EFiled: Jun 12 2025 12:51PM EDT
Filing ID 76448959
Case Number 139,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WEIL HOLDINGS II, LLC, a Delaware limited liability company,	:	C.A. No.: 139,2025
	:	Case Below – Court of Chancery of
Plaintiff Below, Appellant,	:	The State of Delaware
	:	C.A. No. 2024-0388-BWD
v.	:	
	:	**Original Version Filed:**
JEFFREY ALEXANDER, DPM,	:	**May 28, 2025**
	:	
Defendant Below, Appellee.	:	**Public Version Filed:** **June 12, 2025**

OPENING BRIEF OF APPELLANT WEIL HOLDINGS II, LLC

HEYMAN ENERIO
GATTUSO & HIRZEL LLP
Kurt M. Heyman (# 3054)
Jamie L. Brown (# 5551)
Elena M. Sassaman (# 7110)
300 Delaware Avenue, Suite 200
Wilmington, DE 19801
(302) 472-7300
Attorneys for Plaintiff-Appellant Weil Holdings II, LLC

OF COUNSEL:

PATZIK, FRANK & SAMOTNY LTD
Jonathan S. Goodman
Alec J. Losh
Elizabeth L. Archerd
200 South Wacker Drive, Suite 2700
Chicago, IL 60606
(312) 551-8300

TABLE OF CONTENTS

NATURE OF PROCEEDINGS 1

SUMMARY OF ARGUMENT 3

STATEMENT OF FACTS 4

A. Factual Background 4

1. The Weil Organization 4

2. Dr. Alexander 5

3. Dr. Alexander Breaches the Noncompete 7

4. The May 2023 Transaction and the LLC Agreement 8

a. Terms of the LLC Agreement and Noncompete 9

b. Negotiation of the LLC Agreement and Noncompete 12

B. Procedural History 13

ARGUMENT 15

I. THE COURT OF CHANCERY ERRED BY INVALIDATING THE NONCOMPETE IN DISREGARD OF DELAWARE'S CONTRACTARIAN POLICY FAVORING ENFORCEMENT OF CONTRACTS. 15

A. Question Presented 15

B. Scope of Review 15

C. Merits of Argument 15

1. Delaware Public Policy Prioritizes Freedom of Contract 16

2. The Noncompete Was Entered Into as Part of a Capital Investment Transaction and Was Not a Standard Post-Employment Restriction 18

II. THE COURT OF CHANCERY ERRED IN GRANTING SUMMARY JUDGMENT BASED ON ITS REASONABLENESS ANALYSIS THAT DEPARTED FROM THE RECORD AND INVOKED SPECULATIVE CONCERNS. 24

A. Question Presented....24

B. Scope of Review 24

C. Merits of Argument....24

1. The Noncompete is Reasonable on its Face Based on the Language of the LLC Agreement and the Record Presented....25

a. The Noncompete is Geographically Reasonable....26

b. The Duration of the Noncompete is Reasonable in Scope 27

2. The Court Improperly Engaged in a Hypothetical and Speculative Inquiry to Invalidate the Noncompete 29

3. At a Minimum, to the Extent There Were Questions of Fact in Dispute, Summary Judgment Was Not Proper....32

III. THE COURT OF CHANCERY ERRED BY REFUSING TO BLUE-PENCIL THE NONCOMPETE DESPITE THE LLC AGREEMENT'S EXPRESS INSTRUCTION TO DO SO. 34

A. Question Presented....34

B. Scope of Review 34

C. Merits of Argument....34

1. The LLC Agreement Expressly Instructs the Court to Reform the Noncompete.....35

2. Delaware Recognizes Blue-Penciling as a Valid Remedy.....35

IV. THE COURT OF CHANCERY ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO COUNT II OF PLAINTIFF'S VERIFIED COMPLAINT (TORTIOUS INTERFERENCE).....39

A. Question Presented.....39

B. Scope of Review.....39

C. Merits of Argument.....39

CONCLUSION.....41

Memorandum Opinion Resolving Cross-Motions for Summary Judgment issued March 4, 2025 by Vice Chancellor Bonnie W. David.....Exhibit A

TABLE OF CITATIONS

Cases

Abry Partners V, L.P. v. F & W Acquisition LLC,
891 A.2d 1032 (Del. Ch. 2006) 17

Albert v. Alex. Brown Mgmt. Servs., Inc.,
2005 WL 2130607 (Del. Ch. Aug. 26, 2005) 39

Ascension Ins. Hldgs., LLC v. Underwood,
2015 WL 356002 (Del. Ch. Jan. 28, 2015).....17, 22

Cantor Fitzgerald, L.P. v. Ainslie,
312 A.3d 674 (Del. 2024) 15, 16, 28

Christine Manor Civic Ass'n v. Gullo,
2007 WL 1074763 (Del. Ch. Mar. 29, 2007) 33

Del. Express Shuttle, Inc. v. Older,
2002 WL 31458243 (Del. Ch. Oct. 23, 2002) 35

DGWL Investment Corp. v. Giannini,
2013 WL 6456242 (Del. Ch. Sept. 19, 2013).....36

DiStefano v. Westminster Club,
2024 WL 807428 (Del. Super. Ct. Feb. 27, 2024) 32

Ebersole v. Lowengrub,
180 A.2d 467 (Del. 1962) 29

Gilbert v. El Paso Co.,
575 A.2d 1131 (Del. 1990) 15, 24, 34

Gildor v. Optical Solutions, Inc.,
2006 WL 4782348 (Del. Ch. June 5, 2006).....37

GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.,
36 A.3d 776 (Del. 2012) 15, 24, 34

Hub Grp., Inc. v. Knoll,
2024 WL 3453863 (Del. Ch. July 18, 2024) .....*passim*

Knowles-Zeswitz Music, Inc. v. Cara,
260 A.2d 171 (Del. Ch. 1969) 36

Kodiak Bldg. Ptnrs., LLC v. Adams,
2022 WL 5240507 (Del. Ch. Oct. 6, 2022) 18, 25

Lavin v. West Corp.,
2017 WL 6728702 (Del. Ch. Dec. 29, 2017).....28

Lyons Ins. Agency, Inc. v. Wilson,
2018 WL 4677606 (Del. Ch. Sept. 28, 2018).....25

Nemec v. Shrader,
991 A.2d 1120 (Del. 2010).....17

New Enter. Associates 14, L.P. v. Rich,
295 A.3d 520 (Del. Ch. 2023) 17

Norton Petroleum Corp. v. Cameron,
1998 WL 118198 (Del. Ch. Mar. 5, 1998) 36

R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC,
2008 WL 3846318 (Del. Ch. Aug. 19, 2008).....22

Revolution Retail Sys., LLC v. Sentinel Techs., Inc.,
2015 WL 6611601 (Del. Ch. Oct. 30, 2015) 18

Sunder Energy, LLC v. Jackson,
305 A.3d 723 (Del. Ch. 2023) 25

Sunder Energy, LLC v. Jackson,
332 A.3d 472 (Del. 2024).....26, 34, 36, 37

Symbiont.io, Inc. v. Ipreo Holdings, LLC,
2021 WL 3575709 (Del. Ch. Aug. 13, 2021).....37

Statutes

6 *Del. C.* § 18-1101(b) 21

NATURE OF PROCEEDINGS

This dispute arises out of Plaintiff-Below/Appellant Weil Holdings II, LLC's ("Plaintiff" or "Weil Holdings") desire to protect its business interests and enforce a restrictive covenant (the "Noncompete") set out in the Limited Liability Company Agreement of Weil Holdings II, LLC, dated May 26, 2023 (the "LLC Agreement"), to which Defendant-Below/Appellee Dr. Jeffery Alexander ("Defendant" or "Dr. Alexander") agreed as a condition of obtaining a membership interest in Weil Holdings—an interest that he contends is worth approximately $[redacted]. Weil Holdings commenced this action in April 2024, seeking injunctive and declaratory relief based on Dr. Alexander's sustained breach of the Noncompete following his dismissal from one of Weil Holdings' affiliated practices.

