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IN THE

Supreme Court of the State of Delaware

NORTH AMERICAN FIRE ULTIMATE HOLDINGS, LP, Plaintiff-Below/Appellant, v. ALAN DOORLY, Defendant-Below/Appellee.	No. 142, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0023-KSJM

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

Unable to defend the Court of Chancery's decision on the merits, Doorly in his Answering Brief mounts meritless Supreme Court Rule 8 preservation challenges. Specifically, Doorly contends that the Company's legal arguments on appeal, which directly address the Court of Chancery's core holding, were framed differently in the briefing below and therefore cannot be considered by this Court.

Rule 8 is a red herring. In opposing Doorly's motion below, the Company fairly presented its position that (1) Doorly received consideration in connection with the Agreement,[1] which included Units subject to performance and vesting conditions; and (2) the Complaint, in any event, adequately pled the existence of an enforceable contract, which the Parties acknowledged was supported not only by the Units but also by "*other* good and valuable consideration." The Court of Chancery rejected the Company's position and instead dismissed the Company's suit on a novel proposition: it held that the Agreement was enforceable at the time of formation but later became unenforceable for lack of consideration upon the automatic forfeiture of Doorly's Units. Rule 8 does not prevent the Company from appealing that holding.

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[1] All defined terms used herein have the same meaning and were previously defined in the Company's Amended Opening Brief. Dkt. 9.

As for the merits of the Company's arguments, Doorly addresses them only in passing. Tellingly, he offers no legal support for the Court of Chancery's ruling that the Agreement, which was indisputably enforceable at the time of formation, became unenforceable for lack of consideration once Doorly's Units were automatically forfeited in accordance with the Agreement. Indeed, as the Company sets forth in its Opening Brief, the ruling contravenes settled contract law and is without precedent in Delaware. *Newell Rubbermaid Inc. v. Storm*, which Doorly fails to meaningfully distinguish, recognizes that restrictive covenants in an equity grant agreement remain enforceable even after equity is forfeited in accordance with the agreement so long as the executive received something of value *at the time of contract formation*, which includes a conditional grant of equity. 2014 WL 1266827, at *9 (Del. Ch. Mar. 27, 2014).

Doorly likewise fails to combat the serious public policy concerns raised by the Court of Chancery's ruling. Delaware-law-governed equity grant agreements routinely impose on senior executives post-employment obligations, including confidentiality limitations, that survive terminations for cause. If the Court of Chancery's ruling is allowed to stand, such provisions would be rendered illusory. When it suits their interests, executives like Doorly could evade their post-employment obligations by acting in bad faith during their employment term, thereby triggering automatic equity forfeiture under their agreements. Aside from

invoking Rule 8, Doorly's response is that employers can contract around the Court of Chancery's decision by allowing their executive to retain a portion of his/her equity following an automatic forfeiture event. Thus, under the arbitrary paradigm championed by Doorly, the Agreement's post-employment obligations would have remained enforceable had Doorly automatically forfeited 299,999 Units and retained a single Unit but only became unenforceable because all 300,000 Units were automatically forfeited. There is no legal or logical merit for such a rule.

Finally, even if the Units were for some reason not adequate consideration, the Court of Chancery erred in finding on a Rule 12 motion, where all reasonable inferences are to be drawn in the Company's favor, that Doorly did not receive any other form of consideration. Doorly argues that the Agreement "unambiguously" reflects that the Units were the "sole consideration" received by Doorly, but ignores the Agreement's recitals, which acknowledge the existence of "other good and valuable consideration" beyond the "mutual covenants contained" in the Agreement. Contrary to Doorly's position, Delaware law does not impose an affirmative pleading obligation on a contracting party to particularize all forms of consideration received by the other party.

In short, the Court of Chancery's dismissal of this action should be reversed.

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN FAILING TO EVALUATE THE AGREEMENT'S CONSIDERATION AT THE TIME OF CONTRACT FORMATION

A. The Company's First Argument Was Fairly Presented to the Court of Chancery

Doorly's principal contention is that the Company did not specifically argue to the Court of Chancery that "the existence of consideration is measured at the time of contract formation" (Appellant's Opening Br. at 4), and therefore, under Supreme Court Rule 8, this Court cannot consider this question in the context of the Company's appeal. Appellee's Answering Br. at 15-17.

