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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
Plaintiff Below, Appellant,	:	
	:	Case Below – Court of Chancery
v.	:	of the State of Delaware
	:	C.A. No. 2024-0388-BWD
JEFFREY ALEXANDER, DPM,	:	
	:	Original Filed: July 14, 2025
Defendant Below, Appellee.	:	Public Version Filed: July 29, 2025

REPLY BRIEF OF APPELLANT WEIL HOLDINGS II, LLC

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PRELIMINARY STATEMENT

Dr. Alexander's Answering Brief never disputes—or even addresses—the fundamental premise that he breached the express terms of the Non-Compete.[1] Under Delaware's policy favoring freedom of contract, the Court of Chancery's failure to enforce those express terms was error.

The error below is underscored by four primary points. First, as confirmed by the record, the Noncompete arose in connection with Balance Health's acquisition of Weil Holdco I. Thus, the Noncompete bears the hallmarks of a restrictive covenant entered into in connection with the sale of a business and, as a matter of Delaware law, should have been subjected to less searching scrutiny.

Second, the record below demonstrates that Dr. Alexander and the other members had ample opportunity to both discuss the restrictive covenant's terms and negotiate them prior to signing the LLC Agreement, but Dr. Alexander chose not to do so. Instead, he represented that he was a sophisticated investor, well-positioned to negotiate a significant investment and then readily agreed to the terms of the Noncompete to obtain the benefits of an investment he values at more than [redacted]. Dr. Alexander's factual arguments to the contrary show that, at the very

[1] This brief adopts the definitions set forth in the Appellant's Opening Brief ("OB").

least, there was a genuine dispute of fact regarding his bargaining power that should have precluded summary judgment in his favor.

Third, in erroneously holding that the Noncompete was facially unreasonable as a matter of law based on its geographic scope and duration, the lower court based its opinion on putative and hypothetical "facts" that were not in the record. Once again, at the very least, a "reasonableness" analysis should have precluded summary judgment in Dr. Alexander's favor, particularly where it is undisputed that Dr. Alexander was able to find gainful employment (with a competitor, no less) without triggering the Noncompete.

Fourth, the Court of Chancery erred by ignoring the LLC Agreement's express instruction for judicial reformation and refusing to blue-pencil the Noncompete. As a result, with no analysis of the equities, the lower court permitted Dr. Alexander to both maintain his ownership interest in Weil Holdings and granted him license to freely compete with its operating subsidiary in contravention of the bargained-for Noncompete—all to the direct prejudice of the other members who, unlike Dr. Alexander, have abided by their contractual obligations. The lower court should have followed the express direction of the agreement and yielded the blue-pencil to do equity between the parties, rather than work a forfeiture on Weil Holdings.

Accordingly, the judgment of the lower court should be reversed and remanded for further proceedings.

ARGUMENT

I. THE COURT OF CHANCERY ERRED BY INVALIDATING THE NONCOMPETE

A. Delaware Public Policy Favoring Freedom of Contract Should Control

Dr. Alexander undisputedly breached the Noncompete. Delaware public policy favors enforcing contracts. *See Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 676 (Del. 2024) ("[t]he courts of this State hold freedom of contract in high—some might say, reverential—regard."). "[O]ur courts recognize that value inheres in holding contracting parties to their promises and enforcing their reasonable expectations." *Hub Grp., Inc. v. Knoll*, 2024 WL 3453863, at *1 (Del. Ch. July 18, 2024). Placing faith in contracting parties, our courts expect that "[s]ophisticated parties" can—and should—"make their own judgments about the risk[s] they should bear" when entering into contracts. *New Enter. Associates 14, L.P. v. Rich*, 295 A.3d 520, 566 (Del. Ch. 2023) (citing *Abry Partners V, L.P. v. F & W Acquisition LLC*, 891 A.2d 1032, 1061–62 (Del. Ch. 2006)). Thus, Delaware courts regularly uphold contracts, invalidating them only where there is some compelling public policy reason—not present here—not to do so.

