SHAREHOLDER REPRESENTATIVE SERVICES, LLC **Plaintiff** **v.** **COLUMBIA CARE, INC., *et al.*** **Defendants**	**IN THE** **CIRCUIT COURT** **FOR BALTIMORE CITY** **Case No. 24-C-23-001344**

MEMORANDUM OPINION

This matter was before the Court on August 8, 2023, for a hearing on Defendants' motions to dismiss. The Court has considered the briefs of the parties and the oral argument presented by counsel. The Court's analysis and decision are set forth below. The Court will issue separate orders as to each motion.

I. Introduction

This case arises from a dispute between the former Securityholders of Green Leaf Medical, LLC ("Green Leaf") (represented in this matter by Plaintiff Shareholder Representative Services, LLC ("SRS")) and the various defendants consisting of Columbia Care, Inc. ("Columbia Care"), Derek Watson ("Watson"), Chief Financial Officer of Columbia Care, Nicholas Vita ("Vita"), Chief Executive Officer of Columbia Care, Michael Abbott ("Abbott"), Executive Chairman of Columbia's Board of Directors (Watson, Vita, and Abbott referred to collectively as the "Individual Defendants"), and Kroll, Inc. ("Kroll"). In this introduction, the Court will not summarize the entire history between the parties as set forth in the pleadings, but instead will refer to facts as necessary within the Court's analysis. In a nutshell, however, Plaintiff alleges that Defendants fraudulently deprived the former Securityholders of Green Leaf of milestone payments totaling more than $72 million that they would be entitled to receive as the result of Green Leaf achieving certain performance metrics after being acquired by, and becoming a subsidiary of,

Columbia Care pursuant to an Agreement and Plan of Merger dated December 21, 2020 ("Merger Agreement"). Plaintiff alleges that the Individual Defendants were instrumental in an effort to defraud Plaintiff and that they retained Defendant Kroll, who in turn provided accounting services that improperly deflated the performance results of Green Leaf. Plaintiffs also allege that Defendants Columbia Care and Vita made fraudulent or negligent misrepresentations regarding a litigation matter that was pending against Columbia Care prior to the merger (the "Broumand Litigation").

The Defendants have raised various challenges to the Complaint in their respective Motions to Dismiss. The Court finds the arguments of Defendants' counsel to be persuasive in spite of the laudable efforts of Plaintiff's counsel to oppose the motions. At oral argument, Plaintiff's counsel began by noting that the Complaint is 142 paragraphs and 32 pages long and emphasized that point twice more. That a complaint spans many pages and contains numerous paragraphs does not necessarily mean that it has been pled with facts sufficient to establish jurisdiction, standing, or the basis for tort claims; in the instant matter it does not.

II. Standard of Review

The Court takes as true all well-pled allegations and reviews them in the light most favorable to the Plaintiff. *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 122 (2007). Although a court must assume the truth of all well-pleaded facts, dismissal is proper when the facts alleged, if proven, would fail to afford relief to the Plaintiff. Md. Rule 2-322(b)(2); *see also Hogan v. Md. State Dental Ass'n*, 155 Md. App. 556, 561 (2004). The facts as set forth in the complaint must be pleaded with "sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015) (quoting *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010)). Upon an evaluation of Plaintiff's

allegations, the Court finds SRS has failed to state a claim for which relief can be granted as to the various tort claims, and sets forth its reasoning below.

In deciding a motion to dismiss, this Court may consider operative documents upon which Plaintiff pled their complaint. *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (when "a document . . . merely supplements the allegations of the complaint, and the document is not controverted, consideration of the document does not convert the motion into one for summary judgment") (citations omitted); *Sutton*, 226 Md. App. at 74 n.13 (2015) (citing *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007) ("statements or documents incorporated into the complaint by reference, legally required public disclosure documents filed with the SEC, and documents possessed by or known to the plaintiff and upon which it relied in bringing the suit")).