Under Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented." Del. Supr. Ct. R. 8. To comport with Rule 8, an appellant is not required to copy the "precise argument [it made] at the trial level" on appeal and can assert specific arguments challenging the lower court decision provided that the "broader" issue was raised below. *See Sears, Roebuck and Co. v. Midcap*, 893 A.2d 542, 574 n.4 (Del. 2006) (rejecting the appellee's Rule 8 objection because, although the appellant did not articulate to the trial court its specific arguments as to why a jury instruction was improper, the appellant "did object generally to the issuance of the pattern jury instruction" and cited cases consistent with the argument on appeal); *N. River Ins.*

Co. v. Mine Safety Appliances Co., 105 A.3d 369, 383 (Del. 2014) (holding, in an appeal from entry of judgment on the pleadings, that the appellant's specific argument about the speculative nature of harm alleged was adequately preserved because a "broader issue" was discussed and the trial court focused on a narrow component of that broader issue); *Sergeson v. Del. Tr. Co.*, 413 A.2d 880, 881-82 (Del. 1980) (finding an argument that the trial court addressed, even "in passing," was preserved); *cf. Lawson v. Preston L. McIlvaine Const. Co.*, 552 A.2d 858 (TABLE), 1988 WL 141168, at *2 (Del. Dec. 7, 1988) (rejecting a Rule 8 challenge to appellant's statutory dismissal argument because the trial court, *sua sponte*, addressed the argument even though appellant had not raised it below).

Doorly argued to the Court of Chancery that the Units were the "sole consideration" he received and the Units had been forfeited, such that the Company could not sue for breach of the Agreement. B49-B51. Doorly's Opening Brief below principally relied on *NBTY, Inc. v. Vigliante*, 2015 WL 7694865 (N.Y. Sup. Ct. Nov. 24, 2015), a New York state trial court decision, arguing that the Agreement here was somehow akin to employment agreements containing "forfeiture-for-competition" provisions, i.e., provisions that, by their terms, grant an employee a post-employment *choice* between electing to retain a severance benefit in exchange for complying with broad non-competition covenants or forego the benefit in order to compete without limitation. *See* B50-B51 (arguing that the Company "exacted

the penalty it had bargained for: forfeiture of Doorly's Units in exchange for his competition. But having done so, Plaintiff cannot now sue to enforce the Incentive Agreement's restrictive covenants" (citing *NBTY*, 2015 WL 7694865, at *2)); B51 ("[T]he plaintiffs were free to compete but only at the cost of forfeiting their rights . . . ." (quoting *Ainslie v. Cantor Fitzgerald, L.P.*, 312 A.3d 674, 682 (Del. 2024))).

In response, the Company stated that "there was valid consideration for the Restricted Award Agreement when it was executed in February 2022." A82-A83 n.5;[2] A79 ("The Restricted Award Agreement was Supported by Consideration."). The Company further argued that, "[b]y exercising that negotiated remedy under the Restricted Award Agreement, the Company has not rescinded or 'destroyed the sole consideration for the restrictive covenants.'" A85 (quoting B50)). Moreover, the Company maintained that the *NBTY* decision cited by Doorly was inapposite because the trial court had applied New York's inapplicable "employee choice doctrine," which applies only to forfeiture-for-competition provisions in which employees voluntarily resign and have an express contractual "choice" about

[2] This argument appears in a footnote because Doorly had effectively conceded the point. *See* B44. As explained in the Company's Opposition Brief below, the Company pled that the Agreement "is a valid, binding contract" (A32 ¶ 61) and quoted and attached Doorly's express understanding of the same in the Agreement (A22 ¶ 27, A41 § 1(d)(vi)). Doorly did not "appear to contend otherwise" in his Opening Brief below, such that the Company accepted "Doorly's concession" as indicative that "there was valid consideration" at formation. *See* A82-A83 n.5.

whether to retain severance benefits and comply with restrictive covenants or forego benefits and compete. A80-A82. The Agreement, in contrast, did not afford Doorly any such choice as Doorly had agreed that if he was fired for Cause, his Units would be automatically forfeited *and* he would still be bound by all of his post-employment obligations, including the Covenants. A82-A83.

