Order Prepared by the Court

THE BOARD OF EDUCATION OF THE CITY OF PATERSON IN THE COUNTY OF PASSAIC, *Plaintiff,* vs. JOHN DIMARTINO, et al., *Defendants.*	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: PASSAIC COUNTY Docket No. PAS-L-000712-24 *Civil Action* **ORDER**

This matter having come before the Court on the Motion of Defendants, Giovanni Mancini, Jr., "Crumdale Defendants", DiMartino Holding Company LLC, and John DiMartino, by and through its attorneys, to Dismiss Plaintiff's Amended Complaint against him, and the Court having read and considered the papers submitted and heard oral argument of counsel, if any, and for good cause shown, it is:

IT IS, on this 10th day of January, 2025, **ORDERED** that the Motions of all filing Defendants are **PARTIALLY GRANTED**.

IT IS FURTHER ORDERED that the motions to dismiss Counts 1 through 9 and Count 12 of PBOE's Amended Complaint are **DENIED**.

IT IS FURTHER ORDERED that the motions to dismiss Counts 10 and 11 are **GRANTED**, and these counts are **DISMISSED**, without prejudice.

IT IS FURTHER ORDERED that the motions to dismiss Counts 13 and 14 are **DENIED**.

IT IS FURTHER ORDERED that the motion to dismiss claims against the individual Crumdale defendants is **DENIED**.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all parties within seven (7) days of receipt.

BY THE COURT:

/s/ Darren J. Del Sardo

HON. DARREN J. DEL SARDO, P. J. Cv.

X Opposed

___ Unopposed

SEE ATTACHED STATEMENT OF REASONS

NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

THE BOARD OF EDUCATION OF THE CITY OF PATERSON IN THE COUNTY OF PASSAIC, Plaintiff, v. JOHN DIMARTINO, et al., Defendants.	SUPERIOR COURT OF NEW JERSEY PASSAIC COUNTY LAW DIVISION DOCKET NO.: PAS L-000712-24 CIVIL ACTION - CBLP **OPINION**

Decided January 10, 2025

Charles A. Yuen, Esq., of Charles Allen Yuen LLC, counsel for Plaintiff the Board of Education of the City of Paterson of the County of Passaic.

William E. Denver, Esq., of The Denver Law Firm, LLC, counsel for Defendant DiMartino Holding Company LLC.

Gary R. Shendell, Esq., Richard J. Kilstein, Esq., and Seth Kolton, Esq., of Shendell & Pollock, P.L., counsel for Defendant John DiMartino.

Michael O. Kassak, Esq., of White and Williams LLP, counsel for Defendant Giovanni Mancini, Jr.

Robert N. Feltoon, Esq., and Lisa Carney Eldridge, Esq., of Clark Hill PLC, counsel for Defendants Matthew S. Naylor, Brian J. McTear, John B. Willcox, Jr., Crumdale Partners, Liberty Benefits Advisors, LLC, Crumdale Wholesale Advisors LLC, Crumdale Partners, LLC, and Crumdale Insurance Advisors, LLC ("Crumdale Defendants").

The Court addresses three Motions to Dismiss filed by the defendants in this matter. The defendants self-described as the "Crumdale Defendants" ("Crumdale") have moved to dismiss the amended complaint filed by the plaintiff, The Board of Education of the City of Paterson in the County of Passaic ("PBOE"), for failure to state a claim. Defendants John DiMartino and DiMartino Holding Company LLC ("DiMartino Defendants") have filed a joint motion to dismiss the same amended complaint. Additionally, Defendant Giovanni Mancini, Jr., ("Mancini") has filed a separate motion to dismiss. Plaintiff PBOE has opposed all three motions, and all Defendants have filed a Reply Brief. Oral Argument was held before this Court on January 3, 2025. The Court's findings and statements of reasons for all motions pending are set forth below.

BACKGROUND

The dispute arises from claims by The Board of Education of the City of Paterson ("PBOE") against John DiMartino, DiMartino Holding Company LLC, Giovanni Mancini, and the Crumdale Defendants. PBOE alleges that the defendants engaged in a conspiracy, termed the "Program Steering Conspiracy," to manipulate its selection of a broker of record and associated health benefit vendors, using fraudulent misrepresentations and nondisclosures to serve their financial interests.

In early 2018, PBOE solicited proposals for a broker of record to manage employee health benefits. DiMartino and his company, DiMartino Holding, submitted a proposal, which included input from Mancini, and was ultimately selected in April 2018. PBOE claims that the proposal falsely presented Mancini as a senior executive and misrepresented Treadstone Risk

Management, Mancini's company, as a "sister company" of DiMartino Holding. These alleged misrepresentations, PBOE asserts, influenced its decision to award the broker contract to DiMartino Holding.

After being selected, DiMartino, DiMartino Holding, and Crumdale recommended specific health benefit vendors, including Express Scripts and Cigna, citing cost savings and competitive advantages. PBOE alleges that these vendors were pre-selected through non-competitive arrangements, with defendants falsely representing that competitive bids were solicited. It contends that these actions deprived it of better vendor options and led to financial harm, estimated at $5 million over two years.

In October 2018, DiMartino Holding sold certain assets to Crumdale and became Liberty Benefit Advisors, LLC (Liberty-DE), with DiMartino retaining partial ownership and employment. PBOE claims this affiliation was not disclosed and was part of the broader scheme to maintain control over its health benefit programs.

The defendants deny these allegations. They assert that their relationships and vendor recommendations were transparent and that PBOE was aware of these affiliations. They also argue that PBOE benefited from significant cost savings through the selected health benefit plans and failed to demonstrate actual financial harm or wrongdoing. Mancini contends his involvement was limited to assisting with presentations and documents and disputes claims of direct participation in any conspiracy.

The central disputes in this case include whether the defendants concealed material relationships, manipulated the vendor selection process, and caused PBOE financial harm. Both sides present conflicting interpretations of the facts, particularly regarding the transparency and competitive nature of the vendor selection process and the financial impact on PBOE.

Plaintiff's PBOE filed an amended complaint on August 5, 2024. The extensive complaint essentially alleges that the defendants engaged in fraudulent practices, breached fiduciary duties, and unjustly enriched themselves through a coordinated scheme to steer PBOE into non-competitive vendor agreements for personal financial gain. On October 25, 2024, the Crumdale Defendants filed a motion to dismiss for failure to state a claim. Subsequently, John DiMartino and DiMartino Holding Company LLC filed a joint motion to dismiss on November 15, 2024. Defendant Mancini submitted a motion to dismiss on December 2, 2024.

STANDARD

The Court must apply the following familiar standards:

> "[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." The essential test is simply "whether a cause of action is 'suggested' by the facts."
> In exercising this important function, "a reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Moreover, "the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint[,]" rather, "plaintiffs are entitled to every reasonable inference of fact." As we have stressed, "[t]he examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach."