III. Analysis

A. Personal Jurisdiction

Pursuant to Maryland Rule 2-322(a)(1), prior to filing an answer, a party may file a motion to dismiss for lack of personal jurisdiction.[1] The Supreme Court of Maryland, in *Pinner v. Pinner*,

[1] The Court is not persuaded by SRS' argument that Defendants somehow consented and waived their challenge to jurisdiction in Maryland simply by asking that the case be assigned to the Business and Technology Program. Maryland Rule 2-322(a)(1) merely requires the motion challenging jurisdiction be made prior to filing an answer. None of the Defendants have filed an answer; they all filed motions to dismiss. None of the cases cited by Plaintiff are on point or supportive of Plaintiff's consent to jurisdiction argument. *CoStar Realty Info., Inc. v. Field*, 612 F. Supp. 2d 660 (D. Md. 2009) (jurisdiction consented to by defendants, users of real estate internet service provider, based on express consent to jurisdiction in website "Terms of Use" that all users must accept to before accessing service); *Heller Financial Inc. v. Midwhey Powder Co.*, 883 F.2d 1286 (7th Cir. 1989)(defendants consented to personal jurisdiction by virtue of valid and binding forum-selection clause contained in lease); *Epperson v. Ent. Express, Inc.*, 338 F. Supp. 2d 328 (D. Conn. 2004) (defendant consented to venue transfer pursuant to 28 U.S.C. 1404(a), a statute for which the Supreme Court has held that valid personal jurisdiction is a prerequisite of transfer). The Court also notes that counsel for all defendants expressed, in writing, to Plaintiff's counsel that they were asserting and preserving their personal jurisdiction *prior to* requesting assignment to the Business and Technology Program. And, finally, this Court agrees with Judge Cannon's position that a request to be assigned to the Business and Technology Program, "is no more 'in derogation' to a contest of personal jurisdiction than a request to have a hearing on a Monday instead of a Friday." *Strudwick v. Whitney*, 2009 WL 319887 (Md. Cir. Ct. Aug 28, 2009) (Trial Order).

467 Md. 463, 441 (2020),[2] stated that "[t]he defense of lack of personal jurisdiction is a question of law . . . [and] the plaintiff [] bears the burden of establishing personal jurisdiction." The Court also noted in *Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 11 (2005) that the plaintiff must make a *prima facie* showing of personal jurisdiction by a preponderance of the evidence.

The United States Supreme Court, in *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *International Shoe v. Washington*, 326 U.S. 310, 319 (1945)) explained that "[t]he Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'"

The Appellate Court of Maryland, in *Fisher v. McCrary Crescent City, LLC*, held that:

> [a] circuit court has personal jurisdiction over a nonresident defendant if the requirements of the Maryland long-arm statute, . . . have been satisfied and exercising jurisdiction comports with due process i.e., defendant has minimum contacts with the forum, such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

186 Md. App. 86, 108 (2009).

Pursuant to Maryland's long arm statute:

> [a] court may exercise personal jurisdiction over a person, who directly or by an agent . . . [c]auses tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State.

Md. Code., Cts. & Jud. Proc. § 6-103(b)(4).

[2] On November 8, 2022, the voters of Maryland ratified a constitutional amendment changing the name of Maryland's Court of Appeals to the Supreme Court of Maryland and changing the name of Maryland's Court of Special Appeals to the Appellate Court of Maryland. The name change took effect on December 14, 2022. This Court will refer to all decisions of these appellate courts by their current name, regardless of the date of the opinion cited.

Moreover, with respect to Maryland's long arm statute, the Supreme Court of Maryland explained in *Geelhoed v. Jensen* that:

> Application of the long arm statute is a two-step process. First, it must be determined whether the statute purports to authorize the assertion of personal jurisdiction. And secondly, it must be determined whether an exercise of jurisdiction permitted by the statute violates the Due Process Clause of the Fourteenth Amendment. It is important to note, however, that these determinations are interrelated. As noted repeatedly in the cases, the long arm statute represents an effort by the Legislature to expand the boundaries of permissible in personam jurisdiction to the limits permitted by the Federal Constitution. It is therefore necessary to interpret the statute in light of constitutional limitations, rendering where possible an interpretation consistent with those limitations.

277 Md. 220 at 224 (1976). In *Beyond Systems, supra*, 388 Md. at 22, the Supreme Court of Maryland clarified that "[b]ecause we have consistently held that the reach of the long arm statute is coextensive with the limit of personal jurisdiction delineated under the Due Process Clause of the Federal Constitution, our statutory inquiry merges with our constitutional examination."

In *CSR, Ltd. v. Taylor*, 411 Md. 457, 464 (2009) the Supreme Court of Maryland stated that "the constitutional touchstone remains whether the defendant purposefully established minimum contacts in the forum State." Minimum contacts means that, through either specific or general jurisdiction:

> there must be 'purposeful availment,' [sic] meaning there exists so substantial a connection between [defendant] and the forum state that having to defend a lawsuit there would be foreseeable. In Maryland, a substantial connection will be established if Petitioner either engaged in significant activities in the State or created continuing obligations with the State's residents, thus taking advantage of the benefits and protections of Maryland law.

