



**THE BUSINESS COURT OF TEXAS
ELEVENTH DIVISION**

RUSSELL A. HINDS

Plaintiff

v.

SANDMAN OFFSHORE, LLC, and
DAVID WEGNER

Defendants

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Cause No. 26-BC11A-0053

MEMORANDUM OPINION AND ORDER

¶1 Before the court are Plaintiff Russell A. Hinds’s and Third-Party Defendant EnviroCore, Inc.’s (“EnviroCore’s”) Rule 91a motions to dismiss Sandman’s and Wegner’s counterclaims filed on August 10, 2026. Having considered the parties’ briefing and oral argument, the pleadings, and the relevant law, the court denies the motions for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The facts of this case are summarized in the court’s previous opinion¹ and are repeated here for clarity: Sandman is an oil and gas company with five members each

¹ *Hinds v. Sandman Offshore, LLC*, 2026 Tex. Bus. 63, ¶¶ 2–5, 2026 WL 2724943, at *1 (11th Div.) (mem. op.).

holding a 20% interest, including Hinds and Wegner, who were co-managers. According to Hinds's First Amended Petition ("Pet."), he was the day-to-day manager who devoted thousands of hours of service to Sandman and Wyotex Offshore, LLC ("Wyotex"), the assignee of one of Sandman's oil and gas leases. Then, in March 2026, Sandman's members removed him as a co-manager and expelled him as member the next month—all without notice or an opportunity to be heard.

¶3 In response, Sandman's Amended Counterclaims ("Countercl.") plead that Hinds's removal and expulsion were prompted by his self-dealing and conflicting business activity. Specifically, Sandman pleads, Hinds recommended that Wyotex hire Hinds's own drilling-services company, EnviroCore, without disclosing his ownership interest. According to Sandman's counterclaims, Sandman had a Purchase Sale Agreement with Wyotex ("Wyotex Contract") requiring Wyotex to pay \$1,000,000 on October 16, 2025. Hinds and EnviroCore then acted to prioritize Wyotex's payments to EnviroCore over Wyotex's lease payments to Sandman, causing delay in funds owed under the Wyotex Contract. Sandman also accuses Hinds of making unilateral property and tax filings without obtaining proper approval.

¶4 Hinds pleads that Sandman's members have known all along about his ownership of EnviroCore, and that its services were not in conflict with Sandman's business in any event. He, in turn, accuses Wegner of self-dealing management,

alleging that Wegner was motivated by personal animus, retaliation, and his own economic gain to orchestrate the written consents for Hinds's removal and expulsion.

¶5 All parties filed motions to dismiss under Texas Rule of Civil Procedure 91a. The court partially granted Defendants' motions in its recent memorandum opinion. *Hinds*, 2026 Tex. Bus. 63. Hinds now moves to dismiss Sandman's constructive-trust, fraud-by-nondisclosure, and conspiracy counterclaims and Wegner's fraud counterclaims. EnviroCore moves to dismiss all claims Sandman asserted against it. Both movants also lodge special exceptions as an alternative request for relief.

¶6 At least three days before the hearing on the Rule 91a motions, Wegner nonsuited his counterclaims and Sandman amended its counterclaims to add additional facts responsive to the arguments presented in the motions. Hinds agrees that Sandman's amendments to the constructive-trust claim adequately remedied the deficiencies argued in his motions. *See* TEX. R. CIV. P. 91a.5. The court now considers the remaining issues presented in the pending motions.

LEGAL STANDARD

¶7 A motion under Texas Rule of Civil Procedure 91a seeks dismissal of a claim "on the grounds that it has no basis in law or fact." TEX. R. CIV. P. 91a.1. A claim lacks basis in law "if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought." *Id.* A

claim lacks basis in fact “if no reasonable person could believe the facts pleaded.”

Id.