B. Dr. Alexander Agreed to the Noncompete in Connection with the Sale of a Business.

The lower court erred in determining that the Noncompete was not the product of negotiation in connection with the sale of a business. A0859. This fact is confirmed both by the record and Dr. Alexander's own brief, which concedes that his membership in Weil Holdings came about as "part of th[e] transaction" between Weil Management and Balance Holdco in May 2023:

> 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.

(AB at 7 (emphasis added)). The Court of Chancery also acknowledged that "Balance Holdco purchased membership interests in Weil Management," and "[a]s part of that transaction, [Dr. Alexander] made a capital contribution to Weil Holdings." (Op. at 2). In fact, the record establishes that Balance Health "purchased ***all*** of the membership interests in Weil Management." A0031 at ¶ 21 (emphasis added).

Notwithstanding Dr. Alexander's arguments to the contrary (AB at 16), Weil Holdings has always maintained that the Noncompete arose from the transaction

with Balance Health and constituted a strategic investment by a sophisticated investor. (*See, e.g.*, OB at 20; *id.* at 21 ("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."); A0467-69, A0472, A0474). Under Delaware law, "covenants not to compete in the context of a business sale are subject to a 'less searching' inquiry." *Kodiak Bldg. Ptnrs., LLC v. Adams*, 2022 WL 5240507, at *4 (Del. Ch. Oct. 6, 2022) (internal citation omitted). (*See also* OB at 18.)

Seeking to maintain a less rigorous standard of scrutiny, Dr. Alexander repeatedly analogizes the Noncompete to an employment-based covenant that is subjected to a "more searching inquiry." (AB at 20). But the Noncompete and the restrictions contained therein did not arise from, nor were they agreed to as a condition of, an employment agreement between Dr. Alexander and Weil Holdings; and Dr. Alexander was never alleged to have been an employee of Weil Holdings. Rather, the Noncompete is a component of the LLC Agreement, and an obligation associated with his ownership interest as a member of Weil Holdings – it has nothing to do with the promise of employment. *See* A0258 at ¶ 12 ("Separate from my employment with WFAI, I held an indirect interest in Weil Foot & Ankle Management, LLC"). The Noncompete is a mutual commitment among all other

members of Weil Holdings to protect their common enterprise and benefit from ensuring that patients remain within their population.

Unable to argue that the Noncompete arose out of an employee/employer relationship, and thus requiring a more searching inquiry, Dr. Alexander instead asserts that the circumstances surrounding the LLC Agreement's signing bore none of the hallmarks of an agreement signed in connection with the sale of a business. (AB at 18, 20-21). Dr. Alexander seizes on the idea that he was forced to accept the terms of the Noncompete, blaming his limited bargaining power. (*Id.*). But when examined against the actual facts in the record, this claim does not withstand scrutiny. A0509 at ¶¶ 4-5.

Dr. Alexander attempts to portray himself as powerless in negotiating the terms of his purported [redacted] investment. But, he was one of twenty-five members, including twenty-one physicians, who agreed to the terms of the Noncompete. A0467. All members, Dr. Alexander included, were provided ample opportunity and power to negotiate and discuss the terms of the agreement and its restrictions. A0509 at ¶¶ 4-5, A0515-21. The limited record available demonstrates that some members chose to do so and sought to clarify and revise certain terms of the Noncompete. *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."). Dr. Alexander did not negotiate the terms of his investment, though he did elect to continue that investment over choosing liquidity at the time of the Balance Health transaction.