Id. at 496 (citing *Burger King*, 472 U.S. at 474-76).

In *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390 (4th. Cir. 2003), the Court of Appeals, applying the Maryland long-arm statute, stated that:

> [i]n determining whether specific jurisdiction exists, we consider (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.

Id. at 397.

Turning back to the case at bar, the Court finds that Plaintiff has failed to establish a *prima facie* case that personal jurisdiction exists to pursue a claim against Defendant Kroll. Kroll is a Delaware corporation with no offices in the State of Maryland. Defendant Columbia Care retained Kroll and there is no allegation that Kroll solicits business in Maryland or that any solicitation resulted in Kroll's engagement by Columbia Care. The Court finds that the two visits to Maryland by Kroll employees were not significant enough to subject Kroll to personal jurisdiction. Furthermore, it is clear that Kroll has not engaged in significant activity or created continuing obligations in Maryland to support long-arm jurisdiction. *Burger King*, 471 U.S. at 475–76, 105 S.Ct. 2174.

The Court finds that the limited visits to Maryland by Kroll employees are analogous to the visit to Maryland by one of the defendants in *Marriott Corp. v. Village Realty & Inv. Corp.*, 58 Md. App. 145 (1984). In *Marriott*, the plaintiff (Marriott) initiated discussions regarding a Florida real estate purchase. Defendant Eisler, on behalf of the corporate defendant (Village Realty) traveled to Maryland to deliver documents pertaining to the real estate. The Court found that the meeting in Maryland was "no doubt one link in a chain of events leading to the claim for commissions," and the commissions were the heart of the dispute between the parties. *Id.* at 156. However, the Court found the meeting insufficient to "constitute 'a substantial enough connection'

with this State as to make the exercise of jurisdiction here reasonable." *Id.* Likewise, here, this Court finds that the limited meetings attended by Kroll employees in Maryland do not create a substantial enough connection to make the exercise of personal jurisdiction over Kroll reasonable.

With respect to the Individual Defendants, the Court likewise finds that Plaintiff has failed to establish a *prima facie* showing that personal jurisdiction exists. These individuals are not residents of the state and have not engaged in conduct that would lead them to expect to be hailed into a Maryland court. The Court further finds that the "closely related" doctrine does not provide a basis to apply the forum selection clause of the Merger Agreement and establish personal jurisdiction over the Individual Defendants. The facts of the instant matter are distinguishable from those in *Peterson v. Evapco, Inc.*, 238 Md. App. 1 (2018). In *Peterson*, the Court considered factors such as the "non-signatory's ownership of signatory, its involvement in the negotiations, the relationship between the two parties and whether the non-signatory received a direct benefit from the agreement.", *id.* at 46, and concluded that non-signatories could be bound as "closely related" to the signatory.

In contrast to *Peterson*, the Court finds that the Individual Defendants are not closely related to the signatory, Columbia Care, such that it would be foreseeable that the forum selection clause would apply to them. With respect to Watson, he was not employed by Columbia Care when the Merger Agreement was signed; he joined Columbia Care a year later. Columbia Care Motion to Dismiss at Ex. 2, Watson Decl. ¶¶ 3, 15. Furthermore, Watson owned no Columbia Care stock when the Merger Agreement was signed, *id.* at ¶ 16, and received no direct benefit from the Merger Agreement. With respect to Abbott, he did not participate in negotiating the Merger Agreement. Columbia Care Motion to Dismiss at Ex. 3, Abbott Decl. ¶ 17. Furthermore, the Court rejects the notion that Abbott's ownership of 5% of Columbia Care's stock, a public

corporation, renders him "closely related" for purposes of binding him by the corporation's forum selection clause. Nor did Abbott's 5% ownership result in a direct benefit to him and the Court rejects the argument that a "price increase in value" is the type of benefit that would support a "closely related" finding for any of the Individual Defendants. Finally, with respect to Vita, he signed the Merger Agreement solely as an officer of the corporation and the Court finds this inadequate to bind him to the corporation's forum selection clause.