Dr. Alexander does not dispute that he violated the express terms of the Noncompete. Nevertheless, by Memorandum Opinion dated March 4, 2025, the Court of Chancery granted summary judgment in Dr. Alexander's favor and denied Weil Holdings' cross-motion, erroneously holding that the Noncompete was facially unenforceable as a matter of law based on its geographic scope and duration. Compounding this error, the trial court expressly entered this judgment on the basis of putative and hypothetical "facts" that were not in the record—a record which itself was undeveloped due to an early stay of discovery. Finally, despite the LLC Agreement's express instruction for judicial reformation and Delaware caselaw

enforcing such terms, the trial court declined to blue-pencil the Noncompete. As a net result of these rulings, Dr. Alexander maintains his ownership interest in Weil Holdings while simultaneously being free to compete with it in undisputed violation of his contractual obligations under the Noncompete. He cannot have it both ways. This was error and inequitable to Weil Holdings and its other members. The lower court's holding was likewise contrary to Delaware's longstanding policy favoring enforcement of contracts.

Plaintiff Weil Holdings timely filed its notice of appeal. This is Weil Holding's Opening Brief on appeal.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred by invalidating the Noncompete, to which Dr. Alexander agreed in connection with acquiring a membership interest in Weil Holdings, in contravention of Delaware's public policy favoring freedom of contract.

2. The Court of Chancery erred by resolving disputed questions of fact through summary judgment on the basis of hypothetical "facts" not in the record, and without a fully developed factual record on the issues as to which judgment was granted.

3. After finding the Noncompete facially unenforceable, the Court of Chancery erred by failing to blue-pencil the Noncompete, despite the LLC Agreement's express instructions to the contrary.

4. The Court of Chancery erred in granting summary judgment in favor of Dr. Alexander with respect to Count II of the Complaint (tortious interference), despite it being a valid alternative theory of liability.

STATEMENT OF FACTS

A. Factual Background

1. The Weil Organization[1]

Weil Holdings is a Delaware limited liability company governed by the Limited Liability Company Agreement of Weil Holdings II, LLC, dated May 26, 2023. A0028 at ¶ 9. Weil Holdings is a holding company that permits its physician members to share in the profits derived from their clinical practices; it owns PNC Podiatry Holdings, LLC ("Balance Holdco"), which, in turn, owns Weil Foot & Ankle Management, LLC ("Weil Management"). A0462-63; A0028 at ¶ 9, A0031-32 at ¶¶ 21, 24; A0273 at Resp. No. 2.

Weil Management provides a range of management, advisory, and back-office services to Weil Foot and Ankle Institute, LLC ("WFAI"), as well as medical offices in Michigan and Virginia: Foot and Ankle Specialists of West Michigan, PLLC and 1 Foot 2 Foot Centre for Foot and Ankle Care, P.C. . A0030 at ¶ 16; A0280-81 at Resp. No. 10, A0291-93 at Resp. No. 18. Weil Management generates returns for Weil Holdings' members in connection with the services rendered at its medical offices—services that Dr. Alexander previously provided to his patients at WFAI. A0463; A0283 at Resp. No. 13 ("[I]f WFAI performance improves, Weil

[1] Weil Holdings, Weil Management, WFAI and Balance Holdco are collectively referenced herein as the "Weil Organization."

Management's management fee increases[,]" and the value of Weil Holdings increases.). Accordingly, the value of Weil Holdings is directly tied to the profitability of WFAI and the other practices it manages.

On an individual scale, Weil Holdings' members realize additional personal benefits as a result of Weil Management's managerial services, including its financial investments, procurement of first-class facilities, the recruitment of talented staff, targeted advertising, and provision of resources, which make WFAI and related medical offices successful and Weil Holdings profitable. A0463-64; A0031-33 at ¶¶ 19, 26, 28, A0044 at ¶ 77; A0288-89 at Resp. No. 16.

WFAI is a highly successful, well-established, and internationally renowned podiatry practice, specializing in foot and ankle surgery. A0029-30 at ¶ 13. Through the efforts provided by Weil Management, WFAI's success has ballooned, allowing it to build a team of talented podiatrists, surgeons and support staff. A0031 at ¶ 19. As a result, WFAI consistently provides quality care and treatment to its patients and has developed an "unparalleled reputation in the field of podiatry and foot and ankle surgery." *Id.*

2. Dr. Alexander

Dr. Alexander is doctor of podiatric medicine, specializing in foot and ankle surgery. A0256 at ¶ 4. Though he has been practicing in the Chicagoland area since 2004, he began working at WFAI in July 2014 and worked there until his termination

in August 2023. A0257 at ¶¶ 8-9. While practicing at WFAI, Dr. Alexander primarily treated patients at WFAI's Oak Park and Glenview, Illinois offices (the "Oak Park Office" and "Glenview Office," respectively). A0257 at ¶ 10.

During his tenure at WFAI, Dr. Alexander realized significant benefits from Weil Management's investments in WFAI, both professionally as a podiatrist and financially as an investor and Member of Weil Holdings. A0032 at ¶ 26. The Weil Organization afforded Dr. Alexander access to its stellar reputation, an "innovative professional environment, and its robust, complex slate of medical service offerings, all of which allowed him to grow his podiatric practice and increase the profitability of that practice." A0033 at ¶ 28.

Dr. Alexander is a sophisticated investor. He chose to invest in, and become a partial owner of, Weil Holdings. A0563-79. In connection with the LLC Agreement's execution, he represented that he was an accredited investor capable of evaluating the terms of his investment in Weil Holdings. A0055 at § 2.5(b) ("Such Member is an 'accredited investor' within the meaning of Rule 501 . . . ."); A0055 at § 2.5(d) ("Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto.")).

3. Dr. Alexander Breaches the Noncompete

On August 17, 2023, WFAI terminated Dr. Alexander's employment for cause. A0037 at ¶ 40; A0257 at ¶ 9. Immediately thereafter, he began negotiating the terms of employment with Lakeview Health, LLC ("Lakeview") in Racine, Wisconsin—within the Restricted Territory—less than 15 miles away from WFAI's Kenosha office. A0038 at ¶¶ 44-46; A0259 at ¶¶ 19-20. In brazen breach of the Noncompete, in February 2024, he began treating patients for Lakeview, until he was terminated by Lakeview in mid-June 2024. A0479, A0232; A0259-60 at ¶ 22; A0743.