Though he highlights the fact that he "did not attempt to negotiate any terms of the [LLC] Agreement[,]" his choice not to negotiate the terms of the Noncompete has no bearing on his actual bargaining power. A0509 at ¶ 5; *see also* A0259 at ¶ 18 ("[n]otwithstanding my execution of the LLC Agreement, I had no involvement with negotiating the terms of the LLC Agreement."); *but cf.* A0669; A0658 (reflecting Dr. Alexander's negotiations with Lakeview as to his employment agreement restrictions). Dr. Alexander's inaction speaks to his ***choice*** not to negotiate (despite having the opportunity to do so), thereby conflating his lack of action with a lack of bargaining power relative to Weil Holdings. In fact, Dr. Alexander was not coerced into signing the LLC Agreement, a matter he represented to Weil Holdings in certifying that he was an accredited investor with sufficient experience to evaluate and accept the risks of his investment and empowered to retain counsel in negotiating his investment. A0055 at § 2.5(b), (d). "A party to a contract cannot silently accept its benefits and then object to its perceived disadvantages." *Graham v. State Farm Mut. Auto. Ins. Co.*, 565 A.2d 908, 913 (Del. 1989). *See UBEO Holdings, LLC v. Drakulic*, 2021 WL 1716966, at *10 (Del. Ch. Apr. 30, 2021) (quoting *Pellaton v.*

Bank of N.Y., 592 A.2d 473, 477 (Del. 1991)) ("If a party to a contract could use her failure to read a contract as a way to circumvent her obligations, 'contracts would not be worth the paper on which they are written.'"). Here too, Dr. Alexander is not entitled to leverage his own inaction against Weil Holdings to obtain extraordinary judicial relief to save him from a contract he now finds, in part, unfavorable.

To the extent that Dr. Alexander's factual arguments about his supposed lack of bargaining power are credited at all (AB at 9, 16, 17), they only serve to demonstrate that it was error for the court below to grant summary judgment in the face of a genuine dispute of material fact. Ct. Ch. R. 56(c).

Thus, in weighing the competing policy interests surrounding the Noncompete, the bargain reached between these sophisticated parties must be upheld. Dr. Alexander's attempts to invoke *Hub Group, Inc. v. Knoll* to argue that the Court should yield its policy of enforcing contracts to other policy interests, including encouraging competition and protecting employees must be rejected under the circumstances present here. (AB at 14). In fact, the portion of the decision that Dr. Alexander cites expressly notes that Delaware courts will "*consider*[]" giving more weight to other policy interests "in cases where ***an employee, in consideration of future employment, is compelled to enter a contract not to compete***." 2024 WL 3453863, at *1 (Del. Ch. July 18, 2024) (emphasis added). The facts here plainly do not fit this context. If anything, the *Hub Group* decision agrees that Delaware

remains a contractarian jurisdiction, even when restrictive covenants are involved. *Id.* "Only a strong showing that dishonoring a contract is required to vindicate a public policy even stronger than freedom of contract will induce our courts to ignore unambiguous contractual undertakings." *Id.* (quoting *Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 676–77 (Del. 2024) .

The Court should use this opportunity to uphold its "high—some might say, reverential—regard" for freedom of contract in the context of restrictive covenants. *Cantor Fitzgerald*, 312 A.3d, at 676-77. Delaware has served as a beacon of clarity to contract drafters who selected Delaware law and venue to govern their corporate and commercial arrangements. Failure to uphold the principles of freedom of contract here will permit the law in this area to continue its slide from clarity to cloudiness before our very eyes. Most recently, in *Payscale Inc. v. Norman*, 2025 WL 1622341 (Del. Ch. June 9, 2025) (David, V.C.), the Court of Chancery yet again invalidated restrictive covenants—*at the pleadings stage*—based on perceived overbreadth or imbalances in bargaining power, outside the traditional employment context. This emphasizes the very problem presented here: when courts decline to enforce covenants negotiated by sophisticated parties absent a developed record or refuse to blue-pencil them as agreed, they disrupt legitimate commercial expectations and undermine Delaware's contractarian framework.

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 AN ANALYSIS OF REASONABLENESS THAT DEPARTED FROM THE RECORD AND INVOKED SPECULATIVE CONCERNS

The Court of Chancery's reasonableness analysis was based on a speculative analysis of a truncated factual record. Rather than grounding its analysis in the record or construing the LLC Agreement under Delaware's fact-sensitive reasonableness framework, the lower court evaluated a series of hypotheticals to inform its review of the Noncompete. There were not sufficient facts to support the theoretical harms the lower court used to craft its opinion.

