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IN THE SUPREME COURT OF THE STATE OF DELAWARE

TWO RIVERS FARM, LLC, Defendant-Below/Appellant, v. MELISSA GARLINGTON Plaintiff-Below/Appellee.	)	No. 199, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0917-BWD

APPELLEE'S ANSWERING BRIEF

Of Counsel:

Randall M. Lending
VEDDER PRICE
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609-7564

Matthew D. Perri (#6066)
Mari Boyle (#6761)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
perri@rlf.com
boyle@rlf.com

Attorneys for Plaintiff-Below/Appellee Melissa Garlington

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TABLE OF CONTENTS

Page

TABLE OF CITATIONS

Page(s)

CASES

STATUTES & RULES

NATURE OF PROCEEDINGS[1]

This is a simple, expedited, summary books and records action in which the manager of a limited liability company has used procedural machinations and advanced incorrect legal arguments to entrench itself and avoid producing a member list for nearly a year, thereby stripping a member of her contractual and statutory inspection rights.

The extraordinary appeal seeks to set aside a default judgment on an abuse of discretion standard because (1) the default judgment prevented litigation of a merits-based defense, and (2) the Court of Chancery did not allow the proceeding to be further derailed near its conclusion by irrelevant discovery. The very nature of a default judgment prevents a party from further litigation. Thus, this entire appeal is an attack on whether default judgments are proper.

The Court of Chancery repeatedly bent over backwards to allow the Company to raise merit-based defenses in this proceeding even after the Company repeatedly and knowingly ignored Court-ordered deadlines. Rather than litigate, the Company waited until a default judgment was entered, hired new counsel, raised specious legal arguments, ignored Court orders, made conflicting representations to the Court, and then attempted to weaponize discovery to further delay producing the one document

[1] Appellant's Corrected Opening Brief on Appeal is cited herein as "Opening Brief" or "OB".

at issue here (a member's list)—all in a summary, expedited books-and-records proceeding.

The Court of Chancery did not abuse its discretion by entering, enforcing, or setting aside for a narrow purpose a default judgment. This Court should end the manager's year-long campaign of entrenching itself through meritless litigation at the expense of the Company's members.

SUMMARY OF ARGUMENTS

1. Denied. The Court of Chancery did not abuse its discretion by refusing to set aside a default judgment in its entirety that was entered months into an expedited case after affording multiple opportunities for the Company to raise any merit-based defenses. Nor did the Court of Chancery abuse its discretion by tailoring additional proceedings to address the specific issue that it allowed to be litigated out of concern for third parties: the appropriate form of confidentiality protection, if any, of the third-party member information that was required to be produced under the default judgment.

2. Denied. The Court of Chancery did not abuse its discretion by refusing to allow the Company a second bite at the apple through belated discovery requests unrelated to the sole confidentiality issue the Court of Chancery allowed the Company to address.

COUNTERSTATEMENT OF FACTS

Plaintiff-Below/Appellee Melissa Garlington ("Plaintiff") is a member of Defendant-Below/Appellant Two Rivers Farm, LLC (the "Company") and has been a direct member of the Company since 2015. A0023-24.

Beginning in mid-2023, Plaintiff began attempting to exercise her books and records rights as a member. A0025. Over the following year, Plaintiff repeatedly demanded basic books and records to which she is entitled under Delaware law and the Company's Amended and Restated Operating Agreement dated October 13, 2008 (the "Operating Agreement"). A0025; A0075-94. In response, Plaintiff was met with delay and incomplete, non-substantive answers. A0026. Plaintiff even spent the time, effort, and money to travel to the Company's offices to inspect the Company's books and records, but was prevented from inspection. A0026. In these requests, Plaintiff repeated her proper purpose: to value her interest in the Company and investigate potential mismanagement. A0026.

On August 14, 2024, Plaintiff delivered a formal, written demand (the "Demand") to the Company seeking to inspect certain books and records under Section 18-305 of the Delaware Limited Liability Company Act ("Section 18-305"). A0026; A0075-98. Again, the Demand identified Plaintiff's proper purposes, including, among other things, valuing her membership interest in the Company, investigating potential mismanagement and excessive management fees,

determining manager compliance with the Company's Operating Agreement, and determining the veracity and GAAP-compliance of the Company's financial statements. A0078. The Demand sought various books and records that were required to be produced under the Operating Agreement and Delaware law. A0075-78.

