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The Business Court of Texas,
1st Division

SCOTT DEWOLF, *Plaintiff* v. DISIERE PARTNERS, LLC; DISIERE HOLDINGS, L.P.; and DAVID DISIERE, *Defendants* and QEO GROUP, LLC, *Nominal Defendant* and CHRISTOPHER LOCKETT, *Intervenor*	§ § § § § § § § § § § §	Cause No. 26-BC01B-0002

MEMORANDUM OPINION ON JOINT MOTION TO ENFORCE

[¶ 1] This case concerns a business separation between the three members of a limited liability company. Two members seek to enforce a settlement agreement requiring the other member (and those who control it) to purchase the sellers' membership interests. The case also involves the

actual LLC's claims against one of the sellers regarding his alleged improper conduct toward the business.

[¶ 2] Before the court is plaintiff and intervenor's Joint Motion to Enforce Settlement Agreement (the Motion). (Because the plaintiff's and intervenor's claims are nearly identical, for convenience the court refers to the plaintiff and intervenor as "Plaintiffs.") The Motion asserts that the three members agreed to settle this action in an email exchange filed with the court as a Rule 11 agreement (the Rule 11 Agreement).[1]

[¶ 3] The court grants the Motion in part, and denies it in part, because the evidence conclusively establishes that the settling parties created a contract with all material terms and the Disiere Parties (defined below) did not raise a genuine issue of material fact regarding their affirmative defenses. The evidence also conclusively proves that (i) Plaintiffs performed or tendered their performance; (ii) the Disiere Parties breached; and (iii) their breach injured Plaintiffs in the amount of the Disiere Parties' promised net settlement payments.

[1] *See* Motion Exhibit A-1.

[¶ 4] Accordingly, Plaintiffs are, respectively, entitled to joint and several judgments against the Disiere Parties in the net amounts the Rule 11 Agreement calls for. But Plaintiffs are not entitled to specific performance against the Disiere Parties because a monetary judgment gives Plaintiffs an adequate legal remedy. However, QEO Group, LLC was not a party to that agreement, and this order does not affect its claims against DeWolf.

[¶ 5] Next, although Plaintiffs' live pleadings assert attorneys' fees claims, their Motion does not address those claims. So, neither does this opinion and order other than to reserve the issue for further proceedings.

[¶ 6] Finally, the court on its own motion will sever QEO's claims against DeWolf by separate order.

I. Background

A. The Parties

[¶ 7] QEO Group, LLC is a Texas limited liability company, and it is the LLC whose membership interests are the Motion's subject. Plaintiffs sued QEO as a nominal defendant regarding their derivative claims. Relying on independent counsel, QEO has since asserted its own claims against DeWolf.

[¶ 8] Plaintiff Scott DeWolf was QEO's longtime CEO and COO until he resigned on December 1, 2025. He has a ten percent QEO membership interest.

[¶ 9] Intervenor Christoper Lockett was QEO's Chief Administrative Officer prior to his involuntary termination. He has a five percent QEO membership interest.

[¶ 10] Defendant Disiere Partners, LLC is a Texas entity. Disiere Partners has an eighty-five percent QEO membership interest.

[¶ 11] Defendant Disiere Holdings, L.P. is a Texas entity.

[¶ 12] David Disiere is an individual. He has an 85% indirect QEO membership interest.[2]

[¶ 13] The court refers to Disiere Partners, Disiere Holdings, and Mr. Disiere as the Disiere Parties.

B. Procedural Facts

[¶ 14] On January 5, 2026, DeWolf sued the Disiere Parties in state district court.[3] He asserted fiduciary breach and other claims individually and derivatively on QEO's behalf. He also requested interim and permanent

[2] Plaintiff DeWolf's April 28, 2026, Amended Petition (DeWolf's FAP) ¶s 143, 168.

[3] Plaintiff's January 5, 2026, Verified Original Petition and Application for Temporary Restraining Order.

injunctive relief, sought the appointment of a receiver or winding up QEO, demanded an accounting, and requested exemplary damages and the recovery of his attorneys' fees.[4] Two days later, the Disiere Parties removed the case to this court.[5]

[¶ 15] The court granted a temporary restraining order, which the parties later converted to an agreed temporary injunction on January 14, 2026. The temporary injunction prohibits QEO from making dividend-like distributions that do not comply with the membership agreement. That same day, the court signed an agreed scheduling order setting the case for an April 28, 2026, jury trial.[6]

[¶ 16] Six days later, Lockett intervened, asserting claims similar to DeWolf's claims.

[¶ 17] Soon thereafter, the Disiere Parties filed their original answer (January 26th) and original intervention answer (January 30th). They denied that they are liable to Plaintiffs in the capacities in which they were sued and asserted several additional affirmative defenses.[7]

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[4] Plaintiff's January 5, 2026, Verified Original Petition and Application for Temporary Restraining Order.

[5] Notice of Removal.

[6] Scheduling Conference Report, Discovery Control Plan, and Scheduling Order at 3.

[7] Lockett and the Disiere Parties amended their pleadings in mid-February.

[¶ 18] In early February, the parties began a mediation with Judge Jeff Kaplan.[8] That mediation was not initially successful, but the parties continued to discuss settlement.[9]

[¶ 19] In late February, the parties announced their settlement to the court and asked it to abate the case for seventy-five days so they could finalize written documents.[10] Relying on the parties' agreement, the court abated the case.

[¶ 20] The parties' efforts to document their Rule 11 Agreement bogged down and later failed.[11]

[¶ 21] Plaintiffs filed a March 10, 2026, letter (i) stating that the drafting effort was stuck and (ii) requesting a status conference.[12]

[¶ 22] Two days later, the Disiere Parties responded with a letter outlining the parties' drafting efforts. That letter implicitly conceded the parties' agreement and expressed their desire for more time to complete the formal documents:[13]

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[8] Motion Exhibit A, Declaration of Sean McCaffity (McCaffity Dec.) at 2.

[9] McCaffity Dec. at 2.

[10] *See* February 24, 2026, Agreed Order Staying and Abating Case.

[11] *See* McCaffity Dec. at 2-4.

[12] Motion Exhibit A-11.

[13] Disiere Parties' March 12, 2026, letter to court at 3.

> Consummating a complex and high-dollar transaction like this requires cooperation and assistance from both sides. We simply need the other side to participate earnestly and in good faith in this process in order to bring this matter to a successful conclusion.

[¶ 23] Plaintiffs then filed their Motion, to which the Disiere Parties objected.[14] They asserted defenses to the Motion based on (i) fraud and mistake and (ii) completing formal settlement documents was an unmet condition precedent to an enforceable settlement. They also argued the Motion was procedurally improper because that same day they filed a notice telling the court that they were withdrawing their consent to the settlement.[15]

[¶ 24] A few days later, Plaintiffs amended their pleadings to add Rule 11 Agreement contract breach claims.[16] Specifically, among their other causes of action and requested relief, they sought specific performance of the alleged settlement agreement; or, alternatively, they requested a judgment against the Disiere Parties imposing joint and several liability for contract breach damages.[17]

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[14] Disiere Parties' April 15, 2026, Objection to Motion to Enforce (Disiere Resp.).

[15] Disiere Parties' April 15, 2026, Withdrawal of Consent.

[16] *See* DeWolf's FAP; Intervenor Lockett's Third Amended Original Plea in Intervention (Lockett's 3rd Am. Plea).

[17] *See* DeWolf's FAP at 27-29, 49; Lockett's 3rd Am. Plea at 26-29, 50.

