EFiled: Jul 15 2025 04:52PM EDT
Filing ID 76651157
Case Number 139,2025

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| WEIL HOLDINGS II, LLC, Delaware limited liability company,<br><br>Plaintiff Below, Appellant,<br><br>v.<br><br>JEFFERY ALEXANDER, DPM,<br><br>Defendant Below, Appellee. | **PUBLIC VERSION FILED JULY 15, 2025**<br><br>No. 139,2025<br><br>Case Below – Court of Chancery of the State of Delaware<br>C.A. No. 2024-0388-BWD |

# APPELLEE JEFFERY ALEXANDER, DPM'S ANSWERING BRIEF ON APPEAL

Dated: June 27, 2025

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## NATURE OF THE PROCEEDINGS

The Court of Chancery below invalidated the non-compete provision that Appellant Weil Holdings II, LLC ("Weil Holdings") seeks to enforce on this appeal, finding it unreasonable because of its fluctuating geographic scope and indefinite duration and granting summary judgment in favor of Appellee Dr. Jeffery Alexander. Dr. Alexander is a podiatrist who was employed for more than nine years by non-party WFAI Foot and Ankle Institute ("WFAI"). During that time, Dr. Alexander was only licensed to practice podiatric medicine in the State of Illinois, and he treated patients primarily at two of WFAI's offices in Oak Park and Glenview, Illinois. After WFAI terminated Dr. Alexander in August 2023, he applied for and received a medical license for the State of Wisconsin and began practice with Lakeview Health, LLC in Racine, Wisconsin.

With this appeal, Weil Holdings seeks to revive a non-compete provision (the "Non-Compete Provision") found in its governing documents—not an employment agreement—the Limited Liability Company Agreement of Weil Holdings II, LLC ("LLC Agreement"). Weil Holdings holds membership interests of downstream subsidiaries, including Weil Foot & Ankle Management, LLC ("Weil Management"). Weil Management provides back-office support for various healthcare providers, including WFAI, among others. While Dr. Alexander holds membership interests in Weil Holdings, he was never employed by either Weil

Holdings or Weil Management. Further, neither Weil Holdings nor Weil Management provide podiatric medical services. In spite of this, Weil Holdings seeks to restrict Dr. Alexander's practice of podiatric medicine.

The Court of Chancery properly concluded that the Non-Compete Provision is overbroad and unreasonable on its face, granting summary judgment in Dr. Alexander's favor based on the unambiguous language of the LLC Agreement and the undisputed factual record. The Non-Compete Provision unquestionably covers territory across four states and is subject to change based on expansion of Weil Holdings' affiliated practices or current practices moving locations. Even on appeal, Weil Holdings offers no legitimate justification for this overbroad and changing geographic scope. Further, the duration of the Non-Compete Provision is tied to Dr. Alexander's ownership of membership interests in Weil Holdings (with a two-year tail), yet the LLC Agreement contains no provision requiring repurchase of Dr. Alexander's interests, thus placing all discretion with Weil Holdings to determine when (or if) the non-compete restriction should end. Given Delaware's public policy in favor of competition, the Court of Chancery found the Non-Compete Provision unreasonable and unenforceable, and this Court should affirm that conclusion.

Further, the Court of Chancery properly exercised discretion by refusing to blue-pencil the Non-Compete Provision. Delaware courts are typically reluctant to blue-pencil restrictive covenants, instead favoring public interest in competition and

an employee's right to pursue the vocation of their choosing. Contrary to Weil Holdings' assertions, Delaware courts have full discretion in determining whether or not to blue-pencil non-competes and are not required to blue-pencil even under a contractual provision requesting reformation. The Court of Chancery appropriately exercised its discretion to not blue-pencil the Non-Compete Provision here because, among other things, to do so would require a reworking of the Non-Compete Provision and not a simple narrowing of a geographic territory or time period. Moreover, the Court of Chancery found that the LLC Agreement was the product of disparate, and not equal, bargaining power.

For all the reasons set forth in this Answering Brief, this Court should affirm the Court of Chancery's decision invalidating the Non-Compete Provision and granting summary judgment in favor of Dr. Alexander.

## SUMMARY OF THE ARGUMENT

1. Denied. The Court of Chancery correctly held that the Non-Compete Provision was unenforceable because it is both geographically and temporally unreasonable. The Court of Chancery conducted the appropriate reasonableness review and balanced Delaware's competing public policy interests, including the freedom of contract as well as encouragement of competition and the natural interest of an individual to seek lawful employment in the location of their choosing.

2. Denied. The Court of Chancery relied on the express language and structure of the LLC Agreement and the Non-Compete Provision when granting summary judgment in favor of Dr. Alexander on Count I. The Court of Chancery appropriately reviewed the Non-Compete Provision holistically, and in light of undisputed facts, and did not rely on "hypotheticals" to find that the Non-Compete Provision is unreasonable in its overbroad geographic scope or indefinite duration.

3. Denied. The Court of Chancery properly exercised its discretion in refusing to blue-pencil the Non-Compete Provision. Delaware courts are never required to blue-pencil restrictive covenants, even when parties incorporate a provision permitting reformation, because the decision lies solely in the court's discretion. The Non-Compete Provision did not warrant blue-penciling because it was grossly overbroad and was the result of disparate bargaining power. Moreover, blue penciling in this case would require a restructuring of the Non-Compete

Provision as well as other terms and provisions found in the LLC Agreement and not a simple narrowing of the unreasonable geographic location or time period.

4. Denied. The Court of Chancery appropriately granted summary judgment in favor of Dr. Alexander with respect to Count II for tortious interference, as this claim relied entirely on the unenforceable the Non-Compete Provision.

## COUNTERSTATEMENT OF FACTS

### A. Dr. Alexander

Dr. Jeffery Alexander is a podiatric foot and ankle surgery specialist. A0257 at ¶ 4. He has been licensed to practice podiatric medicine in Illinois since 2004. *Id.* at ¶ 6. From 2004 to 2014, Dr. Alexander practiced at Midwest Podiatry until it merged with WFAI in July 2014. *Id.* at ¶ 8. Beginning in July 2014 with this merger, Dr. Alexander began working at WFAI. *Id.* at ¶¶ 8-9; A0032 at ¶ 27. While employed by WFAI, Dr. Alexander was only licensed to practice medicine in the State of Illinois, and he primarily treated patients at WFAI's offices in Oak Park and Glenview, Illinois. A0257 at ¶¶ 6-10; A0281 at Response to Interrogatory No. 11. WFAI terminated Dr. Alexander's employment, purportedly for cause, on or around August 17, 2023. A0257 at ¶ 9; A0037 at ¶ 40.