In his Reply Brief below, Doorly again did not challenge the existence of consideration at the time of contract formation. He argued instead that, because "the Units were the sole consideration given to Doorly in exchange for the restrictive covenants," once the Units were forfeited, the Company could not sue for any relief under the Agreement for his breach of the Covenants. B87-B89. Doorly continued to mischaracterize the Agreement as a "'forfeiture-for-competition' bargain." B83; *see* B83-B84 ("Having obtained the benefit of its bargain—forfeiture in exchange for competition—Plaintiff cannot now also demand damages … ."); B87 (premising argument on the "Agreement's forfeiture-for-competition"). At oral argument, Doorly again emphasized the same forfeiture-for-competition theory, contending that the Company could not seek remedies post-forfeiture of the Units. B119 ("This is a forfeiture for a competition clause … The case law is clear that in forfeiture for competition cases where the plaintiff gets the forfeited consideration, the matter is finished."); B140 ("This is a forfeiture for competition clause."). Notably, at oral argument, even Doorly did not argue that the Agreement became unenforceable for

a lack of consideration. *See generally* B115-B143. The Court of Chancery, however, pivoted from Doorly's arguments regarding forfeiture-for-competition and the unavailability of remedies and concluded that, upon forfeiture of the Units, the Company "eliminated the sole consideration for the restrictive covenants" and rendered the Agreement "unenforceable for lack of consideration." Op. at 6-7, 10.

Doorly's reliance on *In re Oracle Corporation Derivative Litigation* and *Ravindran v. GLAS Trust Co. LLC* is misplaced. Appellee's Answering Br. at 16 (citing --- A.3d ---, 2025 WL 249066, at *10 & n.76 (Del. Jan. 21, 2025); 327 A.3d 1061, 1078 (Del. 2024)). In *Oracle*, the Court found that the appellants had not fairly presented the trial court with their argument that a decedent's interview memoranda were discoverable under Court of Chancery Rule 26(b)(3) because the appellants never raised any semblance of a substantial-need argument in their briefing and only "[r]eferr[ed] to his death and potential complications caused by it" in the abstract. 2025 WL 249066, at *10 & n.76. And in *Ravindran*, the Court found that appellants waived their argument that the forum selection clause covered the appellee even though he was a non-signatory because, following a "lengthy discussion" with the trial court, appellants never articulated it. 327 A.3d at 1079. Here, unlike in *Oracle* and *Ravindran*, Doorly argued that additional remedies for breaching the Covenants were unavailable because the Units were the "sole consideration" and had been forfeited, the Company countered the argument, and

the Court of Chancery granted dismissal on a different but related theory, namely that automatic forfeiture of the Units rendered the Agreement unenforceable for lack of consideration.

In all events, and even assuming arguendo that the issue was somehow not fairly presented below, the "interests of justice" here respectfully require this Court to consider whether the Court of Chancery was correct in holding that consideration for the Agreement should be evaluated not at the time the Agreement was entered, but rather following automatic forfeiture of Doorly's Units. This ruling was "outcome-determinative" for purposes of Doorly's Rule 12 motion and resulted in a complete dismissal of the Company's lawsuit. *See Sandt v. Del. Solid Waste Auth.*, 640 A.2d 1030, 1034 (Del. 1994); *see also Blinder, Robinson & Co. v. Bruton*, 552 A.2d 466, 474 (Del. 1989) ("In any event, given the importance of this issue and the somewhat convoluted manner in which the Commissioner's action was ultimately affirmed, we believe 'the interests of justice' require consideration of this issue by this Court under Supreme Court Rule 8."). Moreover, the novel proposition embodied in the Court of Chancery's order "may have significant implications for future cases." *Sandt*, 640 A.2d at 1034; *see also Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 679 (Del. 2013) (finding interest of justice requirement met where case law was in contradiction). Without resolution of whether post-formation acts by the breaching party destroy

the existence of consideration at the time of contracting, companies will not know whether the equity incentive plans they enter into with their executives will be enforced post-employment, and whether executives will exploit the current contradiction in case law to willfully breach those agreements whenever they believe the upside of avoiding post-employment obligations (including confidentiality and non-disparagement requirements) outweighs the value of the underlying equity.