¶8 To survive dismissal, the plaintiff must satisfy Texas’s notice-pleading rules. *In re First Rsrv. Mgmt., L.P.*, 671 S.W.3d 653, 662–63 (Tex. 2023). Beyond giving fair notice of the claims themselves, the petition must contain “the essential factual allegations supporting those claims, which must be sufficient to support a judgment if ultimately proven.” *Id.* at 663 (internal quotations omitted).

¶9 The court may not consider evidence to decide a Rule 91a motion, basing its ruling “solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.” TEX. R. CIV. P. 91a.6. Rule 59 permits that “written instruments, constituting, in whole or in part, the claim sued on” may be “made a part of the pleadings by copies thereof, or the originals, being attached or filed and referred to as such.” *Id.* R. 59.

ANALYSIS

I. As pleaded, Sandman’s fraud-by-nondisclosure claim does not lack basis in law or fact.

¶10 The court denies Hinds’s motion to dismiss the counterclaim for fraud because Sandman has adequately pleaded the factual allegations to support its cause of action.

¶11 “To establish fraud by non-disclosure, the 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).

¶12 At this stage, Hinds does not challenge the existence of a duty to disclose. He argues the pleading is deficient as to two elements: Sandman’s reliance and a causal connection.

A. Reliance is adequately alleged at this stage based on pleaded inaction.

¶13 Hinds recognizes that “[i]naction can constitute reliance.” Mot. at 8 (citing *White v. Zhou Pei*, 452 S.W.3d 527, 539 (Tex. App.—Houston [14th Dist.] 2014, no pet.)). An allegedly defrauded claimant can prove reliance by showing forbearance; in other words, based on the nondisclosure, the claimant abstained or refrained from acting. *White*, 452 S.W.3d at 539 (“Common law fraud damages can be established by evidence that fraudulent conduct induced a plaintiff’s inaction and that the plaintiff was then injured by the failure to act.”); see *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 928 (Tex. 2010) (“the form of reliance—action or inaction—is not critical to the actionability of fraud.”). Here, Hinds argues that Sandman’s pleading fails to show reliance because it does not identify an act or omission actually induced by the nondisclosure. Mot. at 9.

¶14 The counterclaims allege that Hinds was EnviroCore’s owner, president, and director while serving as Sandman’s director. Countercl. ¶¶ 23–25, Ex. 10. The fraudulent-nondisclosure timeline, accepting all reasonable inferences in Sandman’s favor, is as follows:

- **June 2025:** Hinds, acting as Sandman’s manager, recommended that Wyotex accept EnviroCore’s bid for drilling services without disclosing he owned EnviroCore. *Id.* ¶ 23. Wyotex accepted the bid of \$777,204, which was the lowest received. *Id.* ¶¶ 23–24.
- **August 2025:** EnviroCore, through Hinds, invoiced Wyotex for the drilling services. *Id.* ¶ 26. Wyotex informed Hinds that paying the invoice would hinder his ability to pay the upcoming \$1 million lease payment to Sandman. *Id.* ¶ 29. Even so, following discussions with EnviroCore, Wyotex paid the \$777,204 owed. *Id.* ¶¶ 26, 30.
- **October 2025:** Wyotex’s lease payment to Sandman was due under the Wyotex Contract. *Id.* ¶¶ 28–30, 101; Ex. 5. Before the due date, Wyotex made a partial payment but sought to defer the remainder, citing the “\$777k for the soil boring,” already paid to EnviroCore as justification for delay. *Id.* ¶ 30. Hinds granted Wyotex the deferral despite not obtaining his co-manager’s or other members’ approval. *Id.* ¶¶ 28–33, Ex. 6.
- **November 2025:** Sandman’s members circulated a request that members disclose any consulting arrangements with Wyotex. *Id.* ¶ 27. Hinds made no disclosures in response. *Id.*
- **December 2025:** Wyotex told Wegner about the deferred-payment plan. He objected and insisted on payment, informing Wyotex that Hinds was a minority member who could not unilaterally defer the due date. *Id.* ¶ 34. Days later, Wyotex paid Sandman the balance owed consistent with the deferral plan it had made with Hinds, while withholding Hinds’s portion of the payment until the following month. *Id.* ¶ 35, Exs. 12–13.

