LLC, 33 N.Y.3d 1080, 1082 (2019) (internal quotations and citations omitted).

B. SSR's Newly Minted Fraud In The Factum Argument Is Not Credible And Without Merit

SSR should be held to the contracts it signed. SSR does not and cannot deny that the language of the Release precludes the relief it seeks here. Therefore, SSR instead asks the Court to invalidate the Release on the basis of a new "fraud in the factum" argument. This Court should disregard this argument, as SSR improperly raises it—and its previously unpled factual allegations—for the first time on appeal. But SSR's fraud in the factum claim is also simply not credible, as SSR cannot seriously contend that it did not know it was signing a release.

1. This Court Should Not Consider SSR's Untimely And Unpled "Fraud In The Factum" Argument Nor Its Unsupported Factual Assertions

SSR's appeal impermissibly rests on a newly minted theory of liability propped up by a new and demonstrably false "fact" alleged for the first time in its appellate brief. Specifically, SSR now alleges that "[e]vidently Vidiyala, unbeknownst to Shilpa Reddy, attached one of the signature pages he had her sign to this Purported Release." [App. Brf. 3]. Despite ample opportunity, SSR never before mentioned this new allegation in the Complaint or in their Affirmation offering additional facts in opposition to Respondents' motion to dismiss.

Arguments raised for the first time on appeal are not preserved for appellate review. *See Douglas Elliman-Gibbons & Ives, Inc. v. Kellerman*, 172 A.D.2d 307, 308 (1st Dep't 1991) ("An appellate court should not, and will not, consider different

theories or new questions, if proof might have been offered to refute or overcome them had those theories or questions been presented in the court of first instance."). This is especially true where an appellant's theory requires consideration of new factual allegations that are not in record. *U.S. Bank Nat. Ass'n v. DLJ Mortg. Capital, Inc.,* 146 A.D.3d 603, 603–04 (1st Dep't 2017) ("We decline to consider Ameriquest's new theory, which is not a purely legal argument, and was waived due to Ameriquest's failure to raise it below")

SSR's pleadings did not include a claim that they were duped into signing the Release or that Vidiyala surreptitiously attached Plaintiff's signature page to it. Respondents briefed the matter of the Release and why it barred SSR's claims. SSR submitted a Memorandum and Affirmation in opposition, in which they unsuccessfully argued that the Release did not bar their claims, but never raised this theory or new factual allegation. [*See, e.g.* R. 27-28, 246]. If SSR had a good-faith fraud-in-the-factum argument, it was required to have alleged it in the Complaint and argue it in opposition to Respondents' motion to dismiss. *See Douglas Elliman-Gibbons & Ives, supra*; *see also O'Sullivan v. O'Sullivan*, 206 A.D.2d 960, 960 (4th Dep't 1994) (citing *Szigyarto v. Szigyarto*, 64 N.Y.2d 275, 280 (1985)) ("[P]laintiff's failure to raise the defense in a timely manner deprived defendant of the opportunity to challenge its applicability.")

In any event, SSR's new allegation that Shilpa Reddy did not know she had executed the Release is not credible. The very page she signed is labeled "Signature Page to General Release." [R. 217]. From the beginning, all parties, including SSR were required to provide releases as a requirement of Closing the Transaction. [R. 72].

2. There Was No Fraud In The Factum; SSR Knew It Was Signing A General Release

Even if this Court agrees to consider SSR's fraud in the factum argument, SSR fails. A party alleged fraud in the factum, "must have been induced to sign something entirely different than what [it] thought [it] was signing." *Dalessio v. Kressler,* 6 A.D.3d 57, 61 (2nd Dep't 2004) (citing *First Natl. Bank of Odessa v. Fazzari*, 10 N.Y.2d 394, 397 (1961)) (no fraud in the factum where plaintiff knowing executed the certified check). Fraud in the factum "involves forgery, or fraud with regard to the effect of the actual document being signed." *Bank of Am., N.A. v. Adolphus*, 177 A.D.3d 503, 504 (1st Dep't 2019) (reversing denial of summary judgment and denying further discovery where there was no evidence of fraud in the factum).

Though SSR now on appeal claims not to have known that the signature pages it signed included a general release, that claim is belied by the signature page itself, which reads: "[Signature page for general release]." SSR cannot argue in good faith that it did not know that it was executing a general release and there is no factual

allegation in the Complaint nor any evidentiary statement in Shilpa Reddy's affidavit that indicates SSR did not know it was signing a release.

Given that the signature page discloses it as "for general release," SSR's argument that it did not know what it was signing must fail. *ABR Wholesalers, Inc. v. King*, 172 A.D.3d 1929, 1930–31 (4th Dep't 2019) (rejecting fraud in the factum argument and finding no issues of fact in light of the "conspicuously-labeled promissory note that King signed and twice initialed).

What SSR really is arguing is that it did not bother to read the Release. This too fails. *Sobel v. Appomattox Advisory Inc.*, 2020 WL 2520580, *3 (Sup. Ct. N.Y. Cty. May 17, 2020) (that plaintiff was "only presented with only [sic] the signature pages … did not eliminate his duty to read and understand what he was signing and did, in fact, sign" particularly since the signature page plaintiff executed explicitly referenced the arbitration clause). Dispositive is *Vulcan Power Co. v. Munson*, where this Court held that "[a] signer's duty to read and understand that which it signed is not 'diminished merely because [the signer] was provided with only a signature page.'" 89 A.D.3d 494, 495 (1st Dept. 2011).