This Court also rejects Plaintiff's argument that the conspiracy theory of jurisdiction should apply to the Individual Defendants and Kroll. As will be set forth *infra*, the Court finds that the bald allegations of Plaintiff in its tort claims renders the conspiracy count untenable, which in turn defeats the application of the conspiracy theory of jurisdiction. *Strudwick v. Whitney*, 2009 WL 319887 (Md. Cir. Ct. Aug 28, 2009) (Trial Order) ("A review of the cases makes clear that the basis for jurisdiction over the co-conspirator must arise out of the tort; the "jurisdictional acts" relied upon must be acts by the co-conspirator that were in furtherance of the conspiracy.") (citing *Mackey v. Compass Mktg.*, 391 Md. at 128; *Gemini Enterprises, Inc. v. WFMY Television Corp.*, 470 F.Supp. 559, 564 (M.D.N.C.1979); and *Textor v. Board of Regents*, 711 F.2d 1387, 1392-93 (7th Cir. Ill. 1983)).

B. Standing

As noted *supra* the Complaint alleges that Securityholders of Green Leaf have been damaged due to the conduct of the Defendants. SRS has filed the Complaint in this action as the representative of Green Leaf's Securityholders.

The Supreme Court of Maryland has held that "[t]he doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable

of judicial resolution." *Kendall v. Howard Cty.*, 431 Md. 590, 603 (2013). To have standing, a party must demonstrate an "injury-in-fact," or "an actual legal stake in the matter being adjudicated." *Hand v. Mfrs. & Traders Trust Co.*, 405 Md. 375, 399 (2008) (citing *Security Pacific Nat. Bank v. Evans*, 31 A.D.3d 278, 820 N.Y.S.2d 2 (2006)).

With these principles in mind, the Court finds that Plaintiff lacks standing and is therefore not the proper party as to counts II, III, IV, V, VI, and VII. First, the Court finds that SRS does not have a real and justiciable interest capable of being resolved through this litigation. It is the Securityholders of Green Leaf, not SRS, who were allegedly the victims of Defendants' tortious conduct. Moreover, SRS has suffered no injury-in-fact. The lack of a justiciable interest remains clear when reviewing the assignments signed by some Securityholders and appended to Plaintiff's Opposition. The Assignment of Claim ("Assignment") forms, appended to the Opposition at Exhibit B, state that, "In the event that SRS is awarded a judgment on any of the assigned claims or otherwise receives any proceeds in full or partial satisfaction of the assigned claims, any award or proceeds will be distributed to the Assignor and other former securityholders of Green Leaf Medical, LLC." This is simply not an assignment of the Securityholders claim that is sufficient to create a justiciable interest or injury in fact to SRS. Finally, the Court notes that even if the Assignment was drafted in a way to create an injury-in-fact attributable to SRS, only 110 of the 181 Securityholders signed the Assignment.

The dismissal of various counts in this action, as set forth *infra*, is without prejudice. Should an amended complaint be filed in an effort to rectify the substantive deficiencies of these counts, all necessary plaintiffs must be joined. Should counsel deem joinder of that number of plaintiffs to be unwieldy, as Plaintiff's counsel suggested during oral argument, the Court would

entertain a request to certify a class action. Of course, until such a request is filed, the Court cannot comment on its likelihood of success.

C. Count II – Fraud and Intentional Misrepresentation

Count II of the Complaint, asserting the torts of fraud and intentional misrepresentation, is pled against Columbia Care and Vita. To state a claim for fraud and intentional misrepresentation, a plaintiff must plead sufficient facts demonstrating: "(a) a false representation of a material fact, (b) knowledge that the representation was false or made with reckless indifference to its truth, (c) intent for the plaintiff to rely on the fraudulent misrepresentation, (d) justifiable reliance on the fraudulent misrepresentation, and (e) damages as a result of the fraudulent misrepresentation." *ICATech Corporation v. Facchina*, 268 A.3d 219, *1 (Del. 2021) (citing *Harman v. Masoneilan Int'l., Inc.*, 442 A.2d 487, 499 (Del. 1982); Restatement (Second) of Torts § 525 (Am. L. Inst. 1977).[3] Similarly, the Supreme Court of Maryland has held that:

> the party alleging [fraud] must show: (1) that a false representation was made by a party; (2) that its falsity was known to that party or that the misrepresentation was made with such reckless indifference to truth as to impute knowledge to the party; (3) that the misrepresentation was made for the purpose of defrauding some other person; (4) that the person not only relied on the misrepresentation but had a right to rely upon it with full belief in its truth, and that the person would not have done the thing from which the damage resulted if the misrepresentation had not been made; and (5) that the person suffered damage directly resulting from the misrepresentation.