¶15 Sandman pleads that Hinds’s nondisclosures included (1) his conflicting EnviroCore interest; and (2) his deferred-payment discussion with Wyotex. *Id.* ¶¶ 78–79. Sandman alleges that, if Wegner had known the truth, he would have

exercised his managerial authority under the Sandman Company Agreement to oppose any modification to the Wyotex Contract’s payment terms and insist upon timely payment. *Id.* ¶¶ 80–82. Instead, lacking knowledge of Hinds’s self-interested dealings with Wyotex, Wegner failed to act. Sandman points out that its Agreement permits a manager to act individually, if delegated authority by the managers, and to act through written consent of a majority of the members. Pet. Ex. A § 5.1 (citing Ex. A §§ 5.4, 5.8).²

¶16 Whether the pleadings entitle the relief sought under Rule 91a “is a legal question . . . based on the allegations in the [pleading], which we must accept as true.” *In re Home Depot U.S.A., Inc.*, 735 S.W.3d 719, 721 (Tex. 2026). Sandman’s pleaded facts, taken as true, allege that it refrained from acting through Wegner based on Hinds’s nondisclosures. Sandman adequately pleads facts sufficient to support an inference concerning its inaction-based fraud theory. *See Grant Thornton LLP*, 314 S.W.3d at 928. Because nothing in Sandman’s “pleading itself triggers a clear legal bar to [its] claims, the claims cannot be said to lack a basis in law.” *See Davis v. Homeowners of Am. Ins. Co.*, 700 S.W.3d 837, 847 (Tex. App.—Dallas 2023, no pet.).

² As with previous motions to dismiss, the court considers the Sandman Company Agreement as part of the pleadings under Texas Rules of Civil Procedure 91a and 59. Hinds attaches the Agreement to his petition, Sandman’s counterclaims sue on the Agreement, and Hinds and EnviroCore rely on and cite to the Agreement in their briefing. *See Hensarling v. Carmichael*, No. 25-BC04B-0014, 2025 Tex. Bus. 50, ¶¶ 11–12, 2025 WL 3688733, at *2 (4th Div.).

B. The pleaded facts support a plausible inference of causation.

¶17 Hinds argues Sandman has not adequately pleaded causation due to a “temporal impossibility.” Under the counterclaims, the Wyotex payment’s due date and Hinds’s deferral agreement occurred in October 2025, before Hinds allegedly failed to truthfully answer Sandman’s “Consulting Disclosure Request” the following month. Countercl. ¶¶ 27, 29–30. Hinds also challenges whether the pleadings show Wyotex would have been “able or willing to pay sooner” than the deferral date.

¶18 Hinds’s theory avoids relevant facts pleaded by Sandman. The counterclaim alleges Hinds failed to disclose his conflicting EnviroCore ownership **in June 2025** when recommending Sandman and Wyotex enter into business with EnviroCore, and that Hinds again failed to disclose the conflict and the payment-deferral discussions occurring with Wyotex in October 2025. *Id.* ¶¶ 23–24, 30–33. The counterclaim contains facts supporting Sandman’s theory that Wegner, acting on its behalf, would have exercised managerial authority to get involved in the Wyotex dealings if he had known his co-manager negotiating with Wyotex was self-interested in receiving the EnviroCore payment ahead of the Sandman lease payment. *Id.* ¶ 82. As support, Sandman points to Wegner’s insistence on Wyotex’s immediate payment upon learning about the deferral plan—and Wyotex’s prompt payment in response. *Id.* Exs. 12–13.