Appellant's cases on this issue are easily distinguishable. *Mix v. Neff* is cited for the proposition that "where a signatory signed an instrument different from that which he understood it to be…the instrument [is] void" [App. Brf. 18], but here there is no allegation nor any explanation at all as to what Plaintiff believed it was signing

other than a general release when it executed the signature page clearly marked "signature page for general release."

Similarly, the Court of Appeals finding of fraud in the factum in *Koo v. Robert Koo Wine & Liquor, Inc.* (1st Dep't 1994), was predicated on the fact that "defendant Koo admittedly signed plaintiff's name to the deed[.]" Because the plaintiff had not signed the deed, the question then became whether "Koo did so without plaintiff's authority" which "cast the burden of proof on defendants, who sought to sustain the validity of the deed, to rebut plaintiff's claim of fraud in the factum by a preponderance of the evidence[.]" 203 A.D.2d 180, 181 (1994) (citations omitted). Here, Appellant admits that it executed the signature pages so there is no basis for shifting the burden of proof to Respondents.

Appellant's final "fraud in the factum" case, *Martin v. Citibank*, is similarly unavailing. As the Fourth Department explained:

> Defendant's reliance on *Martin*[] is misplaced. In that case the plaintiff was not aware that pages were missing from the document given to him by the defendant's employee, and the only evidence of the clause the bank sought to enforce was on the missing page. Here, however, defendant was aware that he had not been given the entire document and chose to rely, to his detriment, on the alleged representations of his business partner despite the clear and unambiguous language to the contrary on the page he did, in fact, receive. […I]f the signer could read the instrument, not to have read it was gross negligence; if he could not read it, not to procure it to be read was equally negligent; in either case the writing binds him.

M & T Bank v. HR Staffing Sols., Inc., 106 A.D.3d 1498, 1500 (4th Dep't 2013) (citations omitted).

Cases finding fraud in the factum involve unusual circumstances and unusually vulnerable plaintiffs neither of which are present here. "Generally, a cause of action alleging that the plaintiff was induced to sign something different from what he or she thought was being signed only arises if the signer is illiterate, blind, or not a speaker of the language in which the document is written." *Countrywide Home Loans, Inc. v. Gibson*, 157 A.D.3d 853, 856 (2d Dep't 2018). Appellant here is none of these things and not alleged to be otherwise especially vulnerable. As Justice Ostrager explained in his analysis of SSR's fraudulent inducement claim, but which applies equally to SSR's new fraud in the factum argument:

> while plaintiff alleges relative lack of sophistication due to age, plaintiff's owners and agent were either in pursuit of or had advanced degrees and were well aware that they were engaged in a multi-hundred-million-dollar transaction. Most importantly, plaintiff does not allege any time pressure, coercion, or lack of access to counsel. Indeed, plaintiff does not allege that it even requested access to the full documents to read.

Nor is there any claim that anything in the Release that SSR executed was different than was represented in the Release. SSR fails to explain what it believed it was signing. *Dabriel, Inc. v. First Paradise Theaters Corp.*, 99 A.D.3d 517, 521–22 (1st Dep't 2012) ("Plaintiffs' argument… must fail because they make no allegations as to how any drafts may have differed from the final versions….

plaintiffs have offered insufficient evidence as to why their voluntary execution of the 'wrong' documents was excusable."); *Hansen-Nord v. Youmans*, 2015 WL 5144356, at *3 (N.Y. Sup. Ct. Sep. 01, 2015) ("[P]laintiff does not dispute that her signature lies on the version proffered by defendants, nor does she proffer the version of the agreement she allegedly signed. Ultimately, this allegation of fraud in the factum will not be considered since it is unsupported in plaintiff's papers.")

C. SSR's Alleged Failure To Read The Transaction Documents Is No Excuse

SSR's fraud in the factum theory only relates to the Release; there is no argument that SSR did not know that it was signing the SPA. To avoid the SPA, its Merger Clause and Allocated Share Schedule, SSR asks this Court to excuse its alleged failure to read the Transaction Documents before signing them. SSR's negligent failure to review the agreements it signed should not be sanctioned.

SSR admits that it sold its InvaGen shares pursuant to the SPA and that it received the share allocation provided for therein. [R. 24-25, 28]. To avoid its agreement, SSR argues that it was somehow deceived into entering it—not that anything in the SPA was false or misleading, but that it would not have executed it if it knew that the other shareholders had not agreed to reduced allocations in favor of Camber, a non-shareholder who was not party to the SPA. [R. 26-27]. SSR does not argue that it was misled as to the value of the company, that Camber's contributions to the company were not worth $100 million or that Camber's

participation was not necessary to the deal—and Camber did have to participate. Rather, SSR alleges that it was misled as to other minority shareholders' negotiations with the majority shareholder and that it would not have agreed to reduce its own share allocation if it had known that the other shareholders' allocations were not also being reduced. *Id.* But the allocation percentages for all shareholders were part of the SPA. [R. 43, 46, 170, 207, 218]. SSR is bound to them notwithstanding its alleged failure to review the documents before signing them. [*Id.*; R. 28].