B. The Court of Chancery Erred in Not Assessing the Existence of Consideration at the Time of Contract Formation

For a contract to be enforceable, the parties must exchange consideration. *See* Appellee's Answering Br. at 14 (citing *Shilling v. Shilling*, 332 A.3d 453, 462 (Del. 2024) ("A valid contract requires an offer, acceptance, and consideration.")). The existence of consideration is assessed at the time of contract formation, not at points in time over the life of the contract. Appellant's Opening Br. at 17-18. Here, there is no dispute that, at the time of contract formation, consideration was exchanged—Doorly received something of value, i.e., Units subject to vesting conditions "and other good and valuable consideration" and the Company received Doorly's promise to abide by Covenants during and after his employment. Appellee's Answering Br. at 14; *see* A82-A83 n.5 (Doorly conceding that "there was valid consideration for the [] Agreement when it was executed in February 2022"). Accordingly, the Agreement was valid and enforceable at the time of formation and remains so. It was error for the Court of Chancery to hold otherwise.

Doorly concedes there was consideration (Appellee's Answering Br. at 14) and on appeal abandons altogether his reliance on the misguided New York trial court decision that formed the centerpiece of his arguments before the Court of Chancery, *NBTY v. Vigilante*. As discussed in the Company's Opening Brief, *NBTY* is not in accord with Delaware law and Doorly does not contend otherwise in his Answering Brief. Appellee's Answering Br. at 14-15. Instead, Doorly posits—without citation to any Delaware authority whatsoever—that he was required to retain "at least some consideration for [his] contractual promises" in order for consideration to continue to exist and for Cross Fire to enforce the Agreement. Appellee's Answering Br. at 17.

This *ex post* consideration analysis is without legal justification. As exemplified by the Court of Chancery's decision in *Newell Rubbermaid Inc. v. Storm*, whether consideration exists depends on whether Doorly was "granted a benefit that held actual value" in a bargained-for-exchange at the time of contract formation. 2014 WL 1266827, at *9; *see also generally* Restatement (Second) of Contracts, Chapter 4 "Formation of Contracts – Consideration" and "Topic 1 – The Requirement of Consideration." The handful of cases relied on by Doorly—*Shilling v. Shilling* and *Faw, Casson & Co. v. Cranston*, 375 A.2d 463 (Del. Ch. 1977)—are in accord.

Doorly asserts that *Newell* is "unique" because, unlike here, the employee had already received cash dividends from her ownership of units prior to automatic forfeiture. Appellee's Answering Br. at 18. But that immaterial distinction had no bearing on the court's reasoning or holding that the units themselves were, at the time of formation, sufficient consideration and thus the restrictive covenants remained enforceable even after the former employee had forfeited those units. *See Newell*, 2014 WL 1266827, at *9 ("Although the 2013 Agreements contemplate a contingency … which would then cause the grants to be forfeited, the inclusion of such a contingency does not convert the RSUs into illusory consideration.").

Doorly also asserts that the restricted stock units in *Newell* were consideration for the entire agreement whereas the Units here were consideration only for Doorly to agree to the Covenants. Appellee's Answering Br. at 18. This is not true—the entire Agreement is supported by consideration. Indeed, the *Newell* agreement mirrors the language in Doorly's Agreement. *Compare* B162 (*Newell* agreement) §§ 1-2 ("The receipt of the Award is conditioned upon the Grantee's acceptance of the Award Letter, thereby becoming a party to this Agreement …. The Company hereby grants to the Grantee the Award of RSUs, as set forth in the Award Letter.") *with* A40 (Doorly Agreement) § 1(a) ("Upon the execution of this Agreement and delivery to the Partnership by Executive of an executed joinder to the LP Agreement in the form of Exhibit A attached hereto … , the Partnership will issue to Executive

300,000.00 Class B Units."); *compare also* B166 § 13 (*Newell* agreement) *with* A56 (Doorly Agreement) § 11(u).