The *only* document at issue on this appeal is the production of a member list. A2091. Section 7.1 of the Operating Agreement requires, in relevant part, the Company to maintain "[a] current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account and Units of each Member and Assignee[.]" A0062. Section 7.2 of the Operating Agreement requires that "[a]ny Member or its designated representative shall have reasonable access during normal business hours to the information and documents kept by the Company pursuant to Section 7.1." A0062. Delaware law similarly requires the Company to provide "[a] current list of the name and last known business, residence or mailing address of each member and manager." 6 *Del. C.* § 18-305(a)(3). In accordance with her rights under the Operating Agreement and Delaware law, Plaintiff requested in her Demand verbatim that to which she is entitled: "[a] current list of the full name and last known business or residence address of each Member and Assignee set forth

in alphabetical order, together with the Capital Contributions, Capital Account and Units of each Member and Assignee" (the "Member List"). A0077.

The Company never responded to the Demand. A0031. At first, the Brown Winick Law Firm ("Brown Winick") responded that it did not represent the Company. A0111.

Accordingly, on September 3, 2024, Plaintiff brought an action to enforce her inspection rights under Section 18-305 and Section 7.2 of the Operating Agreement. A0023 (the "Complaint").

The next day, Plaintiff sent to the Company and its counsel via email a copy of the Complaint, the accompanying exhibits, and related papers. A0109.

On September 4, the Chancellor assigned the action and ordered the parties to, among other things, confer and propose a case schedule within one week. A0195. The Chancellor's order noted this was an expedited books and records proceeding. A0195. The Company was served that day in accordance with 6 *Del. C.* § 18-105(b). B4-6.

On September 5, Plaintiff sent to the Company and its counsel via email a proposed case schedule. A0194; A0198-A0202.

On September 9, Brown Winick informed Plaintiff it now was representing the Company. A0204. The Company largely went silent until the day the scheduling order was due, at which point it stated the Company would be producing documents

by the end of the week, and hoped to avoid further litigation, but could not state whether all existing documents requested in the Demand would be made available to Plaintiff. A0204; A0207-09

The parties agreed to a proposed case schedule and Plaintiff submitted the [Proposed] Order for Final Resolution by the Magistrate in Chancery (the "Proposed Schedule"). A0207-08; A0211-16; B7-12. The Company agreed to this timeline and promised to send Plaintiff "everything we have, certainly before Monday." A0207. The Court entered the Proposed Schedule the next day (the "Scheduling Order"). B13-17. Plaintiff sent the order to the Company via email. A0218-23.

Under the Scheduling Order, the Company was required to answer the Complaint by September 16. B13-14. The Company did not appear, file an answer, or otherwise respond to the Complaint by September 16.

Plaintiff explained to the Company that its production was facially deficient, and raised the Company's failure to, among other things, answer the Complaint in accordance with the Court's Order. A0225. Plaintiff informed the Company that if it did not file an answer that day, Plaintiff would seek a default judgment. A0225. The Company responded by producing additional information that did not resolve the Demand and ignoring the answer deadline. A0275.

Plaintiff moved for default judgment. A0099-A0107. The Court heard that motion at a telephonic hearing over a month after the Complaint was filed, 25 days

after the Company's agreed upon deadline to respond to the Complaint, and 18 days after the motion for default judgment was filed. B20-31; A0023; B13-14; A0099.

At the hearing on Plaintiff's motion for default judgment, Scott Oakes, a representative of the Company's manager, appeared and claimed that the reason the Company did not furnish the requested documents is because he doesn't "trust the purpose of why [Plaintiff] wants the information." B27. The Court noted that the Company "hasn't retained Delaware counsel" despite the fact that "[t]hey have had sufficient time to do that at this point[.]" B28. The Court further acknowledged that "the time for a responsive pleading has passed," but generously granted the Company an extension "to file an answer by one week." B28. The Court even explained to the Company's manager that the Company "cannot appear in this case unrepresented by Delaware counsel. The LLC, if it intends to respond in this case, will need to retain Delaware counsel, and Delaware counsel will need to file an answer by next Friday. If no answer is filed on the docket, then I will enter default judgment." B28.