SSR's failure to read the SPA documents, including the Release, before signing them is no excuse. Neither does its alleged receipt of only the signature pages justify its laxity. Nor does any alleged statement or omission by the other shareholders free SSR from its obligations. For example, in *Dasz, Inc. v. Meritocracy Ventures, Ltd.*, plaintiff was held to the agreements he signed notwithstanding his allegations that he (a) signed the note and mortgage without first reading them, (b) was only provided with the signature pages, and (c) that the attorney who prepared the documents fraudulently misrepresented their content. 108 A.D.3d 1084, 1084-5 (4th Dep't 2013).

> It is well settled that '[a] party is under an obligation to read a document before he or she signs it, and a party cannot generally avoid the effect of a [document] on the ground that he or she did not read it or know its contents'. Moreover, '[a] signer's duty to read and understand that which it signed is not diminished merely because [the signer] was provided with only a signature page'.

Id. at 1085 (internal citations omitted). *See, also, Perrotti v. Becker, Glynn, Melamed, & Muffly LLP*, 31 Misc.3d 1205(A), *5 (Sup. Ct. N.Y. Cty. 2009) (dismissing complaint and denying as futile leave to amend to add fraud claim), *aff'd*, 82 A.D.3d 495 (1st Dep't 2011).

It would undermine the basic sanctity of contract to allow a party to sign an unequivocal document and then later excuse itself from the contract terms on the basis that it did not know what it was signing. Indeed, it is "unjustifiable as a matter of law" to rely on oral representations that are directly contradicted by the text of the agreement. *Sandcham Realty Corp. v. Taub,* 299 A.D.2d 220, 221 (1st Dep't 2002) (plaintiff could not rely on representation contrary to the agreement terms).

Notwithstanding its newly minted fraud in the factum allegations, SSR expressly represented that it read, understood, and voluntarily consented to the Release and, that it was advised to consult with counsel before signing it. [R. 216]. According to its own allegations, SSR chose to ignore that advice. [R. 28, 246].

Moreover, SSR admits that Vidiyala expressly told SSR to hold onto the signature pages until it received a full copy of the SPA. [R. 28, 246]. *SSR had the leverage.* The transaction could not close without its signature pages; it could have held them until it was satisfied. Shilpa—acting on behalf of SSR—also ignored this

advice and immediately signed the pages and returned them.[11] [R. 28, 246].

Although SSR now alleges that it was not represented by counsel, it admits it was represented by its principals' sophisticated father. [R. 26]. If SSR failed to retain counsel—despite being advised to do so—it cannot use that failure to invalidate the Release that bound all the parties to the SPA.

Appellant attempts to circumvent its duty to read by arguing that the duty to read does not apply to SSR because (1) it SSR's principals were relatively unsophisticated and (2) SSR allegedly had a "confidential relationship" with Vidiyala because SSR's principals called Vidiyala "Uncle"—a courtesy title commonly extended to older people by their juniors in certain Indian cultures – because of a family friendship between the SSR principals and Vidiyala and because of Vidiyala's role as MSR under the SPA.

First, merely alleging a confidential relationship does not absolve SSR of its obligation to read documents before signing them. As SSR's own cases illustrate, a plaintiff will only be relieved of its duty to read in the narrow situation where given the nature of the alleged confidential relationship under the specific circumstances alleged, it was not negligent for that plaintiff to have failed to read the document at issue.

[11] SSR's admission that Vidiyala advised Shilpa not to sign the signature page until SSR received the full SPA (which included the Release) cannot co-exist with SSR's florid new allegations that the Defendants conceived of and executed a fraudulent scheme to get SSR to sign the SPA without knowing its contents. [*Cf* R. 28, 246; App. Brf. 9-13].

Sorenson v. Bridge Capital Corp., cited by SSR, compels affirmance. 52 A.D.3d 265, 265-266 (1st Dep't 2008). There, this Court reiterated the general rule that in the absence of a confidential relationship, "A party who signs a document without any valid excuse for having failed to read it is 'conclusively bound' by its terms." *Id.* at 266 (internal citations omitted). The *Sorenson* plaintiff alleged that the defendant sponsor's agent "lured him into a relationship of trust and confidence, and then tricked him into entering into revised contracts that gave the sponsor a right to terminate the agreements in the event the parties could not reach mutual understanding on the excess costs of building out the three units to include 'significant additional and different' features from the specifications provided in the offering plan." *Id.*

Notwithstanding the alleged confidential relationship and despite finding that "Plaintiff alleged with specificity that the sponsor's agent engaged in fraud in connection with execution of the agreements by deleting the language to which plaintiff had objected in his presence, and then reinserting it without any notice[,]" this Court nonetheless affirmed the dismissal of plaintiff's fraud in the execution claim. *Id.* The critical element of justifiable reliance could not be established, the plaintiff had no valid excuse for failing to read the full agreement before signing it and he was therefore "conclusively bound" to its terms. *Id.* (dismissing all claims

except breach of good faith and fair dealing with regard to an agreement term that required the exercise of discretion).