Dr. Alexander is now employed by Northern Illinois Foot & Ankle Specialists ("NIFAS"), a podiatry group and one of WFAI's largest competitors. A0512-13 at ¶ 10. NIFAS operates sixteen offices in the Chicagoland area, including the Fox Lake and Sycamore offices where Dr. Alexander practices. A0544-46, A0512-23 at ¶ 10. Although it operates several offices within the restricted territory at issue, including an office 6.8 miles from Dr. Alexander's former WFAI Primary Practice Sites in Oak Park and Glenview, respectively, A0512-23 at ¶ 10; A0754, Dr. Alexander's current practice sites with NIFAS are outside of the Noncompete's restricted territory. A0367. Accordingly, Weil Holdings has not sought to stop Dr. Alexander from practicing at NIFAS.

4. The May 2023 Transaction and the LLC Agreement

Prior to May 2023, WFAI's physicians, including Dr. Alexander, held indirect ownership interests in an entity called Weil Foot & Ankle Holdings, LLC ("Weil Holdco I"), which served as the holding company that owned 100% of Weil Management. A0030 at ¶ 17. In May 2023, Balance Holdco, a holding company for PNC Management, LLC doing business as Balance Health ("Balance Health"), acquired Weil Management, and as part of that transaction, Weil Holdco I was reorganized into Weil Holdings. A0031 at ¶¶ 21-22; A0259 at ¶ 17.

The reorganization was attractive to physicians like Dr. Alexander because it "yielded greater opportunit[ies] for increased profitability of the underlying businesses," like WFAI, which in turn, generated higher returns on the physician members' investments, including "the ability to leverage best practices across a larger organization resulting in improved operations across the podiatry offices and thus greater access and better service for [their] patients." A0508 at ¶ 3.

Dr. Alexander became a Member of Weil Holdings by contributing his indirect ownership interest in Weil Holdco I in exchange for Capital Units issued under the LLC Agreement. A0032 at ¶¶ 23-24. As a result, Dr. Alexander holds an equity interest in the Weil Organization through his ownership of [redacted] of Weil Holdings' membership units—an interest he claimed was worth $[redacted] in 2024. A0258 at ¶ 16; A0032 at ¶ 25.

a. Terms of the LLC Agreement and Noncompete

Governed by Delaware law, the LLC Agreement includes restrictive covenants. A0055-57 at § 2.6. Relevant here is the Noncompete, which prohibits Unitholders (including Dr. Alexander) from competing with Weil Holdings for so long as they own units and two years thereafter:

> (a) For so long as a Unitholder holds, directly or indirectly, any Units and for a period of two (2) years thereafter (the "Restricted Period"), such Unitholder shall not . . . directly or indirectly, (i) engage in, or assist others in engaging in, the Restricted Business within the Restricted Territory, (ii) have an interest in any Person that engages in the Restricted Business anywhere in the Restricted Territory in any capacity whatsoever, including as a partner, member, stockholder, manager, director, officer, employee, consultant, principal, agent or trustee . . . or (iii) cause, induce or encourage any actual or prospective patient, client, customer, supplier, vendor, referral source, business partner, service provider, consultant, lender, investor, landlord, agent, independent contractor, licensor or licensee of the business of any of the Company, the Company Entities, the Affiliated Practices, PNC Management, PNC Managed Practices, and their respective Affiliates (collectively and individually, the "Company Group"), or any other Person who has a business relationship with the business of any member of the Company Group, or to terminate or modify any such Person's relationship with the business of any member of the Company Group in a manner that is adverse to any member of the Company Group . . . .

A0055-56 at § 2.6(a) (emphasis removed).

The Restricted Period ensures that the Noncompete's duration extends so long as a Member retains an interest in Weil Holdings, "and for a period of two (2) years after." *Id.* Instead of requiring a mandatory redemption of a physician-member's

ownership in Balance Health upon termination of employment, Members were aware that they would be permitted to retain their membership interests for the duration of the investment, or "resell their membership to one another or back to Balance Health upon consent." A0510-12 at ¶¶ 7-8; A0564-79. In either case, the terms of the Noncompete would remain in place for an additional two years. *See* A0055 at § 2.6(a) ("For so long as a Unitholder holds, directly or indirectly, any Units and for a period of two (2) years thereafter . . . .").

The LLC Agreement further defines "Affiliated Practice," "Restricted Business," "Restricted Territory," and "Primary Practice Site," and when read in conjunction with one another, the terms limit the scope of the Noncompete by establishing a restricted territory delineated by affiliated entities and the types of services provided:

> "Affiliated Practice" means (i) any entity that provides podiatry or other healthcare services that has entered into a management or administrative services agreement with Weil Management, which podiatric entities include, without limitation, Weil Foot and Ankle Institute, LLC, an Illinois limited liability company, Foot & Ankle Specialists of West Michigan, PLLC, a Michigan professional limited liability company and 1 Foot 2 Foot Centre for Foot and Ankle Care, P.C., a Virginia professional service corporation, and (ii) Infinity Vascular Institute, S.C., an Illinois medical corporation.
>
> "Restricted Business" means the business of one or more of the following: providing podiatric services, providing orthopedic services, providing wound care services, and providing and arranging non-clinical management, administrative, advisory, and back-office

> services to healthcare providers who provide podiatric services, orthopedic services, and/or wound care services.
>
> "Restricted Territory" means (a) with respect to the practice of podiatric medicine or any other medicine by . . . Jeffery Alexander, DPM . . . a radius of 25 miles from [Dr. Alexander's] Primary Practice Site, and 15 miles from any other practice site of the Affiliated Practices . . . .
>
> "Primary Practice Site" means, with respect to a Member who is a podiatrist, any site where, in the aggregate, at least 20% of such Member's office time has been spent practicing podiatry or otherwise performing podiatric services to patients, or if such Member's practice schedule is such that such Member is not in any site where, in the aggregate, at least (20%) of such Member's office time has been spent practicing podiatry or otherwise performing podiatric services to patients, then the two (2) sites where such Member spends the most office time.

A0090, A0093.