¶19 Unlike the question of duty—which this court recently noted is a matter-of-law determination that can readily be addressed at the pleading stage³—causation of a tort injury is typically a question of fact. *Rogers v. Zanetti*, 518 S.W.3d 394, 401 (Tex. 2017) (noting court may decide causation as a legal question only “when reasonable minds could not arrive at a different conclusion.”). In this particular case, Sandman’s pleaded facts present an “unresolved . . . inquiry,” as to causation rather than “a clear legal bar apparent from the pleadings.” See *In re Katten Muchin Rosenman LLP*, No. 05-25-01525-CV, 2026 WL 177544, at *1 (Tex. App.—Dallas Jan. 22, 2026, no pet.). At this stage, reading within the counterclaim’s four corners, the court is unable to resolve the disputed questions of whether Sandman is correct that (1) Wegner would have acted to demand payment sooner if he had known the allegedly concealed facts or that (2) Wyotex could have or would have paid once Wegner insisted on enforcing the Contract’s deadline.

¶20 A viable, proven fraud claim may entitle the claimant to actual and consequential damages. *Baylor Univ. v. Sonnichsen*, 221 S.W.3d 632, 636 (Tex. 2007); see also *Formosa Plastics Corp. USA v. Presidio Eng’rs & Contractors, Inc.*, 960 S.W.2d 41, 49 n.1 (Tex. 1998). Sandman pleads “deferred-payment damages” and alleges that it was injured by losing the timely use of funds owed during the two-month period the delayed \$450,000 was unpaid, along with “other damages in an

³ *Hinds*, 2026 Tex. Bus. 63, ¶ 11 (citing *Nat’l Plan Adm’rs, Inc. v. Nat’l Health Ins. Co.*, 235 S.W.3d 695, 704 (Tex. 2007)).

amount to be determined at trial.” Countercl. ¶¶ 29, 55, 83. While Sandman has not identified with particularity its damages theory as to harm allegedly caused by the missing funds during that time period, nothing about these pleaded facts is implausible or forecloses recovery as a matter of law. *See* TEX. R. CIV. P. 91a.1.

¶21 Hinds seeks in the alternative for Sandman to replead to identify its “measure of damages, the time period, or how the alleged harm is calculated.” Mot. at 12. Sandman’s precise damages model, the amount and timing of pecuniary harm caused by the allegedly delayed payment, and specificity as to any losses caused are all appropriate inquiries during the discovery stage of this case rather than grounds for 91a dismissal or special exceptions. *See, e.g., Tipton v. State ex rel. Lottery Comm’n*, No. 03-21-00133-CV, 2022 WL 3722389, at *4 (Tex. App.—Austin Aug. 30, 2022, no pet.) (affirming denial of Rule 91a dismissal because the “Texas Rules of Civil Procedure require a plaintiff to plead whether its damage request will fit into one of five defined dollar amounts,” rather than plead damages with specificity) (citing TEX. R. CIV. P. 47). The court similarly declines Hinds’s request to order Sandman to replead to describe **how** action taken by Wegner would have caused Wyotex to pay sooner, finding that topic appropriate for discovery. The court concludes Sandman’s counterclaim, as amended in response to Hinds’s motion, pleads causation of an injury with sufficient plausibility and specificity to clear the Rule 91a and fair-notice hurdles.

¶22 As to the fraud-by-nondisclosure claim, Hinds’s motion is denied.

II. As pleaded, Sandman’s tortious-interference claim does not lack basis in law or fact.

¶23 EnviroCore also moves for dismissal of Sandman’s claim for tortious interference with an existing contract.

¶24 “The elements of a claim for tortious interference with an existing contract are (1) the existence of a contract subject to interference; (2) willful and intentional interference; (3) the willful and intentional interference caused damage; and (4) actual damage or loss occurred.” *Inwood Nat’l Bank v. Fagin*, 706 S.W.3d 342, 347 (Tex. 2025) (internal quotations omitted).

¶25 Sandman claims EnviroCore tortiously interfered with its Wyotex Contract, causing Wyotex to fail to deliver payment by the Contract’s deadline. Countercl. ¶¶ 101–03. EnviroCore moves for dismissal, arguing Sandman’s counterclaim is deficient as to the elements of knowing inducement, causation, and actual loss.