SSR similarly cites the Second Department's holding in *Sofio v. Hughes* for the proposition that "a party who signs a document without any valid excuse for having failed to read it is 'conclusively bound' by its terms." 162 A.D.2d. 518, 519 (2d Dep't 1990). *Sofio* does not support SSR's position here. The "valid excuse" exception at issue there concerns situations where the signer is "illiterate, or blind, or ignorant of the alien language of the writing, and the contents thereof are misread or misrepresented to him by the other party." *Id*. Moreover, the court held that, even though the signer was "ignorant of the alien language" of the release he signed, he was nonetheless negligent in not first reviewing the document with the aid of a translator. He therefore did not have a valid excuse and was conclusively bound by the release. *Id*. at 521 ("His misapprehension concerning the scope of the release is thus attributable solely to his negligent failure to read it.")

Only *Williams v. Lynch* finds the alleged relationship and circumstances sufficient together to absolve the plaintiff of its failure to read the documents it executed. 245 A.D.2d 715 (3rd Dep't 1997). But the confidential relationship in *Williams v. Lynch* was a couple within a romantic relationship "analogous to that of

a husband and wife" and the agreement at issue concerned the terms of their cohabitation. *Williams v. Lynch,* 245 A.D.2d at 716.[12]

Second, SSR's alleged lack of sophistication also does not obviate its duty to investigate, *New York City Educ. Const. Fund v. Verizon New York Inc.*, 114 A.D.3d 529, 530 (1st Dep't 2014). This Court should not place any weight on SSR's extensive reliance on the purported youthful naivete of SSR's shareholders. SSR is a real estate corporation and, at the time it executed the SPA, also a 9% shareholder of a pharmaceutical company valued at $500 million. SSR took advantage of the corporate form to hold and sell assets worth tens of millions of dollars, but now asks the Court to invalidate a release it signed because its shareholders are allegedly too young and unsophisticated to have agreed to it even though they were represented in the events outlined in the Complaint by their sophisticated father, a successful businessman. SSR cannot have it both ways.

SSR acknowledges that the IAS Court relied on the Court of Appeals decision in *Pappas v. Tzolis*, 20 N.Y.3d 228 (2012), but fails to explain why that case should not control. It does. In *Tzolis*, the Court noted its holding in *Centro*:

> [a] sophisticated principal is able to release its fiduciary from claims—*at least* where, as here, the fiduciary relationship is no longer one of unquestioning trust—so

[12] Lest Appellant claim that the principle recited in *Williams* is broadly applicable to other types of relationships, the court cited three cases as precedent for its holding—two concerned married couples and one a brother and sister. *See Sinclair v. Purdy*, 235 N.Y. 245, 253 (1923); *Janke v. Janke*, 47 A.D.2d 445, 448–449 (4th Dep't 1975); *Muller v. Sobol*, 277 A.D. 884 (2d Dep't 1950).

> long as the principal understands that the fiduciary is acting in its own interest and the release is knowingly entered into.

Id. at 232.

SSR also selectively quotes *Centro* for the proposition that "In certain circumstances, a fiduciary's disclosure obligations might effectively operate like a written representation that no material facts are undisclosed, and this might satisfy a principal's obligation to investigate further." But SSR omits the very next sentence "Where a principal and fiduciary are sophisticated parties engaged in negotiations to terminate their relationship, however, the principal cannot blindly trust the fiduciary's assertions." [App. Br. at 23]; *Centro* at 279. Given that the sale of InvaGen to Cipla would terminate any fiduciary relationship that SSR could even allege existed, *Centro* precludes any reliance on that fiduciary relationship to explain why the terms of the sale should not apply to SSR. The issue here is splitting the pie among the shareholders; for that they are inherently adverse.

POINT II. EVEN IF THE DOCUMENTARY EVIDENCE DID NOT REQUIRE DISMISSAL, SSR HAS FAILED TO STATE ANY CLAIMS AGAINST ANY RESPONDENT.

Even if its claims were not barred by the documentary evidence, Appellant does not state a claim for fraud, breach of fiduciary duty or unjust enrichment.

A. SSR's Complaint Fails To State A Cause Of Action For Fraud

To allege a cause of action based on fraud, a plaintiff must assert a material "misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury." *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 178-9 (2011) (internal quotation and citation omitted). The claimed injury must be the direct and proximate result of the fraud. *Laub v. Faessel*, 297 A.D.2d 28, 30–31 (1st Dep't 2002) (holding that a plaintiff alleging fraud "must establish that the alleged misrepresentations or other misconduct were the direct and proximate cause of the losses claimed."). All the elements of a fraud claim must be pleaded with particularity. CPLR 3016(b); *Mandarin Trading, supra*.

SSR falls well short of these requirements. The Complaint lacks adequate allegations that (1) SSR reasonably relied on Shri and Vidiyala's alleged misrepresentations, (2) Shri or Vidiyala ever intended to deceive SSR about any matter, or (3) SSR suffered any pecuniary loss as a result of the alleged fraud or,

indeed, any damages at all. This Court should reject SSR's attempt on appeal to use its appellate brief to prop up its deficient Complaint with new allegations of a conspiracy to commit fraud in the factum.