### B. The Relevant Weil Entities

Weil Holdings is a Delaware limited liability company, holding membership interests of downstream subsidiaries. A0028 at ¶ 9. Weil Holdings is governed by the LLC Agreement. A0026 at ¶ 1. Weil Holdings owns interests in PNC Podiatry Holdings, LLC ("Balance Holdco"), which in turn owns Weil Management. A0031 at ¶ 21. Weil Management offers administrative and back-office support for various healthcare providers, including WFAI's offices in both Illinois and Wisconsin. A0030 at ¶ 16. Weil Management also provides these services to Foot and Ankle

Specialists of West Michigan, PLLC ("FASWM") and 1 Foot 2 Foot Centre for Foot and Ankle Care, P.C. ("1F2F"), which operate podiatric medical practices in Michigan and Virginia, respectively. A0030 at ¶ 16; A0280-81 at Response to Interrogatory No. 10; A0291-93 at Response to Interrogatory No. 18. Weil Management does not have patients of its own, and Dr. Alexander was never a Weil Management employee. A0258 at ¶ 13. Furthermore, Dr. Alexander has never been employed by FASWM or 1F2F, and he has never been licensed to practice medicine in Michigan or Virginia. *Id.* at ¶¶ 14-15.

Dr. Alexander holds an indirect ownership interest in Weil Management. Prior to May 2023, this interest was held through Weil Food and Ankle Holdings, LLC ("Weil Holdco I"), which held 100% of Weil Management. A0032 at ¶ 25; A0258 at ¶ 16. In May of 2023, however, the membership interests of Weil Management were purchased by Balance Holdco, a holding company for PNC Management, LLC doing business as Balance Health. A0031 at ¶ 21. As part of this transaction, Weil Holdco I was transformed into Weil Holdings, and Dr. Alexander maintained his indirect ownership interest by agreeing to the LLC Agreement. *Id.* at ¶ 22; A0032 at ¶ 23-24. Dr. Alexander thus came to own, and still owns to this day, a 7.7% Membership Interest in Weil Holdings. A0032 at ¶ 25; A0258 at ¶ 16. Based on figures provided by Weil Holdings, this interest is worth

approximately [redacted]. A0258 at ¶ 16; A0280 at Response to Interrogatory No. 9.

### C. The Restrictive Covenants

Section 2.6(a) of the LLC Agreement contains a set of restrictive covenants, including the Non-Compete Provision that is at the core of this matter.[1] A0055-57. In relevant part, Section 2(a) provides: "For so long as any 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 anywhere in the Restricted Territory.". A0055 at § 2.6(a). The Non-Compete Provision incorporates the following pertinent definitions, ordered alphabetically:

> - "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, [WFAI], [FASWM], and [1F2F], and (ii) Infinity Vascular Institute, S.C., an Illinois medical corporation.
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> - "Primary Practice Site" means, with respect to a Member who is a podiatrist, any site where, in the

[1] The LLC Agreement also contains a non-solicitation provision and a restriction on ownership of any interest in a competing business. A0055-56 at § 2.6(a)(ii) and (iii). However, the Court of Chancery concluded that any disputes under these provisions of the LLC Agreement were not ripe for argument (Op. at 17-18), and Weil Holdings did not raise these on appeal.

> 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%) [sic] 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.
>
> - "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.
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> - "Restricted Territory" means (a) with respect to the practice of podiatric medicine or any other medicine by ... Jeff[e]ry 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 ... (c) for all other purposes, the United States.
>
> - "Unitholder" means, with respect to any class of units, a Member (or other Person) owning a Unit or Units of such class.

A0090-95. To continue his investment in Weil Management after eight years of employment by WFAI, Dr. Alexander agreed to the LLC Agreement. A0259 at ¶ 18. Dr. Alexander held no bargaining power when it came to negotiating the terms of the LLC Agreement and viewed it as "take it or leave it." *Id.*

Following his termination from WFAI, Dr. Alexander retained his indirect ownership interest in Weil Management. A0258 at ¶ 16. Notably, the LLC Agreement does not provide for a mandatory repurchase or redemption of Dr. Alexander's membership interests in Weil Holdings for any reason, even in the event that a member is terminated for cause at one of Weil Holdings' operating subsidiaries. A0277-78 at Response to Interrogatory No. 6.

**D. Dr. Alexander's Employment and Termination with Lakeview**

Approximately six months after his termination from WFAI, on or about February 5, 2024, Dr. Alexander began working for Lakeview Health, LLC ("Lakeview") in Racine, Wisconsin. A0259 at ¶ 20. Lakeview offers comprehensive healthcare services for veterans and underserved communities. *Id.* Dr. Alexander was not licensed to practice medicine in Wisconsin prior to his employment at Lakeview and did not practice in the State of Wisconsin before this time. A0257 at ¶ 7.

Lakeview's sole office is located at 800 Goold Street, Racine, Wisconsin. A0259 at ¶ 20. This is approximately 60 miles from WFAI's offices in Oak Park, Illinois, one of Dr. Alexander's primary practice sites while employed by WFAI. *Id.* at ¶ 21. Lakeview's office is approximately 46 miles from WFAI's office in Glenview, Illinois, Dr. Alexander's other primary practice site at WFAI. *Id.* As the crow flies, Lakeview's office is within a 15-mile radius of WFAI's office in

Kenosha, Wisconsin. A0038 at ¶ 46. However, Dr. Alexander never practiced podiatric medicine or treated patients for WFAI in Kenosha.[2] A0257-58 at ¶ 11.

Weil Holdings learned of Dr. Alexander's employment with Lakeview in February 2024 and subsequently filed the action below on April 12, 2024, seeking to enjoin Dr. Alexander from working for Lakeview on the basis that his employment violated the Non-Compete Provision. A0037 at ¶ 42. In addition to filing a Verified Complaint, Weil Holdings filed a Motion to Expedite, which was granted, and Motion for Preliminary Injunction. A0116-124. Weil Holdings issued a subpoena to Lakeview, and threatened to join Lakeview to this litigation, during the expedited discovery period, which led to Lakeview's termination of Dr. Alexander on or around June 19, 2024. A0259 at ¶ 22; A0352-61. Weil Holdings thereafter claimed its Motion for Preliminary Injunction was moot. A0174-77.