Green v. Morgan Properties, 215 N.J. 431, 451-52 (2013) (citations omitted)

In deciding a motion pursuant to Rule 4:6-2(e), "[t]he motion judge must accept as true all factual assertions in the complaint . . . [and] accord to the non-moving party every reasonable inference from those facts." Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008). The judge must examine the complaint "'in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim,

opportunity being given to amend if necessary.'" Green v. Morgan Props., 215 N.J. 431, 452 (2013) (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)). On a motion to dismiss for failure to state a claim under Rule 4:6-2(e), the court must only consider "the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (internal quotation marks omitted). "The court may not consider anything other than whether the complaint states a cognizable cause of action." Ibid. The court must "accept as true the facts alleged in the complaint," Darakjian v. Hanna, 366 N.J. Super. 238, 242 (App. Div. 2004), and "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary," Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (internal quotation marks omitted). The party opposing the motion is "entitled to every reasonable inference of fact." Ibid.

The trial court has been instructed by the Supreme Court that Motions to dismiss should rarely be granted, and an order granting a motion to dismiss under Rule 4:6-2(e) should usually be without prejudice, so that the plaintiff may have an opportunity to re-plead, if he can do so, to state a viable cause of action. Printing Mart-Morristown, supra., 116 N.J. at 771-72.

DECISION

Count 1: Fraud and Fraud in the Inducement (Broker of Record Selection)

To prevail on a claim for common law fraud or fraud in the inducement, plaintiff must demonstrate: (1) a material representation of a past or present fact; (2) knowledge by the defendant of its falsity; (3) intention that it be relied upon; (4) reasonable reliance by the other

person; and (5) resulting damages. See Gross v. Johnson & Johnson-Merck Consumer Pharms. Co., 696 A.2d 793, 796-97 (N.J. Super. Law. Div. 1997). Rule 4:5-8(a) requires that any complaint alleging fraud set forth the particulars of the wrong, with dates and items, if necessary, insofar as practicable.

The Crumdale Defendants argue that PBOE failed to adequately plead the elements of fraud, specifically the existence of any material misrepresentation of fact made by Crumdale with knowledge of its falsity or intent to induce reliance. Crumdale asserts that there are no allegations tying it directly to DiMartino's proposal for the broker of record selection and no facts showing Crumdale's involvement in any alleged misrepresentation. They further contend that PBOE's claim lacks specific allegations of reasonable reliance or resulting damage and note that PBOE's purported damages conflict with the documents cited in the amended complaint, including references to savings achieved through DiMartino's appointment.

Citing Four Seasons at N. Caldwell Condo. Assoc., Inc. v. K. Hovnanian at N. Caldwell III, LLC, No. ESX-L-7096-18 (N.J. Super. Ct. Law Div. May 28, 2019), the Crumdale Defendants emphasize that "group pleading" that lumps multiple defendants together without detailing their individual roles is impermissible. They assert that PBOE repeatedly refers to the "Crumdale Group," which includes multiple entities and undefined "ABC Corporations," without differentiating the specific roles or actions of each defendant. Similarly, the federal court in McCarthy v. Musclepharm Corp., No. 22CV3412(EP)(CLW), 2023 WL 358561, at *6 (D.N.J. Jan. 23, 2023), noted that group pleading is particularly impermissible under heightened fraud-pleading standards. Additionally, they contend that PBOE fails to plead reliance and damages with particularity, and the allegations regarding damages conflict with documents cited in the amended complaint, including evidence suggesting PBOE saved approximately $10 million by

selecting DiMartino. Thus, they argue that PBOE has not sufficiently pleaded a viable fraud claim against the Crumdale Defendants.

The DiMartino Defendants assert that PBOE has failed to identify any material misrepresentations made by them in connection with their selection as the broker of record. They emphasize that their proposal included competitive quotes that saved PBOE approximately $10 million in the first year, undermining claims of fraud or misrepresentation. The DiMartino Defendants argue that PBOE's allegations are conclusory and do not explain how PBOE relied on any misrepresentation. They also state that no evidence has been presented to substantiate harm suffered by PBOE due to their selection.

Mancini also contends that PBOE's allegations against him lack specificity, failing to identify any material misrepresentation made with intent or knowledge of falsity. He argues that the amended complaint does not show how PBOE relied on any actions or statements by him or how such reliance resulted in harm. Mancini further highlights that PBOE acknowledges saving approximately $10 million through its selection of DiMartino, which undermines any claim of damages tied to fraud. Mancini concludes that PBOE has not adequately pleaded a claim for fraud or fraud in the inducement.

In opposition, PBOE argues that its claims are sufficiently pled under Rule 4:5-8(a), which requires allegations of fraud to include particulars of the wrong "insofar as practicable." Citing Banco Popular N. Am. v. Gandi, 184 N.J. 161 (2005), and Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989), PBOE asserts that its allegations should be read liberally and in a light most favorable to the plaintiff. PBOE maintains that it adequately detailed the Crumdale Defendants' involvement in the alleged Program Steering Conspiracy and their failure to disclose material facts about their relationship with DiMartino. The Crumdale

Defendants, the DiMartino Defendants, and Mancini are all sufficiently implicated in the alleged fraud based on their respective roles and involvement as detailed in the amended complaint. The allegations outline reliance on misrepresentations and the resulting harm, including the loss of competitive opportunities and the entry into contracts with vendors tied to the alleged conspiracy.

The court finds that PBOE has adequately pleaded the elements of fraud and fraud in the inducement regarding the broker of record selection. Under the pleading standards of Banco Popular and Printing Mart-Morristown, PBOE's allegations, including the defendants' failure to disclose material information and participation in the alleged Program Steering Conspiracy to steer PBOE's business noncompetitively and to profit from the lack of competition, are sufficient to survive a motion to dismiss.

Citing from Plaintiff's complaint, PBOE asserts that it was "fraudulently steered to certain service providers associated with the defendants" and was "fraudulently caused to enter into a broker of record relationship with DiMartino Holding." PBOE further alleges that DiMartino Holding was "soon fraudulently replaced by the defendants without PBOE's knowledge," resulting in PBOE paying for broker of record services it never received.

PBOE contends that it was "fraudulently caused by the defendants to pay for 'program aggregator' services from Crumdale Group," which provided no actual benefit. The complaint highlights that "relevant service providers to PBOE were not materially approached," and that "PBOE was fed misrepresentations about the market by the defendants" and "not provided with truthful information about the willing and competitive service providers in the market." Consequently, PBOE claims it was deprived of the opportunity to contract with providers offering considerably better terms. *See* PBOE Am. Compl. ¶¶ 64-65.

The claim details material misrepresentations, reliance, and damages, specifically the $5 million overpayment (*See* PBOE Am. Compl. ¶¶ 352-358), with enough specificity to allow the case to proceed, particularly given the pre-discovery stage and the complexity of the alleged fraud. The court rejects the defendants' arguments that the allegations are conclusory or that group pleading is impermissible, as the allegations reasonably implicate each defendant. The motion to dismiss Count 1 is denied as to all defendants.