Everett v. Baltimore Gas & Elec., 307 Md. 286, 300 (1986). Courts have also been clear that the fraudulent statement "must have been misleading at the time it was made," as opposed to

[3] The Court finds that it can look to Delaware law and Maryland law with respect to SRS' claims for fraud and intentional misrepresentation, negligent misrepresentation, tortious interference, and conspiracy. The Court reaches this conclusion based on both the doctrine of *lex loci delicti*, which dictates that the applicable law is to be where the injury allegedly occurred, and the Merger Agreement, which states, "This Agreement shall be governed and construed in accordance with the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof, as to all matters, including matters of validity, construction, effect, performance and remedies." Merger Agreement at 11.3(a). With respect to the location of injury, Plaintiff alleges that at least some of the Securityholders are located in Maryland.

questioning the statement in hindsight. *In re NAHC, Inc. Sec. Litig.*, 306 F.3d 1314, 1330 (3rd Cir. 2002); *Hillson Partners Ltd. P'ship v. Adage, Inc.*, 42 F.3d 204, 209 (4th Cir. 1994) ("mere allegations of fraud by hindsight" insufficient). Moreover, statements of opinion are insufficient to support a claim of fraudulent or intentional misrepresentation. *Babb v. Bolyard*, 194 Md. 603, 609 (1950) (to form basis for fraud, statement "must be a statement of an alleged existing fact or facts, and not merely of some future or contingent event, or an expression of opinion") (quoting *Boulden v. Stilwell*, 100 Md. 543, 551 (1905)).

In addition to lack of personal jurisdiction as to Defendant Vita and lack of standing to assert the claim generally, the Court finds that there are insufficient facts pled to show that Columbia Care and Vita knowingly misrepresented facts related to the Broumand Litigation with the intent to deceive. The sum and substance of SRS' allegations are that: 1) Columbia Care failed to identify the Broumand Litigation as a material legal proceeding in its 2019 and 2020 public filings; Compl. ¶ 61, 64, 73, 98; 2) while Green Leaf conducted due diligence of Columbia Care, Green Leaf was told (by an unidentified party) that all litigation matters were contained in public filings; *id.* ¶ 63, 98; and 3) in December of 2020 Vita described the Broumand Litigation to Kevin and Philip Goldberg of Green Leaf as "immaterial," a "nothingburger," and "no cause for concern." *Id.* ¶ 68. It was not until late 2021 and early 2022, after the merger, that the negative financial impact of the Broumand Litigation was felt by Columbia Care. *Id.* ¶¶ 74-76.

The Court finds these allegations are insufficient to maintain a claim of fraudulent misrepresentation. The identified statements were in the nature of an opinion (*e.g.* "no cause for concern"). Furthermore, the Complaint fails to plead with particularity facts demonstrating that Columbia Care and Vita knew of the falsity of any statement and made such statement with an intent to deceive. Lastly, the Court finds Plaintiff's allegations surrounding the purported

intentional misrepresentation to be bald, conclusory, and/or "upon information and belief;" these allegations fail to plead a knowing misrepresentation of facts.

The Court further finds that there is a failure to plead reliance by the Securityholders. Making statements to Philip and Kevin Goldberg regarding the Broumand litigation does not equate to making those statements to the Securityholders represented by SRS. *S'holder Representative Servics. v. Sandoz, Inc.*, 46 Misc. 3d 1228(A), 2015 N.Y. Misc., LEXIS at 20-21 ("SRS has not pleaded facts sufficient to set forth reliance on these alleged misrepresentations by the former shareholders, as the shareholders not present for the alleged oral misrepresentations ... cannot be alleged to have relied on representations they never received.") (citing *Modell's NY v. Noodle Kidoodle*, 242 A.D.2d 248, 250 (1st Dep't 1997)). Moreover, the Court finds that Plaintiff's bald allegations that the Securityholders relied on public filings related to material litigation to be insufficient to plead reliance. *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010) ("well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.") (citing *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238 (2000); *Bobo v. State*, 346 Md. 706 (1997)). Count II will therefore be dismissed.