The LLC Agreement also includes a provision through which the parties contemplated and accounted for the possibility that the Noncompete's restrictions were called into question. Specifically, the LLC Agreement instructs a reviewing court to blue-pencil the Noncompete should it find any portion of the Noncompete overly broad or unenforceable:

> In the event that any covenant contained in this Section 2.6 is ever adjudicated to exceed the temporal, geographic or other limitations permitted by applicable law in any jurisdiction, ***then any court is expressly empowered and instructed to reform such covenant***, and such covenant will be deemed reformed, in such jurisdiction to reflect the maximum temporal, geographic, product or other limitations permitted by applicable law. The covenants and other provisions contained in this Section 2.6 are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or

> provision as written will not invalidate or render unenforceable the remaining covenants or provisions of this Section 2.6, and any such invalidity or unenforceability in any jurisdiction will not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

A0056 at § 2.6(f) (emphasis added).

b. Negotiation of the LLC Agreement and Noncompete

Prior to its execution, the members reviewed drafts of the LLC Agreement and were permitted to provide comments and negotiate its terms. A0509 at ¶¶ 4-5, A0515-21. While all members could participate, some members took a more active role in the negotiation process. *See, e.g.*, A0509 at ¶ 5 ("[Dr. Amarantos[] raised questions about the [LLC] Agreement's provisions, 'to better understand the new agreement[.]' . . . Each of his questions were answered by Weil Management's counsel, who reported updating provisions in the [LLC] Agreement, which notably included reducing the scope of the physicians' noncompete obligations."). For reasons known only to him, Dr. Alexander chose not to involve himself in the direct negotiation of the LLC Agreement's terms. *Id.* Irrespective of his level of engagement, Dr. Alexander expressly represented that he was an accredited investor who had the opportunity and resources to consider and negotiate the terms of his investment. A0055 at § 2.5(b), (d); A0056-57 at § 2.6(f); A0073 at § 12.13(ii)-(iii); A0472. Dr. Alexander further agreed that the restrictive covenants contained within the LLC Agreement were "reasonable and necessary to protect the legitimate

interests of the Company Group and constitute[d] a material inducement to the Company to admit such Unitholder as a Member and Balance Holdco to consummate the transactions contemplated by the Balance Purchase Agreement." A0056-57 at § 2.6(f).

In connection with negotiations, Members were aware that the Noncompete would not apply indefinitely, as the investment would be wound up or rolled over into a new investment enterprise in the near future. A0510-11 at ¶ 7 (Everyone signed the LLC Agreement "without redemption provisions . . . because we were aware that [while] the typical holding period for a private equity firm's investment in a physician practice is 5 to 7 years, [] with Balance Health launching in 2021, [we] were potentially looking at a liquidity event in 3 to 5 years."). All parties to the LLC Agreement were aware that the Noncompete was never intended to last indefinitely, and in agreeing to its terms, represented that they understood its finite nature. *Id.*

B. Procedural History

Weil Holdings filed its Complaint on April 12, 2024, moving to expedite the litigation and seeking a preliminary injunction. *See* A0026-0115. The trial court granted expedition, A0173, and until mid-June 2024, the parties engaged in limited discovery. A0479. On or around June 28, 2024, Weil Holdings learned that its basis for expedition had been mooted as a result of Dr. Alexander's termination by his

new employer, Lakeview. A0174-97. While Weil Holdings is still proceeding on the harms that Dr. Alexander's work at Lakeview caused to date, the termination extinguished the immediate threat of irreparable harm posed by Dr. Alexander's breach of the Noncompete. A0174-97; A0232; A0479; A0259 at ¶ 22. And because Dr. Alexander was providing podiatric medical services at NIFAS's Chicagoland offices located outside the Noncompete's Restricted Territory, no claims were asserted based on his new employment.

While discovery was still at an early stage, Dr. Alexander moved for summary judgment on the enforceability of the Noncompete as a matter of law; Weil Holdings cross-moved. A0217, A0252. The trial court heard argument on February 10, 2025. A0842; *see generally* A0862-0918. Notably, Dr. Alexander never disputed that he breached the Noncompete as written. Nevertheless, on March 4, 2025, the trial court issued its Memorandum Opinion Resolving Cross-Motions for Summary Judgment (the "Opinion" or "Op.," attached hereto as Exhibit A) granting Dr. Alexander's motion for summary judgment, denying Weil Holding's cross-motion, and entering judgment in Dr. Alexander's favor. Op. at 18.

On April 2, 2025, Weil Holdings filed a timely notice of appeal to this Court.

ARGUMENT

I. THE COURT OF CHANCERY ERRED BY INVALIDATING THE NONCOMPETE IN DISREGARD OF DELAWARE'S CONTRACTARIAN POLICY FAVORING ENFORCEMENT OF CONTRACTS.

A. Question Presented

Whether the Court of Chancery erred by refusing to enforce the Noncompete, in contravention of Delaware's public policy favoring the enforcement of contracts. (Preserved at A0461, A0484-87, A0491).

B. Scope of Review

When faced with a question that hinges on public policy, the Court's scope of review is *de novo*. *Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 685 (Del. 2024). Moreover, the Court reviews the grant of summary judgment *de novo*. *See Gilbert v. El Paso Co.*, 575 A.2d 1131, 1141 (Del. 1990). Likewise, the Court reviews questions of contract interpretation *de novo*. *GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 779 (Del. 2012).

C. Merits of Argument

The lower court's decision reflects a departure from Delaware's longstanding policy of enforcing unambiguous contracts as written. This is particularly apparent here, where the agreement at issue was entered into by sophisticated parties in the context of a significant investment by Dr. Alexander, as part of a larger acquisition

of a business, and where there is no dispute that Dr. Alexander actually breached the agreement. The court should have prioritized Delaware's fundamental public policy of freedom of contract by enforcing the Noncompete as written and as agreed to by the parties. Instead, the trial court gave undue deference to another policy interest—"an individual's right to choose [his] employment" and to be free from purported uncertainty and oppressive obligations in the context of contracts of adhesion. Op. at 9 (quoting *Hub Grp., Inc. v. Knoll*, 2024 WL 3453863, at *1 (Del. Ch. July 18, 2024)). This was error.

1. Delaware Public Policy Prioritizes Freedom of Contract

Delaware courts have consistently emphasized that freedom of contract is a bedrock principle of Delaware law, and that courts should be reluctant to rewrite or invalidate contracts voluntarily entered into by informed parties. "The courts of this State hold freedom of contract in high—some might say, reverential—regard. Only 'a strong showing that dishonoring [a] contract is required to vindicate a public policy interest even stronger than freedom of contract' will induce our courts to ignore unambiguous contractual undertakings." *Cantor Fitzgerald*, 312 A.3d at 676–77. As our courts have reiterated in countless opinions, "Delaware . . . is a contractarian jurisdiction." *Hub Grp.*, 2024 WL 3453863, at *1. "[O]ur courts recognize that value inheres in holding contracting parties to their promises and

enforcing their reasonable expectations." *Id*. To say that Delaware prides itself on the contractarian nature of its law risks understatement:

> This jurisdiction respects the right of parties to freely contract and to be able to rely on the enforceability of their agreements; where Delaware's law applies, with very limited exceptions, our courts will enforce the contractual scheme that the parties have arrived at through their own self-ordering, both in recognition of a right to self-order and to promote certainty of obligations and benefits.

New Enter. Associates 14, L.P. v. Rich, 295 A.3d 520, 565–66 (Del. Ch. 2023) (citing *Ascension Ins. Hldgs., LLC v. Underwood*, 2015 WL 356002, at *4 (Del. Ch. Jan. 28, 2015)).

Our courts expect that "[s]ophisticated parties" can—and believe that they should—"make their own judgments about the risk[s] they should bear" in entering into contracts. *Id.* at 566 (citing *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1061–62 (Del. Ch. 2006)). Accordingly, Delaware courts are—and should be—"especially chary about relieving sophisticated business entities of the burden of [their] freely negotiated contracts." *Id*.