A. The Noncompete is Reasonable on its Face

The Noncompete is both commercially and legally reasonable as a matter of law. Had the Noncompete been appropriately scrutinized as arising from the sale of a business, the lower court should have upheld it.

Delaware enforces restrictive covenants "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. Importantly, the lower 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), *aff'd in part, rev'd in part,* 332 A.3d 472 (Del. 2024). Courts should not "tick through [the] individual features of a restriction in isolation, because features work together synergistically." *Id.*

1. The Geographic Scope is Reasonable

Dr. Alexander contends that the geographic scope of the Noncompete is unreasonable because it is "[l]iable to [c]hange and [] [o]verbroad" (AB at 23), but this is not supported by the Noncompete's language. The restriction is limited to a 15-mile radius around each "Affiliated Practice" and a 25-mile radius around Dr. Alexander's two primary WFAI offices. (OB at 12; A0090, A0093). Dr. Alexander's primary restrictions—as a podiatric physician licensed to practice medicine in Illinois and Wisconsin only—include the zones within 25 miles of his former Primary Practice Sites and 15 miles from all other WFAI offices in the Chicago area (including the Kenosha, Wisconsin site at issue). A0559-62. Moreover, while the Noncompete's restrictions protect zones around Weil Holdings' members within Michigan and Virginia (not the entire states), those restrictions are irrelevant in terms of restricting Dr. Alexander—they serve only to protect the profitability of those practices, increasing the profits returned to him.

That the locations of affiliated practices might (or might not) someday evolve does not make the Noncompete wholly unenforceable. It is not materially different

than other agreements where a restricted territory is tied to business operations. *See Lyons Ins. Agency, Inc. v. Wilson*, 2018 WL 4677606, at *6 (Del. Ch. Sept. 28, 2018) (finding a restrictive covenant that barred "competitive" activity enforceable without a specific geographic limitation). Here, the supposed "changing" geography is controlled by defined terms in the LLC Agreement, which does not present undue uncertainty. Indeed, there is no dispute that Dr. Alexander has been able to find employment in Chicagoland with a major competitor—NIFAS—which does not violate the Noncompete. Weil Holdings (a collection of his co-investors) is not seeking to trap Dr. Alexander or force him out of his chosen field. It is simply seeking to hold him accountable for a breach that has already occurred, one which Dr. Alexander has not contested, and which threatened Weil Holdings' members who practice in Kenosha, and concomitantly, the overall value of the interests of all Weil Holdings' members.

2. The Temporal Scope is Reasonable

The temporal scope of the Noncompete is similarly reasonable. The Noncompete applies for so long as the member owns units in Weil Holdings and two years thereafter. A0055-56 at § 2.6(a). Simply, it is tethered to ownership, which Dr. Alexander can terminate voluntarily, followed by a two-year tail. This is not indefinite. Dr. Alexander could have triggered the tail period at any time by

divesting his units and the record is devoid of any meaningful efforts on his part to do so.

Dr. Alexander's argument that the Noncompete may last indefinitely because of Weil Holdings' discretion to approve inter-member transfers does not render it unenforceable. (AB at 31). First, the temporal duration of the Noncompete must be viewed through the lens of its modest geographic restrictions, as instructed by *Sunder*. *Sunder* expressly contemplates that modest geographic restrictions can be coupled with longer, perhaps indefinite, temporal restrictions if, on the whole, the restrictive covenant does not truly impede competition or earning a living. *Sunder*, 305 A.3d at 753 ("All else equal, a longer restrictive covenant will be more reasonable if geographically tempered . . . ."). Here, Dr. Alexander's commute has only been extended by mere minutes, which is not an unreasonable burden to bear in exchange for continuing to receive profits from the protected zones of patient populations around his co-members' practices. *See* A0548. Second, because these parties are sophisticated, there is no reason to believe that they cannot reach a value-optimizing transaction should Dr. Alexander want to divest his units in favor of competing. Indeed, Weil Holdings must exercise its transfer-approval discretion in good faith, considering "the scope, purpose, and terms of the parties' contract." *In re Dura Medic Holdings, Inc. Consol. Litig.*, 333 A.3d 227, 265 (Del. Ch. 2025).