D. Count III – Negligent Misrepresentation

Count III of the Complaint, asserting the tort of negligent misrepresentation, is pled against Defendants Columbia Care and Vita. In addition to lack of personal jurisdiction as to Defendant Vita and lack of standing to assert this claim generally, the Court finds that this claim has been contractually waived. The Merger Agreement at section 9.5(j) provides as follows:

> Exclusive Remedy. The Parties (other than the Securityholder Representative, in its capacity as Securityholder Representative and not on behalf of the Securityholders, with respect to claims against or amongst the Securityholders) acknowledge and agree that their sole and exclusive

> remedy with respect to any and all claims for any Losses under this Agreement (except (a) in the case of fraud or intentional misrepresentation and (b) for any other remedies expressly set forth in Section 11.4) shall be pursuant to the indemnification provisions set forth in this SECTION 9. In furtherance of the foregoing, each of the Parties (other than the Securityholder Representative, in its capacity as Securityholder Representative and not on behalf of the Securityholders, with respect to claims against or amongst the Securityholders) hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of actions for any breach of any such representation, warranty, covenant, agreement, or obligation it may have against the other Parties and their Affiliates arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this SECTION 9.

The Court finds that Plaintiff's claimed damages for negligent misrepresentation, Compl. ¶ 115, fall under the definition of "loss" set forth in section 1.1 of the Merger Agreement ("any claim, loss, fines, royalty, liability, damage, deficiency, diminution in value, lost profit, Tax, interest, penalty, cost, fees or expense."). Furthermore, the Court finds that the Merger Agreement's indemnification provision is the exclusive remedy for the alleged negligent misrepresentations or non-disclosures pertaining to the Broumand Litigation. Having found that this claim is waived, the Court need not address the other substantive arguments pertaining to negligent misrepresentation. Count III will therefore be dismissed.

E. Count IV – Tortious Interference with a Contract

Count IV of the Complaint asserts tortious interference with a contract against the Individual Defendants and Kroll. In *MCG Capital Corp. v. Maginn*, 2010 Del. Ch. LEXIS 87 (Del. Ch. May 5, 2010) the court held that:

> For an officer or director to be held personally liable for intentional interference with contract, plaintiff must also show that the intentional acts of that officer or director exceeded the scope of their authority. . . . We cannot hold officers and directors liable for intentional interference with contractual relations if their misinterpretation of a contract causes the company they serve to breach that contract.

Id. at *42-44 (citing *Goldman v. Pogo. com Inc.*, 2002 WL 1358760, at *8 (Del. Ch. June 14, 2002)). Similarly, the Appellate Court of Maryland, in *Bleich v. Florence Crittenton Services of Baltimore, Inc.*, 98 Md. App. 123, 146-47 (1993) held that:

> a plaintiff must allege that a third party, without justification and for an unlawful purpose, intentionally interfered with the business relationship between the plaintiff and another, causing the plaintiff actual damage . . . Thus, when an employee acts within the scope of her employment, or as an agent of her employer, she cannot be held liable for interfering with the contract, business relationships, or economic relationships, between the employer and another.

Thus, in addition to the lack of personal jurisdiction over the Individual Defendants and a lack of standing to assert this claim generally, the Court finds that this count fails as to the Individual Defendants because they cannot interfere with a contract concerning their own company. This is, in essence, what Plaintiff alleges. Compl. ¶ 39, 42-44, 51, 99, 102, 110. As such, the claim cannot be maintained under either Delaware or Maryland law.

As to Kroll, in addition to the lack of personal jurisdiction over Kroll and a lack of standing to assert this claim generally, the Court finds that the Complaint fails to sufficiently plead, beyond bald allegations, Kroll's knowledge of the contract or contractual obligations with which Kroll allegedly interfered. *Discovery Commc'ns v. Computer Scis. Corp.*, 2013 WL 3448076 (D. Md. July 8, 2013) (applying Maryland law and dismissing claim of intentional interference with employment contract of Executive Vice President/Chief Accounting Officer when plaintiff made conclusory allegation that defendant "was and is aware of the existence of the Employment Agreement."). Count IV will therefore be dismissed.

F. Count V – Breach of Fiduciary Duty

Count V of the Complaint asserts a breach of fiduciary duty against the Individual Defendants. In addition to a lack of personal jurisdiction over the Individual Defendants and

standing to assert the claim generally, pursuant to the law of British Columbia, Canada,[4] officers and directors owe no duty directly to shareholders.