1. SSR Has Not Alleged Reasonable Reliance On Any Alleged Misrepresentation

SSR cannot establish reasonable reliance on Shri and Vidiyala's alleged misrepresentations, as required for each of its fraud claims. As Justice Ostrager held, "plaintiff's reliance was unreasonable because the alleged misrepresentations are flatly contradicted by the terms of the Transaction Documents." [R. 11]. It is axiomatic that the failure to read a contract before signing it renders unreasonable any reliance on alleged misrepresentations related to the contract. *Stortini v. Pollis*, 138 A.D.3d 977, 978 (2nd Dep't 2016) ("[T]he plaintiff's averment that he did not read the documents before signing them prevents him from establishing justifiable reliance, an essential element of fraud.") More specifically, "[i]f the oral misrepresentations made to a party to a contract are "meaningfully contradicted" by the subsequent writing, reliance on the oral representations is unreasonable. *Perrotti, supra*, (quoting *Societe Nationale D'Exploitation Industrielle des Tabacs et Allumettes v. Salomon Brothers International Limited,* 249 A.D.2d 232, 233 (1st Dep't 1998) and *citing inter alia Daily News, L.P. v. Rockwell International Corporation,* 256 A.D.2d 13, 14 (1st Dep't 1998) (conflict between oral

representation and subsequent agreement "negates a claim of a reasonable reliance upon the oral representation").

Even an unsophisticated party has a duty to investigate and must "use ordinary intelligence to ascertain the truth of defendant's representations." *New York City Educ. Const. Fund,* 114 A.D.3d at 530. This is true even where the fraud claim is brought against an alleged fiduciary. *Sandcham Realty Corp.*, 299 A.D.2d at 221 (where agreement between plaintiff and his counsel contradicted the counsel's alleged misrepresentations, claim "would have been properly dismissed for the additional ground that [plaintiff] had a duty to read the document before signing it.").

Here, the alleged misrepresentations by Shri and Vidiyala about the way in which Camber would be compensated for its contribution to InvaGen are directly contradicted by the executed agreements. [R. 170, 207, 218, 283]. It is readily apparent that Camber was not even a party to the final agreements. The Allocated Share Schedule set forth the allocation percentage of the purchase price that each InvaGen shareholder would receive, as SSR admits. [R. 29 ("[u]pon reviewing the Second Amendment, Plaintiff discovered that its pro rata share had been reduced by 2.126% and the allocation to the other Stockholders had been increased in the cumulative amount of 2.126%.")]. That Amendment, with its attached Schedule executed by all parties and delivered at

Closing, establishes SSR's agreement to the share allocation it in fact received and therefore renders SSR unable to state a claim for fraud.[13]

SSR rests solely on *Suttongate Holdings Ltd. v. Laconm Mgmt. N.V.*, 160 A.D.3d 464, 464–465 (1st Dep't 2018) to argue that all the foregoing case law does not apply and that SSR's reliance was reasonable despite its admitted failure to read the SPA and Release. [App. Br. at 34]. That case is inapplicable. The misrepresentations at issue in *Suttongate* came from the claimants' own attorney whom they retained to represent them in forming a joint venture. Claimants' alleged in their counterclaim that the attorney drafted and presented them with documents that he misrepresented formed the joint venture, but instead "required them to repay an $8 million 'loan' to Suttongate, an entity controlled by [their attorney] while giving [their attorney] the windfall of a substantial economic interest in their properties." *Suttongate*, 160 A.D.3d at 464.

2. SSR Did Not And Cannot Allege That Shri Or Vidiyala Had Any Intent To Deceive SSR

SSR failed to allege that Shri and Vidiyala had intended to deceive SSR when they made their alleged misrepresentations about how Camber would be compensated for its contributions to InvaGen. As this Court has held –

[13] The term "Allocated Share" appears 25 times in the text of the SPA and its definition expressly directs the reader to the "Allocated Share Schedule" "for the percentage set forth next to each Stockholder's name." [R. 46]. SSR, according to its own Complaint, read none of this before executing the SPA.

> Absent a present intention to deceive, a statement of future intentions ... is not actionable on the grounds of fraud. A complaint based upon a statement of future intention must allege facts to show that the defendant, at the time the promissory representation was made, never intended to honor or act on his statement.

Cronos Grp. Ltd. v. XComIP, LLC, 156 A.D.3d 54, 72 (1st Dep't 2017) (quoting *Non–Linear Trading Co. v. Braddis Assoc.*, 243 A.D.2d 107 (1st Dep't 1998).