[¶ 25] The parties argued the Motion on April 29, 2026. Later that day, the court signed an order granting this relief:

> - The parties have thirty days from the signing of this order to complete expedited discovery limited to the issues of fraud and mistake concerning the parties' Rule 11 Agreement.
> - The Disiere Parties may submit supplemental briefing within ten days from the close of this discovery period explaining why there is a fact issue as to fraud and mistake regarding the subject of the motions to enforce.
> - Plaintiff and intervenor may respond in ten days.
> - The parties shall confer and reach out to the court to set the motion for a new hearing or agree to resolve the motion by submission.
> - The case is otherwise stayed for all matters unrelated to the motion—and except for service and appearance of QEO Group, LLC—and [the] parties shall seek leave from the court before making any filing other than their supplemental briefs until the court resolves the motion or thirty days after the motion is heard, whichever comes first.[18]

[¶ 26] Thereafter, the parties conducted discovery, submitted additional briefing, and the court heard the Motion again on October 2, 2026.[19]

[18] April 29, 2026, Order.

[19] Due to various discovery disputes and scheduling problems, the actual discovery period was approximately one hundred days, not the thirty originally provided for by the court's April 29th Order.

[¶ 27] In the meantime, independent QEO counsel filed (i) QEO's original answer to Lockett's claims and (ii) counterclaims against only DeWolf and six affirmative defenses.[20] QEO sued DeWolf for trade secret misappropriation and fiduciary breach.[21]

C. The Rule 11 Agreement Terms

[¶ 28] Below is the text of the claimed Rule 11 Agreement that Plaintiffs filed with their Motion:

> The Disiere Parties offer the following[:]
>
> > DeWolf $16M
> > Lockett $8M
>
> Disclaim/sell/buy any interest in any QEO entity (QEO Group, Capital, Interests, and any others).
>
> Paid within 60 days of signing the settlement
> We approach the Court and ask for a 75 day abatement (with the hope that we can complete final settlement documents within 2 weeks)
>
> Capital accounts will be what they are – there will not be any change to what is
>
> Releases of all parties/all claims

[20] QEO Group's June 10, 2026, Original Answer to Intervenor Lockett's Third Amended Original Plea in Intervention; QEO Group, LLC's June 24, 2026, Original Answer to Plaintiff DeWolf's Amended Petition, Original Counterclaim, and Application for Temporary Restraining Order and Temporary Injunction (QEO Answer) at 2-3.

[21] QEO Answer at 19.

> 1/1/26 is fine from this end – credit to the above amounts for 2026 distributions already made
>
> Will need to discuss TI staying in place as it relates to any distributions between agreement and funding[.][22]

[¶ 29] Having considered the pleadings, applicable law, and parties' submissions, briefing, and arguments, the court rules as follows.[23]

II. Analysis and Rulings

A. Procedural Posture

[¶ 30] To begin, the court concludes that the Motion is procedurally proper. Before DeWolf and Lockett amending their pleadings to add breach of the Rule 11 Agreement claims, the Disiere Parties' Motion response argued that the Motion was procedurally improper because the Plaintiffs did not bring a separate contract breach cause of action.[24] The Disiere Parties later argued that Plaintiffs' subsequent pleading amendments adding those causes of action did not retroactively save the Motion.[25] The Disiere Parties'

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[22] Motion Exhibit A-1.

[23] The court's rulings are made in connection with the Motion and pursuant to TEX. R. CIV. P. 166(g) as questions of law over which "reasonable minds cannot differ on the outcome." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., LLC*, 546 S.W.3d 648, 653 (Tex. 2018) (internal quotations omitted).

[24] Disiere Resp. at 2.

[25] This specific argument was made by QEO Group, LLC at page 8 of its August 17, 2026, Response to the Motion. QEO is represented by separate counsel from the Disiere Parties. QEO and the Disiere Parties are aligned in opposition to the Motion. Accordingly, the court considers QEO's arguments to be made in support of the Disiere Parties.

supplemental response further argued that the only way for the Plaintiffs to obtain a judgment before trial was a Rule 166(a) summary judgment motion, which the Motion was not styled as such.[26] The court disagrees.

[¶ 31] The supreme court holds that, "Like any other breach of contract claim, a claim for breach of settlement agreement is subject to the established procedures of pleading." *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009); *accord Padilla v. LaFrance*, 907 S.W.2d 454, 462 (Tex. 1995) (same).[27] In resolving the same, parties are "entitled to full, fair discovery" and to have their cases decided on the merits. 279 S.W.3d at 663 (quoting *Able Supply Co. v. Moye*, 898 S.W.2d 766, 773 (Tex. 1995)).

[¶ 32] A "pleading" in its usual sense refers to a petition or answer. *See* TEX. R. CIV. P. 45(a). But the rules and the supreme court's guidance require courts to elevate substance over form "if justice so requires." *See* TEX. R. CIV. P. 71; *Bertucci v. Watkins*, 709 S.W.3d 534, 542 (Tex. 2025) (courts shall "endeavor[] to resolve cases on the merits" instead of procedural defects (internal quotations omitted)).

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[26] Disiere Parties' August 17, 2026, Supplemental Briefing (Disiere Suppl. Resp.) at 9.

[27] Disiere Parties' April 15, 2026, Withdrawal of Consent prevents the court from rendering an agreed judgment but not enforcing the Rule 11 Agreement. *Padilla*, 907 S.W.2d at 461-62.

[¶ 33] So, a "motion to enforce" itself may be considered a "pleading" when it "clearly state[s] the terms of the agreement, detail[s] [non-movant]'s breach of that agreement, and [the] requested relief." *Neasbitt v. Warren*, 105 S.W.3d 113, 118 (Tex. App.—2d Dist. 2003, no pet.); *see also Blue Angel Weimaraner Rescue, Inc. v. Ayars*, No. 10-23-00145-CV, 2025 WL 1262465, at *3 (Tex. App.—10th Dist. May 1, 2025, no pet.) ("A motion seeking enforcement of the settlement agreement is a sufficient pleading to allow the trial court to render judgment enforcing the settlement, but only if the motion satisfies the general purpose of pleadings, which is to give the other party fair notice of the claim and the relief sought."); *3CPL Holdings, LLC v. DFLC, Inc.*, No. 03-24-00850-CV, 2025 WL 2446348, at *5 (Tex. App.—3d Dist. Aug. 26, 2025, pet. denied.) (same).

[¶ 34] Once contract breach is "pled," a trial on the merits or summary judgment motion can be used to resolve a dispute over a settlement agreement, but that list "is far from exhaustive." *In re Park Mem'l Condo. Ass'n, Inc.*, 322 S.W.3d 447, 451 n.5 (Tex. App.—14th Dist. 2010, orig. proceeding) (*e.g.*, Rule 166(g) motions can be used to decide pure questions of law).

[¶ 35] So, a motion to enforce itself suffices "to allow the trial court to render judgment enforcing the settlement." *Blue Angel*, 2025 WL 1262465,

at *3; *3CPL Holdings*, 2025 WL 2446348, at *6 ("Thus, we hold that the … motion to enforce the settlement agreement was sufficient for the trial court to render judgment enforcing the agreement as a binding contract, and that the trial court did not err by entering final judgment accordingly despite Blackburn's withdrawal of consent.").

[¶ 36] Indeed, the supreme court does not require any particular procedural method to enforce a Rule 11 agreement. *See Padilla*, 907 S.W.2d at 462 ("*for example*" a counterclaim seeking enforcement of the parties' agreement and motion for summary judgment is a sufficient method (emphasis added)). And it has further held that "[w]hen a Rule 166(g) order disposes of claims . . . the order is akin to a summary judgment[.]" *JPMorgan*, 546 S.W.3d at 653.