### E. The Court of Chancery Grants Summary Judgment for Dr. Alexander and Weil Holdings Appeals

On August 2, 2024, Dr. Alexander moved for summary judgment on both counts contained in Weil Holdings' Verified Complaint, one for breach of the LLC Agreement and the related count of tortious interference with business expectancy.

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[2] WFAI's office in Kenosha was at a different location, approximately one mile away from its current location, for the vast majority of Dr. Alexander's tenure with WFAI. A0030 at ¶ 14.

Weil Holdings subsequently cross-moved for summary judgment. A0217-54. The Court of Chancery heard argument on February 10, 2025. A0842; A0862-918.

On March 4, 2025, the Court of Chancery granted Dr. Alexander's motion for summary judgment, finding the Non-Compete Provision to be overbroad and unenforceable. *See* Ex. A to Weil App. Br. (hereinafter "Op."). Based on the undisputed factual record before the Court of Chancery, Vice Chancellor David determined that the Non-Compete Provision was invalid because it is "indefinite in duration and would restrict [Dr. Alexander] from practicing in a geographic region that is constantly subject to change." Op. at 1. The Vice Chancellor went so far as to say it was "not a close call." *Id.* at 11. The Court of Chancery also entered judgment for Dr. Alexander on the tortious interference claim, as it was predicated entirely on the unenforceable Non-Compete Provision. *Id.* at 18.

On April 2, 2025, Weil Holdings appealed the Court of Chancery's grant of summary judgment in favor of Dr. Alexander to this Court.[3]

[3] The Opening Brief of Appellant Weil Holdings, II LLC will hereinafter be cited as "Weil App. Br."

## ARGUMENT

### I. THE COURT OF CHANCERY CORRECTLY DETERMINED THAT THE NON-COMPETE PROVISION IS UNENFORCEABLE AFTER CONDUCTING THE APPROPRIATE REASONABLENESS REVIEW THAT BALANCED COMPETING PUBLIC INTERESTS.

#### A. Question Presented

Whether the Court of Chancery properly granted summary judgment in Dr. Alexander's favor by weighing competing public interests in encouraging competition, enforcing valid contracts, and protecting an individual's right to pursue the lawful employment of their choice. A0245; Op. at 9.

#### B. Scope of Review

This Court reviews the Court of Chancery's grant of summary judgment under a *de novo* standard of review. *U.S. Cellular Inv. Co. of Allentown v. Bell Atl. Mobile Sys., Inc.*, 677 A.2d 497, 499 (Del. 1996). This Court reconsiders the Court of Chancery's factual findings only to the extent they were "clearly erroneous." *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 217 (Del. 2005).

#### C. Merits of Argument

When analyzing the validity of any restrictive covenant not to compete, a court must balance all competing public policies, which includes the encouragement of competition, protection of commercial interests, and the natural right to employment of one's choosing. It does not, as Weil Holdings asserts, solely consider the interest in upholding contracts. Weil App. Br. at 16. These interests must be

considered in every case disputing a non-compete provision regardless of whether the non-compete is found in an employment contract or a sale and purchase agreement. The Court of Chancery conducted a thorough analysis of these competing interests and rightfully concluded that the Non-Compete Provision is unreasonable and therefore unenforceable as a matter of Delaware law.

1. Delaware Courts Balance Public Interests When Reviewing Restrictive Covenants

Delaware places a high value on upholding valid contracts and enforcing contracting parties' reasonable expectations. But, contrary to Weil Holdings' assertion, Weil App. Br. at 16, Delaware does not prioritize enforcement of contracts above all other interests. *See Hub Grp., Inc. v. Knoll*, 2024 WL 3453863, at *1 (Del. Ch. July 18, 2024) ("Describing this jurisdiction as contractarian, however, and evincing a willingness to generally hold contracting parties to their bargains…does not mean that upholding contracts is the only value recognized by this court."). Delaware's "contractarian view has its limits when such enforcement is inimical to public policy." *Kodiak Bldg. Partners, LLC v. Adams*, 2022 WL 5240507, at *6 (Del. Ch. Oct. 6, 2022). In the context of non-compete provisions, and in addition to upholding contracts, Delaware courts examine public policy considerations encouraging competition, striking down artificial obstacles to competition, and the natural right of an individual to follow a trade or profession anywhere they please in

a lawful manner. *Id.* at *7 (quotations omitted); *see also Centurion Serv. Grp., LLC v. Wilensky*, 2023 WL 5624156, at *2 (Del. Ch. Aug. 31, 2023) ("Delaware courts have favored the public interest of competition in their review of noncompetition agreements.") (citation omitted). When, on balance, these interests outweigh the value in enforcing a contract, Delaware courts "will decline to enforce contractual obligations, no matter how clear or sincerely intended when entered." *Kodiak*, 2022 WL 5240507 at *6 (quoting *Lyons Ins. Agency, Inc. v. Wark*, 2020 WL 429114, at *1 (Del. Ch. Jan. 28, 2020)). Delaware courts indeed take a "nuanced approach" and conduct a reasonableness analysis and a balancing of the equities that are "typically foreign to judicial review in contract actions." *Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 487 (Del. 2024). As such, the Court of Chancery properly balanced "contractarian principles against the restraints on trade that restrictive covenants impose." *Id.*[4]

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[4] Weil Holdings' advocacy of Delaware's contractarian history is belied by its later arguments, which ask this Court to look beyond the unambiguous text of the LLC Agreement and rely on what the parties allegedly knew or believed to be true at the time of entering the agreement. Weil App. Br. 13, 28. This is both inconsistent with Weil Holdings' arguments and contradicts longstanding Delaware law that "only the language of the contract itself"—not parol evidence—"is considered in determining the intentions of the parties. *Allied Cap. Corp. v. GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006). Moreover, Weil Holdings asks the Court to reform significant portions of the agreement while simultaneously seeking to hold Dr. Alexander to the precise terms of the Non-Compete Provision. Weil App. Br. at 34-38. Appellant cannot, as they accuse Dr. Alexander, have their cake and eat it too,

2. The Non-Compete Provision Was Not Related to the Sale of a Business and Did Not Justify Application of a "Less Searching" Reasonableness Inquiry

Delaware does not "mechanically" enforce non-compete restrictions. *Payscale Inc. v. Norman*, 2025 WL 1622341, at *4 (Del. Ch. June 9, 2025). Rather, as noted above, non-compete provisions are carefully reviewed to ensure 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.