The Complaint contains no factual allegations that Shri or Vidiyala did not intend to honor or act on their alleged misrepresentations. Indeed, there aren't any facts from which such an intent can be inferred. Conclusory allegations that such intent existed, without any factual basis, are insufficient. *Cronos Grp. Ltd. v. XComIP, LLC*, 156 A.D.3d 54, 72 (1st Dep't 2017) ("[W]here a fraud claim is based upon an alleged false promise, the plaintiff is required to plead specific facts from which it may be reasonably inferred that the defendant did not intend to keep the promise when it was made.") (citing CPLR 3016(b)). Moreover, "any inference drawn from the fact that the expectation did not occur is not sufficient to sustain the plaintiff's burden of showing that the defendant falsely stated his intentions." *Id.* (quoting *Lanzi v. Brooks*, 54 A.D.2d 1057, 1058 (3rd Dep't 1976), *aff'd*, 43 N.Y.2d 778, 373 (1977))

The Complaint's allegations, in fact, make it impossible to infer that Respondents had any intent to deceive SSR. *First*, the alleged misrepresentation made by Bandi on behalf of Shri about how Camber might be compensated occurred

during a conversation with SSR representative Dr. Reddy over breakfast in the Fall of 2015. [R. 26-27]. The Transaction's Closing was not imminent and, in fact, would not occur until February 2016. If his statements were intended to deceive SSR, Bandi would have to have believed that SSR would never see any of the Transaction Documents before the Closing and, in fact, would execute them without reviewing them (see *infra*). There is no factual allegation from which it can even be inferred that Bandi held this unreasonable belief. There is certainly no allegation that Bandi ever made any efforts to keep any of the closing documents from SSR, which he would need to do to keep his alleged scheme a secret. That SSR somehow executed the SPA and General Release without ever reading any part of those documents does not magically supply Bandi's intent to deceive months earlier.

Second, SSR remarkably admits that when Vidiyala sent the signature pages to Dr. Reddy, Vidiyala "simply requested that Dr. Reddy obtain Plaintiff's signatures and *retain the original signatures until he furnished the original closing documents*." [R. 28]. If Vidiyala had a "present intent to deceive" SSR about the contents of the SPA and the General Release, he would not have asked SSR to refrain from returning their executed signature pages until SSR received those very documents. There is, again, no factual basis to infer that Vidiyala intended to deceive SSR.

3. SSR Does Not And Cannot Allege Damages Resulting From The Alleged Misrepresentations

A plaintiff alleging fraud "must establish that the alleged misrepresentations or other misconduct were the direct and proximate cause of the losses claimed." *Laub v. Faessel*, 297 A.D.2d 28, 30–31 (1st Dep't 2002). Moreover, damages for fraud are only available for a *pecuniary loss* the plaintiff has suffered as a direct result of the misrepresentation. *Mastro Indus., Inc. v. CBS Records*, 50 A.D.2d 783 (1975) ("The purpose of an action for deceit is to indemnify the party injured. All elements of profit are excluded. The true measure of damage is indemnity for the actual pecuniary loss sustained as the direct result of the wrong."). Accordingly, a plaintiff cannot recover damages for fraud on the basis of what the plaintiff would have received were the alleged misrepresentation accurate. *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 (2017) ("Damages are to be calculated to compensate plaintiffs for what they lost because of the fraud, not to compensate them for what they might have gained.... [T]here can be no recovery of profits which would have been realized in the absence of fraud") (citations omitted); *see also Cayuga Harvester, Inc. v. Allis-Chalmers Corp.*, 95 A.D.2d 5, 22 (4th Dep't 1983) ("There is no question that in New York damages for fraud are limited to indemnity for the actual loss sustained and that loss of the benefit of the bargain as represented by the wrongdoer is not recoverable.") Here, however, SSR received exactly what

they agreed. [R. 218]. Where the balance of the purchase price went is not relevant. It was not to go to SSR.

For example, in *Kensington Publ. Corp. v. Kable News Co.*, a book publisher plaintiff sued a distributor for fraud. 100 A.D.2d 802 (1st Dep't 1984). The plaintiff alleged a

> fraudulent representation by defendant that the rate contained in the agreement between the parties was the best rate defendant paid to any other publisher and that had defendant adhered to its representation, plaintiff would have received additional funds by reason of the sale of its books.

Id. at 802. This Court held that the motion court should have granted defendant's motion to dismiss, because the purpose of a cause of action for fraud is to "indemnify the party injured" for the "actual pecuniary loss sustained as the direct result of the wrong" and not for lost profits or foregone opportunities as a result of the alleged misrepresentation. *Id.* (quoting *Mastro*, *supra*); *see also ESBE Holdings*, *supra* at 298 (holding that the alleged fraudulent misrepresentations "even if they induced plaintiffs to invest in certain companies, did not relate to the financial condition of any of the companies and therefore did not directly cause the loss about which plaintiffs complain.")

Here, SSR does not allege that it received less than Respondents represented it would. Instead, SSR complains that rather than Camber –obviously not a party to the SPA—the Respondents received more than SSR expected. SSR therefore did

not suffer any damages at all, much less any cognizable damages for fraud. The SPA allocated to SSR—and SSR undisputedly received—the very amount it was told it would receive and acknowledged in writing. [R. 218].