[¶ 37] Rather, what is important is that non-movants have due process. *See Aguilar v. Aguilar*, 2025 WL 1512197, at *5 (Tex. App.—4th Dist. May 28, 2025, no pet.) (non-movant has a due process right to present evidence on fact issues raised in response to a motion to enforce). "Due process, on a fundamental level, requires notice and a fair opportunity to be heard," including the opportunity to obtain and introduce evidence in a meaningful manner. *In re Park*, 322 S.W.3d at 450.

[¶ 38] Likewise, a party has sufficient "fair notice of the claim and relief sought" where the motion "[seeks] to enforce the parties' mediated settlement agreement, stated that a later formalized agreement was unnecessary given the parties' agreement, asserted that the agreement contains all essential terms, and maintained that [the non-movant] breached the agreement." *3CPL Holdings*, 2025 WL 2446348, at *5. The Motion did all the above.

[¶ 39] Here, the Motion—supported by sworn testimony and exhibits—gave the Disiere Parties factual and legal notice that Plaintiffs sought to enforce the Rule 11 Agreement and provided their supporting evidence. In substance, the Motion gave more notice than notice pleading would require. *See Blue Angel*, 2025 WL 1262465, at *3 (the general purpose of pleadings "is to give the other party fair notice of the claim and the relief sought"). And the evidence and arguments met Rule 166(a)'s standards. *See generally* TEX. R. CIV. P. 166a.

[¶ 40] Additionally, after DeWolf and Lockett filed the Motion, they both pled contract claims based the Rule 11 Agreement.[28] The court's April

[28] *See* DeWolf's FAP; Lockett's 2nd Am. Plea.

29, 2026, Order gave the Disiere Parties an opportunity to conduct discovery on the affirmative defenses they raised in response to the Motion and to file a second response after discovery was completed.[29] And the court held a second hearing on the Motion. So, due process was met.

[¶ 41] Accordingly, the court rejects the Disiere Parties' premises that the Motion fails since it was not styled a summary judgment motion and DeWolf and Lockett amended their pleadings after they filed the Motion.

B. Legal Standards

[¶ 42] Having determined that the Motion is procedurally proper, which particular legal standard to apply—*e.g.*, Rule 166a or Rule 166(g)—is immaterial because "Rule 166(g) authorizes trial courts to decide matters that, though ordinarily fact questions, have become questions of law because 'reasonable minds cannot differ on the outcome.'" *JPMorgan*, 546 S.W.3d at 653 (quoting *Walden v. Affiliated Computer Servs., Inc.*, 97 S.W.3d 303, 322 (Tex. App.—14th Dist., 2003, pet. denied)).[30]

[29] April 29, 2026, Order.

[30] *Walden* discusses Rule 166's development and the 1990 changes to it that authorize trial courts to resolve before trial issues as if a summary judgment motion presented the same issues. *Walden*, 97 S.W.3d at 322-23 ("Just as the proper granting of a summary judgment or directed verdict does not offend the constitution, neither does the use of Rule 166 to dispose of legal issues.").

[¶ 43] Thus, "[w]hen a Rule 166(g) order disposes of claims [as a matter of law], the order is akin to a summary judgment or directed verdict," and the standards are the same. *JPMorgan*, 546 S.W.3d at 653.

[¶ 44] So, granting a motion to enforce is not proper if non-movants raise a genuine material fact issue on (i) any element of movants' claim or (ii) each element of at least one of non-movants' affirmative defenses. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006); *Woodside v. Woodside*, 154 S.W.3d 688, 691-92 (Tex. App.—8th Dist. 2004, no pet.).

[¶ 45] A genuine issue of material fact exists if more than a scintilla of evidence supports the alleged fact. *See Amazon.com Servs. LLC v. Grant*, 2024 WL 5053063, at *2 (Tex. App.—5th Dist. Dec. 10, 2024, no pet.). Evidence is more than a scintilla when it "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *King Ranch v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (quoting *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)). However, less than a scintilla exists when the evidence is "so weak as to do no more than create a mere surmise or suspicion" of a fact. *Id.* (quoting *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983)).

C. Substantive Analysis

1. Contract Breach Elements

[¶ 46] A plaintiff asserting a breach-of-contract claim must prove (i) the existence of a valid contract; (ii) the plaintiff performed or tendered performance as the contract required; (iii) the defendant breached the contract by failing to perform or tender performance as the contract required; and (iv) the plaintiff sustained damages as a result of the breach. *See, e.g.*, *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

[¶ 47] To prove the first element (the existence of a valid contract), the plaintiff must establish that (i) an offer was made; (ii) the other party accepted in strict compliance with the terms of the offer; (iii) the parties had a meeting of the minds on the essential terms of the contract (mutual assent); (iv) each party consented to those terms; and (v) the parties executed and delivered the contract with the intent that it be mutual and binding. *See, e.g.*, *E–Learning LLC v. AT & T Corp.*, 517 S.W.3d 849, 858 (Tex. App.—4th Dist. 2017, no pet.).

[¶ 48] A particular breach-of-contract claim may involve disputes regarding any combination of these requirements, as well as on numerous defenses the defendant may assert. *USAA Texas*, 545 S.W.3d at 501 n.21.

2. Contract Construction Principles

[¶ 49] A court's primary objective when construing contracts "is to ascertain and give effect to the parties' intent as expressed in the instrument." *U.S. Polyco, Inc. v. Tex. Cent. Bus. Lines Corp.*, 681 S.W.3d 383, 387 (Tex. 2023) (quoting *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 763 (Tex. 2018)); *see also Equinor Energy LP v. Lindale Pipeline, LLC*, 731 S.W.3d 324, 327 (Tex. 2026).

[¶ 50] Usually, courts deem the contract alone to express the parties' intent because it is objective, not subjective, intent that controls. *U.S. Polyco*, 681 S.W.3d at 387. To that end, courts will examine and consider the entire writing, seeking as best they can to harmonize and give effect to all its provisions so that none will be rendered meaningless. *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157-58 (Tex. 1951).

[¶ 51] With unambiguous contracts, courts "can determine the parties' rights and obligations under the agreement as a matter of law." *Inwood Nat'l Bank v. Fagin*, 706 S.W.3d 342, 347 (Tex. 2025) (per curiam) (quoting *ACS Invs., Inc. v. McLaughlin*, 943 S.W.2d 426, 430 (Tex. 1997)); *see also Equinor Energy*, 731 S.W.3d at 327.

[¶ 52] A written contract is unambiguous if it is so worded that it can be given a definite or certain meaning when considered in context of the circumstances surrounding its execution and as applied to the matter in dispute. *URI*, 543 S.W.3d at 765. Context is a permissible indicator of meaning, and courts are to harmonize and give effect to all contract terms by analyzing them regarding the whole contract. *Polyco*, 681 S.W.3d at 390. Context "is not [] confined to the two-dimensional contractual environs" of the document itself but also includes the business context and realities the words are meant to address. *Board of Regents of the Univ. of Tex. Sys. v. IDEXX Labs., Inc.*, 691 S.W.3d 438, 443-45 (Tex. 2024) (per curiam) (quoting *URI*, 543 S.W.3d at 764).