When a non-compete arises out of the sale of a business courts have stated that they are subject to a "less searching" inquiry than a non-compete contained in more traditional employment contracts. *Kodiak*, 2022 WL 5240507 at *4. A lesser inquiry is appropriate because a business sale typically does not involve a high level of disparity in each side's bargaining power. *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *24 (Del. Ch. Jan. 26, 2024). This does not mean, as Weil Holdings suggests, however, that Delaware courts eschew a reasonableness analysis or decline to "scrutinize the scope of a restrictive covenant[.]" Weil App. Br. at 18; *see also*

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espousing the vital importance of forcing parties to adhere to contracts, "good and bad," Weil App. Br. at 17, as written while simultaneously asking this Court to not only look beyond the explicit language of the agreement but to reform its key provisions entirely

*id.* at 25 ("To the extent that it is necessary to reach the reasonableness of the unambiguous language of the Noncompete (as opposed to simply enforcing it)…"). Regardless of whether a non-compete provision is contained within an employment agreement or an agreement for the sale of a business, Delaware courts must still conduct a reasonableness analysis and balance public interests. *See*, *e.g.*, *Kodiak*, 2022 WL 5240507 at *11 ("While Delaware courts allow for a broader scope of reasonableness in connection with a sale of a business as opposed to an employment agreement, 'reasonableness' is still tied to whether the scope is 'essential for the protection of the [acquirer's] economic interests.) (citation omitted); *Intertek Testing Servs. NA, Inc. v. Eastman*, 2023 WL 2544236, at *4 (Del. Ch. Mar. 16, 2023) ("Although relatively broad restrictive covenants have been enforced in the sale of a business context, such covenants must be tailored to the competitive space reached by the seller and serve the buyer's legitimate economic interests."). The reasonableness review itself does not change in the context of a sale of business, but a court can be less critical of non-compete provisions given that this type of transaction typically involves more sophisticated parties with equal footing. *See Kodiak*, 2022 WL 5240507, at *11.

The Court of Chancery properly concluded that the Non-Compete Provision was not negotiated in the context of the sale of a business. As the Court of Chancery concluded, it was *undisputed* that the Non-Compete Provision was not related to the

sale of a business, Op. at 16, contrary to Weil Holdings' assertions on appeal, Weil App. Br. at 19. In its opposition to summary judgment, Weil Holdings only argued that the "less searching" standard applied "outside of the employee/employer scenario." A0484. Nowhere did Weil Holdings argue to the Court of Chancery that the Non-Compete Provision was entered into as part of the sale of a business, only that it was not in the setting of a strict employer/employee relationship. Weil Holdings cannot change its position on appeal to escape the Court of Chancery's ruling and factual finding. *See CCSB Fin. Corp. v. Totta*, 302 A.3d 387, 403 (Del. 2023) (finding argument made for the first time on appeal that contradicted acknowledgements made to court below was waived); Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review.").

In any event, the Non-Compete Provision was not entered into in connection with the sale of a business, particularly as that term has been used by Delaware courts to rationalize application of a "less searching" standard of inquiry. Courts utilize a "less searching" inquiry where an individual or entity sells their ownership stake in a business, leaving them with no outstanding interest, and in exchange agrees to be restricted in competing with that business for a limited period of time. In *Kodiak*, for example, the defendant sold his entire 8.33% interest in a business as part of a broader acquisition, and in connection with that transaction, he agreed to a set of restrictive covenants. 2022 WL 5240507 at *2. Similarly, in *Intertek*, the defendant

sold a company he cofounded and agreed to a non-compete provision as part of the stock purchase agreement. 2023 WL 2544236 at *1. Other recent cases are aligned with *Kodiak* and *Intertek*. *See Imperial Dade Canada Inc. v. Veritiv Operating Co.*, 2022 WL 22907852, at *1 (Del. Ch. Jan. 29, 2025) (applying less searching inquiry when defendant sold Canadian subsidiary and agreed to non-compete as part of stock purchase agreement); *Labyrinth*, 2024 WL 295996 at *24 (applying less searching inquiry when defendant was sole shareholder of company sold and agreed to non-compete as part of stock purchase agreement); *Kan-Di-Ki, LLC v. Suer*, 2015 WL 4503210, at *2 (Del. Ch. July 22, 2015) (applying less searching inquiry when defendant sold ownership of two businesses and agreed to non-compete and non-solicitation provisions in purchase agreement). The circumstances in this case are quite different.

Dr. Alexander held a membership interest in Weil Holdco I, which owned 100% of Weil Management. When Balance Health acquired Weil Management from Weil Holdco I, the interest holders of Weil Holdco I (including Dr. Alexander) received membership interests in Weil Holdings to maintain his indirect ownership interest in Weil Management. Dr. Alexander was required to sign the new LLC Agreement containing the Non-Compete Provision to obtain his membership interest in Weil Holdings and maintain his indirect ownership interest in Weil Management. Unlike the cases addressed above, Dr. Alexander did not outright sell his indirect

ownership interest in Weil Management. Rather, Dr. Alexander traded one indirect ownership interest of Weil Management (in Weil Holdco I) for another (in Weil Holdings). This situation does not justify the application of a "less searching" standard, as it did not involve the sale of a business where Dr. Alexander "holds the cards." *Labyrinth*, 2024 WL 295996 at *24. To be sure, the restrictive covenant dispute between Dr. Alexander and Weil Holdings stems from Dr. Alexander's termination by WFAI and subsequent employment at Lakeview. It was not as a result of Dr. Alexander's sale of his ownership interest in Weil Management and subsequent employment at Lakeview. Viewed in this context, the circumstances of this case are more closely aligned with the more searching inquiry imposed by Delaware courts when restrictive covenants arise in a traditional employer-employee relationship, as Weil Holdings is attempting to restrain Dr. Alexander from competing with WFAI after WFAI terminated his employment.

Ultimately, however, whether a "more searching" or "less searching" inquiry is applied should not change the outcome. The Court of Chancery indeed determined that the Non-Compete Provision, under any standard, was unreasonable and that it was "not a close call." Op. at 11. That decision is correct, and it should be affirmed.