It is also undisputed that Weil Holdings expressed its willingness to repurchase his membership units. A0580-82. It is Dr. Alexander who has hampered the progress of those negotiations—leveraging threats of "frivolous litigation and government complaints if it did not provide [him] with his desired payout" and refusing to make a counteroffer. A0477; A0673-77. Again, 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.

B. The Lower Court's Decision Was Based on an Underdeveloped Record

To the extent the Court determines the lower court's reasoning was grounded in fact rather than hypothetical scenarios, the questions raised were 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 should have been denied.

The trial court should have had the opportunity to review the Noncompete "***holistically***, carefully, and nonmechanically," *Kodiak*, 2022 WL 5240507, at *7 (emphasis added), "***evaluating all of the dimensions of the restrictive covenant and considering how it operates with other restrictions in the contract***." *Sunder Energy*, 305 A.3d, at 753 (emphasis added). Sure enough, Dr. Alexander maintains that the lower court did review the Noncompete "holistically." (AB at 4). But this is not possible. Discovery was stayed shortly after it began, (A0017 at D.I. 43), leaving the factual record underdeveloped. The lower court did not have sufficient facts at its disposal to conduct the reasonableness review it did. Accordingly, granting summary regarding the practical scope and application of the Noncompete was error.

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

A. Delaware Law Supports Reformation Where A Contract Provides for It

The lower court erred by declining to blue-pencil the Noncompete. Delaware public policy prioritizes the enforcement of contracts as written, valuing parties' freedom of contract and "holding contracting parties to their promises and enforcing their reasonable expectations." *Hub Grp.*, 2024 WL 3453863, at *1. The LLC Agreement includes a mandatory blue-penciling clause (A0056-57 at § 2.6(f)), whereby Dr. Alexander and its twenty-four other signatories expressly invited the Court to reform any terms of the Noncompete adjudged unenforceable. (*Id.*).

Recognizing the equitable power of the court to blue-pencil restrictive covenants, Delaware courts have routinely enforced similar provisions. *See Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *11-14 (Del. Ch. Oct. 23, 2002); *Norton Petroleum Corp. v. Cameron*, 1998 WL 118198, at *4, 5 (Del. Ch. Mar. 5, 1998); *Knowles-Zeswitz Music, Inc. v. Cara*, 260 A.2d 171, 175 (Del. Ch. 1969); *DGWL Investment Corp. v. Giannini*, 2013 WL 6456242 (Del. Ch. Sept. 19, 2013).

Though the ability to blue-pencil a contract is a matter of judicial discretion, that discretion must be exercised reasonably. The Court of Chancery gave no weight

to the parties' express agreement to permit blue-penciling. It failed to consider whether a tailored reformation—such as reducing the radius to a static number of miles and/or changing durational terms—could render the provision enforceable and instead opted to strike the Noncompete in its entirety. And in failing to consider this relief, the court below further neglected to consider the equities of permitting Dr. Alexander to retain the benefits of bargain—his interest in Weil Holdings—while ignoring the obligations that went along with those benefits by being able to compete directly with WFAI. This was unreasonable and an abuse of discretion.