3. Application to Rule 11 Agreements

[¶ 53] Rule 11 agreements are contracts relating to litigation and are "construe[d] [] under the same rules as a contract." *Shamrock Psychiatric Clinic, P.A. v. Texas Dep't of Health & Hum. Servs.*, 540 S.W.3d 553, 560 (Tex. 2018); *see* TEX. CIV. PRAC. & REM. CODE § 154.071(a) ("If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.").

[¶ 54] Next, an agreement satisfies Rule 11 if it is (i) in writing, (ii) signed, and (iii) filed on the record. TEX. R. CIV. P. 11. An email containing counsel's signature block satisfies both the "in writing" and "signed" requirements. *See Thang v. Defy Int'l, LLC*, 712 S.W.3d 647, 664 (Tex. App.—14th Dist. 2025, no pet.) ("Regardless of whether parties to a Rule 11 agreement type their names with a typewriter, a computer keyboard, or a touchscreen, and regardless of whether they type their names in an email or create a 'signature block' to be included with their email, the effect is the same. They have signed it."). Those elements exist here in the email exchanges.[31] And the parties' Rule 11 Agreement was filed with the Motion.[32]

[¶ 55] Like other contracts, a Rule 11 Agreement is enforceable if it (i) evidences the parties' objective intent to be bound and (ii) contains all material terms of a settlement agreement. *See Foreca, S.A. v. GRD Dev. Co.*, 758 S.W.2d 744, 746 (Tex. 1988); *Padilla*, 907 S.W.2d at 460-61.

[¶ 56] The supreme court explains the rationale thusly:

> Agreements to enter into future contracts are enforceable if they contain all material terms. After all, the reason agreements to enter into future contracts are often unenforceable is that courts have no way to determine what

[31] Motion Exhibit A-1.

[32] Motion Exhibit A-1.

> terms would have been agreed to after negotiation. This concern is not present when the agreement to enter into a future contract already contains all the material terms of the future contract.

McCalla v. Baker's Campground, Inc., 416 S.W.3d 416, 418 (Tex. 2013) (internal citations omitted).

[¶ 57] A contract's material terms are determined on a case-by-case basis. *Id.* (citing *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex. 1992)). They are terms that the parties would reasonably regard as "vitally important ingredient[s]" of their bargain. *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 237 (Tex. 2016) (quoting *Neeley v. Bankers Tr. Co.*, 757 F.2d 621, 628 (5th Cir. 1985)).

[¶ 58] Generally, a Rule 11 settlement agreement's material terms include (i) payment terms and (ii) release of claims. *McCalla*, 416 S.W.3d at 418; *Padilla*, 907 S.W.2d at 460-61.

[¶ 59] The enforceability of a Rule 11 agreement, where the parties contemplate more-formal documents later, depends on two factors: (i) did the parties agree to be bound by the Rule 11 agreement's stated terms and (ii) did they state those terms with "a reasonable degree of certainty and definiteness" to enable the court to understand the parties' obligations and

give an appropriate remedy if they are breached. *Fischer*, 479 S.W.3d at 237. A Rule 11 agreement must meet both standards to be enforceable. *Id.*

[¶ 60] Thus, if the parties "clearly intended to agree and a reasonably certain basis for granting a remedy exists," courts will find the contract terms definite enough to provide that remedy. *Id.* at 239 (quotation omitted). And a "specific method or standard to determine" a party's obligation provides a reasonably certain basis for granting a remedy, even if the obligation was not fully defined when the agreement was made. *Id.* at 243.

[¶ 61] Additionally, because the law disfavors forfeitures, courts consider terms sufficiently definite when the language is reasonably susceptible to an interpretation avoiding forfeiture. *Id.* at 239. Thus, if a Rule 11 agreement admits of two constructions, one that would make it valid and the other invalid, the former construction prevails. *See id.*

[¶ 62] For the reasons discussed in the next part, the court concludes that the Rule 11 Agreement is a valid contract because it satisfies all the contract formation elements.

4. Contract Formation and the Rule 11 Agreement

a. Offer, Acceptance, and Mutuality

[¶ 63] To begin, the email exchanges conclusively prove that the Disiere Parties made a specific offer that Plaintiffs unequivocally accepted without modification.[33] That is, following the mediation, the mediator asked the Disiere Parties to respond to the mediation settlement demand by February 24th.[34] On February 19th, the Disiere Parties sent the email containing the terms at issue.[35] That same day, Plaintiffs accepted the offer as is, with no reservations, qualifications, or counters.[36]

[¶ 64] Next, mutuality exists because the Rule 11 Agreement obligates each side to fulfill promises made to the other side (pay money, surrender interests, and execute releases). So, as a matter of law, there was an offer, acceptance, and mutuality.

b. Essential Terms

[¶ 65] Furthermore, the Rule 11 Agreement contains the essential terms for a complete settlement between the parties. Here, the emails provide

[33] Compare Motion Exhibit A-1 with Motion Exhibits A-2 and A-3.

[34] McCaffity Dec. at 2.

[35] McCaffity Dec. at 2; Motion Exhibit A-1.

[36] McCaffity Dec. at 2; Motion Exhibits A-2 and A-3.

the material terms, including payment terms and mutual releases. Specifically, the essential terms include:

a. Disiere Parties would pay $16 million to DeWolf and $8 million to Lockett within sixty days in exchange for them relinquishing their equity interest in any QEO entity.

b. Capital accounts would not be adjusted or changed.

c. Parties to the lawsuit as of February 19, 2026, would release all claims against one another.

d. Distributions to Plaintiff DeWolf and Interventor Lockett already made in 2026 would be credited against the monies to be paid to them above.[37]

[¶ 66] Items a, b, and d fully address payment terms and the equity exchange, and c addresses release of claims. *See McCalla*, 416 S.W.3d at 418. The court concludes that those are the essential terms, and that those terms are unambiguous.[38]

[¶ 67] And those terms are complete under the circumstances, which include that:

- the terms were negotiated between sophisticated parties;
- those parties were represented by experienced and competent counsel;

[37] *See* Motion Exhibit A-1.

[38] The parties also agreed to ask the court for a seventy-five-day abatement so they could work on formal documents without having to prepare for a trial two months later. As discussed below, they did so.

- the parties were settling multiple direct and derivative claims in which Plaintiffs were seeking substantial damages against the Disiere Parties;
- this was a business divorce in which the majority owners were buying out minority owners;
- the parties were seeking to end their years' long relationships and go their separate ways;
- QEO fired Lockett before the lawsuit;
- likewise, DeWolf resigned his employment before the lawsuit; and
- the parties were negotiating at arm's length in an adversarial context with each party looking out for its self-interest.

[¶ 68] And the essential terms are fixed and definite, not open to further negotiation. *Cf. Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 846 (Tex. 2000) ("It is well settled law that when an agreement leaves material matters open for future adjustment and agreement that never occur, it is not binding upon the parties and merely constitutes an agreement to agree.").

[¶ 69] Here, the only thing left to be determined is Plaintiffs' net payments. But because the Rule 11 Agreement provides "a specific method or standard to determine the amount," Plaintiffs are owed (*i.e.*, $16M or $8M minus 2026 distributions), the agreement is reasonably definite enough for the court to grant a remedy. *See Fischer*, 479 S.W.3d at 243. Accordingly, a

"reasonable basis for granting a remedy" exists by enforcing the plain terms of the Rule 11 Agreement provided at ¶ 65 above. *Id.* at 239.