Count 2 – Fraud and Fraud in the Inducement (Provider Selection)

The Crumdale Defendants argue that PBOE has failed to specify any misrepresentation made by them regarding the alleged "Program Steering Conspiracy." They assert that PBOE does not allege facts showing any false statements or nondisclosures about vendor selection or Crumdale's relationships with specific vendors such as Express Scripts and Cigna. The Crumdale Defendants contend that their representations about longstanding relationships with certain vendors were truthful and did not imply exclusivity, as evidenced by the proposed Crumdale Program Access Agreement. They argue that PBOE's allegations lack particularity under Rule 4:5-8. Furthermore, documents referenced in the Amended Complaint show PBOE saved millions of dollars during its engagement with DiMartino and would have incurred higher costs after his termination, further undermining claims of harm.

The DiMartino Defendants contend that PBOE has not identified any false or misleading statements about the provider selection process. They argue that PBOE was aware of their recommendations regarding specific vendors before awarding the vendor contract and that PBOE fails to allege intentional deception or reliance on false statements. According to the DiMartino Defendants, their role was limited to providing options and facilitating informed decisions, and PBOE had ample opportunity to question or verify their recommendations. The DiMartino

Defendants maintain that PBOE's allegations are speculative, do not establish fraudulent intent, and fail to demonstrate any actionable harm.

Mancini asserts that the amended complaint does not identify any specific misrepresentations he made concerning provider selection or establish any intent to deceive or knowledge of falsity. Mancini also highlights that PBOE acknowledged saving significant amounts of money by selecting the providers it did. Without allegations of specific damages or alternative outcomes, Mancini argues that PBOE has not sufficiently pleaded a fraud or fraud in the inducement claim regarding provider selection.

PBOE argues that the Crumdale Defendants, DiMartino Defendants, and Mancini had a duty to disclose the existence of the alleged Program Steering Conspiracy, which involved steering PBOE toward pre-approved providers without consideration of competing bids. PBOE contends that Rule 4:5-8 allows for general allegations of malice, intent, and knowledge and that any lack of specificity can be addressed during discovery. PBOE rejects the defendants' reliance on alternative interpretations of alleged communications, asserting that these issues are matters of defense rather than grounds for dismissal. Furthermore, PBOE maintains that the allegations sufficiently implicate all defendants in the fraudulent conspiracy and that Mancini's continued role with DiMartino Holding supports an inference of participation.

In Plaintiff's complaint, PBOE specifically alleges that the defendants conspired to misrepresent and conceal facts regarding the provider selection process. Specifically, PBOE asserts that the defendants made "misrepresentations and nondisclosures concerning marketplace providers," including whether providers had been approached for proposals and whether they were willing to submit proposals. PBOE also claims that the defendants falsely represented that

certain providers could only be accessed through Crumdale Group. *See* PBOE Am. Compl. ¶¶ 388–394.

The court finds that PBOE has sufficiently alleged a claim of fraud in provider selection against all defendants. Under Rule 4:5-8, PBOE's Amended Complaint meets the required pleading standard by alleging specific misrepresentations and omissions related to vendor relationships and competitive bidding. The allegations, viewed in the light most favorable to PBOE support a plausible claim of fraud, particularly given the defendants' alleged participation and nondisclosure of the Program Steering Conspiracy. PBOE has also sufficiently alleged detrimental reliance and damages, as the exact extent of harm can be clarified during discovery. *See* PBOE Am. Compl. ¶¶ 352-358. Accordingly, the motions to dismiss Count 2 are denied.

Count 3 – Fraud (Replacement of PBOE's Broker of Record and Hiring Its Sole Employee)

The Crumdale Defendants argue that Count Three is speculative and does not adequately allege a fraud claim. PBOE fails to allege any specific misrepresentation made by the Crumdale Defendants about their business dealings with DiMartino in late 2018, after the PBOE health benefit plans were already in place. The Crumdale Defendants contend that there are no allegations of reliance or damages stemming from their alleged conduct. PBOE does not claim it paid more to the new entity, Liberty DE, than to Liberty NJ, nor does it demonstrate how the business dealings caused any harm. Accordingly, the Crumdale Defendants argue that PBOE fails to meet the heightened pleading standards under Rule 4:5-8.

The DiMartino Defendants maintain that PBOE has not identified any specific false statements made by them regarding the setup of Liberty DE. They argue that the transactions involving Liberty DE occurred after PBOE had implemented its health benefits plans and do not demonstrate fraudulent intent or reliance. The DiMartino Defendants also assert that PBOE has

not shown how these business dealings caused financial harm or increased costs. They emphasize that DiMartino continued serving as PBOE's broker of record without any changes to its fees. Thus, they argue that the allegations are insufficient to support a fraud claim.

Mancini contends that PBOE has failed to allege any representations made by him related to the creation of Liberty DE or the alleged fraudulent transactions involving the Crumdale Group and DiMartino. Mancini argues that the absence of specific allegations or evidence of intent to deceive or knowledge of falsity precludes a claim for fraud. Mancini also highlights that PBOE does not allege any increased costs or damages due to the transition to Liberty DE. Therefore, he asserts that Count Three should be dismissed with prejudice.

PBOE alleges that the defendants conspired to render DiMartino Holding a shell company, created another company of the same name controlled by Naylor and Crumdale Group, and misappropriated funds from PBOE's contract with DiMartino Holding. It is alleged that Mancini continued to support DiMartino and act on behalf ostensibly of the shell DiMartino Holding in relation to PBOE and supported misrepresentations being made. *See* PBOE Am. Compl. ¶¶ 286-287. Additionally, the defendants hired DiMartino's sole employee, defendant DiMartino, full-time. *See* PBOE Am. Compl. ¶¶ 403–404.

The complaint further alleges that these transactions created conflicting duties and incentives among the defendants, which were actively concealed from PBOE. PBOE reasonably relied on the expectation that these transactions would not occur, and the defendants' nondisclosures constituted fraud. PBOE asserts that had it known the truth, it would have terminated the relationship. *See* PBOE Am. Compl. ¶¶ 405–410.

The court finds that PBOE has sufficiently alleged a claim for fraud regarding the replacement of its broker of record and the hiring of its sole employee. These allegations, if true,

demonstrate a breach of loyalty and misrepresentation that deprived PBOE of the independent representation it reasonably expected. Under the pleading standards of Rule 4:5-8, the allegations of nondisclosure and fraudulent intent are sufficiently specific to survive a motion to dismiss. Furthermore, PBOE's claims of damages, while requiring further development, are adequately alleged for this stage of litigation. Accordingly, the motions to dismiss Count 3 are denied.

Count 4 – Aiding and Abetting Fraud

Under New Jersey law, A person is liable with another if he "knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself." Judson v. Peoples Bank Trust & Co., 25 N.J. 17, 29 (1957).