The Company ignored the Court again and failed to file anything by the extended deadline. On October 23, the Court granted Plaintiff's motion for default judgment and ordered the Company to "produce copies of each and every requested book and record in *unredacted* form as set forth in Plaintiff's Demand and Complaint" within five business days (by October 30) (the "Default Judgment

Order"). A0236-37 (emphasis added). The Company did not make any production by that October 30 deadline or provide any explanation for ignoring the Court of Chancery's orders.

On November 5, Plaintiff moved for coercive sanctions (the "Sanctions Motion"). A0238-50. The Court set a hearing on that motion for November 21. B32. Plaintiff provided notice to the Company as required by the Court of Chancery's order. B34-41.

A week before the hearing, new counsel for the Company entered an appearance. B73.

Less than 48 hours before the hearing, the Company filed an opposition to the motion for sanctions and a cross-motion to set aside default judgment (the "Motion to Set Aside"). A0260-71. The Company essentially made two meritless arguments in the Motion to Set Aside. *First*, the Company argued that its failure to comply with Delaware law requiring a registered agent meant that the Company had not been properly served and could never be sued without the appointment of a receiver despite the directly on-point statutory authority to the contrary. A0262-67. *Second*, it argued production of a member list worked "manifest injustice" because the members had an interest in confidentiality that the default judgment did not address and refused to produce the Member List. A0267-70. In her reply, Plaintiff explained that service was proper pursuant to directly on-point statutory authority as well as

Delaware precedent. A0284-86. Plaintiff further explained that the Company could not show extraordinary circumstances warranting vacating the default judgment. A0287-90.

At the November 21 hearing on the Sanctions Motion and the Motion to Set Aside, the Court of Chancery gave the Company another chance. Instead of imposing sanctions for the Company's admitted failure to comply with the Default Judgment Order, the Court of Chancery encouraged the parties to meet-and-confer to resolve the outstanding issues and gave the Company an additional two weeks to comply with the Default Judgment Order. B87-88.

Still, the Company refused to comply. Following the hearing on the Sanctions Motion, Plaintiff sent an email requesting the unproduced books and records. B96-98. The Company had purported to produce documents that were plainly not all the books and records sought in the Default Judgment Order but it had also never provided Plaintiff with information about what documents did exist as required by the Chancellor's September 4 order. B1-3; B100-03. The parties submitted competing status reports. B104-32; B133-53. In response, the Court of Chancery set another hearing on the Motion for Sanctions and Motion to Set Aside and allowed supplemental briefing on the motions. A0011-12.

On January 24, 2025, more than four months after this expedited books and records action was filed, and after briefing on both motions, including two rounds of

supplemental briefing, the Court of Chancery held a second hearing on the Sanctions Motion and Motion to Set Aside. A0294-323; A0324-780; A0781-1157; A1158-75; A1182-1231.

At the hearing, the Court of Chancery denied the Motion for Sanctions as moot based on the Company's representations, even though the representations contradicted themselves. A1229; A0800 (purporting to produce financials of Two Rivers Farm, LLC); A1324 (purporting to produce "voluminous financial records"); A1215 (admitting that "[t]he financials are not done at the level of defendant. They are just not."); A1356 (admitting that the "Company does not have audited financial statements prepared"); A1217 (admitting that "[w]hen it comes to management fees, yes, we produced what we as counsel understood at the time -- again, trying to get these documents to them as fast as possible -- was a listing of management fees. Turns out that's not true."). Although Plaintiff believes that ruling was erroneous, Plaintiff has not appealed that ruling.

The Court of Chancery also orally denied the Motion to Set Aside. The Court of Chancery concluded that the Company had been properly served and the default judgment was valid. A2092. Nonetheless, in light of the Company's concerns regarding the confidentiality and privacy protections of the Member List, the Court of Chancery, set aside a tiny portion of the default judgment in a limited respect that

was narrowly-tailored to the singular issue of determining whether the member list should be subject to confidentiality protections. A1229-30.