Doorly separately challenges the applicability of cases cited in pages 15 to 17 of the Opening Brief but in so doing overlooks the key point each of them illustrates—*when* consideration is measured for purposes of evaluating the enforceability of a contract. *See* Appellee's Answering Br. at 19-20. In each case, and as undisputed by Doorly, the court assessed consideration at the time the parties formed the contract. *See, e.g.*, *Eagle Force Hldgs., LLC v. Campbell*, 187 A.3d 1209, 1212 (Del. 2018) ("[T]he formation of a contract requires … consideration."); *Strange v. State Tax Comm'n*, 7 So. 2d 542, 544 (Miss. 1942) (viewing the contract at issue "in the light of the circumstances … at the time of its execution" and measuring consideration "as of the time the contract was executed"). This is so even where the consideration was worthless or non-existent at the time of enforcement. *See, e.g.*, *W. Fed. Sav. & Loan Ass'n of Denver v. Nat'l Homes Corp.*, 445 P.2d 892, 897-98 (Colo. 1968) (finding the agreement at issue was supported by the consideration of the opportunity to do future business that "is measured as of the time of making the contract," even though "it may be that [the promisor] will receive nothing for its [performance of such business]").

Finally, Doorly attempts to whistle past the Company's public policy argument. *See* Appellee's Answering Br. at 21. As the Company alleged in its

complaint, and as Doorly does not (and cannot) dispute, while managing Cross Fire, Doorly actively harmed Cross Fire's business by creating a new firm that underbid Cross Fire and stealing confidential proprietary information, among other misconduct.[3] It would be inequitable and contrary to public policy to reward Doorly for his misconduct by voiding Doorly's post-employment obligations—including obligations to keep sensitive Company information confidential—that Doorly expressly agreed would survive his termination for prescribed periods of time and deprive the Company of its contractual remedies. To affirm that decision would rewrite arms-length contracts and encourage executives to engage in misconduct in violation of equity grant agreements whenever they conclude the upside in doing so is greater than the perceived value of the equity they were granted.

Here, those repercussions are already being felt. Not only did the Company file suit to enforce Doorly's Covenants for the time period prescribed under the Agreement, but it also sought damages that were suffered by the Company for injuries sustained while Doorly remained employed, had possession of his Units, and during a period during which Doorly does not contest that his Covenants were in effect. The decision below prevents the Company from even seeking to recover

[3] In the wake of the Court of Chancery's Rule 12 dismissal, the Company has now also commenced litigation in the United States District Court for the Southern District of New York for, among other things, theft of trade secrets and unfair competition. *See Cross Fire & Security Co., Inc. and North American Fire Holdings, LLC v. Alan Doorly, et al.*, 25-cv-04846 (S.D.N.Y. Jun. 9, 2025).

damages caused by Doorly's breaches of the Agreement while he was still working for the Company, before his Units were forfeited. Respectfully, this was error.

II. THE COURT OF CHANCERY ERRED IN FINDING AT THE PLEADINGS STAGE THAT THE UNITS WERE THE "SOLE CONSIDERATION" FOR THE AGREEMENT

A. The Company's Second Argument Was Fairly Presented to the Court of Chancery

In response to Doorly's motion to dismiss, the Company argued that the Complaint did not concede that the Units were the "sole consideration" granted to Doorly under the Agreement. A82 (stating the "units w[ere] not the sole consideration for the Restrictive Covenants"). Doorly's contention that this argument also was not preserved is equally misplaced. *See supra* at Section I.A.

The Company argued below that "the Agreement's plain language"—specifically, the "*and other* good and valuable consideration" language in the Agreement's recitals (emphasis added)—provides that the Units "were not the sole consideration for entering the Restricted Award Agreement" and "contradicted" Doorly's claim that the Agreement unambiguously established that the Units were the "sole" consideration. A79-A80, A82. The Court of Chancery acknowledged this was the Company's argument—"Plaintiff's primary response is to deny … that the Units comprised the sole consideration for the Agreement" (Op. at 7)—but rejected it, holding that "Plaintiff eliminated the sole consideration for the restrictive covenants." *Id*. Thus, the Company fairly presented this argument below. *See* A22 ¶ 27; A40.