[¶ 70] Other terms in the Rule 11 Agreement emails—such as the "need to discuss [the temporary injunction] staying in place" until the settlement was funded—were not material or were accomplished. *See Fischer*, 479 S.W.3d at 237 ("[A] contract need only be definite and certain as to those terms that are 'material and essential' to the parties' agreement." (quoting *Radford*, 104 S.W.2d at 475)).

c. Performance and Breach

[¶ 71] At a high level, the undisputed evidence establishes that Plaintiffs tendered their performance.[39] Specifically, DeWolf's counsel's 1:54 PM February 25, 2026, email to the Disiere Parties' counsel stated:[40]

> You had indicated docs by Wednesday. Just a reminder, please send those over so we can get this done, especially now that the clock is ticking on the Court's order.

[39] The Disiere Parties Rule 166(g) motion filed the day before the October 2nd hearing argued for the first time that the Plaintiffs had not established that they tendered their performance. The court views that argument as untimely and off point since the court denies specific performance for other reasons. However, the court addresses Plaintiffs' tendered performance because that is an element of their contract breach claims.

[40] Motion Exhibit A-8 at 4.

[¶ 72] Likewise, Lockett's counsel's 1:53 PM March 4, 2026, email to the Disiere Parties' counsel stated:[41]

> We would appreciate receiving the more formal settlement agreement by this Friday, March 6, 2026. That will be 15 days after the parties entered into the Rule 11 settlement agreement – which I believe is ample time to send us the agreement. Please call me if you have any Questions. Thanks.

[¶ 73] These are Plaintiffs' unequivocal statements confirming their willingness to perform according to the Rule 11 Agreement's terms.

[¶ 74] The Disiere Parties adduced no evidence indicating that either Plaintiff declined to perform his Rule 11 Agreement duties. For example, the Disiere Parties offered no evidence that either Plaintiff was unwilling to (i) sign a formal settlement agreement consistent with the Rule 11 Agreement, (ii) abandon his membership interest, or (iii) sign a mutual release had the Disiere Parties complied with the Rule 11 Agreement's material terms. *See, generally*, *Mustang Pipeline Co., Inc. v. Driver Pipeline Co., Inc.*, 134 S.W.3d 195, 199 (Tex. 2004) (per curiam) (party is discharged from its duties under the contract where other side materially breaches first).

[41] Motion Exhibit A-9 at 1 (emphasis original).

[¶ 75] Moreover, following the offer and acceptance emails, DeWolf's counsel on February 19th offered to tell the court about the parties' settlement and request for a seventy-five-day abatement.[42]

[¶ 76] The requested abatement was appropriate given the then-impending scheduling order deadlines:

- March 6, 2026, affirmative pleadings cutoff;
- March 13, 2026, responsive pleadings cutoff;
- March 13, 2026, fact discovery cutoff;
- March 16, 2026, expert designation cutoff for parties with burden of proof;
- March 25, 2026, responsive expert designation cutoff;
- March 30, 2026, rebuttal expert designation cutoff;
- April 7, 2026, expert discovery cutoff;
- April 10, 2026, dispositive motion deadline;
- April 13, 2026, expert challenges deadline; and
- April 28, 2026, jury trial setting.

[¶ 77] With those deadlines and upcoming trial setting, the parties reasonably agreed to focus their time, attention, and resources on preparing the anticipated formal settlement documents instead of trial preparation.

[42] Motion Exhibit A-2 at 1.

[¶ 78] On February 20th, DeWolf's counsel asked whether the Disiere Parties' counsel would take the "first crack at the settlement documents."[43] Later that day, the Disiere Parties' counsel agreed to draft those documents and expressed her hope to have drafts by the following Wednesday (February 25th).[44] She also agreed with DeWolf's counsel that reaching out to the court for procedural guidance was "the right way to investigate what we need to do."[45]

[¶ 79] Roughly two-and-a-half hours later, DeWolf's counsel emailed the court—without objection—that the parties had reached a settlement of the dispute and stated that the settlement included a request to stay or abate the case for seventy-five days "to permit the settlement to be formally documented and consummated."[46]

[¶ 80] The court agreed, and on February 24th signed the parties' agreed order abating and staying the case.[47] That order further provided that

[43] Motion Exhibit A-5 at 1.
[44] Motion Exhibit A-6 at 1.
[45] Motion Exhibit A-6 at 1.
[46] Motion Exhibit A-7 at 1.
[47] Agreed Order Staying and Abating Case.

the court would entertain a written request to extend the stay should that extension be needed.[48]

[¶ 81] Thus, the parties performed their obligations to seek the contemplated stay and abatement, and all parties have benefitted from the other side's performance.

[¶ 82] In the meantime, the Disiere Parties began requesting information from DeWolf and asking him to meet to discuss matters concerning QEO's business.[49]

[¶ 83] On February 25th, DeWolf's counsel asked the Disiere Parties' counsel to send draft settlement documents so the parties could "get this done."[50] The Disiere Parties' counsel responded, "I'm waiting on client approval. I'll send as soon as I can."[51]

[¶ 84] However, by early March the Disiere Parties had not tendered any draft settlement documents.[52] Instead, their counsel continued to ask

[48] Agreed Order Staying and Abating Case. After granting QEO's unopposed motion for leave to file its claims against DeWolf and the beginning of discovery between him and QEO, the court vacated the stay on June 29, 2026. That order also directed the parties to confer and promptly submit a proposed amended scheduling order, which they have not done.

[49] McCaffity Dec. at 3.

[50] Motion Exhibit A-8 at 4.

[51] Motion Exhibit A-9 at 1.

[52] McCaffity Dec. at 3.

DeWolf's counsel about QEO business.[53] So, on March 2nd DeWolf's counsel asked the Disiere Parties' counsel where the settlement documents were.[54]

[¶ 85] On March 4th, Lockett's counsel asked for the documents by the end of the week, March 6th.[55] The Disiere Parties' counsel responded that she would "do what [she] can" to provide drafts.[56]

[¶ 86] When the Disiere Parties had not provided any drafts by the morning of March 9th, Lockett's counsel wrote to the Disiere Parties' counsel requesting a conference on Lockett's anticipated motion to compel enforcing the settlement.[57] The Disiere Parties' counsel said they would oppose a motion to compel.[58]

[¶ 87] The next day (March 10th at 3:19 PM), DeWolf's counsel filed a letter with the court describing the dispute and requesting a status conference to discuss the matter.[59] Minutes later, the Disiere Parties' counsel sent counsel for DeWolf and Lockett "an initial draft of an Equity Purchase and

[53] Motion Exhibit A-8 at 1-4.
[54] Motion Exhibit A-8 at 1.
[55] Motion Exhibit A-9 at 1.
[56] Motion Exhibit A-10 at 1.
[57] Motion Exhibit A-10 at 1.
[58] McCaffity Dec. at 3.
[59] *See* Motion Exhibit A-11.

Settlement Agreement (EPSA)" that was "being delivered subject to our clients' review and comments."[60]

[¶ 88] However, among other potential issues, the draft EPSA that the Disiere Parties' counsel sent included noncompetition and indemnity clauses that were not included in the Rule 11 Agreement.[61] So, Plaintiffs filed their Motion. They included with that Motion a copy of the correspondence reflecting the parties' settlement discussions.[62]

[¶ 89] More than two-and-a-half-weeks later, the Disiere Parties filed a document captioned "Disiere Parties' Notice of Withdrawal of Consent" in which they said for the first time that they were denying that the parties' email exchange "somehow constitutes an enforceable Rule 11 Settlement Agreement (as alleged in their Joint Motion to Enforce Settlement Agreement), . . . [.]"[63]

[¶ 90] At the same time, the Disiere Parties filed their "Objection to the 'Motion to Enforce'" arguing (i) the Motion was procedurally deficient, (ii) there was no intent that the Rule 11 Agreement be a binding contract, and,

[60] McCaffity Dec. at 3; Motion Exhibit A-12 at 1.