Dr. Alexander's authorities on blue-penciling are inapposite. (AB 35-36). The Answering Brief cites to *FP UC Holdings, LLC v. Hamilton*, 2020 WL 1492783 (Del. Ch. Mar. 27, 2020), *Sunder Energy, LLC v. Jackson*, 305 A.3d 723 (Del. Ch. 2023), *Labyrinth, Inc. v. Urich*, 2024 WL 295996 (Del. Ch. Jan. 26, 2024) and *Intertek Testing Servs. NA, Inc. v. Eastman*, 2023 WL 2544236 (Del. Ch. Mar. 16, 2023) to suggest that a court should be hesitant in blue-penciling a restrictive covenant. But each of these authorities address the same policy consideration—one that is not present here—and recite non-controversial guidance that Delaware courts should not intervene to save sophisticated and overzealous employers from an overreaching restrictive covenant. This policy concern has no application among members who have ordered their affairs to promote profitability and mutual returns.

B. The Court's Reliance on "Unequal Bargaining Power" Was Misplaced

In declining to blue-pencil the Noncompete, the lower court held, in part, that "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* A0859 (alteration in original). As discussed, *supra* Section I.A, Dr. Alexander has latched onto this idea, analogizing his position to that of a disparately placed employee. (AB at 36-37). He makes the factual assertion that he and Weil Holdings "did not possess equal bargaining power." (*Id.* at 36). In support of this statement, Dr. Alexander points to the fact that he "did not attempt to negotiate any terms of the [LLC] Agreement[,]" (A0509 at ¶ 5) and "[n]otwithstanding my execution of the LLC Agreement, I had no involvement with negotiating the terms of the LLC Agreement." A0259 at ¶ 18. But that speaks only to his ***choice*** not to negotiate, and ignores his opportunity to do so, conflating his lack of action with a dearth of bargaining power relative to Weil Holdings.

Dr. Alexander was an accredited investor who accepted these terms in exchange for a valuable ownership stake. He could have negotiated like others did (OB at 13), but he chose not to, despite having negotiated his restrictive covenants elsewhere. A0669; A0658. His election should not be his tool to undermine Weil Holdings' ability to enforce the LLC Agreement. *See Pellaton*, 592 A.2d, at 477.

Notwithstanding the foregoing, at a minimum, given the stay of discovery, Dr. Alexander's claims regarding his understanding of the terms of the Noncompete and his level of participation in the negotiations have not been vetted by Weil Holdings. As a result, with no analysis of the equities, the lower court permitted Dr. Alexander to both maintain his ownership interest in Weil Holdings and granted him license to freely compete with its operating subsidiary leaving factual questions in dispute that should have precluded the lower court's grant of summary judgment. 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)

The Court of Chancery erred by granting summary judgment on Count II of the Complaint. As stated in its Opening Brief, Weil Holdings asserted Court II as an alternative theory of liability against Dr. Alexander. Count II asserts a claim for Tortious Interference with Business Expectancy based on Dr. Alexander's conduct following his termination from WFAI. As alleged in the Complaint, Dr. Alexander's actions were without justification and "designed to interfere with the prospective economic expectations of Weil Holdings." A0043-45 at ¶¶ 82, 85. Moreover, Dr. Alexander's interference in Weil Holdings' business expectancy came about as a result of his breach of the Noncompete—a fact which Dr. Alexander has never disputed.

Despite Dr. Alexander's argument to the contrary, his undisputed breach of the Noncompete is *related* to Count II, but not a "predicate" to that cause of action. Even if the Court upholds the lower court's ruling with respect to Count I, Weil Holdings should still be permitted to argue in favor of its alternative theory of liability. *See Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *8 (Del. Ch. Aug. 26, 2005).

Dr. Alexander argues that "Weil Holdings cannot carry its burden in proving tortious interference[]" and refers to the "undisputed factual record[,]" yet this matter

has yet to engage in plenary discovery. The lower court's ruling was premature and should be reversed and remanded for further proceedings.

CONCLUSION

The judgment of the Court of Chancery should be reversed and remanded for proceedings consistent with this Court's Order.

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Dated: July 14, 2025

CERTIFICATE OF SERVICE

Kurt M. Heyman, Esquire, hereby certifies that on July 29, 2025, copies of the foregoing Public Version of Reply Brief of Appellant Weil Holdings II, LLC were served electronically upon the following counsel:

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