The Crumdale Defendants argue that Count Four should be dismissed because PBOE fails to identify specific actions taken by individual Crumdale Defendants to support the aiding and abetting claim. They assert that the allegations improperly lump all defendants together and are conclusory in nature. According to the Crumdale Defendants, PBOE does not provide any factual basis for the alleged "substantial assistance" or "encouragement" provided by each Crumdale Defendant in furthering the alleged fraud. Moreover, they argue that the underlying fraud claims do not meet the heightened pleading standards required under Rule 4:5-8, making the aiding and abetting claim inherently deficient. They also contend that PBOE has not sufficiently alleged any financial harm resulting from the alleged aiding and abetting scheme.

The DiMartino Defendants echo similar arguments, asserting that PBOE has failed to provide specific allegations regarding their role in aiding and abetting any fraud. They argue that PBOE does not identify any concrete actions by the DiMartino Defendants that would constitute "substantial assistance" or demonstrate that they knowingly participated in the alleged fraudulent

scheme. Furthermore, they contend that the aiding and abetting claim fails because the underlying fraud claims against the DiMartino Defendants have not been adequately pleaded.

Mancini contends that there are no specific allegations that Mancini knowingly assisted in any fraudulent scheme or provided substantial encouragement to any principal violation. Mancini also argues that since the underlying fraud claims against him are not viable, the aiding and abetting claim must be dismissed. Even if the underlying claims were viable, he asserts that PBOE's allegations lack the specificity required under the heightened pleading standards for fraud claims.

PBOE alleges that the defendants knowingly aided and abetted each other in perpetrating the alleged frauds, including the Program Steering Conspiracy, misrepresentations regarding provider selection, and the fraudulent replacement of the broker of record. PBOE asserts that the defendants actively participated in and facilitated these fraudulent schemes, resulting in damages. *See* PBOE Am. Compl. ¶¶ 266-339, 412–415.

The court concludes that PBOE has sufficiently alleged a claim for aiding and abetting fraud. The amended complaint sets forth facts that, when viewed in the light most favorable to PBOE, allege that the Crumdale Defendants, along with the other defendants, knowingly provided substantial assistance in furtherance of fraudulent activities. DiMartino and DiMartino Holding are alleged to have been main actors in the fraud, and Mancini's position and association with the other defendants and the PBOE account make aiding and abetting readily inferable based on the allegations. While the defendants argue that the allegations are too general, Rule 4:5-8 permits the general pleading of knowledge and intent, and the complaint provides adequate detail for this stage of litigation. The court finds that the underlying fraud claims have been

sufficiently pleaded to support the aiding and abetting claim. Accordingly, the motions to dismiss Count 4 are denied.

Counts 5 & 6: Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty

To state a claim for breach of fiduciary duty, a plaintiff must allege: "1) the existence of a fiduciary duty or relationship between the parties; 2) breach of that duty; and 3) resulting damages." Read v. Profeta, 397 F. Supp. 3d 597, 633 (D.N.J. 2019). A claim for aiding and abetting a breach of fiduciary duty requires a showing of "(1) the existence of a fiduciary relationship, (2) breach of the fiduciary's duty and (3) a knowing participation in that breach by the defendants who are not fiduciaries." Scheidt v. DRS Techs. Inc., 424 N.J. Super. 188, 209 (2012 App. Div.).

The Crumdale Defendants argue that Count 5 should be dismissed because no fiduciary relationship existed between Crumdale and PBOE, and even if it did, the complaint does not allege a viable breach of fiduciary duty. The defendants assert that Crumdale's relationship with PBOE was indirect, with no contractual or direct connection, as PBOE declined to enter into the proposed Program Access Agreement. Without such a relationship, Crumdale contends, there can be no fiduciary duty, citing F.G. v. MacDonnell, 150 N.J. 550, 556 (1997), which defines fiduciary relationships as those arising when trust and confidence are placed in a party with a dominant or superior position.

Additionally, Crumdale argues that the complaint alleges no specific breach or resulting harm. The defendants point to emails cited by PBOE indicating that the health benefit plans Crumdale facilitated generated significant savings for PBOE, undermining any claim of harm. Crumdale also challenges the allegation that it assumed DiMartino Holding's fiduciary responsibilities after November 2018. According to the Crumdale Defendants, the alleged

breaches all relate to decisions made in June and July 2018, before any alleged assumption of fiduciary duties by Crumdale.

For Count 6, Crumdale asserts that a claim for aiding and abetting breach of fiduciary duty requires proof of an underlying breach, which PBOE has failed to establish. They argue that there is no evidence Crumdale knowingly participated in or substantially assisted in any breach, as required by Scheidt v. DRS Techs. Inc.

The DiMartino Defendants assert that no fiduciary relationship existed between them and PBOE because the vendor agreement explicitly described their relationship as that of independent contractors. They argue that independent contractor status precludes a finding of fiduciary duty and emphasize that their role was limited to soliciting competitive bids and securing favorable terms for PBOE's health benefits program. Citing McKelvey v. Pierce, 173 N.J. 26, 800, 859 (N.J. 2002), they claim no special relationship existed that would impose fiduciary obligations.

The DiMartino Defendants also contend that PBOE's allegations fail to establish a breach of duty or resulting harm. They highlight that the complaint references savings achieved through their recommendations, which contradicts any claim of financial injury. Regarding Count 6, the DiMartino Defendants argue that they cannot be held liable for aiding and abetting their own alleged breach of fiduciary duty, and even if they were not fiduciaries, PBOE has failed to demonstrate knowing participation in any breach by others.

Mancini asserts that the claims against him fail because PBOE has not alleged any fiduciary relationship between him and PBOE. Without such a relationship, there can be no claim for breach of fiduciary duty. Mancini also argues that PBOE has not provided specific facts to establish that he knowingly participated in or substantially assisted any alleged breach, as

required under Scheidt. Additionally, Mancini highlights the lack of specificity in PBOE's allegations and the heightened pleading standard for claims involving breach of fiduciary duty, citing Beaver v. Magellan Health Services, Inc., 433 N.J. Super. 430, 443, n. 1 (App. Div. 2013).

PBOE argues that fiduciary duties are inherently owed by a broker of record to its client, as recognized under United Jersey Bank v. Kensey, 306 N.J. Super. 540, 551 (App. Div. 1997), and N.J.A.C. § 11:17A-4.10. PBOE asserts that DiMartino Holding, as broker of record, owed fiduciary duties to act in its best interests and that these duties extended to the Crumdale Defendants when they assumed DiMartino Holding's role. Plaintiff's claim that as of November 2018, DiMartino Holding had become, unknown to PBOE, a shell company with its assets having been transferred to the Crumdale Group. PBOE contends that during the period from November 2018 to at least May 2019, all defendants were involved in the pressuring for a signed contract with Express Scripts, Inc. Thus, they all assumed the inherent fiduciary duty.

The court finds that PBOE has sufficiently pleaded claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. Brokers of record, such as DiMartino Holding, DiMartino as owner, and Mancini as an identified employee and/or consultant to DiMartino Holding with direct involvement, inherently owe fiduciary duties to their clients. N.J.A.C. § 11:17A-4.10. The complaint plausibly alleges that these duties were breached by steering PBOE to pre-selected vendors for personal benefit. *See* PBOE Am. Compl. ¶¶ 57-69.