Because of this, Delaware courts do not interfere to "rewrite [a] contract to appease a party who later . . . believes to have been [party to] a bad deal. Parties have a right to enter into good and bad contracts, the law enforces both." *Id.* (citing *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010)).

2. The Noncompete Was Entered Into as Part of a Capital Investment Transaction and Was Not a Standard Post-Employment Restriction

Outside the employer-employee context, courts need not apply an exacting standard in evaluating the reasonableness of the restriction. As a general principle, "covenants not to compete in the context of a business sale are subject to a 'less searching' inquiry than if the covenant 'had been contained in an employment contract[,]'" *Kodiak Bldg. Ptnrs., LLC v. Adams*, 2022 WL 5240507, at *4 (Del. Ch. Oct. 6, 2022) (internal citation omitted), as a contract between sophisticated parties is less likely to be the product of disparate bargaining power. *See Revolution Retail Sys., LLC v. Sentinel Techs., Inc.*, 2015 WL 6611601, at *10 (Del. Ch. Oct. 30, 2015) (same, in the context of a contract to exchange securities); *see also id.* (where "[r]estrictive covenants are carefully negotiated," "our law requires that the unambiguous terms be given effect."). "Where a party negotiates for a contractual restriction, 'it is stuck with that,' and 'cannot, as an 'oh by the way,'' claim that a broader or lesser restriction must apply." *Id.* (internal citation omitted).

Conversely, "where an employee, in consideration of future employment, is compelled to enter a contract not to compete[,]" courts scrutinize the scope of a restrictive covenant. *Hub Grp.*, 2024 WL 3453863, at *1. Courts will balance Delaware's contractarian policy with "the recognition of an individual's right to

choose her employment, and the desire to avoid oppressive or unclear obligations arising from contracts of adhesion." *Id*.

Here, the Court of Chancery erred in concluding that it was "undisputed" that "the Noncompete was not negotiated in the context of a sale of a business[,]" and faulting Weil Holdings for Dr. Alexander's failure to "negotiate the Noncompete in any substantive way." Op. at 16.

The Noncompete did arise from the sale of a business: as part of Balance Health's acquisition of Weil Management, the former physician-owners of Weil Holdco I were permitted to obtain ownership interests in the Weil Organization through Weil Holdings' membership interests. A0508 at ¶ 2 ("On November 11, 2022, Weil Management and Balance Health executed a letter of intent to effectuate such a merger, which was structured as a sale of Weil Management to Balance Health, with the physician owners receiving equity in Balance Health as a consideration for their ownership in Weil Management."); *see also* A0563-79 (the Rollover Letter Agreement referencing the individual "Owners"); A0031 at ¶¶ 21-22; A0259 at ¶ 17. Through this merger transaction, Dr. Alexander contributed his indirect ownership interest in Weil Holdco I to Weil Holdings in order to acquire Capital Units reflecting a 7.7% ownership stake in Plaintiff, which he claims is worth approximately $2.8 million. A0500; A0258 at ¶ 16; A0033 at ¶ 28. Dr. Alexander was an investor and an equity holder, not a job applicant. A0258-59 at ¶¶ 16-18.

His 7.7% ownership stake is ongoing and valuable, and along with accepting the accretive opportunities associated with his ownership interest, it is only natural and expected that Dr. Alexander also voluntarily assumed the obligations set forth in the LLC Agreement, including the Noncompete now at issue.

Prior to the execution of the LLC Agreement, Dr. Alexander and his colleagues had the opportunity to be as involved in or as detached from the negotiating process as they wanted. A0509 at ¶¶ 4-5. Unlike the traditional employer/employee scenario, Dr. Alexander had the time and opportunity to review, comment on and question the terms and restrictions contained within the LLC Agreement. *Id.*; A0515-21. While several members took an active role in the negotiations—seeking clarifications and advocating for fewer restrictions—Dr. Alexander admits he chose not to participate and instead elected to accept the agreement as presented, never seeking any amendments to its terms or the scope of the Noncompete. A0509 at ¶ 5; A0259 at ¶ 18. Dr. Alexander's election not to participate in negotiations concerning the LLC Agreement's terms should not have been a factor that weighed in his favor in analyzing the scope of his contractual obligations. Op. at 16. Indeed, after declining the opportunity to negotiate the terms of his investment, Dr. Alexander proceeded to expressly represent that he was an accredited investor, capable of evaluating the terms of his investment, and acknowledged that he had access to legal counsel before entering the LLC

Agreement. A0055 at §§ 2.5(b), (d); A0073 at § 12.13. Further, Dr. Alexander explicitly agreed that the restrictive covenants contained in the LLC Agreement, were "reasonable and necessary to protect the legitimate interests of the Company Group and constitute[d] a material inducement to the Company to admit such Unitholder as a Member and Balance Holdco to consummate the transactions contemplated by the Balance Purchase Agreement." A0056 at § 2.6(f).

Dr. Alexander's position in this lawsuit boils down to the assertion that this contract term that he and the other Weil Holdings members bargained for—a term agreed upon in return for membership interest he values at over two million dollars—is irrelevant. Even though all of the members—save Dr. Alexander—are abiding by this term, Dr. Alexander posits that he should be able continue to enjoy both the fruits of his ownership stake in Weil Holdings while still being able to freely compete with it. In simplest terms, he wants to have his cake and eat it too. This Court should reject such artifice.

Parties routinely choose Delaware law and Delaware courts for the adjudication of their disputes because they expect contracts—and particularly LLC agreements—to be enforced as written. 6 *Del. C.* § 18-1101(b) ("It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements."). By invalidating the Noncompete without fully considering the context of the transaction, the genesis of

the LLC Agreement, or the parties' express acknowledgments contained therein, the Court of Chancery deviated from the expectation that Delaware courts would enforce the LLC Agreement as written.

"The ability to self-order is the sine qua non of free markets; without the ability to hold and dispose of property, and to agree to be bound contractually, no functional market could exist." *Ascension Ins.*, 2015 WL 356002, at *6. The principles of the freedom of contract must be "assiduously guarded lest the courts erode the primary attraction of limited liability companies." *R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318, at *7 (Del. Ch. Aug. 19, 2008). "Upholding freedom of contract is a fundamental policy of this State." *Ascension Ins.*, 2015 WL 356002, at *4.

The material facts are not in dispute. Dr. Alexander agreed to the terms of the LLC Agreement and agreed to be bound by the restrictions set forth in the Noncompete. By undertaking employment at Lakeview in Racine, Wisconsin, less than 15 miles from WFAI's Kenosha, Illinois office, Dr. Alexander breached the Noncompete and stood to damage his fellow members. Dr. Alexander does not dispute this. As such, a court applying Delaware's public policies favoring freedom and enforcement of contracts should have found this to be an easy choice. The Noncompete should have been enforced as written.

The Court should reverse the lower court's decision granting summary judgment in Dr. Alexander's favor and its denial of Weil Holdings' cross-motion.