Furthermore, Weil Holdings' reliance on a stipulation in the LLC Agreement that the Non-Compete Provision was "reasonable and necessary" to protect the economic interests of Weil Holdings is misplaced. This type of contractual

provision does not preclude courts from conducting a reasonableness review. *See Kodiak*, 2022 WL 5240507 (concluding that contractual provisions purporting to waive a party's ability to challenge reasonableness were "ineffective to preclude or circumvent the requisite judicial scrutiny of noncompete provisions before they can be enforced"); *Sunder Energy, LLC v. Jackson*, 305 A.3d 723, 754 (Del. Ch. 2023), *aff'd in part, rev'd in part*, 332 A.3d 472 (Del. 2024) ("The court has an independent obligation to review the reasonableness of restrictive covenants that cannot be bargained away.").

In sum, the Court of Chancery properly balanced the relevant competing public policy interests, including the importance of upholding valid contracts, protecting competition, and an individual's right to employment. This analysis was appropriate and necessary, as courts examine all restrictive covenants for reasonableness whether they are contained in an employment agreement or a contract for the sale of a business. Under this analysis, the Court of Chancery determined that the Non-Compete Provision was unreasonable and overbroad, and this Court should uphold that decision to grant summary judgment in Dr. Alexander's favor.

## II. THE COURT OF CHANCERY PROPERLY GRANTED SUMMARY JUDGMENT ON COUNT I BECAUSE THE GEOGRAPHIC SCOPE AND DURATION ARE UNREASONABLE AS A MATTER OF LAW

### A. Question Presented

Whether the Court of Chancery properly concluded that the Non-Compete Provision was unreasonable, and thus unenforceable as a matter of law, because it is overbroad in both geographic scope and duration based on the express language of the LLC Agreement and the undisputed factual record. A0233-40; Op. at 11-15.

### B. Scope of Review

This Court reviews the Court of Chancery's grant of summary judgment under a *de novo* standard of review. *U.S. Cellular* 677 A.2d at 499. This Court reconsiders the Court of Chancery's factual findings only to the extent they were "clearly erroneous." *Homestore,* 888 A.2d at 217.

### C. Merits of Argument

The Court of Chancery relied on undisputed facts and the unambiguous language of the LLC Agreement in granting summary judgment in Dr. Alexander's favor. Under the well-established reasonableness review standard, the Court of Chancery properly concluded that the Non-Compete Provision is facially invalid due to its overbroad geographic and temporal restrictions.

It is well-established that Delaware courts do not mechanically enforce non-compete provisions and instead "closely scrutinize[]" them as restrictions on trade.

*Centurion*, 2023 WL 5624156, at *2. Weil Holdings recognizes this, citing *Kodiak*, but nonetheless contends that this Court should not engage in a reasonableness analysis and rather just "simply enforce[e]" the Non-Compete Provision. Weil App. Br. at 25. This is incorrect.

In Delaware, all non-compete provisions are carefully reviewed to ensure that 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." *FP UC Holdings, LLC v. Hamilton*, 2020 WL 1492783, at *6 (Del. Ch. Mar. 27, 2020); *see also Sunder Energy*, 305 A.3d at 754. This reasonableness review is designed to advance Delaware's policy favoring competition and avoid imposing unnecessary and artificial restrictions on trade and competition. *See*, *e.g.*, *Centurion*, 2023 WL 5624156 at *2; *Hub Grp.*, 2024 WL 3453863 at *1. The Court of Chancery engaged in this reasonableness review and appropriately determined that the Non-Compete Provisions' shifting geographic scope and indefinite duration were unreasonable.

1. The Court of Chancery Correctly Determined That the Non-Compete Provision is Liable to Change and Geographically Overbroad

The Non-Compete Provision purports to restrict Dr. Alexander from practicing podiatric medicine or providing podiatric services within a "radius of 25 miles from the Unitholder's Primary Practice Site, and 15 miles from any other

practice site of the Affiliated Practices." Because "Affiliated Practice" includes all practice sites of WFAI, FASWM, and 1F2F, this prohibits Dr. Alexander from practicing podiatric medicine and providing podiatric services in four states: Illinois, Wisconsin, Michigan, and Virginia.

The Court of Chancery determined that the geographic scope of the Non-Compete Provision was overbroad not only because it restricts Dr. Alexander from practicing medicine within four states, but also because "the Restricted Territory can change dramatically as Affiliated Practices move and expand." Op. at 14. For instance, if Weil Management contracts with an additional entity or an Affiliated Practice moves locations, the geographic scope will shift or grow. In making this determination, the Court of Chancery relied on the undisputed factual record, concluding that the Non-Compete Provision was invalid and granting summary judgment in favor of Dr. Alexander.

Weil Holdings bears the burden to prove by clear and convincing evidence that the Non-Compete Provision is reasonable. *Revolution Retail Sys., LLC v. Sentinel Techs., Inc.*, 2015 WL 6611601, at *10 (Del. Ch. Oct. 30, 2015). To determine whether a geographic restriction in a non-compete is reasonable, the court looks to whether it is "essential for the protection of the employer's economic interests." *FP UC Holdings*, 2020 WL 1492783 at *6. This analysis does not relate to the number of miles covered by the restriction but the legitimate economic

interests of the employer, including "protection of employer goodwill and protection of employer confidential information from misuse." *Kodiak*, 2022 WL 5240507 at *8. Weil Holdings ignores this burden and fails to identify any legitimate business interest or demonstrate how the Non-Compete Provision is tailored to protect that interest.

Weil Holdings first argues that the geographic area covered by the Non-Compete Provision is "functionally and contextually narrower than as interpreted by the trial court." Weil App. Br. at 26. This argument is based on its claim that "[r]oughly one-third" of the Restricted Territory is "over Lake Michigan." *Id.* Under the plain language of the LLC Agreement, however, the Non-Compete Provision covers territory in four states. Weil does not and cannot dispute this fact.

Weil Holdings further claims that the Non-Compete Provision's geographic scope is reasonable because Dr. Alexander was able to find a new position within "a 47-minute commute from his home." Weil App. Br. at 27. But the fact that literal compliance with the Non-Compete Provision is possible does not *ipso facto* make the Non-Compete Provision reasonable. And Weil Holdings presents no legal authority to suggest otherwise. Moreover, it is not Dr. Alexander's actions that are relevant in determining the reasonableness of the geographic scope. The focus of the inquiry is on the legitimate business interests asserted by Weil Holdings and how those interests are protected by the Non-Compete Provision. Weil Holdings fails to

articulate any legitimate business interests or provide any explanation of how restricting Dr. Alexander's ability to practice podiatric medicine in four states is essential to protecting those interests. Setting aside the misalignment between the podiatric medicine practiced by Dr. Alexander at WFAI and the management services offered by Weil Management to podiatric practices, Weil Holdings makes no attempt to demonstrate how the fluctuating geographic scope of the Non-Compete Provision is necessary when it is undisputed that Dr. Alexander only practiced for WFAI in Illinois; never practiced medicine in Wisconsin until after he was terminated from WFAI; has never practiced medicine in Michigan or Virginia; and has never been employed by 1F2F or FASWM.