While the Crumdale Defendants argue that no fiduciary relationship existed, the allegations of their assumption of DiMartino Holding's role after November 2018 and their involvement in vendor selection sufficiently establish a basis for fiduciary responsibility. The court also finds that PBOE has adequately alleged harm resulting from these breaches, including financial losses tied to vendor contracts. Ibid. *See* PBOE Am. Compl. ¶¶ 352-358.

For Count 6, aiding and abetting requires (1) a fiduciary relationship, (2) a breach, and (3) knowing participation in the breach. Scheidt, 424 N.J. Super. at 209. The complaint sufficiently alleges that all defendants knowingly participated in and facilitated breaches by DiMartino Holding, including the placement of its business noncompetitively with their own providers, satisfying these elements. *See* PBOE Am. Compl. ¶¶ 64-69. Accordingly, the motions to dismiss Counts 5 and 6 are denied.

Count 7: Civil Conspiracy

"A combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damage." Morgan v. Union Cty. Bd. of Chosen Freeholders, 268 N.J. Super. 337, 364, (App. Div. 1993).

The Crumdale Defendants argue that Count 7 for civil conspiracy fails because the amended complaint does not sufficiently plead an actionable "underlying wrong," which is required for a conspiracy claim. The defendants emphasize that the "gist" of a conspiracy claim is not the agreement but the underlying tort that would provide a cause of action in the absence of a conspiracy. See G.D. v. Kenny, 15 A.3d 300, 321 (N.J. 2011). The Crumdale Defendants assert that PBOE fails to establish any actionable conspiracies, alleging that no damage resulted from their conduct and that PBOE's claims lack specificity.

The DiMartino Defendants contend that PBOE has not alleged sufficient facts to demonstrate their involvement in any unlawful act or conspiracy. They argue that PBOE has failed to establish an underlying wrong that supports the conspiracy claim. The defendants assert that their conduct, including vendor recommendations, was consistent with their professional

role and contractual obligations and were made in good faith. They deny any agreement to commit fraud or use unlawful means to achieve their objectives and contend that the allegations lack factual support for a conspiracy or wrongful intent.

Mancini asserts that PBOE has failed to allege an underlying tort that would independently support a cause of action, which is a prerequisite for a conspiracy claim. Without a viable underlying claim, Mancini contends, the conspiracy claim cannot stand. He further argues that PBOE has not alleged specific acts showing his participation in or knowledge of any conspiracy.

PBOE counters that civil conspiracy is adequately pled under the liberal standards of Banco Popular, which reinstated a conspiracy claim in similar circumstances. PBOE alleges coordinated actions by the defendants to steer it toward uncompetitive contracts, including the Express Scripts contract, causing specific and measurable financial damages. Contrary to the defendants' arguments, PBOE asserts that the underlying wrongs, including fraud and breaches of fiduciary duty, have been sufficiently pled. PBOE maintains that these allegations provide adequate notice of the claims and establish a basis for conspiracy liability.

The court finds that PBOE has sufficiently pled a claim for civil conspiracy. Civil conspiracy requires proof of an agreement between two or more parties to commit an unlawful act or achieve a lawful act by unlawful means, an overt act in furtherance of the conspiracy, and resulting damage. Morgan, 268 N.J. Super. at 364. The "gist" of a conspiracy claim is the underlying wrong that would provide a right of action absent the conspiracy. See Banco Popular, 184 N.J. at 178.

PBOE has alleged coordinated actions by the defendants to achieve improper ends, including steering it toward contracts that caused financial harm. *See* PBOE Am. Compl. ¶¶ 63-

69. The allegations of fraud and breaches of fiduciary duty serve as the underlying torts supporting the conspiracy claim. While the defendants dispute the sufficiency of the underlying claims, the court has already found them sufficiently pled. Accordingly, the motions to dismiss Count 7 are denied.

Count 8: Professional Malpractice (DiMartino Holding and Liberty DE)

Liberty DE ("LBA-DE") argues that Count 8 for professional malpractice lacks merit because it fails to allege any actionable wrongdoing by them during the relevant period between October/November 2018 and April 2019. They assert that PBOE's allegations are conclusory and unsupported by specific facts demonstrating harm or breach of duty. LBA-DE highlights that PBOE signed a two-year agreement with Express Scripts in May 2019 and other vendor agreements effective July 2018, long before LBA-DE assumed any role. The LBA-DE Defendants also point out that PBOE cites a written proposal for the renewal period starting July 1, 2019, without providing a basis for any negative inference regarding it. They argue that PBOE has not established how Liberty DE caused financial harm, rendering the malpractice claim baseless.

DiMartino Holding contends that PBOE has not adequately alleged professional malpractice. They argue that PBOE fails to identify any specific wrongful acts by DiMartino Holding during the relevant period, particularly after October/November 2018. Moreover, they assert that PBOE's entry into vendor agreements, including the Express Scripts contract in May 2019, contradicts claims of negligence in vendor selection. DiMartino Holding maintains that their actions were consistent with industry standards and their contractual obligations, and they did not deviate from the accepted standard of care. They further argue that the negligence alleged requires a breach of duty that proximately causes injury, which PBOE has not shown.

Additionally, they assert that any dissatisfaction by PBOE stems from disagreements over vendor selection rather than any actionable malpractice.

PBOE counters that the allegations of professional malpractice are adequately pled against both DiMartino Holding and Liberty DE. They argue that Liberty DE, as the replacement broker in October/November 2018, failed to perform its duties by deferring to vendor selections made by others, including Express Scripts, without adequately advising PBOE about market competition. PBOE maintains that these actions constitute a breach of the duty to use reasonable professional skill. They also argue that DiMartino Holding's alleged malpractice is evident in its failure to seek competitive quotes and its role in steering PBOE toward vendors as part of the Program Steering Conspiracy. PBOE asserts that its entry into vendor agreements demonstrates reliance on the alleged malpractice and supports its claims.

The court concludes that PBOE has sufficiently alleged professional malpractice against DiMartino Holding and Liberty DE. To state a claim for professional malpractice, a plaintiff must allege a deviation from an accepted standard of care that proximately causes harm. See Rider v. Lynch, 42 N.J. 465, 476-77 (1964).

The plaintiffs allege that brokers and agents owe a professional duty of care to their clients, including acting in good faith and exercising reasonable skill and diligence in procuring vendor services. DiMartino Holding and Liberty DE, which replaced DiMartino Holding in October or November 2018, undertook to obtain information about vendors providing benefit-related services, including pharmaceutical benefit managers, secure competing proposals, and advise PBOE regarding available options, as stated in PBOE Am. Compl. ¶¶ 443-445. The plaintiffs assert that these defendants breached their professional duties by deferring to and advocating for vendor selections preferred by other defendants, including the choice of Express

Scripts, Inc. as the pharmaceutical benefit manager, without adequately investigating alternatives, as detailed in PBOE Am. Compl. ¶¶ 446. As a result of these breaches, the plaintiffs claim that PBOE suffered damages, as described in PBOE Am. Compl. ¶¶ 447, 352-358.