[61] Motion Exhibit A-13 (Draft EPSA) at 6-8, 12-16.

[62] Motion Exhibits A-1 through A-13.

[63] Disiere Parties' April 15, 2026, Withdrawal of Consent.

(iii) alternatively, it is void for fraud and mistake.[64] However, that Objection did not explain the type of mistake that occurred or who was responsible for it; nor did it provide any factual or legal basis for the alleged fraud.[65]

[¶ 91] Based on the above, the court concludes that as a matter of law (i) Plaintiffs and the Disiere Parties formed a binding and enforceable Rule 11 settlement agreement that has been filed with the court; (ii) that agreement contains the parties' essential terms to settle the disputes between them; (iii) those terms are unambiguous; (iv) Plaintiffs tendered their performance consistent with those terms; (v) the Disiere Parties breached that contract by requiring Plaintiffs to accept material terms not included in the Rule 11 Agreement before they would perform their end of the bargain; and (vi) the Disiere Parties' breaches resulted in Plaintiffs suffering monetary damages in readily calculable amounts.

5. Damages

[¶ 92] The Rule 11 Agreement obligated the Disiere Parties to pay DeWolf the principal sum of $16 million less any distributions that QEO paid him beginning on or after January 1, 2026.

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[64] *See generally* Disiere Resp.

[¶ 93] Similarly, the Rule 11 Agreement obligated the Disiere Parties to pay Lockett the principal sum of $8 million less any distributions that QEO paid him beginning on or after January 1, 2026.

[¶ 94] The evidence is undisputed that no Disiere Party has paid any of those sums to DeWolf or Lockett. So, the Disiere Parties' breaches resulted in DeWolf and Lockett suffering damages in those amounts minus their distributions for 2026, respectively.

[¶ 95] The court next addresses the Disiere Parties defenses to DeWolf's and Lockett's Rule 11 Agreement contract breach causes of action.

6. The Disiere Parties' Defenses

a. Introduction

[¶ 96] The Disiere Parties raised (i) failure of a condition precedent; (ii) fraud; and (iii) unilateral mistake as affirmative defenses to the Motion.[66] The court concludes that they failed to raise a genuine issue of material fact on each element their affirmative defenses. *See Woodside*, 154 S.W.3d at 691. In sum, the court concludes that the Rule 11 Agreement unambiguously does not make execution of final documents a condition precedent to forming a

[66] *See* Disiere Resp. at 6; Disiere Suppl. Resp. at 26-44.

binding contract, and the Disiere Parties adduced *no evidence* supporting their fraud or unilateral mistake defenses.

b. Condition Precedent

[¶ 97] The Disiere Parties argue that final, formal documentation was a condition precedent to contract formation under the Rule 11 Agreement.[67] "'Whether the execution of a separate [] agreement was, and is, essential to a mutuality of assent is a question of the intention of the parties[,]' [which] . . . is usually an inference to be drawn by the fact finder." *Foreca*, 758 S.W.2d at 746 (quoting *Scott v. Ingle Bros. Pacific, Inc.*, 489 S.W.2d 554, 555 (Tex. 1972)). However, "[w]hile intent is normally an issue of fact, in some cases, a court may determine the intentions of the parties as a matter of law." *Gen. Metal Fabricating Corp. v. Stergiou*, 438 S.W.3d 737, 749 (Tex. App.—1st Dist. 2014, no pet.) (internal quotations omitted).

[¶ 98] Here, the Rule 11 Agreement has no language that usually indicates the parties' intent for final documents to be a condition precedent to contract formation. *See Foreca*, 758 S.W.2d at 746 ("subject to legal documentation" term created a fact issue on intent); *cf. Chalker Energy*

[67] Disiere Suppl. Resp. at 5; *see also* Motion Exhibit A-1 ("We approach the Court and ask for a 75 day abatement (with the hope that we can complete *final settlement documents* within 2 weeks)[.]" (emphasis added)).

Partners III, LLC v. Le Norman Operating LLC, 595 S.W.3d 668, 673-74 (Tex. 2020) ("[L]anguage that no contract will arise until a formal agreement is executed makes clear the parties' intent that the contemplated formal document is a condition precedent to contract formation.").

[¶ 99] In contrast, mere reference to "final settlement documents" in the Rule 11 Agreement alone is insufficient to create a fact issue as to the parties' intent. *See Hardman v. Dault*, 2 S.W.3d 378, 381 (Tex. App.—4th Dist. 1999, no pet.) (a deadline for "final documents" to be signed without any "subject to" language in settlement agreement did not create a condition precedent); *R.R. Comm'n of Texas v. Gulf Energy Expl. Corp.*, 482 S.W.3d 559, 573 (Tex. 2016) (approving *Hardman*). So, the court concludes that formal documentation was not a condition precedent to contract formation here.

c. Fraud by Omission

[¶ 100] The Disiere Parties assert a fraud by omission theory based on DeWolf not disclosing that he (i) was competing or was planning to compete against QEO, (ii) took financial spreadsheets with him when he left the company, and (iii) hid insurance claim information from the company. The Disiere Parties allege these actions diminished the value of QEO and

consequentially they overpaid for Plaintiffs' membership interests.[68] They allege Lockett knew of these acts by DeWolf and failed to disclose them as well.

> [¶ 101] To establish fraud by omission, a plaintiff must show:
>
> (1) the defendant deliberately failed to disclose material facts; *(2) the defendant had a duty to disclose such facts to the plaintiff;* (3) the plaintiff was ignorant of the facts and did not have an equal opportunity to discover them; (4) the defendant intended the plaintiff to act or refrain from acting based on the nondisclosure; and (5) the plaintiff relied on the non-disclosure, which resulted in injury.

Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC, 572 S.W.3d 213, 219-20 (Tex. 2019) (emphasis added).

[¶ 102] In general, a person has no duty to disclose facts absent a confidential or fiduciary relationship. *Ins. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998). Whether such a duty exists is a question of law. *Bradford v. Vento*, 48 S.W.3d 749, 755 (Tex. 2001).

[¶ 103] The Disiere Parties argue that the "QEO Group, LLC agreement requires true and full information of all things affecting the Company," and therefore DeWolf and Lockett had a duty of disclosure.[69] Section 2.5 of the

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[68] *See* Disiere Parties Suppl. Resp. at 26-28.

[69] Disiere Parties Suppl. Resp. at 27 (citing Disiere Parties Suppl. Resp. Exhibit A § 2.5).

QEO Group, LLC Company Agreement states that "In addition to the other rights specified herein, each Member shall have the right to: . . . (ii) *have on demand* true and full information of all things affecting the Company and a formal account of Company affairs whenever circumstances render it just and reasonable."[70]

[¶ 104] However, read in context, § 2.5 describes a member's rights against *the Company*, not other members. Supporting this reading, § 5.1 provides that only the manager is responsible for maintaining the books and records of the Company at the Company's principal office.[71] David Disiere is QEO's manager, not DeWolf or Lockett. Accordingly, § 2.5 did not create a duty on DeWolf (nor Lockett) to disclose DeWolf's planned competition with QEO.

[¶ 105] The Disiere Parties further argue that DeWolf and Lockett owed the Disiere Parties fiduciary duties as co-members of QEO.[72] However, unless modified by the company agreement, members of a limited-liability company do not owe formal fiduciary duties to each other. *See Zhu v. VivaTech*

[70] Disiere Parties Suppl. Resp. Exhibit A § 2.5 (emphasis added).