II. THE COURT OF CHANCERY ERRED IN GRANTING SUMMARY JUDGMENT BASED ON ITS REASONABLENESS ANALYSIS THAT DEPARTED FROM THE RECORD AND INVOKED SPECULATIVE CONCERNS.

A. Question Presented

Whether the Court of Chancery erred in granting summary judgment in favor of Dr. Alexander by relying on hypothetical "facts" outside the record and resolving disputed issues of fact. (Preserved at A0479; A0894, A0896).

B. Scope of Review

The Court reviews the grant of summary judgment *de novo*. *See Gilbert*, 575 A.2d at 1141. Likewise, the Court reviews questions of contract interpretation *de novo*. *GMG Cap.*, 36 A.3d at 779.

C. Merits of Argument

The Court of Chancery improperly invalidated the Noncompete at the summary judgment stage through a speculative analysis of putative facts, rather than grounding its analysis in the record or construing the LLC Agreement under Delaware's fact-sensitive reasonableness framework. Simply, there were not sufficient facts to support the hypothetical situations the lower court used in crafting its opinion.

1. The Noncompete is Reasonable on its Face Based on the Language of the LLC Agreement and the Record Presented

To the extent that it is necessary to reach the reasonableness of the unambiguous language of the Noncompete (as opposed to simply enforcing it), it is both commercially and legally reasonable on its face, particularly when considered in light of the context in which it was adopted, the contractual definitions provided, and the parties' express acknowledgment of its fairness. Under Delaware law, "[r]estrictive covenants are enforceable when they are (i) valid under general principles of law; (ii) are reasonable in their scope and effect, (iii) bear a reasonable relationship to the advance of legitimate interests, and (iv) survive a balancing of the equities." *Hub Grp.*, 2024 WL 3453863, at *7.

Where there is a question as to the reasonableness of a given restriction, our courts will review them "to ensure they (1) are reasonable in geographic scope and temporal duration, (2) advance a legitimate economic interest of the party seeking its enforcement, and (3) survive a balancing of the equities." *Id.* at *7 (quoting *Lyons Ins. Agency, Inc. v. Wilson*, 2018 WL 4677606, at *5 (Del. Ch. Sept. 28, 2018) (cleaned up)). The trial court should have reviewed the Noncompete "holistically, carefully, and nonmechanically," *Kodiak*, 2022 WL 5240507, at *7, "evaluating all of the dimensions of the restrictive covenant and considering how it operates with other restrictions in the contract." *Sunder Energy, LLC v. Jackson*, 305 A.3d 723,

753 (Del. Ch. 2023) [hereinafter *Sunder I*] ("A court must not tick through individual features of a restriction in isolation, because features work together synergistically."), *aff'd in part, rev'd in part,* 332 A.3d 472 (Del. 2024).

a. <u>The Noncompete is Geographically Reasonable</u>

The Noncompete is geographically reasonable in scope, presenting a limited restriction as written and as applied to the facts that were before the trial court. Under the express terms of the LLC Agreement, the Noncompete applies only to a 15-mile radius around each "Affiliated Practice" and a 25-mile radius around Dr. Alexander's two "Primary Practice Sites" in Oak Park and Glenview, Illinois. A0471; A0033 at ¶ 32; A0055-56 at § 2.6(a). Roughly one-third of the geographic area covered by the radial restrictions is over Lake Michigan, making it functionally and contextually narrower than as interpreted by the trial court. A0471-73. More to the point, in executing the LLC Agreement, Dr. Alexander determined and explicitly acknowledged that the geographic restriction was "reasonable" in scope. A0056 at § 2.6(f).

When viewed in context of the current dispute, the Noncompete only applies to defined locations, not to entire states or regions. Dr. Alexander's claim that it covers "four states" is refuted by the actual terms and maps showing overlap in the Chicagoland area. A0471-72; A0559-62. Furthermore, not even one month after being terminated by Lakeview, Dr. Alexander obtained gainful employment at

NIFAS, in his chosen field, outside the Restricted Territory, with a 47-minute commute from his home, demonstrating that the geographic scope leaves room for optionality in future employment. A0465; A0544-51.

In fact, Dr. Alexander's current unchallenged employment at NIFAS further underscores the reasonableness of the geographic scope of the Noncompete. Dr. Alexander's ability to obtain full-time employment within weeks of his termination at a reputable podiatric practice—without violating the Noncompete—demonstrates that the restrictions imposed are not only geographically reasonable on their face, but also workable in practice. A0465; A0544-51. Far from imposing an undue hardship, Dr. Alexander's current role confirms that the Noncompete does not impose a hardship, nor does it inhibit his podiatric practice in any meaningful way. Rather, the Noncompete works exactly as intended—and as Delaware law dictates it should: to protect the significant financial interests of Weil Holdings and its members.

b. The Duration of the Noncompete is Reasonable in Scope

Likewise, the duration of the Noncompete is reasonable in its scope. As a threshold matter, the restriction is not indefinite. Rather, it is tied to Dr. Alexander's continued equity ownership in Weil Holdings plus two years. A0055-56 at § 2.6(a) (". . . [f]or so long as [he] holds" his membership interest "and for a period of two

(2) years after."); A0492; A0035 at ¶ 34; A0901-02, A0903. There is nothing novel or inequitable about this arrangement; this structure mirrors other investment-related restrictive covenants, where restrictions are tied to equity ownership rather than the termination of employment. A0492 (citing *Cantor Fitzgerald*, 312 A.3d at 699).

The liquidity timeline for a private equity investment is finite—lasting anywhere from three to ten years. *See* A0494 (citing *See Lavin v. West Corp.*, 2017 WL 6728702, at *12 n. 90 (Del. Ch. Dec. 29, 2017)). Here, the Noncompete was never intended to last indefinitely, and all parties to the LLC Agreement understood its finite nature. *See* A0510-11 at ¶ 7. As part of the negotiation process, Weil Holdings' members were aware that the Noncompete would not apply indefinitely, as the investment would be wound up or rolled over into a new investment enterprise in the near future. *Id.* (Everyone signed the LLC Agreement "without redemption provisions . . . because we were aware that [while] the typical holding period for a private equity firm's investment in a physician practice is 5 to 7 years, [] with Balance Health launching in 2021, [we] were potentially looking at a liquidity event in 3 to 5 years.").

Moreover, having retained his equity interest despite his termination from WFAI, Dr. Alexander himself is controlling the duration of the Noncompete's temporal restriction through his own intransigence. A0477. Weil Holdings expressed its willingness to repurchase his membership units, A0580-82, but Dr.

Alexander has chosen not to meaningfully pursue redemption—instead leveraging threats of "frivolous litigation and government complaints if it did not provide [him] with his desired payout." A0477; A0673-77. Furthermore, Dr. Alexander's ability to continue practicing podiatry without triggering the restrictions in the Noncompete further confirms its practical temporal fairness. A0461, A0465; A0544-46.

At bottom, Dr. Alexander does not need judicial relief from his membership obligations, let alone drastic relief rescinding Weil Holdings' express contractual rights and protections respecting its legitimate business interests and patients. Dr. Alexander had a choice: maintain his interests in Weil Holdings or compete. He cannot do both.