While DiMartino Holding argues that PBOE's claim only arises from dissatisfaction or disagreement with the vendor selection process, PBOE has alleged that the vendor agreements were entered into based on the defendants' alleged malpractice, specifically Defendant's failure to seek competitive quotes. At this stage, PBOE is not required to prove its claims but only to allege sufficient facts to state a plausible claim for relief. Accordingly, the motions to dismiss Count 8 are denied.

Count 9: Breach of Contract; Breach of Implied Duties Including Good Faith Covenant (DiMartino Holding and Liberty DE)

The Crumdale Defendants argue that PBOE's claim for breach of contract fails because it is not based on any terms within the Vendor Agreement signed by DiMartino Holding and PBOE. Instead, PBOE relies on promises made by DiMartino in response to the March 2018 Request for Proposals ("RFP"), which were not included in the final Vendor Agreement. The Vendor Agreement contains a robust integration clause stating that it "contains the entire understanding of the parties" and "supersedes all previous agreements and undertakings." Since the RFP promises were not incorporated into the contract, the Crumdale Defendants assert that any claim relying on those promises must fail.

The Crumdale Defendants and the DiMartino Defendants both contend that the breach of the implied covenant of good faith and fair dealing claim fails because PBOE does not allege any conduct during the relevant period—October/November 2018 to April 2019—that deprived it of the benefits of the Vendor Agreement. The Defendants emphasize that PBOE was already under

contract with vendors as of July 1, 2018, and that no actionable wrongdoing occurred after that point. DiMartino Defendants contend that their performance under the Vendor Agreement met contractual expectations, as the vendors chosen provided substantial cost savings. Without allegations of specific harm or wrongdoing, PBOE's claim for breach of the implied covenant also fails.

DiMartino Holding also asserts that PBOE's breach of contract claim is legally defective because it relies on statements from the March 12, 2018, RFP response rather than on terms in the executed Vendor Agreement. Under New Jersey law, integration clauses preclude reliance on prior agreements or understandings not included in the final contract. See Winoka Vill., Inc. v. Tate, 16 N.J. Super. 330, 333–34 (App. Div. 1951). Because the RFP promises were not incorporated into the executed Vendor Agreement, PBOE cannot enforce them as contractual obligations.

PBOE contends that its claims for breach of contract and breach of the implied covenant of good faith and fair dealing are adequately pleaded. PBOE asserts that the Vendor Agreement incorporates the obligations set forth in the RFP and that securing competitive quotes was a material component of the contract. PBOE relies on Conway v. 287 Corporate Ctr. Assocs., 187 N.J. 259, 269 (2006), which allows courts to consider extrinsic evidence, including pre-contractual negotiations and the parties' conduct, to determine contractual intent. The RFP response, along with evidence of DiMartino Holding's alleged failure to secure competitive quotes, supports the claim that the contractual terms were breached.

Regarding the implied covenant of good faith and fair dealing, PBOE argues that the Program Steering Conspiracy deprived it of the benefits of the Vendor Agreement. PBOE alleges that the predetermined nature of the conspiracy violated the covenant's requirement for fair

dealing. PBOE asserts that these allegations are sufficient to survive a motion to dismiss, as the facts establish a plausible claim of harm caused by Defendants' actions.

The party seeking to prove a breach of contract claim must prove "first, that '[t]he parties entered into a contract containing certain terms'; second, that '[the non-breaching party] did what the contract required [it] to do'; third, that '[the breaching party] did not do what the contract required [it] to do[,]' defined as a 'breach of the contract'; and fourth, that '[the breaching party's] breach, or failure to do what the contract required, caused a loss to the [non-breaching party].'" Globe Motor Co. v. Igdalev, 225 N.J. 469, 482, 139 A.3d 57 (2016) (first alteration in original) (sixth alteration in original) (quoting *Model Jury Charges* (Civil), § 4.10A, "The Contract Claim-Generally" (approved May 1998)).

"The implied covenant of good faith and fair dealing requires the parties to a contract to refrain from doing anything which will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract." Comprehensive Neurological, P.C. v. Valley Hosp., 312 A.3d 243, 261 (N.J. 2024).

The court finds that PBOE has sufficiently alleged claims for breach of contract and breach of the implied covenant of good faith and fair dealing. The plaintiff's breach of contract claim asserts that DiMartino Holding and its undisclosed replacement, Liberty DE, failed to perform express and implied duties outlined in the broker of record agreement, and specifically breached promises made in the RFP response. *See* PBOE Am. Compl. ¶¶ 448-457.

While the Vendor Agreement contains an integration clause, the court "considers all of the relevant evidence that will assist in determining the intent and meaning of the contract." Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 262 (2006). The allegations regarding the RFP

response and the Program Steering Conspiracy provide enough factual support to infer that securing competitive quotes was a material term of the agreement.

Additionally, PBOE's claims regarding the implied covenant of good faith and fair dealing are supported by allegations of a predetermined conspiracy that undermined the contractual relationship and resulted in the failure to secure competitive quotes without adequate investigation. *See* PBOE Am. Compl. ¶¶ 352-358. Accordingly, the motions to dismiss Count 9 are denied.

Counts 10 and 11: Consumer Fraud Act – Broker Selection and Vendor Selection

The Crumdale Defendants argue that Counts 10 and 11, which allege violations of the New Jersey Consumer Fraud Act (CFA), should be dismissed because the transactions at issue do not involve "merchandise" as defined under N.J.S.A. § 56:8-1(c). They assert that the CFA applies to "goods, commodities, services or anything offered, directly or indirectly to the public for sale," and the broker and vendor services at issue here were not public-facing or available for consumer transactions.

Crumdale further argues that the transactions were complex, business-to-business agreements involving sophisticated entities, as evidenced by PBOE's RFP process and the Vendor Agreement. Applying the factors outlined in All the Way Towing, LLC v. Bucks County Int'l, Inc., 200 A.3d 398 (N.J. 2019), the Defendants contend that the transactions were not of the type intended to fall under the CFA's protections. Crumdale also claims that PBOE has failed to plead an ascertainable loss, as required under the CFA, and cites Robey v. SPARC Group LLC, 311 A.3d 463 (N.J. 2024), where the New Jersey Supreme Court affirmed the dismissal of CFA claims for failure to plead such a loss.

The DiMartino Defendants also argue that the CFA claims must fail because the transactions in question do not constitute consumer transactions involving "merchandise" as defined by the CFA. They emphasize that the services provided under the Vendor Agreement were business-to-business, customized consulting services for PBOE's employee benefits program, not goods or services marketed to the general public. Citing 539 Absecon Blvd., L.L.C. v. Shan Enterprises Ltd. Partnership, 406 N.J. Super. 242 (App. Div. 2009), the DiMartino Defendants assert that the CFA does not apply to business-to-business agreements like the one at issue here, which center on a professional relationship rather than consumer goods or services. The DiMartino Defendants also argue that PBOE's claims of misrepresentation and non-disclosure are not actionable under the CFA because they pertain to alleged breaches of a service contract, not consumer fraud. Additionally, they reiterate that PBOE has not sufficiently pled an ascertainable loss tied to any specific misrepresentation or fraudulent act.