4. This Court Should Reject SSR's Late Attempt To Address These Deficiencies With An Unpled Conspiracy Claim

The Complaint contains no allegations that the Respondents ever planned, schemed or even communicated with each other in conjunction with the two alleged misrepresentations to defraud SSR. Nonetheless, apparently recognizing that the isolated "misrepresentations" they allege disconnected as they are by Respondent and the passage of time cannot support a fraud claim, in their appellate brief, SSR now repeatedly refers to a "scheme" that Respondents "hatched" to take advantage of SSR. They go on to say that Vidiyala "helped implement the scheme" with Bandi. Uppugalla is also now somehow part of the "fraudulent scheme," despite SSR not asserting any contact with him at all nor any knowledge by him of the alleged misrepresentations nor bringing a fraud claim against him.

Other than ramping up the rhetoric and smearing Respondents, it's unclear what SSR hopes to gain by making these claims that appear nowhere in the record. *First,* adding the word "scheme" to their deficient Complaint does not cure its failure to allege reasonable reliance, intent or damages particularly as conspiracy to commit fraud is not a standalone claim in New York. "[T]o establish a claim of civil conspiracy, the plaintiff 'must demonstrate the primary tort, plus" (1) an

agreement; (2) an overt act; (3) intentional participation in the scheme; and (4) damages. *Abacus Fed. Sav. Bank v. Lim*, 75 A.D.3d 472, 474 (1st Dep't 2010). It has not done so.

Second, even if SSR were able to allege fraud *and* the Court allowed SSR to supplement the record via unsupported accusations in a brief, the allegations of an agreement among Respondents are conclusory and insufficient.

B. SSR Failed To Adequately Allege The Existence Or Breach Of Any Fiduciary Duties

SSR also failed to state a claim for breach of fiduciary duty by any Respondent. SSR's fiduciary duty claims are based on the same insufficient allegations as its fraud claims and should be dismissed for the same reasons. SSR agreed to the 6.874% allocation percentage that it received. The alleged misstatement and omission on which it attempts to rely are belied by the text of the SPA, which disavows any fiduciary duty among the parties with regard to their negotiations.

> all parties to this Agreement specifically acknowledge that no party has any special relationship with another party that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's length transaction.

[R. 144].

Nor would there be a fiduciary duty among shareholders in connection with negotiation of how to split the proceeds from the sale of their shares. This Court

should reject SSR's attempts to manufacture a fiduciary relationship attendant to the allocation of the sales proceeds among the shareholders. The issue is not the mere status of Shri as majority shareholder, nor Vidiyala's subsequent limited role as MSR. Rather, the court must look to the actual circumstances and conduct at issue. Once Cipla agreed to buy InvaGen for $500 million, the shareholders were in competition for the largest piece of the purchase price they could obtain, while agreeing to the fewest other concessions; the SPA imposes different obligations on different shareholders. *Infra.* This is not the case of a director or controlling shareholder acting on behalf of a corporation or of the shareholders—they each acted for themselves. SSR acted through its own agent, Dr. Reddy, in negotiations *inter se* to allocate the proceeds from the sale of the shareholders' stock interests.

The very fact that they negotiated opposite SSR means that Vidiyala and Shri were not fiduciaries of SSR with regard to that negotiation.

As the First Department has explained: "[t]hat defendants arguably are fiduciaries of plaintiffs does not invalidate the release, since they negotiated across the table from plaintiffs[.]" *Kafa Investments, LLC,* 114 A.D.3d at 433–34. There is no fiduciary duty between parties engaged in such negotiations.

> Negotiation is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. The word implies an arm's length exchange…. a fiduciary relationship ceases once the parties thereto become adversaries. *A fortiori*, a fiduciary relationship cannot have been created between parties who have been adversaries throughout their transaction.

EBC I, Inc. v. Goldman Sachs & Co., 91 A.D.3d 211, 215–16 (1st Dep't 2011) (internal citations and quotations omitted);[14] *see also Centro, supra* ("Where a principal and fiduciary are sophisticated parties engaged in negotiations to terminate their relationship, however, the principal cannot blindly trust the fiduciary's assertions.")

The Complaint alleges that SSR's representative independently negotiated its share allocation with Shri alone. If Shri did say that the other shareholders had agreed to accept a reduced allocation, the statement was made as part of a negotiation from an adversarial, non-fiduciary, posture. Notably, SSR had months between the time of the alleged statement (in Fall 2015) and the February 2016 closing to ascertain its accuracy and that the alleged allocation would be reflected in the final SPA.

Finally, SSR's attempts to cast Vidiyala as its fiduciary based on his position as MSR are disingenuous. Vidiyala's role as the MSR springs from the SPA, the very agreement SSR now seeksto avoid. Moreover, his responsibilities as MSR were expressly limited to implementing the terms of the SPA, primarily by ensuring that the payments would be made. [*See e.g.* R. 44, 154 (listing the specific SPA provisions for which the MSR role applied)].

[14] If SSR's conjecture about Respondents holding a grudge against Dr. Reddy were accurate, it further illustrates that the parties were negotiating at arm's length. [App. Brf. 10].

At no time does SSR identify any misconduct by Vidiyala as MSR. The purported misrepresentation that SSR alleges predates and is unrelated to Vidiyala's post-contract role as MSR. Mere status for certain limited and unrelated purposes cannot give rise to an unrelated claim of fiduciary duty and does not create a prior duty to speak. SSR's argument also disregards its own pleading that unequivocally identified the negotiation of the allocation percentage SSR would receive as being solely between Shri and SSR, by its sophisticated agent, Dr. Reddy.