The primary reason the Court of Chancery below found the geographic scope "unworkable" is that it is subject to change. As noted above, the Restricted Territory hinges on the location of each Affiliated Practice. However, those locations are not definitively established at a specific site or as of a certain time. If Weil Management contracts with an additional practice or if one of the existing practices moves or opens an additional office, the scope of the Non-Compete Provision would shift or expand immediately without any consultation of Dr. Alexander. Thus, as the Court of Chancery noted, Dr. Alexander could be in compliance with the Non-Compete Provision one day, but the next day be in violation of the same Non-Compete Provision because of action that Dr. Alexander has no control (and potentially

knowledge) over. As the Court of Chancery concluded, "For a person seeking stable housing and employment, [these concerns] are unworkable." Op. at 14.

Unable to rebut the Court of Chancery's legitimate concerns around the overbroad geographic scope given the plain language of the LLC Agreement, Weil Holdings argues on appeal that the Court of Chancery improperly "analyzed theoretical and potential harms, suggesting that the Restricted Territory was a moving target." Weil App. Br. at 30. Not so. The Court of Chancery's conclusion was based on the fundamental design of the geographic restriction per the unambiguous language of the LLC Agreement. The geographic restrictions embodied in the Non-Compete Provision are inarguably intended to expand and/or shift as Weil Management enters into new management contracts with new podiatric practices or as existing podiatric practices expand into new territory. Weil Holdings notably does not dispute this. It instead argues that there is nothing in the record to suggest that a change in the geographic scope "was imminent or even likely to occur." *Id.* What Weil Holdings overlooks, however, is the undisputed fact that a WFAI "Affiliated Practice" did in fact move locations while Dr. Alexander was employed by WFAI, A0030 at ¶ 14, thus providing a concrete example of how the geographic scope of the Non-Compete actually changed. It is also common sense that offices sometimes move locations. And it is the fact that the geographic scope can change—without notice or input to Dr. Alexander, the restricted party—that

renders the Non-Compete Provision overbroad. The speed at which such changes may occur is not dispositive, or even necessarily relevant, which is the basis for Weil Holdings' criticism of the Court of Chancery's reliance on *Hub Group*.

Not only is the potential for expansion explicit in the language of the agreement but also in the very nature of Weil Holdings as a private equity investor. A core principle of this type of entity is to expand with new investments. Weil Holdings itself recognizes this, arguing that equity firms typically only hold an investment for five to seven years. Weil App. Br. at 13, 28. Thus, the expanding scope of the geographic restriction of the Non-Compete Provision is clear and undisputed on the face of the LLC Agreement and in the factual record, and it was appropriately considered by the Court of Chancery when determining that the Non-Compete Provision was overbroad and unenforceable.

2. The Court of Chancery Correctly Determined That the Duration of the Non-Compete Provision is Indefinite and Unreasonable

It is undisputed that the Non-Compete Provision applies for as long as Dr. Alexander holds Units in Weil Holdings "and for a period of two (2) years thereafter." Because there is no mandatory redemption or repurchase of Dr. Alexander's Membership Units, the Court of Chancery rightfully determined that the duration would be entirely within Weil Holdings' control, meaning it is "potentially indefinite." Op. at 12, citing *Sunder*, 305 A.3d at 756.

The Court of Chancery's decision in *Sunder* is instructive. There, the court was faced with a non-compete with a potentially indefinite term "because it endure[d] for 'the period during which such Person owns Units and for a two (2) year period thereafter[.]" *Sunder*, 305 A.3d at 756. The court found that the potential indefinite nature of the non-compete rendered it unreasonable and therefore unenforceable as a matter of law. *Id.* Even though the agreement in *Sunder* allowed the employer to repurchase vested membership units for zero dollars, the court found that the "sole discretion over when the two-year clock starts" unfairly rested with the employer because "a holder of Incentive Units cannot divest himself of the units and start the clock." *Id.* Moreover, there was no reason to believe that the company would continue to pay defendant-unitholder profit distributions following his departure from the company. *Id.* Notably, on appeal to the Delaware Supreme Court, the employer in *Sunder* did not challenge the Court of Chancery's determination that the non-compete provision was "facially unreasonable" based on duration. *See Sunder Energy*, 332 A.3d at 476.

The Non-Compete Provision in this case is similar to the provision in *Sunder*, which the court found unreasonable and unenforceable with one critical distinguishing feature. Unlike the agreement at issue in *Sunder*, there is no provision in the LLC Agreement that mandates a redemption or repurchase of Dr. Alexander's

Membership Interest. Op. at 12. This undoubtedly renders the Non-Compete Provision indefinite in duration and unenforceable as a matter of law.

Weil Holdings asserts that all parties to the LLC Agreement understood that the Non-Compete Provision "was never intended to last indefinitely" because the "liquidity timeline for a private equity investment is finite—lasting anywhere from three to ten years." Weil App. Br. at 28. This time period, however, is not part of the LLC Agreement. Rather, the LLC Agreement explicitly states that the Non-Compete Provision will remain in effect so long as Dr. Alexander holds an interest in Weil Holdings and for two years after that. And there is no limitation on how long Weil Holdings will exist. Delaware's "fundamental rules of construction require strict adherence to the language of the contract when its provisions are clear," and courts will not look to extrinsic evidence in this circumstance. *MHM/LLC, Inc. v. Horizon Mental Health Mgmt., Inc.*, 1996 WL 592719, at *2 (Del. Ch. Oct. 3, 1996), *aff'd sub nom. Horizon Mental Health Mgmt., Inc. v. MHM/LLC, Inc.*, 694 A.2d 844 (Del. 1997). Throughout its brief, Weil Holdings concedes that the Non-Compete Provision is unambiguous, emphasizing "Delaware's longstanding policy of enforcing unambiguous contracts as written." Weil App. Br. at 15; *see also id.* at 16, 18, 21, 25. It cannot then ask this Court to look beyond the express terms of the contract, consider what some parties allegedly believed about the Non-Compete

Provision's duration, and speculate regarding the timeline of Balance Holdco's investment.