Plaintiff promptly proposed a short restrictive three-page confidentiality agreement that would cover the member list, resolve the confidentiality issue, and thereby conclude this action. A1275-79. The Company did not provide a single comment to that confidentiality order. A1281-89. Rather than follow the Court of Chancery's ruling, the Company attempted to restart the litigation in its entirety, going back five months to the beginning of the action. A1286. While not taking any position on the terms of the draft confidentiality agreement, the Company served an answer, sought a trial in 90-days, served 12 requests for production and 16 interrogatories on Plaintiff, and claimed it would seek to depose Plaintiff. A1232-51; A1252-62; A1263-69; A1281-89.

Exasperated by the Company's latest attempt to avoid production of a document clearly required by Delaware law, the Operating Agreement, and a then-two-month-old court order, Plaintiff again sought assistance from the Court. A1270-73. The Company took the position that the Vice Chancellor did not mean what she said at the January 24 hearing. A1290-95. According to the Company the sole remaining issue was not "the confidentiality of personal information, including the names and addresses of nonparties who are not before the Court" as the Vice Chancellor stated but instead whether Plaintiff could prove it was entitled to the

member list and overcome any merit-based defenses raised by the Company. A1290-94.

The Court of Chancery expressly rejected the Company's assertion. A month later—now six months into an expedited, summary, books and records proceeding—the Court of Chancery held another hearing. At that hearing, the Court of Chancery admonished the Company for misconstruing its prior order. The Court of Chancery was forced to explain, again, that "defendant's service argument was directly contrary to the plain language of Section 18-104(d)" and that the "plaintiff properly served the defendant in accordance with the applicable statute, and that the default judgment is valid." A1304-07. The Court of Chancery held however, "in the interest of equity, the confidentiality of personal information of third parties is implicated, and so I am reopening the default judgment solely for the purpose of determining whether the member list must be produced in unredacted form and/or subject to a confidentiality order." A1307. The Court of Chancery explained that it would determine that issue alone "notwithstanding that the default judgment is valid and enforceable." A1307.

The Court of Chancery set a highly expedited schedule for resolving that sole remaining issue, which involved yet another round of briefing. A1307. As the Court of Chancery's later opinion would describe its own ruling, the Court of Chancery determined it would "reopen[] the [D]efault [J]udgment solely for the purpose of

determining whether the member list must be produced in unredacted form and/or subject to a confidentiality order." A2093-94.

The parties submitted supplemental briefing ostensibly on that issue. Rather than argue about appropriate confidentiality protections (an issue which the Company initially raised), the Company again used its brief to collaterally attack the merits of producing the document at all. A1310-37. Indeed, the Company argued that Plaintiff should not receive a member list because Plaintiff's purpose is purportedly improper, A1322, and the books and records statute allows the manager to determine what is in the best interest of the Company, so, even if Plaintiff can have the document, she cannot use it, A1333-36. The thrust of the Company's position, as it is on appeal, is that a manager is entitled to prevent members from contacting one another, as long as that manager believes it knows what is best for the Company. As Plaintiff explained, not only was this yet another example of the Company ignoring the Court of Chancery's order, it was yet another position unsupported by Delaware law. A1960-A2061.

On April 7, 2025, the Court of Chancery issued a letter opinion. A2087. Again, the Court of Chancery told the Company that it was addressing issues already resolved by default judgment:

> The Court did not invite the parties to relitigate the propriety of Plaintiff's purpose; it expected the parties to address potential harm to

> third parties in revealing confidential information without the protection of a confidentiality order.

A2095. But, just in case, the Court of Chancery also held that the Company's position was incorrect as a matter of law:

> But even if Plaintiff's purposes were at issue, the Demand plainly states a proper purpose for the member list. Title 6, Section 18-305(a)(3) entitles a member of a Delaware limited liability company to obtain "[a] current list of the name and last known business, residence or mailing address of each member and manager." 6 *Del. C.* § 18-305(a)(3). Similarly, Section 7.2 of the Company's operating agreement entitles members to "the information and documents kept by the Company pursuant to Section 7.1[,]" which includes "[a] current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account and Units of each Member and Assignee." Compl., Ex. 1 §§ 7.1–7.2. And Plaintiff has identified a facially proper purpose for seeking a member list. *See, e.g., Marilyn Abrams Living Tr. v. Pope Invs. LLC*, 2017 WL 1064647, at *4 (Del. Ch. Mar. 21, 2017) ("Contacting other members to discuss an investment is a proper purpose."), *aff'd*, 177 A.3d 69 (Del. 2017).
>
> Defendant argues that Plaintiff's "real reason for contacting the Members is to convince as many Members as possible of [her] theory that the Company has been mismanaged" so that she can "build a coalition of enough Members to overthrow management." DB at 14. Even if Defendant is correct that Plaintiff seeks to communicate with stockholders to change management, that purpose is proper. *See Marathon P'rs L.P. v. M&F Worldwide Corp.*, 2004 WL 1728604, at *8 (Del. Ch. July 30, 2004) (holding that inspection of a stock list to communicate with other stockholders to effect a change in management was a proper purpose); *Skoglund v. Ormand Indus., Inc.*, 372 A.2d 204, 214 (Del. Ch. 1976) (holding that inspection of a stock list "to communicate with other shareholders on matters relating to their common interest, including, among other things, the desirability of changing the board of directors[,]" was proper).