[71] Disiere Parties Suppl. Resp. Exhibit A § 5.1.

[72] Disiere Parties Suppl. Resp. at 27.

Elecs., LLC, 2026 WL 1871213, at *7 (Tex. App.—3d Dist. June 30, 2026, no pet.) (citing *Bertucci v. Watkins*, 709 S.W.3d 534, 544 (Tex. 2025)); *see also Dunster Live, LLC v. LoneStar Logos Mgmt. Co.*, 2024 WL 291403, at *7 (Tex. App.—3d Dist. Jan. 26, 2024, no pet.) ("Texas law does not impose fiduciary duties between members of a limited liability company."); TEX. BUS. ORGS. CODE § 101.401.

[¶ 106] And the Disiere Parties do not allege an informal fiduciary relationship existed between them and DeWolf or Lockett.

[¶ 107] Further, the Disiere Parties' reliance on *Straehla v. AL Glob. Servs., LLC* is misplaced because that case dealt with fiduciary duties a member owed only to the LLC itself, not other members. *See* 619 S.W.3d 795, 804-05 (Tex. App.—4th Dist. 2020, pet. denied).

[¶ 108] Here, the parties were negotiating to end their relationship as QEO members in the context of settling a pending lawsuit. This court recently held that transactions that terminate prior relationships are often "inherently adversarial," that "whatever relationship existed before was ending," and each party "ha[s] to look out for himself." *Beard v. Perot*, 2026 Tex. Bus. 65, ¶ 126, ---- S.W.3d ---- (1st Div.).

[¶ 109] Such transactions are therefore naturally at arm's length. *Id.*, ¶s 125-33. And "[i]n an arm's-length transaction the defrauded party must exercise ordinary care for the protection of his own interests." *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015) (quoting *Thigpen v. Locke*, 363 S.W.2d 247, 251 (Tex. 1962)).

[¶ 110] Finally, the Disiere Parties argue that the following January 27, 2026, statement by DeWolf's counsel was false or misleading, creating a duty to correct once he learned the truth:

> I do not believe Scott took any documents with him so he is not in possession, custody or control of such documents at this time to produce. At least that I'm aware of, although I have asked him to start collecting anything he might have that would be relevant to the claims and defenses in this case and also about this specifically.[73]

[¶ 111] The Disiere Parties argue that, "[i]n the days before DeWolf resigned as QEO Group's CEO, he stole QEO Group's most confidential and sensitive trade secrets."[74] Disiere Parties rely on *Dewayne Rogers Logging, Inc. v. Propac Indus., Ltd.* for the idea that "[w]hen one makes a representation, he has a duty to disclose new information when he is aware the

[73] Disiere Parties Suppl. Resp. at 28.

[74] Disiere Parties Suppl. Resp. at 29.

new information makes the earlier representation misleading or untrue." 299 S.W.3d 374, 391 (Tex. App.—12th Dist. 2009, pet. denied).

[¶ 112] First, the Disiere Parties cite no supreme court case supporting a duty to disclose under these circumstances. The RESTATEMENT (SECOND) OF TORTS § 551 states that:

> (2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated, . . . (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading; and (c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so; . . .

[¶ 113] But the supreme court "ha[s] never adopted section 551." *Bradford*, 48 S.W.3d at 755-56; *accord Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 562 (Tex. 2019) ("[S]ection 551 of the Restatement (Second) of Torts [is] a part of the Restatement that this Court has never expressly adopted."). The supreme court has said only that such a duty "may" exist. *See Bombardier*, 572 S.W.3d at 220.

[¶ 114] Regardless, assuming this legal disclosure ground exists, the January 27th statement by DeWolf's counsel cannot support a fraud-by-nondisclosure argument because it is (i) a qualified expression of opinion ("I

do not *believe* Scott took any documents") and (ii) there is no evidence that DeWolf's counsel learned that the statement was incorrect before the February 19th Rule 11 Agreement.

[¶ 115] "Pure expressions of opinion are not representations of material fact, and thus cannot provide a basis for a fraud claim." *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 337-38 (Tex. 2011). There is an exception when the "speaker purports to have special knowledge of the fact." *Id.* (internal quotation omitted). But here, the opposite is the case—DeWolf's counsel conveyed that he *did not know* if his representation was true.

[¶ 116] Accordingly, the court concludes that the Disiere Parties failed as a matter of law to establish that DeWolf (or Lockett) owed a duty to disclose and therefore the Disiere Parties' fraud-by-nondisclosure defense fails.

d. Unilateral Mistake

[¶ 117] A court may order recission as equitable relief for a unilateral mistake if:

> (1) the mistake is of so great a consequence that to enforce the contract as made would be unconscionable; (2) the mistake relates to a material feature of the contract; (3) the mistake must have been made regardless of the exercise of ordinary care; and (4) the parties can be placed in status quo in the equity sense, *i.e.*,

> rescission must not result in prejudice to the other party except for the loss of his bargain.

James T. Taylor & Son, Inc. v. Arlington Indep. Sch. Dist., 335 S.W.2d 371, 372-73 (Tex. 1960).

[¶ 118] The proto-typical version of unilateral mistakes is where "a bidder for a public contract … made a mistake of fact in the bid which he submitted, and upon discovery of that mistake acts promptly" to withdraw his bid or rectify his mistake. *Id.* at 373; *see also, e.g.*, *Harry Brown, Inc. v. McBryde*, 622 S.W.2d 596, 599-601 (Tex. App.—12th Dist. 1981, no pet.). The supreme court has referred to these as "an honest mistake … as any businessman might make." *James*, 335 S.W.2d at 374. For example, the mistake in *James* occurred because the contractor failed to carry a digit in calculating their bid. *Id.* at 372.

[¶ 119] The Disiere Parties' briefing does not attempt to match any allegations or evidence to the elements of unilateral mistake. For that reason alone, the court need not consider the argument. *See Scudday v. King*, 2022 WL 2230730, at *6 (Tex. App.—4th Dist. June 22, 2022, pet. denied) (a trial court is "not required to search the record for evidence raising a material fact issue" (internal quotation omitted)); *see also* TEX. R. CIV. P. 166a, cmt. 1997

(providing that non-Plaintiff's response to no-evidence motion must "point out evidence that raises a fact issue on the challenged elements"). "Judges are not like pigs, hunting for truffles buried in briefs." *In re State Farm Mut. Auto. Ins. Co.*, 712 S.W.3d 53, 71 (Tex. 2025) (J. Sullivan, concurring) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (per curiam)).

[¶ 120] Furthermore, the Disiere Parties' unilateral mistake defense repackages their fraud defense. The "mistake" they complain of is their lack of knowledge about the same issues they claim Plaintiffs fraudulently failed to disclose.[75]

[¶ 121] Additionally, the Disiere Parties offered no evidence that their alleged mistake was made regardless of ordinary care. *See James*, 335 S.W.2d at 373 (mistake cannot be a result of party's own negligence). Indeed, they offered no evidence that they exercised any care in this regard.

[¶ 122] Finally, the Disiere Parties offered no evidence that Lockett knew of DeWolf's conduct.

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[75] *See generally* Disiere Parties Suppl. Resp.