A. Sandman adequately pleads knowing inducement.

¶26 The Texas Supreme Court has held that a tortious-interference claim requires showing the defendant was more than a “willing participant” in a breach; “knowing inducement or other intentional interference” is required. *Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 927 (Tex. 1993). A showing that a third party “breached its obligations of its own volition,” without more, will not support a tortious-interference claim if there is no evidence the defendant “persuaded anyone to

breach.” See *John Paul Mitchell Sys. v. Randalls Food Mkts., Inc.*, 17 S.W.3d 721, 731 (Tex. App.—Austin 2000, pet. denied).

¶27 Sandman pleads facts showing that EnviroCore was “[a]cting through Hinds,” who knew of Wyotex’s upcoming contractual duty to pay Sandman, bid on the drilling work at over \$700,000, “at a price not commensurate with the work,” and then invoiced Wyotex for that amount with the intent for Wyotex to prioritize payments to itself over Sandman. Countercl. ¶¶ 99–103, Exs. 5, 8, 11, 13. EnviroCore does not contest that Hinds had knowledge of the Wyotex Contract and its deadline. Taking Sandman’s pleading as true, Wyotex informed Hinds “before [it] paid the \$777k core boring invoice” that “the payment of over \$700k would affect [Wyotex’s] ability to pay the remaining \$1.0MM due for the lease pursuant to the terms of the [Wyotex Contract].” *Id.* Exs. 12–13. Within several days of receiving this information, EnviroCore induced Wyotex to pay the \$777,204 and then, weeks later through Hinds, “proposed” a partial deferral plan for the \$1 million lease payment owed to Sandman. *Id.*

¶28 In *Browning-Ferris*, the Texas Supreme Court held the evidence showed nothing more than a third party’s cancellation of the plaintiff’s contract after “some contact” with its competitor, the defendant, but that the record lacked evidence the defendant took any “wilful act” to influence the third party. 865 S.W.2d at 927. EnviroCore relies on cases like *Browning-Ferris* and *John Paul Mitchell* that were decided after a jury trial on a fully developed record, while Sandman has not yet had

opportunity for discovery concerning EnviroCore’s role. Even so, Sandman points to specific communications with Wyotex that it attributes to EnviroCore, and it pleads that those communications induced Wyotex’s failure to pay.

¶29 EnviroCore does not argue that Sandman’s pleading fails to allege a breach by Wyotex. While EnviroCore raises questions concerning whether Hinds was operating in his capacity as its president or as Sandman’s manager during these communications, the court cannot conclude that the counterclaim’s allegations on this point foreclose recovery as a matter of law—as it must to dismiss this claim. *See In re Shire PLC*, 633 S.W.3d 1, 21 (Tex. App.—Texarkana 2021, no pet.) (“if the [movant] cannot demonstrate that the [claimant’s] recovery . . . [is] foreclosed as a matter of law, then it may still move for summary judgment, but it is not entitled to dismissal under Rule 91a.”).

¶30 The court is not persuaded by EnviroCore’s argument that “chronology defeats causation.” Reply at 10. It is true that “every EnviroCore act the pleading identifies predates the obligation whose breach it allegedly induced.” *Id.* But an act of interference necessarily occurs **before** the breach, not afterwards, to influence the breach. As outlined above, Sandman adequately alleges facts showing EnviroCore knew of the Wyotex obligation during EnviroCore’s pleaded acts taken in June through October 2025—before Wyotex’s payment became due in October 2025. Countercl. ¶¶ 29–33. The chronology here works in Sandman’s favor, not EnviroCore’s.

B. Causation and actual loss are adequately pleaded.

¶31 As with the nondisclosure claim, Sandman pleads that its failure to timely receive the Wyotex payment caused it injury in the form of “deferred-payment damages.” Countercl. ¶ 55. For the reasons described in Section I(B), the court concludes Sandman’s factual allegations as to causation and harm are sufficient at the pleading stage of the case.

¶32 In sum, EnviroCore’s motion presents no legal barriers to Sandman’s pleaded tortious-interference theory, so the motion must be denied. The court further concludes that Sandman’s amendments adequately address any details reasonably sought by EnviroCore’s special exceptions, overruling those objections.