C. The Complaint Fails To State A Claim For Unjust Enrichment

Both the SPA and the Release preclude SSR's unjust enrichment claims against all Respondents. A party cannot recover for unjust enrichment where there is a contract governing the same subject matter. *Pappas*, 20 N.Y.3d at 234. The claim exists only "*in the absence of an actual agreement between the parties concerned." Id.* (internal citations omitted). *Kordower-Zetlin v Home Depot U.S.A., Inc.*, 134 A.D.3d 556, 557-58 (1st Dep't 2015); *Bellino Schwartz Padob Adv., Inc. v Solaris Mktg. Group, Inc*., 222 A.D.2d 313 (1st Dep't 1995). Just as the Court of Appeals explained in dismissing the unjust enrichment claim in *Pappas v. Tzolis*, "[b]ecause the sale of [stock] was controlled by contracts the unjust enrichment claim fails as a matter of law." *Pappas, supra* at 234.

First, SSR admits that it executed a written agreement for the sale of its shares in InvaGen that is the very basis of the unjust enrichment claimed. [R. 24, 28].

Indeed, SSR has taken and enjoyed the proceeds it received pursuant to those Agreements. [R. 25, 28, 170, 207, 218]. It further knowingly executed the Release, by providing a signature page containing the language "signature page to general release." [R. 217].

Second, there is nothing unjust in Respondents keeping the benefits set forth in the contract they executed. In this transaction for the sale of their shares to a third party, the shareholders were negotiating opposite each other, owed no duty to each other and were free to sell their shares to Cipla at the best price they could obtain. SSR does not allege any reason that Vidiyala, Uppugalla and Shri would be prohibited from selling their personally owned InvaGen stock for the best price that they could get. *See, supra addressing claimed fiduciary duties.*

Notably, nothing in the Complaint even hints why Respondent Uppugulla's retention of the proceeds of the sale of his shares would be unfair. The Complaint does not allege any acts, omissions or interactions with SSR by Uppugalla. Nor does it allege any fiduciary or other relationship between Uppugalla and SSR. *Mandarin Trading,* 16 N.Y.3d 173, 182 ("Moreover, under the facts alleged, there are no indicia of an enrichment that was unjust where the pleadings failed to indicate a relationship between the parties that could have caused reliance or inducement."). There is no basis in the Complaint to infer that Uppugalla even knew about the alleged misrepresentations here.

Third, SSR has not alleged how any Respondent was enriched *at SSR's expense*. *Cty. of Nassau v. Expedia, Inc*., 120 A.D.3d 1178, 1180 (2d Dep't 2014) ("The essence of unjust enrichment is that one party has received money or a benefit at the expense of another."). According to its own allegations, SSR received the amount allocated in the SPA, which was no less than the amount Shri and Vidyala represented SSR would receive. SSR appears to be complaining that the other parties received more than SSR thought they would (but still only the amount stated in the SPA), but cannot explain how that happened at SSR's expense. According to SSR, it happened at Camber's expense.

The SPA reflects a detailed agreement covering far more than just the amount of stock owned by each. The final agreement imposes different obligations on each shareholder. For example, Shri provided a $72 million letter of credit to Cipla, which was added to the Transaction in the Second Amendment—i.e. *after* the Autumn 2015 conversation between Shri's principal, Bandi, and SSR's agent, Dr. Reddy. [R. 174]. Vidiyala and Uppugalla gave up their profit shares and stock options in InvaGen. [R. 162]. No similar concessions were imposed on SSR. Far from a binary agreement that each share would be bought for a specific dollar amount, the transaction was multifaceted. The final deal is set forth in lengthy agreements entered by multiple parties (including nonparties to this litigation) negotiating at arms-length and is a wholly inappropriate basis for an unjust enrichment claim.

SSR does not deserve this Court's exercise of its equitable powers. While the Complaint alleges that SSR's principals were young and not represented by counsel, it nevertheless acknowledges that their father, Dr. Reddy, a businessman and scientist, acted as their agent in the negotiations. [R. 26].

Moreover, SSR certainly could have retained counsel to assist it in selling its shares for tens of millions of dollars. The law of unjust enrichment is not a "catchall cause of action to be used when others fail.") *Corsello v. Verizon NY, Inc.*, 18 N.Y.3d 777, 790–91 (2012). In this $500 million transaction, it is entirely just for SSR, a valuable real estate business, to be held to the contracts it signed.

The Court should not relieve SSR from its executed contract or "renegotiate" the terms of its stock sale. Having executed the SPA and the other Transaction Documents, SSR is bound by them. *Supra*.

CONCLUSION

For the foregoing reasons and on the record on appeal, Defendants respectfully request that the Court affirm Justice Ostrager's Order dismissing the Complaint in its entirety with prejudice.

Dated: October 23, 2020
New York, New York

Respectfully submitted,
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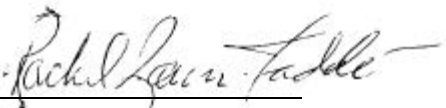
By: 

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