Weil Holdings then contends that it is Dr. Alexander who controls the duration of the Non-Compete Provision because he can agree to a voluntary buy-out of his interests at any time. This argument was rejected by the Court of Chancery—and with good reason—because it is Weil Holdings sole determination as to whether and when it will make or accept a reasonable offer to purchase Dr. Alexander's Membership Units. Op. at 12. Dr. Alexander has little bargaining power to compel a reasonable purchase price, and Weil Holdings has a high interest in refusing to purchase Dr. Alexander's units to ensure that the non-compete restriction continues for as long as possible. Weil Holdings notably does not address this dynamic.

As with the geographic restrictions, Weil Holdings illogically asserts that the Court of Chancery relied on hypotheticals in determining that the Non-Compete Provision's duration is potentially indefinite. This argument holds no water and is contradicted by the LLC Agreement. Weil Holdings can point to no provision of the LLC Agreement that requires it to buy-out Dr. Alexander's membership interest or that imposes guidelines for a reasonable value for that interest. Weil Holdings' statement that it has shown a "willingness to work with Dr. Alexander" to provide a reasonable proposal is, at best, insincere. Despite Dr. Alexander's Membership Interests holding a value of approximately [redacted], Weil Holdings offered only

[redacted], a discount of more than 90%. This only serves to underscore the unequal bargaining power between Weil Holdings, a private equity backed holding company, and Dr. Alexander.

In summary, the Court of Chancery relied on both the clear language of the contract and the undisputed factual record in concluding that the Non-Compete Provision was overbroad in both geographic scope and temporal duration. Weil Holdings' uncited assertion that the Court of Chancery engaged in a "parade of hypotheticals" is groundless, and this Court should affirm the Court of Chancery's determination.

## III. THE COURT OF CHANCERY CORRECTLY EXERCISED ITS DISCRETION IN EQUITY AND REFUSED TO BLUE-PENCIL THE NON-COMPETE PROVISION.

### A. Question Presented

Whether the Court of Chancery properly exercised its discretion in declining to blue-pencil the unreasonable Non-Compete Provision. A0247-48; Op. at 15-17.

### B. Scope of Review

This Court reviews the discretionary decision of whether to blue-pencil an unreasonable and overbroad restrictive covenant for abuse of discretion. *Sunder Energy*, 332 A.3d at 485. This Court similarly reviews the Court of Chancery's exercise of its equitable powers for abuse of discretion. *In re Peierls Charitable Lead Unitrust*, 77 A.3d 232, 235 (Del. 2013).

### C. Merits of the Argument

It is well-established that the Court of Chancery's decision whether or not to blue-pencil an agreement is entirely discretionary under the court's equitable authority. *See*, *e.g.*, *Sunder*, 332 A.3d at 486 ("Delaware courts have the discretionary 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."); *Payscale*, 2025 WL 1622341, at *7; *Intertek*, 2023 WL 2544236, at *5. Here, the Court of Chancery properly declined to blue pencil the agreement, as it would require rewriting portions of the contract altogether.

1. Courts Are Not Required to Defer to Contractual Language Permitting Blue-Penciling

Weil Holdings recognizes that the Court of Chancery has discretion whether or not to blue-pencil the overbroad and unreasonable Non-Compete Provision, but it nevertheless argues that the Court of Chancery should have engaged in a blue-penciling exercise because of a provision in the LLC Agreement permitting a court to "reform" the Non-Compete Provision if it were later found to be unenforceable. Weil App. Br. at 35. Courts of equity, however, do not draw their authority from a contract between two parties but instead can provide this type of remedy utilizing its inherent powers. *See Sunder*, 332 A.3d at 488-89 (noting courts' discretionary authority to blue-pencil restrictive covenants); *FP UC Holdings*, 2020 WL 1492783 at *8 (same). Weil cites no precedent—because it does not exist—holding that a court must blue-pencil a contract based solely on the fact that it is permitted by the agreement. To the contrary, Delaware courts are not required to reform overbroad restrictive covenants even where the agreement contains a provision expressly permitting it. *See Kodiak*, 2022 WL 5240507, at *4 n.49 (declining to blue-pencil overbroad restrictive covenants despite the presence of a judicial reformation clause).

2. The Court of Chancery Correctly Declined to Blue-Pencil the Non-Compete Provision

While Delaware courts may in their discretion decide to blue-pencil a restrictive covenant, they are generally hesitant to do so. *Kodiak*, 2022 WL 5240507, at *4. Courts typically exercise their discretion in equity to decline blue-penciling in order to "not to allow an employer to 'back away from an overly broad covenant by proposing to enforce it to a lesser extent than written.'" *FP UC Holdings*, 2020 WL 1492783, at *8. Reforming overbroad restrictive covenants indeed "creates perverse incentives for employers drafting restrictive covenants." *Sunder*, 332 A.3d at 490. Employers will create restrictions asking "for as much as possible, with the expectation that they will at least get what they're entitled to should the matter go to court." *Labyrinth*, 2024 WL 295996, at *23 (alterations and quotation omitted). *See also Sunder*, 305 A.3d at 754 ("To blue-pencil the provision creates a no-lose situation for employers [because if] someone does challenge the provision, then the worst case is that the court will blue-pencil its scope so that it is acceptable."). On this foundation, Delaware courts frequently decline to blue-pencil overbroad restrictive covenants. *See*, *e.g.*, *Cleveland Integrity Servs., LLC v. Byers*, 2025 WL 658369, at *9 (Del. Ch. Feb. 28, 2025) ("Where noncompete or nonsolicit covenants are unreasonable in part, Delaware courts are hesitant to 'blue pencil' such agreements to make them reasonable.") (citation omitted); *Intertek*, 2023 WL

2544236 at *5 ("In my view, revising the non-compete to save Intertek—a sophisticated party—from its overreach would be inequitable."); *Kodiak*, 2022 WL 5240507, at *13 n.108 ("The inequities inherent in blue-penciling a noncompete also counsel against enforcing only those portions of the [agreement] that are supported by Kodiak's legitimate business interests."); *Centurion*, 2023 WL 5624156, at *5.