III. As pleaded, Sandman’s civil-conspiracy claim does not lack basis in law or fact.

¶33 Both EnviroCore and Hinds move for dismissal of the conspiracy counterclaim based on the theory that they are not two separate persons as required by Texas law for such a claim.⁴

¶34 Civil conspiracy claim requires proof of: “(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages” caused by a tortious act

⁴ Hinds moves for dismissal of the claim only to the extent it is predicated on the fraud-by-nondisclosure claim against him.

committed pursuant to the conspiracy. *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 141 (Tex. 2019).

¶35 The movants cite the general rule that an entity cannot conspire with itself through its own officers or management when they are acting within the scope of their agency relationship. See *Bayou Terrace Inv. Corp. v. Lyles*, 881 S.W.2d 810, 815 (Tex. App.—Houston [1st Dist.] 1994, no pet.). “But this principle is inapplicable where there is evidence that the agent or employee is simultaneously involved with another company or entity with conflicting interests.” *Id.* As applied to this suit as pleaded by Sandman, the exception swallows the rule.

¶36 The rationale against recognizing an intracorporate conspiracy is that the conduct of an entity’s agent is legally treated as the conduct of the entity itself. *Fojtik v. First Nat’l Bank of Beeville*, 752 S.W.2d 669, 673 (Tex. App.—Corpus Christi-Edinburg 1988), *writ denied*, 775 S.W.2d 632 (Tex. 1989). In *Fojtik*, for example, the plaintiff alleged that a bank director conspired with the bank and its president to force him out of business. *Id.* at 672. But the director’s liability was not excused by the intracorporate-conspiracy doctrine because he also owned an equipment dealership that competed with plaintiff’s business, making it “conceivable” that the director acted not as an agent of the bank, but in his distinct capacity as an independent dealer. *Id.*

¶37 In fact, the movants recognize this exception as applying to a conspirator who acts in an independent capacity rather than solely as the entity’s representative.

Reply at 11 (citing *Fojtik*, 752 S.W.2d at 673; *Crouch v. Trinque*, 262 S.W.3d 417, 427 (Tex. App.—Eastland 2008, pet. denied)).

¶38 And Sandman seeks to fit within the exception, pleading that Hinds and EnviroCore are co-conspirators and that Hinds acted in his individual capacity as a Sandman manager, while EnviroCore acted through Hinds in its independent corporate capacity. Countercl. ¶¶ 85–86. Hinds and EnviroCore identify nothing in the pleadings that preclude Sandman’s theory here. While Sandman alleges Hinds was EnviroCore’s sole owner and president, Hinds’s ownership or leadership alone do not negate EnviroCore’s independent existence. In fact, Hinds concedes he “does not ask the Court to disregard EnviroCore’s separate legal identity.” Mot. at 14. The movants point out that the bank in *Fojtik* had other decisionmakers beyond the conspirator, but—assuming the outcome in *Fojtik* would have been different if the bank comprised **only** the conspirator⁵—the pleadings here do not conclusively establish that EnviroCore lacked decisionmakers beyond Hinds or that their economic interests are otherwise wholly aligned.

¶39 In sum, the movants identify no legal or factual impediment within the pleadings alone that foreclose Sandman’s theory that Hinds, acting as Sandman’s

⁵ For example, Texas intermediate appellate courts are divided on whether a corporation can conspire with its wholly owned subsidiary. *See Am. Akaushi Ass’n, Inc. v. Twinwood Cattle Co., Inc.*, No. 14-21-00701-CV, 2025 WL 450750, at *32 (Tex. App.—Houston [14th Dist.] Feb. 11, 2025, pet. denied), *reh’g filed*, (Tex. July 29, 2026).

manager, conspired with EnviroCore, so the motion on these grounds must be denied.

IV. As pleaded, Sandman’s knowing-participation claim does not lack basis in law or fact.

¶40 EnviroCore moves for dismissal of Sandman’s claim that EnviroCore knowingly participated in Hinds’s alleged breach of his fiduciary duties to Sandman.