Mancini contends that the CFA does not apply to these transactions because the broker services at issue were not the typical broker services supplied to the public. Instead, DiMartino Holding was contracted to advise and assemble a multi-faceted employee benefit plan covering thousands of individuals.

Mancini also invokes the "learned professional" exemption recognized in Macedo v. Dello Russo, 840 A.2d 238 (N.J. 2004), arguing that services provided by professionals subject to specialized regulations and licensing are not subject to the CFA. Mancini claims that, as a professional providing specialized services, he cannot be held liable under the CFA.

PBOE argues that the CFA claims are sufficiently pled because the services at issue—brokerage and vendor selection—constitute "services or anything offered, directly or indirectly to the public for sale" under N.J.S.A. § 56:8-1(c). PBOE disputes the Defendants'

characterization of the transactions as overly complex or outside the scope of the CFA, asserting that obtaining competitive quotes and securing vendor services are routine functions that do not fall outside the CFA's reach.

PBOE further contends that it has sufficiently alleged an ascertainable loss, citing the $5 million it claims to have overpaid due to the lack of competitive bidding. PBOE emphasizes that damages need only be proven with reasonable certainty, referencing Lane v. Oil Delivery, Inc., 216 N.J. Super. 413 (App. Div. 1987).

As to Mancini's reliance on the "learned professional" exemption, PBOE asserts that Mancini is not alleged to have provided professional services to PBOE, and therefore the exemption does not apply. Instead, PBOE claims that Mancini knowingly participated in fraudulent practices, which fall within the CFA's scope.

"Merchandise" means "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale". N.J.S.A 56:8-1(c). The court finds that the transactions at issue in Counts 10 and 11 do not involve "merchandise" as defined under the CFA.

In All the Way Towing, for the purposes of determining whether CFA will apply to the "merchandise", the court should consider: (1) the complexity of the transaction, taking into account any negotiation, bidding, or request for proposals process; (2) the identity and sophistication of the parties, which includes whether the parties received legal or expert assistance in the development or execution of the transaction; (3) the nature of the relationship between the parties and whether there was any relevant underlying understanding or prior transactions between the parties; and, as previously noted; (4) the public availability of the subject merchandise." All the Way Towing, LLC v. Bucks County Int'l, Inc., 200 A.3d 398, 408

(N.J. 2019). Applying the factors outlined in All the Way Towing, the court concludes that these were complex, negotiated, business-to-business agreements involving sophisticated entities, not consumer transactions subject to the CFA.

First, the complexity of the transaction—a $72 million employee benefits program for 5,500 employees procured through a detailed RFP process—distinguishes it from a consumer transaction. Second, the parties' sophistication, including the plaintiff's engagement of legal counsel, reflects a commercial arrangement rather than one intended for consumer protection. Third, the relationship was business-to-business, as evidenced by the Vendor Agreement designating DiMartino as an independent contractor, not a consumer service provider. Finally, the customized brokerage services were not marketed to the public but tailored to the plaintiff's specific needs. The court acknowledges PBOE's argument that the broker's role involved obtaining and evaluating proposals, a task PBOE describes as straightforward and not inherently complex. However, the court finds that the transaction's structure, including the RFP process, aligns with business-to-business arrangements under All the Way Towing.

As to Mancini, the court finds that the "learned professional" exemption is moot as the court has found that the underlying transactions are not covered by the CFA and the claims against all Defendants under Counts 10 and 11 are dismissed without prejudice.

Count 12: Unjust Enrichment

The Crumdale Defendants argue that PBOE's claim for unjust enrichment is unsupported by factual allegations. They assert that the amended complaint relies on vague and conclusory statements, such as claims that defendants received "unwarranted compensation," "enhanced commissions," or "inflated prices" for services, without providing specific facts to substantiate

these allegations. Crumdale emphasizes that PBOE fails to cite any evidence showing it paid inflated prices to Express Scripts or that the agreements were non-competitive.

The Crumdale Defendants further argue that unjust enrichment requires the plaintiff to show that it directly conferred a benefit on the defendant and that retaining such benefit without payment would be unjust, citing Eli Lilly & Co. v. Roussel Corp., 23 F. Supp. 2d 460, 496 (D.N.J. 1998). Here, PBOE does not allege it conferred any direct benefit on Crumdale but instead claims Crumdale received benefits from unnamed third parties, which cannot sustain an unjust enrichment claim. Crumdale also asserts there was no direct relationship between it and PBOE, and therefore, PBOE cannot recover fees based on any indirect benefit received by Crumdale.

The DiMartino Defendants contend that PBOE's unjust enrichment claim lacks the necessary factual foundation and fails to meet the standard set forth in VRG Corp. v. GKN Realty Corp., 641 A.2d 519, 526 (N.J. 1994). They argue that unjust enrichment requires the plaintiff to demonstrate that the defendant received a benefit from the plaintiff and that retention of the benefit without payment would be unjust. Additionally, the plaintiff must show it expected remuneration at the time the benefit was conferred.

The DiMartino Defendants argue that PBOE's allegations are conclusory, providing no specific facts to support claims of inflated prices, non-competitive agreements, or enhanced commissions. They emphasize that PBOE has failed to identify any specific benefit conferred on the DiMartino Defendants by PBOE or explain why retaining such benefit would be unjust.

Mancini argues that New Jersey law does not recognize unjust enrichment as an independent tort cause of action, citing Castro v. NYT Television, 851 A.2d 88 (N.J. Super. App. Div. 2004). Instead, unjust enrichment is a quasi-contractual remedy requiring the plaintiff to

show (1) the defendant received a benefit from the plaintiff and (2) retaining that benefit would be inequitable, as explained in Wanaque Borough Sewerage Auth. v. Twp. of W. Milford, 677 A.2d 747, 753 (1996).

Mancini contends that PBOE's amended complaint fails to identify any benefit it conferred on him, instead alleging generalized and unsupported claims about fees and commissions. Mancini further notes that unjust enrichment claims cannot proceed without specificity as to the benefit conferred and the unjust nature of its retention, which are absent here.

PBOE argues that its amended complaint sufficiently alleges unjust enrichment, including claims that defendants received unwarranted compensation, commissions, and fees due to fraud and non-competitive agreements. PBOE contends that its allegations meet the standard for unjust enrichment, particularly given the broad scope of restitution available for fraud against a public entity, citing Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 500 (1952).

PBOE disputes Crumdale's assertion that it had no direct relationship with PBOE, arguing that the amended complaint alleges a direct and undisclosed relationship beginning in October/November 2018. PBOE maintains that Crumdale's argument is based on disputed factual assertions rather than the allegations in the amended complaint, which must be taken as true for purposes of a motion to dismiss.