2. The Court Improperly Engaged in a Hypothetical and Speculative Inquiry to Invalidate the Noncompete

Rather than evaluating the enforceability of the Noncompete based on the actual facts in the record, the lower court addressed potential future scenarios—such as geographic expansion of the Restricted Territory or indefinite duration of the Noncompete—that were unsupported by facts in the record. The court departed from the legal standard for summary judgment and injected questions of fact into the dispute, resolving those questions in Dr. Alexander's favor without the necessary factual record to do so. *See Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962) ("Under no circumstances, however, will summary judgment be granted when, from

the evidence produced, there is a reasonable indication that a material fact is in dispute.").

Specifically, instead of basing its decision on the undisputed facts in the evidentiary record to evaluate the reasonableness of the Noncompete's geographic scope, the lower court analyzed theoretical and potential harms, suggesting that the Restricted Territory was a moving target. *See, e.g.*, Op. at 14; *see also* A0894. The court posited that Dr. Alexander might one day find himself in breach of the Noncompete due to a future geographical expansion of WFAI or its other Affiliated Entities without the factual record or evidence to suggest that such an occurrence was imminent or even likely to occur. Op. at 14; *see also* A0894.

The lower court attempted to analogize the geographic scope of the restrictive covenant in the *Hub Group* case to the Noncompete at issue here. Op. at 14. But this analogy is misplaced. In *Hub Group*, the restrictive covenant, which applied to a transportation and logistics company, extended to 25 entities across four countries including India and all of North America and spanning more than 42,000 zip-codes depending on the routes taken. 2024 WL 3453863, at *8. There, the Court of Chancery found the geographic scope unreasonable not only because of the expansive scope of the restriction but also because the truck routes themselves changed daily, causing the restricted territory to be in a constant state of flux. *Id*. at *8, 12. This is markedly different than the geographic restriction imposed by the

Noncompete—podiatry practices cannot expand in the same way as the routes of logistics companies. By attempting to analogize this case to *Hub Group*, the trial court improperly injected improbable "what if" scenarios and questions of fact into an otherwise clear record.

With respect to the reasonableness of the duration of the Noncompete, the lower court viewed Dr. Alexander as though he was a vulnerable employee at the mercy of Weil Holding's whims. The court suggested that he had no mechanism by which to divest himself of his membership units and obligations. Op. at 11-12. Implying that Weil Holdings might some day in the future nefariously attempt to hold Dr. Alexander hostage through the terms of the Noncompete, the court stated: "the LLC Agreement permits (but does not obligate) Weil Holdings to repurchase membership units" such that "Plaintiff decides when—and if—to accept an offer, putting the duration of the Noncompete entirely within Plaintiff's control." *Id.* at 12. The evidence within the record confirms that Plaintiff has narrowly viewed the Noncompete such that Dr. Alexander has been able to work at a podiatric practice that, in fact, has offices within the Restricted Territory. A0512-13 at ¶ 10. Further, the record demonstrates that Weil Holdings has already evinced its willingness to work with Dr. Alexander and consider "a reasonable proposal" for the purchase of his membership units "to provide Dr. Alexander with liquidity[.]" A0362-64 (initial redemption proposal, including a two-year limited waiver to eliminate the tail

restriction on the Noncompete); A0477; A0580-82; A0512 at ¶¶ 8-9; A0676. This stands in juxtaposition to Dr. Alexander's threatening and inflexible negotiation tactics. *See* A0581. Dr. Alexander apparently values his interest in Weil Holdings more than his ability to compete within the geographically restricted area, and the Court should hold this sophisticated party to his choice by enforcing the Noncompete's restrictions.

Engaging in a "[p]arade of hypotheticals" is exactly what courts should avoid at summary judgment. This exercise undercuts the parties' written agreement and effectuates the delivery of an advisory opinion or engagement in judicial policymaking. *See DiStefano v. Westminster Club*, 2024 WL 807428, at *3 (Del. Super. Ct. Feb. 27, 2024). There is no record evidence to support the lower court's hypotheticals, and the court "must not engage in speculation or conjecture when addressing a motion for summary judgment." *Id*.

3. At a Minimum, to the Extent There Were Questions of Fact in Dispute, Summary Judgment Was Not Proper

Even if the questions the lower court raised were reasonably grounded in fact and necessary for an evaluation of the Noncompete's enforceability, they are necessarily factual in nature and should not have been resolved on an incomplete record. While Weil Holdings maintains that summary judgment in its favor on the limited issue of enforceability of the Noncompete would have been proper here

based on Delaware's policy of freedom of contract and Dr. Alexander's undisputed breach, "'[r]easonableness' is not [always] amenable to resolution on a motion for summary judgment." *See Christine Manor Civic Ass'n v. Gullo*, 2007 WL 1074763, at *1 (Del. Ch. Mar. 29, 2007). Thus, to the extent that it was necessary to assess the reasonableness of the restrictions in the Noncompete, summary judgment in Dr. Alexander's favor should have been denied.

Based on the court's opinion below, there were several material questions of fact germane to the evaluation of the reasonableness of the Noncompete that could not be resolved in Dr. Alexander's favor on this record: (i) whether Dr. Alexander was a sophisticated party who understood and voluntarily accepted the Restrictive Covenant, Op. at 11, 16; (ii) whether and to what extent the parties' bargaining power differed, *Id.* at 9-11, 15-16; (iii) whether the geographic scope was likely to change, *Id.* at 1, 14; and (iv) whether the duration of the Noncompete was truly indefinite or likely to change, *Id.* at 1, 12, 14.

None of these disputed questions of fact should have factored into the lower court's analysis of enforceability, but each appears to have held weight in the court's decision to grant summary judgment in Dr. Alexander's favor. This was error. To the extent the Court declines to reverse the lower court's denial of Weil Holdings' cross motion for summary judgment, it should reverse the court's grant of summary judgment in Dr. Alexander's favor and remand for further proceedings.

III. THE COURT OF CHANCERY ERRED BY REFUSING TO BLUE-PENCIL THE NONCOMPETE DESPITE THE LLC AGREEMENT'S EXPRESS INSTRUCTION TO DO SO.

A. Question Presented

Whether the Court of Chancery erred by refusing to blue-pencil the Noncompete despite the LLC Agreement's express instruction to do so. (Preserved at A0495; A0906-09).

B. Scope of Review

The Court reviews the trial court's grant of summary judgment *de novo*. *See Gilbert*, 575 A.2d at 1141. Likewise, the Court reviews questions of contract interpretation *de novo*. *GMG Capital*, 36 A.3d at 779. Furthermore, the Court will review the trial court's exercise of discretion for abuse of discretion. *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, at 483 (Del. 2024) [hereinafter *Sunder II*].

C. Merits of Argument

Having found the Noncompete overbroad and invalid, the Court of Chancery erred further by declining to blue-pencil the restrictive covenant even though the LLC Agreement expressly instructs the court to reform the scope of any unenforceable restrictions contained therein.