In limited situations, courts may exercise discretion to blue-pencil restrictive covenants, as discussed by this Court in *Sunder*. 332 A.3d at 486. However, Weil Holdings misstates the Court's findings in *Sunder*, contending that the Court adopted "factors a court should consider when determining whether to blue-pencil a restrictive covenant." Weil App. Br. at 36. This is incorrect. The Court stated the blue-penciling may be appropriate when there are circumstances "that indicate an equality of bargaining power between the parties, such as where the language of the covenants was specifically negotiated, valuable consideration was exchanged for the restriction, or in the context of the sale of a business." *Sunder*, 332 A.3d at 486.[5]

The Court of Chancery relied on undisputed facts in the record to determine that Dr. Alexander and Weil Holdings did not possess equal bargaining power. As

[5] Weil Holdings further misstates *Sunder* by alleging that it requires a "significant disparity in bargaining power coupled with a deceptive nonchalance by management." Weil App. Br. at 36. This combination is not found in the *Sunder* Court's decision.

described above, it is undisputed that the Non-Compete Provision was unrelated to the sale of a business. *See supra* at 16-21. And despite Weil Holdings' claims on appeal, it was undisputed in the factual record below that there were no negotiations of the terms of the LLC Agreement between Dr. Alexander and Weil Holdings. *See* A0509 at ¶ 5 (Affidavit of Lowell S. Weil, Jr.: "Dr. Alexander … did not attempt to negotiate any terms of the [LLC] Agreement."); A0259 at ¶ 18 (Affidavit of Dr. Alexander: "Notwithstanding my execution of the LLC Agreement, I had no involvement with negotiating the terms of the LLC Agreement."); *Id.* (Dr. Alexander viewed as a "take it or leave it" agreement). Weil Holdings cannot reverse its position now. As the Court of Chancery concluded below, it is indisputable that Dr. Alexander did not hold equal bargaining power with Weil Holdings in "his position as a unitholder employee." Op. at 16.

Beyond this, Weil Holdings again argues "most importantly" that the LLC Agreement "expressly mandates the court's intervention to judicially reform any terms adjudged unenforceable." As already discussed in detail above, Delaware courts are not bound by these provisions in contracts and may still decline to blue-pencil an agreement notwithstanding the presence of this language. Blue-penciling is indeed distinct from a contractually-mandated remedy, like specific performance or liquidated damages in the cases inaptly cited by Weil Holdings. Weil App. Br. at 37. Those cases involve application of the remedies *as stated* in the relevant

agreement, not a request to the court to rewrite the very terms of the agreement. It is entirely nonsensical for Weil Holdings to demand "judicial reformation" of the LLC Agreement yet criticize the Court of Chancery for "refusing the enforce the Noncompete as written" in the same breath. *Id.* at 37-38.

Weil Holdings argues that the Court of Chancery erred by rejecting "limiting the scope to locations where Dr. Alexander practiced or adopting a finite term." *Id.* at 38. The Court of Chancery appropriately rejected this alternative because making the Non-Compete Provision enforceable would not require a simple change of physical distance or number of years but would instead "require the court to craft an entirely new covenant to which neither side agreed." *Sunder*, 332 A.3d at 490. For the geographic restriction, it would not be as simple as altering the distance at issue, as in the cases cited by Weil Holdings. Weil App. Br. at 35-36; *see also Norton Petroleum Corp. v. Cameron*, 1998 WL 118198, at *4-5 (Del. Ch. Mar. 5, 1998) (reducing radius of restriction from 100 miles to 20 miles); *Knowles-Zeswitz Music, Inc. v. Cara*, 260 A.2d 171, 175 (Del. Ch. 1969) (narrowing geographic restriction from 100-mile radius of Wilmington, Delaware to only relevant school districts where former employee was sole sales representative); *DGWL Investment Corp. v. Giannini*, 2013 WL 6456242 (Del. Ch. Sept. 19, 2013) (limiting geographic scope of restriction). The parties here did not agree to a specific distance or radius that can

be narrowed. Instead, it would require extensive redrafting of the agreement, as the Court of Chancery recognized:

> And to address the geographic scope, it would have to choose between redefining Affiliated Practices to refer only to those practices where Defendant worked; freezing the definition of Affiliated Practices in time so that it is not subject to change, excising the reference in Section 2.6 that refers to Affiliated Practices altogether, or making some other manner of edits to rein in the overbroad language.

Op. at 17. Similarly, the LLC Agreement does not set a specific duration for the Non-Compete Provision but instead ties it to the ownership of Membership Units. To make this reasonable, the court would have to not only "arbitrarily select a finite duration," *id.*, but deal with the inequity in bargaining power between Dr. Alexander and Weil Holdings so that the triggering event does not rest in Weil Holdings' sole discretion.

## IV. THE COURT OF CHANCERY PROPERLY DISMISSED WEIL HOLDINGS' TORTIOUS INTERFERENCE CLAIM

### A. Question Presented

Whether the Court of Chancery properly granted summary judgment in favor of Dr. Alexander on Weil Holdings' claim of tortious interference.

### B. Scope of Review

This Court reviews the Court of Chancery's grant of summary judgment under a *de novo* standard of review. *U.S. Cellular* 677 A.2d at 499.

### C. Merits of Argument

Weil Holdings asserted in Count II that Dr. Alexander tortiously interfered with prospective economic expectations by treating patients during his short employment with Lakeview and that Weil Management lost out on "expected and anticipated revenue sources." A0044-45 at ¶ 83. The predicate for Count II is the unenforceable Non-Compete. Weil Holdings indeed alleged in its Verified Complaint that its supposed loss was "a result of" Dr. Alexander's purported breach of the Non-Compete Provision. A0044 at ¶ 81. The Court of Chancery therefore correctly granted summary judgment in Dr. Alexander's favor on Count II.

Irrespective of the unenforceability of the Non-Compete Provision, Count II still fails because Weil Holdings cannot carry its burden in proving tortious interference. The undisputed factual record is that, with the exception of one individual, Dr. Alexander did not treat any former Weil Holdings' patients while

employed by Lakeview. A0261-61 at ¶¶ 23-25. The former Weil Holdings' patient that Dr. Alexander did treat specifically sought him out (*id.*), as it is the right of any patient to seek medical treatment from a provider of their choosing. Dr. Alexander did not solicit that one patient. *Id.*

## CONCLUSION

For the foregoing reasons, the Court should affirm the Court of Chancery's grant of summary judgment on all counts in favor of Dr. Alexander. In the event of an affirmance, Dr. Alexander respectfully requests that the Court still remand this case to the Court of Chancery to administer a motion for fees in accordance with the "prevailing party" fee-shifting provision found in the LLC Agreement.

June 27, 2025

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## CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2025, I caused true and correct copies of the foregoing **[Public Version] Appellee Jeffery Alexander, DPM's Answering Brief** on Appeal to be served on the following counsel of record via File & ServeXpress:

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