As to Mancini and the DiMartino Defendants, PBOE argues that unjust enrichment does not require heightened pleading specificity. PBOE asserts that it has sufficiently alleged the underlying facts to support its claim, including inflated fees and commissions resulting from the defendants' actions.

The plaintiffs sufficiently allege claims for unjust enrichment, as the court finds that PBOE has adequately pleaded specific allegations regarding the defendants' improper receipt of

compensation, commissions, and fees. These payments were inflated and resulted from non-competitive practices, with fees directly tied to fraudulent misrepresentations and actions taken by the defendants. *See* PBOE Am. Compl. ¶¶ 481. If proven, these allegations could establish that retaining such benefits would be unjust. VRG Corp. v. GKN Realty Corp., 641 A.2d 519, 526 (N.J. 1994).

The amended complaint further alleges that the fees charged were unclear and misleading, violating New Jersey law and regulations, including claims that producer commission fees were hidden, lumped together with other fees, and misleadingly described. *See* PBOE Am. Compl. ¶¶ 482. These fees were ultimately paid by PBOE and allegedly stemmed from fraudulent misrepresentations, failures to disclose, and breaches of fiduciary duty, particularly by DiMartino Holding in its role as broker of record. *See* PBOE Am. Compl. ¶¶ 483-484.

While the defendants argue there was no direct relationship or benefit conferred by PBOE, the court finds that the amended complaint sufficiently alleges a close connection between the defendants' actions and the harm suffered by PBOE, supporting an unjust enrichment claim at this stage. Given these allegations, the plaintiffs contend that it would be inequitable for the defendants to retain such compensation and benefits and seek restitution. *See* PBOE Am. Compl. ¶¶ 485. Accordingly, the motions to dismiss Count 12 are denied.

Count 13: Piercing the Corporate Veil

PBOE has alleged, based on information and belief, that the Crumdale Group entities are dominated and controlled by Naylor and the individual defendants, and that these entities failed to operate independently or observe corporate formalities. Specifically, PBOE's Amended Complaint references statements made by DiMartino and DiMartino Holding in a Pennsylvania

action, where they alleged that "the dominance and control of defendant Naylor and the disregard of separate natures of the Crumdale Group entities" are true. *See* PBOE Am. Compl. ¶ 487. PBOE further asserts that the vast majority of correspondence and documentation provided to PBOE by the defendants "identifies only 'Crumdale Partners' and makes no other type of distinction regarding any corporate entities." *See* PBOE Am. Compl. ¶¶ 488.

Additionally, the Amended Complaint alleges that the defendants "failed to operate the Crumdale Group entities and, on information and belief, other affiliated entities, independently or abide by corporate formalities." *See* PBOE Am. Compl. ¶¶ 489. PBOE also contends that the Crumdale Group entities are controlled by Naylor and the individual defendants, and if certain entities within the Crumdale Group are found to be undercapitalized or non-existent, "such facts reflect actions by the defendants including Naylor to shield themselves from liability to PBOE." *See* PBOE Am. Compl. ¶¶ 490–491.

While piercing the corporate veil is not an independent cause of action, it is an equitable remedy available in cases where corporate formalities have been disregarded, and justice requires such a remedy to prevent fundamental unfairness. *See* Richard A. Pulaski Const. Co. v. Air Frame Hangars, Inc., 950 A.2d 868, 878 (N.J. 2008).

Contrary to the defendants' arguments, the allegations set forth in Count 13 are sufficient to give notice of PBOE's intent to seek the equitable remedy of piercing the corporate veil. The complaint appropriately pleads facts that, if accepted as true, would justify disregarding the corporate structure to prevent injustice. The court denies the defendants' motions to dismiss Count 13.

Count 14: Punitive Damages

While punitive damages are recognized under New Jersey law as a remedy incidental to a valid underlying cause of action rather than an independent substantive cause of action, the inclusion of a separately titled count does not render it improper or prejudicial. See Smith v. Whitaker, 734 A.2d 243, 250 (N.J. 1999) ("As a rule, a claim for punitive damages may lie only where there is a valid underlying cause of action."); See Nappe v. Anschelewitz, Barr, Ansell & Bonello, 97 N.J. 37, 45 (1984).

Defendants argue that punitive damages are not a standalone cause of action and should therefore be dismissed. While defendants correctly assert that punitive damages are a remedy rather than a cause of action, their argument fails to recognize that PBOE's inclusion of this count serves the purpose of providing notice of its intent to seek punitive damages as part of the relief sought.

PBOE contends that its separately titled count for punitive damages is consistent with the procedural requirements for pleading and provides clarity regarding the remedies being sought. Accordingly, the court denies the defendants' motions to dismiss Count 14. While punitive damages are not an independent cause of action, their inclusion as a separate count in the complaint does not prejudice the defendants and appropriately alerts them to the plaintiff's claims for relief. Further proceedings will determine whether PBOE can meet the evidentiary standards required for an award of punitive damages.

Claims Against the Individual Crumdale Defendants – Naylor, Willcox and McTear

The court denies the motion to dismiss all claims against the individual Crumdale defendants—Naylor, Willcox, and McTear. While the defendants argue that the amended

complaint improperly groups them together without distinguishing individual actions or pleading the essential elements of a cause of action against each individual, the court finds that the allegations, as presented, are sufficient to survive dismissal at this stage.

Crumdale relies on Four Seasons to argue that the lack of specific factual allegations linking the individual defendants to each count requires dismissal. However, the court notes that the amended complaint reasonably details the alleged involvement of Naylor, Willcox, and McTear, including their roles within the Crumdale entities and their purported participation in the alleged misconduct. *See* PBOE Am. Compl. ¶¶ 99-104, 114, 132-134, 225-231, 290-304.

At this procedural stage, the court is required to view the allegations in the light most favorable to the plaintiff and to draw all reasonable inferences in its favor. The factual sufficiency of the claims against the individual defendants is a matter better addressed through discovery, not on a motion to dismiss. Accordingly, the motion to dismiss the individual Crumdale defendants is denied.

CONCLUSION

In conclusion, this Court has carefully considered the motions to dismiss, and the arguments presented for each count of PBOE's amended complaint. For Counts 1 through 9 and Count 12, the court finds that PBOE has sufficiently alleged its claims, meeting the required pleading standards under New Jersey law. The motions to dismiss these counts are denied. For Counts 10 and 11, the court concludes that the transactions at issue do not fall within the scope of the New Jersey Consumer Fraud Act (CFA) "merchandise", as they involve complex business-to-business agreements, and thus the claims are dismissed without prejudice. Regarding Counts 13 and 14, the court finds that the inclusion of piercing the corporate veil and punitive damages claims as separate counts is appropriate for providing notice of the relief sought and denies the

motions to dismiss these counts. Finally, the court denies the motion to dismiss claims against the individual Crumdale defendants, as the sufficiency of allegations against them is better addressed during discovery. The case will proceed on the surviving claims to allow the parties to develop the factual record further.