A2095-97. The Court of Chancery likewise rejected the Company's argument that the member list should be produced under the default judgment but "Plaintiff should be prohibited from using it" because any concerns with its use were properly addressed by Plaintiff's highly-restrictive confidentiality order, which the Company had never raised any issue with. A2097-99.

As a result, "Defendant must produce to Plaintiff an unredacted copy of the member list, subject to Plaintiff's proposed form of confidentiality order." A2099.

This appeal followed. The Company quickly moved for a stay pending appeal, then filed this appeal on a non-expedited basis. A2100.

Through its meritless legal arguments and procedural machinations, the manager of the Company has already improperly entrenched itself for nearly a year by preventing Plaintiff from receiving a basic equivalent to a stockholder list. The Company has persistently ignored the Court of Chancery's orders, including a default judgment entered nine months ago. This Court should end the extreme burden on Plaintiff and the misuse of Company resources in this statutory, summary, expedited proceeding, and affirm the Court of Chancery's opinion requiring the immediate production of the Member List pursuant to a confidentiality agreement.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY HELD THAT THE DEFAULT JUDGMENT PREVENTED THE COMPANY FROM RAISING NEW DEFENSES.

A. Question Presented

Whether the Court of Chancery abused its discretion by refusing to set aside in its entirety a default judgment requiring production of a Member List after providing the Company with multiple opportunities to appear to avoid the judgment in a summary, expedited, books and records proceeding. A2087-99.

B. Scope of Review

The parties agree that this Court reviews the denial of a motion to vacate a default judgment under Rule 60(b)(6) for abuse of discretion. *Senu-Oke v. Broomall Condo., Inc.*, 2013 WL 5232192 (Del. Sept. 16, 2013) (ORDER); OB at 16.

C. Merits of the Argument

1. The validly-entered default judgment is well-supported by Delaware law.

Delaware law may be forgiving of defaults, but it is not limitless. It certainly does not permit a party to repeatedly flout court-ordered deadlines with impunity. To permit otherwise would render case schedules, court orders and rules, and default judgments meaningless. At the outset of this case, the Company agreed to the Scheduling Order, which required the Company to answer the Complaint by September 16, 2024. B14. Contrary to the Company's belief, Delaware law is clear

that court rules and orders, including scheduling orders, have meaning and deadlines matter. *Wollner v. PearPop, Inc.*, 2022 WL 2205359, at *3 (Del. Ch. June 21, 2022); *Terramar Retail Ctrs., LLC v. Marion #2 Seaport Tr. U/A/D June 21, 2002*, 2018 WL 6331622, at *9 (Del. Ch. Dec. 4, 2018); *Goldstein v. Denner*, 2024 WL 1599501, at *3 (Del. Ch. Apr. 1, 2024). In furtherance of this principle, Delaware courts repeatedly stress that "scheduling orders are not merely guidelines but have the same full force and effect as any other court order." *In re ExamWorks Grp., Inc. S'holder Appraisal Litig.*, 2018 WL 1008439, at *6 (Del. Ch. Feb. 21, 2018). This is particularly so in expedited cases. *D1 Jasper Hldgs. LP v. JUUL Labs, Inc.*, C.A. No. 2023-1060-NAC, at 8-9 (Del. Ch. Mar. 4, 2024) (TRANSCRIPT).