[¶ 123] Accordingly, the court concludes that there is legally no evidence that it would be "unconscionable" to enforce the Rule 11 Agreement. *See id.* (the first element of unilateral mistake is "the mistake is of so great a consequence that to enforce the contract as made would be unconscionable"); *see also* MERRIAM WEBSTER'S COLLIGATE DICTIONARY 1286 (10th ed. 1996) ("Unconscionable" is generally defined as "shockingly unfair or unjust"). There is nothing unfair in concluding that parties to an arm's-length transaction must protect their own interests.

7. Conclusions

[¶ 124] For the reasons stated above, the court concludes that the Rule 11 Agreement is a binding contract that the Disiere Parties breached thereby entitling Plaintiffs to recover their respective damages.

[¶ 125] Finally, the court also concludes that QEO Group, LLC was not a party to the Rule 11 Agreement and is not bound by its terms. The facts do not conclusively establish that counsel for the Disiere Parties was acting on behalf of QEO, and the plain terms of the Rule 11 Agreement state that "[t]he *Disiere Parties* offer the following," not QEO.[76]

[76] *See* Motion Exhibit A-1 (emphasis added).

D. Settlement Agreements and Rule 408 / Hearsay

[¶ 126] On October 1, 2026, defendants filed Objections to Plaintiffs' Evidence in Support of the Motion. The court ruled on those objections five days later.[77]

[¶ 127] In particular, defendants objected to the Rule 11 Agreement and related documents as inadmissible settlement negotiations under TEX. R. EVID. 408. Defendants cite no case for the premise that Rule 408 bars introduction of a Rule 11 agreement on a motion to enforce the same, and the court finds no such case. The court concludes that the purpose of TEX. R. EVID. 408 is not to exclude such evidence under these circumstances. *Cf. City of Houston v. Sam P. Wallace & Co.*, 585 S.W.2d 669, 673 (Tex. 1979) ("Texas adheres to the rule that information about settlement agreements should be excluded from the jury, because the agreement may be taken as an admission of liability."). Indeed, accepting the Disiere Parties' premise would render all Rule 11 settlement agreements unenforceable, which premise has no legal support.

[77] QEO filed a "Joinder in Disiere Parties' Objections" the same day Disiere Parties objected. The court's October 6, 2026, Order applies equally to QEO's joinder.

[¶ 128] Defendants further objected to many of the same documents as hearsay. But statements that constitute offer, acceptance, or terms of a contract—so-called "operative facts"—are not hearsay. *Thomas C. Cook, Inc. v. Rowhanian*, 774 S.W.2d 679, 685 (Tex. App.—8th Dist. 1989, writ denied). The making of such statements are themselves relevant and, thus, evidence that such statements were made is not barred by the hearsay rule. *Id.*

E. Specific Performance

[¶ 129] The day before the court's second hearing on the Motion, the Disiere Parties filed a 166(g) Motion Regarding the Unavailability of Specific Performance. They argue that specific performance is not an available remedy in this lawsuit because of (i) indefiniteness; (ii) conduct inconsistent with a sale; (iii) lack of performance; (iv) unclean hands; and (v) lack of damages.

[¶ 130] DeWolf's response argues, *inter alia*, that:

> The core performance DeWolf seeks to compel is the payment of a liquidated sum of money: $16 million, less credit for 2026 distributions already made, in exchange for his interest and releases. Texas courts enforce Rule 11 settlement agreements through judgments on the breach-of-contract claim requiring the defaulting party to perform. *Mantas*, 925 S.W.2d at 658; *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009); *Padilla*, 907 S.W.2d at 461–62. Whether a judgment ordering Defendants to pay the agreed sum against DeWolf's tender of his interest is labeled "specific performance" or an award of the contract price, its substance is the same. The [166(g)] Motion would, at most,

> affect the label—not DeWolf's entitlement to the benefit of his bargain.

The court agrees with DeWolf.

[¶ 131] Accordingly, Plaintiffs are entitled to monetary judgments against the Disiere Parties in the amounts the Rule 11 Agreement specifies, plus pre-judgment and post-judgment interest allowed by law. Those judgments are joint and several as to all Disiere Parties because the Rule 11 Agreement reflects that each Disiere Party made a joint payment promise to DeWolf and Lockett. Thus, the court declines to order specific performance and does not address the Disiere Parties' arguments on its availability in this case (such as unclean hands).

[¶ 132] Correspondingly, the court will (i) sever QEO's claims against DeWolf from all other claims in this case, (ii) issue a final monetary judgment for Plaintiffs, and (ii) decree that DeWolf and Lockett are deemed to have abandoned their respective QEO membership interests upon signing the final judgment in this case. A monetary judgment along with the court's decree gives effect to the Rule 11 Agreement's material terms. *See Fischer*, 479 S.W.3d at 239 (courts can grant a remedy if the parties clearly intended to agree and a reasonably certain basis for granting a remedy exists).

F. Attorneys' Fees

[¶ 133] Plaintiffs' pleadings seek to recover their reasonable and necessary attorneys' regarding their successful contract breach causes of action. The court directs the parties to confer and submit to the court a plan for resolving the attorneys' fees claims.

III. Conclusion

[¶ 134] For the foregoing reasons, the Joint Motion to Enforce Settlement Agreement is granted in part and denied in part consistent with this opinion.

It is so ORDERED.

BILL WHITEHILL
Judge of the Texas Business Court,
First Division

SIGNED: November 19, 2026

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Associated Case Party: QEO Group, LLC

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Elizabeth Mensch		emensch@condontobin.com	11/19/2026 2:53:05 PM	SENT
Kathy Gatzemeyer		kgatzemeyer@textrial.com	11/19/2026 2:53:05 PM	SENT
Rebecca Neumann		rneumann@textrial.com	11/19/2026 2:53:05 PM	SENT
Business Court 1B		BCDivision1B@txcourts.gov	11/19/2026 2:53:05 PM	SENT
Jodie Wingerter		jwingerter@reidcollins.com	11/19/2026 2:53:05 PM	SENT

Associated Case Party: David Disiere

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Associated Case Party: David Disiere

Name	BarNumber	Email	TimestampSubmitted	Status
Sean M.A.Lewis	24132066	sean.lewis@haynesboone.com	11/19/2026 2:53:05 PM	SENT

Associated Case Party: Scott DeWolf

Name	BarNumber	Email	TimestampSubmitted	Status
Sean McCaffity		smccaffity@textrial.com	11/19/2026 2:53:05 PM	SENT

Associated Case Party: Christopher Lockett

Name	BarNumber	Email	TimestampSubmitted	Status
Cheryl LMann		cmann@clousebrown.com	11/19/2026 2:53:05 PM	SENT
Mackenzie Keith		MackenzieKeith@clousebrown.com	11/19/2026 2:53:05 PM	SENT
Brandi Phillips		bphillips@clousebrown.com	11/19/2026 2:53:05 PM	SENT

Associated Case Party: LonnieJ.Holder

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Madden	24013079	emadden@reidcollins.com	11/19/2026 2:53:05 PM	SENT
Benjamin King		bking@reidcollins.com	11/19/2026 2:53:05 PM	SENT

Associated Case Party: JesseC.Furgerson

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Madden	24013079	emadden@reidcollins.com	11/19/2026 2:53:05 PM	SENT

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Associated Case Party: JesseC.Furgerson

Eric Madden	24013079	emadden@reidcollins.com	11/19/2026 2:53:05 PM	SENT
Benjamin King		bking@reidcollins.com	11/19/2026 2:53:05 PM	SENT

Associated Case Party: ShaunT.Provence

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Madden	24013079	emadden@reidcollins.com	11/19/2026 2:53:05 PM	SENT
Benjamin King		bking@reidcollins.com	11/19/2026 2:53:05 PM	SENT