Section 122 of the Canadian Business Corporations Act states as follows:

> Duty of care of directors and officers
> 122 (1) Every director and officer of a corporation in exercising their powers and discharging their duties shall
> (a) act honestly and in good faith with a view to the best interests of the corporation; and
> (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Canadian courts have issued decisions consistent with the statutory provision. *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 ("The fiduciary duty of the directors to the corporation originated in the common law . . . Often the interest of the shareholders are co-extensive with the interests of the corporation. But if they conflict, the directors' duty is clear – it is to the corporation."); *People's Dep't Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 ("The fiduciary duty under s. 122(1)(a) of the CBCA requires directors and officers to act in good faith and honestly vis-à-vis the corporation . . . . At all times, they owe their fiduciary obligations to the corporation, and the corporations' interests are not to be confused with the interests of the creditors or those of any other stakeholder."). As no duty exists under the applicable law, Count V will be dismissed.

G. Count VI – Aiding and Abetting Breach of Fiduciary Duty

Count VI asserts a claim that Defendant Kroll aided and abetted the Individual Defendants in their breach of a fiduciary duty. This count must fail due to the Court's lack of personal jurisdiction over Kroll. Moreover, as set forth in section III(F) of this Opinion, *supra*, no such

[4] The Court finds that the law of British Columbia, Canada applies to a claim of breach of fiduciary duty and aiding and abetting breach of fiduciary duty based on the internal affairs doctrine. *Tomran, Inc. v. Passano*, 391 Md. 1, 17 (2006); *Gilman v. Wheat, First Securities Inc.*, 345 Md. 361, 370–71 (1997); *N.A.A.C.P. v. Golding*, 342 Md. 663, 674 (1996); *Stockley v. Thomas*, 89 Md. 663 (1899).

duty exists vis-à-vis the Individual Defendants and the Securityholders and, therefore, Kroll cannot aid and abet the breach of a non-existent duty. Count VI will therefore be dismissed.

H. Count VII – Civil Conspiracy

Count VII asserts a claim of civil conspiracy as to the Individual Defendants and Kroll. In addition to the lack of personal jurisdiction over these defendants and the lack of standing to assert the claim generally, the Court finds that no civil conspiracy can exist based on this Court's dismissal of the underlying torts. Count VII will therefore be dismissed.

G. Motion to Strike Jury Demand

The Defendants have moved, pursuant to Maryland Rule 2-322(e), to strike Plaintiff's jury demand in this action and point to the jury trial waiver contained in the Merger Agreement. Plaintiff argues in opposition that the jury trial waiver is ambiguous as to the tort claims and is therefore unenforceable. Moreover, with respect to Kroll, Plaintiff asserts that the waiver is unenforceable altogether because Kroll is not a party to the Merger Agreement.[5]

In *Walther v. Sovereign Bank*, 386 Md. 412 (2005), the Supreme Court of Maryland held that

> Article 23 of the Maryland Declaration of Rights, guarantees the right to a jury trial in civil cases. Although the right to a jury trial is fundamental, parties can contractually waive their right to a jury trial. In order to have a valid waiver of a fundamental right such as the right to a jury trial, however, there ordinarily must exist a "knowing and intelligent" waiver of the right.

Id. at 442-43 (citing *Richardson v. State*, 381 Md. 348 (2004); *Maryland–National Capital Park and Planning Comm'n v. Washington National Arena*, 282 Md. 588 (1978); and *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185, 92 S.Ct. 775, 782, 31 L.Ed.2d 124 (1972)).

[5] The Court recognizes that SRS concedes that the jury trial waiver applies to Count I, Breach of Contract. Although this is the sole count remaining as a result of the decision set forth in this Memorandum Opinion, the Court is addressing the jury trial waiver should Plaintiff successfully amend its Complaint and have tort claims survive dismissal and/or summary judgment.

With respect to construction of such a waiver, in *ST Sys. Corp v. Maryland Nat'l Bank*, 112 Md. App. 20 (1996) the Appellate Court of Maryland stated that

> [g]enerally, jury waiver provisions are strictly construed. The rules of construction, however, cannot be used to limit artificially the scope of a jury waiver provision in contrast to the language used by the parties in the contract itself. We, therefore, see no reason why our interpretation of contractual jury waiver provisions should differ from the established construction rules used for interpreting contracts. This Court's duty is to interpret the language of the contract and determine what a reasonable person in the parties' position would have meant by the language used in the contract. Additionally, words within a contract are afforded their ordinary meaning unless otherwise specified.