1. The LLC Agreement Expressly Instructs the Court to Reform the Noncompete

As discussed above in Sections I.C.1 and I.C.3, Delaware courts routinely enforce contracts as written and prioritize parties' freedom of contract and "holding contracting parties to their promises and enforcing their reasonable expectations." *Hub Grp.*, 2024 WL 3453863, at *1. Here, Dr. Alexander agreed to be bound by certain geographic and temporal restrictions imposed by the Noncompete, in exchange for an ownership interest in Weil Holdings, and further agreed that the scope of restrictions was "reasonable and necessary to protect the legitimate interests of the Company Group." A0056-57 at § 2.6(f). Most relevant here, the parties also agreed that, in event that any covenant contained in the Noncompete were adjudged to be unenforceable, the "***court is expressly empowered and instructed to reform such covenant***." *Id.* (emphasis added).

2. Delaware Recognizes Blue-Penciling as a Valid Remedy

Delaware has long recognized the equitable power of the court to blue-pencil overbroad restrictive covenants to bring them within reasonable bounds, particularly where the parties have not acted in bad faith and where modification would preserve the contractual bargain. *See, e.g.*, *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *11–14 (Del. Ch. Oct. 23, 2002) (revising the temporal limitation contained in the agreement and adding a geographic restriction in the first instance);

Norton Petroleum Corp. v. Cameron, 1998 WL 118198, at *4, 5 (Del. Ch. Mar. 5, 1998) (blue-penciling the agreement by reducing a 100-mile radius to a 20-mile radius); *Knowles-Zeswitz Music, Inc. v. Cara*, 260 A.2d 171, 175 (Del. Ch. 1969) (engaging in blue-penciling to reduce the geographic scope of the restrictive covenant at issue); *DGWL Investment Corp. v. Giannini*, 2013 WL 6456242 (Del. Ch. Sept. 19, 2013) (same).

Despite recognizing that "Delaware courts have the [] power to blue pencil overbroad restrictive covenants to align a company's legitimate interests and an individual's right to be free from unreasonable restrictions on their livelihood[,]" (*see* Op. at 15 (quoting *Sunder II*, at 486)), the lower court declined to blue-pencil the Noncompete, in part because "the undisputed facts 'd[o] not carry any of th[e] hallmarks] of equal bargaining power which might support blue penciling the parties' agreement." *See id*. at 16 (alteration in original). This was error.

In *Sunder II*, this Court recently addressed the factors a court should consider when determining whether to blue-pencil a restrictive covenant, including: (i) whether there were negotiations or discussions about the restrictive covenant; (ii) whether the terms of the restrictions were explained to the party contesting enforcement; (iii) whether there was significant disparity in bargaining power coupled with a deceptive nonchalance by management; and (iv) whether there was

consideration given in exchange for the agreement to be bound by the restrictions. 2024 WL 5052887, at *8-11.

This case stands in contrast to *Sunder II* and supports blue-penciling. Here, (i) the scope of the restrictions was the subject of discussion and negotiation prior to the agreement's execution; (ii) Dr. Alexander was afforded the opportunity to negotiate the terms but declined to do so, leaving it to other podiatrists in the practice; and (iii) Dr. Alexander's ownership interest and professional opportunities represented significant consideration for his agreement to be bound by the terms of the Noncompete. But, most importantly, the LLC Agreement here expressly mandates the court's intervention to judicially reform any terms adjudged unenforceable.

While Plaintiff maintains that the restrictions in the Noncompete were reasonable and enforceable, the lower court's findings to the contrary should have been followed by judicial reformation as a contractually-mandated remedy. *See Gildor v. Optical Solutions, Inc.,* 2006 WL 4782348, at *11 (Del. Ch. June 5, 2006) ("[I]n the absence of some countervailing public policy interest, courts should respect the parties' bargain [for a remedy of specific performance.]"); *Symbiont.io, Inc. v. Ipreo Holdings, LLC*, 2021 WL 3575709, at *2 (Del. Ch. Aug. 13, 2021) ("As a remedy for the breach of the non-competition provision, this decision enforces the contractual [damages] remedy called for by the JV Agreement."). By refusing to

enforce the Noncompete as written, and then further refusing to narrow the Noncompete in a way that would have honored the parties' commercial expectations—such as limiting the scope to locations where Dr. Alexander practiced or adopting a finite term—the lower court rejected a reasonable and equitable solution in favor of total erasure. To the extent that the Noncompete was unenforceable, the court's decision not to blue-pencil the purportedly offending terms was error.

To the extent the Court declines to reverse the lower court's denial of Weil Holdings' cross motion for summary judgment, it should reverse the court's grant of summary judgment in Dr. Alexander's favor and remand for further proceedings.

IV. THE COURT OF CHANCERY ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO COUNT II OF PLAINTIFF'S VERIFIED COMPLAINT (TORTIOUS INTERFERENCE).

A. Question Presented

Whether the Court of Chancery erred in granting summary judgment in favor of Dr. Alexander with respect to Court II of the Complaint (tortious interference). (Preserved at A0502; A0909-10).

B. Scope of Review

The applicable scope of review is set forth in Argument I.B, *supra*.

C. Merits of Argument

Despite the fact that Weil Holdings only cross-moved for summary judgement as to Count I, the Court of Chancery, in two sentences, granted Dr. Alexander's motion with respect to Count II. Count I constitutes Weil Holdings' primary cause of action, whereas Count II, which alleges a claim of tortious interference with business expectancy, constitutes an alternative theory of liability. A0043-45 at ¶¶ 76-86. Where one party calls into question the enforceability of the contract, the other is permitted to plead alternative theories of liability. *See Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *8 (Del. Ch. Aug. 26, 2005). As discussed above in Section II.C.1, though Weil Holdings maintains that the trial court erred in finding the Noncompete facially invalid and unreasonable as a matter of law, to the extent this Court reverses the trial court and remands for further proceedings, Weil

Holdings' alternative theory remains live, and it should be permitted the opportunity to conduct discovery on and present argument in favor of its alternative theory.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and remanded for proceedings consistent with this Court's Order.

HEYMAN ENERIO
GATTUSO & HIRZEL LLP

/s/ Kurt M. Heyman
Kurt M. Heyman (# 3054)
Jamie L. Brown (# 5551)
Elena M. Sassaman (# 7110)
300 Delaware Avenue, Suite 200
Wilmington, DE 19801
(302) 472-7300
Attorneys for Plaintiff-Appellant Weil Holdings II, LLC

OF COUNSEL:

PATZIK, FRANK & SAMOTNY LTD
Jonathan S. Goodman
Alec J. Losh
Elizabeth L. Archerd
200 South Wacker Drive, Suite 2700
Chicago, IL 60606
(312) 551-8300

Dated: May 28, 2025

CERTIFICATE OF SERVICE

Kurt M. Heyman, Esquire, hereby certifies that on June 12, 2025, copies of the foregoing Public Version of Opening Brief of Appellant Weil Holdings II, LLC were served electronically upon the following counsel:

Travis J. Ferguson, Esquire
McCARTER & ENGLISH, LLP
Renaissance Centre
405 N. King Street, 8th Flr.
Wilmington, DE 19801

/s/ Kurt M. Heyman
Kurt M. Heyman (# 3054)