¶41 “The elements of a knowing-participation claim are: (1) the existence of a fiduciary duty owed by a third party to the plaintiff; (2) the defendant knew of the fiduciary relationship; and (3) the defendant was aware of his participation in the third party’s breach of its duty.” *Straehla v. AL Glob. Servs., LLC*, 619 S.W.3d 795, 804 (Tex. App.—San Antonio 2020, pet. denied); *see Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 639 (5th Cir. 2007) (applying Texas law). EnviroCore challenges all three elements of the claim.

A. Sandman adequately pleads a fiduciary duty owed by Hinds.

¶42 For the reasons described in its prior memorandum opinion, EnviroCore’s first grounds for dismissal fails. *Hinds*, 2026 Tex. Bus. 63, ¶ 16. As manager, Sandman adequately pleads, Hinds owed a fiduciary duty—albeit limited in scope under the parties’ contract. *See id.* The Sandman Agreement’s exculpatory clause eliminated all fiduciary duties other than those “duties as may be expressly set forth in this Agreement.” Pet. Ex. A § 5.10 Among the expressly carved-out duties were duties not to commit “gross negligence, willful misconduct or breach of this Agreement”

and not to “engage in or possess interests in other oil and gas business ventures conflicting with the interest of the Company, independently or with others.” Pet. Ex. A §§ 5.10–5.11.

¶43 Sandman does not allege Hinds committed gross negligence, but it does allege he engaged in willful misconduct and conflicting business activity in breach of his fiduciary duties to the company. Countercl. ¶¶ 65, 72–73. Sandman pleads facts in support of its theory, describing Hinds’s EnviroCore-related activity that was allegedly self-interested, intentionally harmful to Sandman’s financial health, and thus conflicting with its best interest. *Id.* ¶¶ 23–24, 29–35, 97, Exs. 6, 8–11, 13. EnviroCore’s challenge to the duty element of the claim fails at this stage.

B. Sandman adequately pleads facts to support EnviroCore’s knowledge and awareness.

¶44 “[A]n agent’s knowledge is generally imputed to its principal.” *Grant Thornton*, 314 S.W.3d at 924. Here, based on Hinds’s role as EnviroCore’s president, Sandman pleads that knowledge of his fiduciary duty, and awareness of his breach, was imputed to EnviroCore sufficient to satisfy the second and third prongs of this claim. Countercl. ¶ 97. On reply, EnviroCore recognizes Rule 91a dismissal is not appropriate where the claimant has adequately alleged facts charging the defendant-participant with knowledge acquired by agents acting on its behalf. *See Unimacts Glob., LLC v. Ayr Energy Inc.*, No. 25-BC11A-0083, 2026 Tex. Bus. 31, ¶¶ 14–15, 2025 WL 4737015, at *2–3 (11th Div.). It is true that imputation of knowledge for a

knowing-participation claim creates a mere presumption in favor of the actor’s knowledge—not evidence in support. *LMP Austin English Aire, LLC v. Lafayette English Apartments, LP*, 654 S.W.3d 265, 289 (Tex. App.—Austin 2022), *pet. granted and vacated by agr.*, No. 22-0995, 2024 WL 2871287 (Tex. June 7, 2024). But this suit is not at the evidentiary stage of the proceedings.

¶45 EnviroCore argues the knowing-participation claim fails because EnviroCore was not “distinct” enough from Hinds, its owner and president. Reply at 8. Assuming without deciding that an “indistinctness” argument could ultimately carry the day, EnviroCore identifies nothing in the pleadings that would enable the court to hold as a matter of law that EnviroCore and Hinds were “one person.” *See id.* Again, no party asks to disregard EnviroCore’s corporate status, and movants cite no authority preventing the company from participating in Hinds’s alleged breach simply because he was its owner.