Id. at 34 (citing 5 Moore's Federal Practice § 38.46, at 38–428 (2d ed. 1993); *Jenkins v. Karlton*, 329 Md. 510 (1993); *General Motors Acceptance v. Daniels*, 303 Md. 254 (1985); *Kasten Const. v. Rod Enterprises*, 268 Md. 318 (1973); and *Strickler Eng. Corp. v. Seminar*, 210 Md. 93 (1956)).

With respect to the jury trial waiver in the instant matter, the Merger Agreement states as follows:

> EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER OR RELATING TO THIS AGREEMENT OR ANY ANCILLARY AGREEMENT OR THE TRANSACTIONS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ESCROW AGREEMENT OR ANY OTHER ANCILLARY AGREEMENT OR THE TRANSACTIONS OR THE FACTS OR CIRCUMSTANCES LEADING TO EACH PARTY'S EXECUTION OR PERFORMANCE OR ANY ACTIONS OF ANY OF THE AFFILIATES OR REPRESENTATIVES OF ANY OTHER PARTY RELATED THERETO.

Merger Agreement at 11.3(c) (all caps in original).

The Court finds that the waiver was knowing and voluntary, pursuant to the acknowledgement by SRS in section 11.3(d) of the Merger Agreement. Moreover, SRS does not

raise the issue of voluntariness, instead arguing that the language is ambiguous. The Court further finds that the clear language of the waiver is broad in scope and encompasses all claims brought in the action. The plain language of the waiver is unambiguous when it references "any controversy that may arise under or relating to this agreement." All of Plaintiff's claims in this litigation arise under or relate to the Merger Agreement. Finally, pursuant to *Westbard Apartments, LLC v. Westwood Joint Venture, LLC*, 181 Md. App. 37 (2008) and *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942 (11th Cir.1999), upon which the *Westbrand* Court relied, this Court finds that because the claims in the instant matter arise out of and relate directly to the Merger Agreement the waiver applies equally to all claims and all Defendants. Therefore, the Court will strike the jury demand as to all Defendants.

IV. Conclusion

For the foregoing reasons, the Court will issue orders granting Defendants' respective motions.

Judge Jeffrey M. Geller
Judge's Signature Appears on Original Document

August 29, 2023
Date

Judge Jeffrey M. Geller

SHAREHOLDER REPRESENTATIVE SERVICES, LLC **Plaintiff** **v.** **COLUMBIA CARE, INC., *et al.*** **Defendants**	**IN THE** **CIRCUIT COURT** **FOR BALTIMORE CITY** **Case No. 24-C-23-001344**

ORDER

Upon consideration of Defendant Kroll, Inc.'s Motion to Dismiss and Motion to Strike (DE#15), Plaintiff's Opposition thereto, Kroll, Inc.'s Reply Brief, and the oral argument presented on August 8, 2023, and for the reasons set forth in this Court's August 29, 2023 Memorandum Opinion, it is this 29th day of August, 2023

ORDERED that the Motion shall be, and hereby is, **GRANTED**; and it is further

ORDERED that all claims against Defendant Kroll, Inc. (DEF006) shall be, and hereby are, **DISMISSED**.

Judge Jeffrey M. Geller
Judge's Signature Appears on Original Document

Judge Jeffrey M. Geller

SHAREHOLDER REPRESENTATIVE SERVICES, LLC **Plaintiff** **v.** **COLUMBIA CARE, INC., *et al.*** **Defendants**	**IN THE** **CIRCUIT COURT** **FOR BALTIMORE CITY** **Case No. 24-C-23-001344**

ORDER

Upon consideration of the Columbia Care Defendants' Partial Motion to Dismiss and Motion to Strike (DE#13), Plaintiff's Opposition thereto, the Columbia Care Defendants' Reply Brief, and the oral argument presented on August 8, 2023, and for the reasons set forth in this Court's August 29, 2023 Memorandum Opinion, it is this 29th day of August, 2023

ORDERED that the Motion shall be, and hereby is, **GRANTED**; and it is further

ORDERED that all claims against Defendants Derek Watson (DEF003), Nicholas Vita (DEF004), and Michael Abbott (DEF005) shall be, and hereby are, **DISMISSED**; it is further

ORDERED that Counts II and III shall be, and hereby are, **DISMISSED** as to Defendant Columbia Care, Inc. (DEF001); it is further

ORDERED that the matter shall remain open and proceed as to Count I only; and it is further

ORDERED that Plaintiff's Jury Demand shall be, and hereby is, **STRICKEN.**

Judge Jeffrey M. Geller
Judge's Signature Appears on Original Document

Judge Jeffrey M. Geller