B. The Court of Chancery Erred in Finding, at the Pleadings Stage, that the Units were the "Sole Consideration" for the Agreement

"Delaware law does not 'assume that parties to a contract must explicitly detail the precise consideration they are exchanging' and 'makes no such requirement.'" *Moscowitz v. Theory Ent. LLC*, 2020 WL 6304899, at *12 (Del. Ch. Oct. 28, 2020) (quoting *Seiden v. Kaneko*, 2017 WL 1093937, at *6 (Del. Ch. Mar. 22, 2017) (citing *Equitable Tr. Co. v. Gallagher*, 99 A.2d 490, 492-93 (Del. 1953)), *aff'd Seiden v. Shu Kaneko*, 177 A.3d 69 (Del. 2017) (TABLE)). Recitals, including those regarding consideration exchanged, "provide background and can offer insight into the intent of the parties." *Urdan v. WR Cap. P'rs, LLC*, 2019 WL 3891720, at *15 (Del. Ch. Aug. 19, 2019), *aff'd*, 244 A.3d 668 (Del. 2020)). "[A] recital in a written agreement that a stated consideration has been given facially supports a finding that the agreement is supported by consideration, absent facts suggesting that no such consideration was actually given or expected." *Moscowitz*, 2020 WL 6304899, at *12 (citing *TA Operating LLC v. Comdata, Inc.*, 2017 WL 3981138, at *23 (Del. Ch. Sept. 11, 2017); Restatement (Second) of Contracts §§ 87, 218)).

Here, the Company adequately pled the existence of consideration to support the Agreement, including but not limited to the Units. The Agreement recites the existence of "other good and valuable consideration" beyond just the mutual promises set forth in the Agreement. *See* A22 ¶ 27; A40. On a Rule 12 motion,

where all reasonable inferences must be drawn in the Company's favor, the Court of Chancery lacked any basis to find that no such "other good and valuable consideration" existed. *See Windsor I, LLC v. CWCapital Asset Mgmt. LLC*, 238 A.3d 863, 871 (Del. 2020).

Doorly's Answering Brief chides the Company for not going beyond the allegations as pled in opposing Doorly's motion to dismiss by demonstrating what "other" form of consideration Doorly received but simultaneously contends that any such evidence could not be considered on a Rule 12 motion because the Agreement is unambiguous. Appellee's Answering Br. at 26-27. Doorly misses the point: the Agreement unambiguously states that Doorly received the benefits provided under the Agreement "*and other* good and valuable consideration." Short of some concession by the Company in the Complaint that the Units were, in fact, the only consideration received by Doorly, reliance on the recital language is sufficient at the motion to dismiss stage to plead an enforceable contract. *See Moscowitz*, 2020 WL 6304899, at *12. What may ultimately constitute the "other good and valuable consideration" can be determined on a developed factual record.

Contrary to Doorly's suggestion, the Company is not arguing that the Agreement is ambiguous, only that consideration is not particularized in the Agreement. Doorly's reliance on four cases for the purpose of reciting principles of contract interpretation is accordingly misplaced and immaterial. Appellee's

Answering Br. at 26-27 (citing *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020 (Del. Ch. 2006); *SeaWorld Ent., Inc. v. Andrews*, 2023 WL 3563047 (Del. Ch. May 19, 2023); *Exit Strategy, LLC v. Festival Retail Fund BH, L.P.*, 326 A.3d 356 (Del. 2024); *Schron v. Troutman Sanders LLP*, 20 N.Y.3d 430 (2013)).

Doorly's efforts to distinguish *Moscowitz* are likewise unavailing. Doorly incorrectly asserts that *Moscowitz* observed the recitals and "then engaged in an in-depth analysis of the existence and sufficiency of consideration based upon the remainder of the contract." Appellee's Answering Br. at 25-26. In fact, the plaintiff in *Moscowitz* was bound by a series of three agreements: an "LLC Agreement," an "Initial Plan," and an "Award Agreement." *See* 2020 WL 6304899, at *1. As part of its ruling on the defendant's motion to dismiss, the Court of Chancery concluded that "[e]ach of the Agreements provides that it is supported by valuable consideration." *Id.* at *13. With respect to the LLC Agreement, the Court of Chancery reasoned that the agreement "plainly states that 'in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,' Moscowitz agreed to be bound by its terms, including the Initial Plan." *Id.* at *13-14. This was the end of the *Moscowitz* court's analysis of the LLC Agreement, as the recital's reference to consideration was sufficient. *See id.* at *13. So too here, and it was error for the

Court of Chancery to concluded that the Units were the "sole consideration" for the Agreement at the pleadings stage.

CONCLUSION

For the reasons stated above, Appellant respectfully requests that the Court of Chancery's dismissal of this action be reversed.

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