¶46 Under settled Texas law, Sandman’s pleadings adequately allege EnviroCore had knowledge and awareness sufficient to survive Rule 91a’s dismissal mechanism on these two elements. The court also overrules the special exceptions urged in the alternative. Sandman’s pleading amendments, filed in response to the motions, adequately address any deficiencies identified.

V. The court declines to hold that no aiding-and-abetting claim is viable under established Texas law.

¶47 EnviroCore moves for dismissal of Sandman’s aiding and abetting claim, arguing Texas does not recognize an independent aiding and abetting cause of action.

¶48 The Texas Supreme Court has announced that it “has not expressly decided whether Texas recognizes a cause of action for aiding and abetting.” *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 224 (Tex. 2017). If the aiding-and-abetting doctrine is viable in Texas, it is a derivative or vicarious theory of liability. *Nettles v. GTECH Corp.*, 606 S.W.3d 726, 738 (Tex. 2020). Courts applying the aiding-and-abetting cause of action have required the claimant to prove that “(1) the primary actor committed a tort; (2) the defendant had knowledge that the primary actor’s conduct constituted a tort; (3) defendant had intent to assist the primary actor; (4) defendant gave the primary actor assistance or encouragement; and (5) defendant’s conduct was a substantial factor in causing the tort.” *Immobiliere Jeuness Etablissement v. Amegy Bank Nat’l Ass’n*, 525 S.W.3d 875, 882 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (citing *Juhl v. Airington*, 936 S.W.2d 640, 643 (Tex. 1996)).

¶49 This court is bound to follow the Texas Supreme Court, which has also explained that “[a] cause of action has no basis in law under Rule 91a if it is barred by an **established** legal rule and the plaintiff has failed to plead facts demonstrating that the rule does not apply.” *In re First Rsrv. Mgmt., L.P.*, 671 S.W.3d at 661 (emphasis added). Accordingly, a court ruling at the pleadings stage considers whether established legal doctrines, as applied to the case’s pleaded facts, create a

claim with a basis in the law. *See id.*; TEX. R. CIV. P. 91a.1. When analyzing a Rule 91a motion, trial courts often resolve unanswered legal questions, applying the law in new or expanded ways to the pleadings before it. Here, though, EnviroCore’s motion hinges on a discrete legal question that the Texas Supreme Court has expressly answered. *See First United Pentecostal Church of Beaumont*, 514 S.W.3d at 224. The answer is “undecided.”

¶50 EnviroCore cites precedent disposing of a claim for aiding and abetting under Texas Rule of Civil Procedure 166, but none that applies the Rule 91a standard for dismissal. *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corp.*, 2025 Tex. Bus. 9, ¶ 196, 709 S.W.3d 619, 657 (1st Div.) (disposing of aiding-and-abetting claim under Rule 166(g), 166(p)). Given the Court’s pronouncement that the viability of an aiding-and-abetting claim is an open question, this court declines to hold that an established legal rule bars Sandman’s claim at the pleadings stage of this case. EnviroCore’s motion to dismiss Sandman’s aiding-and-abetting claim is denied.

VI. The court declines to render a fee award.

¶51 As with Defendants’ motions, the court exercises its discretion to decline to award attorneys’ fees or costs related to the filing of these motions to dismiss. TEX. R. CIV. P. 91.7; *Sanchez v. Striever*, 614 S.W.3d 233, 247 n.10 (Tex. App.—Houston [14th Dist.] 2020, no pet.) (“any award of fees and costs is discretionary, not mandatory”).

CONCLUSION AND ORDER

For the reasons stated above, the court DENIES Hinds's partial Rule 91a motion to dismiss and OVERRULES his special exceptions filed in the alternative.

The court further DENIES EnviroCore's partial Rule 91a motion to dismiss and OVERRULES its special exceptions filed in the alternative.

SO ORDERED.

A handwritten signature in blue ink, reading "Stacy Rogers Sharp", is written over a horizontal line.

STACY ROGERS SHARP
Judge of the Texas Business
Court, Fourth Division, *sitting
by assignment*

SIGNED ON: September 24, 2026