Chancery Court Rule 55(b) further provides that, "[w]hen a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default may be entered." Ct. Ch. R. 55(b). Accordingly, Delaware courts have repeatedly entered default judgment and ordered production of books and records where a defendant failed to respond to a books-and-records complaint. *Schafermeyer v. Tingo Grp. Inc.*, 2024 WL 2045466 (Del. Ch. May 6, 2024) (ORDER) (granting plaintiff's motion for default judgment and ordering inspection of every requested book and record within five business days where defendant failed to timely answer the complaint); *Seiden v. Kaneko*, 2015 WL 7289338, at *4 (Del.

Ch. Nov. 3, 2015) (entering default judgment against the defendant for failure to respond to an underlying Section 220 complaint); *Palma Cap. Ltd. v. Westergaard.com, Inc.*, 2016 WL 6877108, at *1 (Del. Ch. Nov. 21, 2016) (ORDER) (same); *Yarbro v. Calmare Therapeutics Inc.*, 2017 WL 5133330, at *1 (Del. Ch. Nov. 3, 2017) (ORDER) (same).

The Company does not appear to contest the validity of the default judgment and even admits to failing to timely file an answer. OB at 10. Rather, the Company's chief complaint is that, after the Court of Chancery set aside one word in the default judgment to address the narrow issue *raised by the Company* regarding confidentiality, the Court of Chancery did not require Plaintiff to litigate every aspect of the judgment. But such a decision is well within the Court of Chancery's discretion.

"A motion to open a default judgment pursuant to Rule 60(b)(1) and (6) is addressed to the sound discretion of the Trial Court." *Battaglia v. Wilm. Sav. Fund. Soc'y*, 379 A.2d 1132, 1135 (Del. 1977). Delaware law is clear that "[b]ecause of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted." *MCA, Inc. v. Matsushita Elec. Indus. Co.*, 785 A.2d 625, 635 (Del. 2001). The Court thus requires a showing of "extraordinary circumstances" to warrant reopening default judgment. *Carlyle Inv. Mgmt. L.L.C. v. Nat'l Indus. Grp. (Hldg.)*, 2012 WL 4847089, at *13 (Del. Ch. Oct.

11, 2012), *aff'd*, 67 A.3d 373 (Del. 2013). Extraordinary circumstances do not exist where the party "makes a free and conscious choice regarding the conduct of the litigation." *Bell Tel. Lab'ys, Inc. v. Hughes Aircraft Co.*, 73 F.R.D. 16, 21 (D. Del. 1976); *see also Phillips v. Siano*, 1999 WL 1225245, at *4 (Del. Super. Ct. Oct. 29, 1999) ("A Rule 60(b)(6) motion, although designed to protect against injustice, cannot be used 'to relieve a party from the duty to take legal steps to protect his interests.'"); *Sens Mech., Inc v. Dewey Beach Enters., Inc.*, 2015 WL 5157210, at *4 (Del. Super. Ct. June 19, 2015) ("Plaintiff's inaction not to take steps to protect its legal interests disqualifies it from receiving the extraordinary relief available under Rule 60(b)(6)."); *Keith v. Melvin L. Joseph Constr. Co.*, 451 A.2d 842, 847 (Del. Super. Ct. 1982) (denying relief of a default judgment under 60(b)(6) where the defendant corporation ignored service, labeling the conduct "intentional and conscious" therefore precluding relief under 60(b)(6)).

As the Court of Chancery recognized in *Carlyle*, a Rule 60(b) motion "is not an opportunity for a do-over *or an appeal*." *Carlyle*, 2012 WL 4847089, at *5-6 (emphasis added); *id.* at *2 (denying motion to vacate default judgment under Rule 60 because "any injury to [Defendant] from the default judgment was self-inflicted"). "Rule 60(b)(6) does not apply when one party has made a deliberate choice to handle a case in a certain way, suffers an adverse result, and therefore seeks to adopt a new strategy." *Id.* at *13. "[Defendant's] decision to not appear and thus

to suffer a default judgment may have been unwise, but does not constitute extraordinary circumstances relieving it of the consequences of its own tactical choice." *Id.*

In *Carlyle*, the Court of Chancery granted default judgment on an anti-suit injunction after defendant chose not to respond to the complaint. *Id.* at *3-4. Then "[defendant], having purposely ignored numerous deadlines for action and opportunities to appear in this case, filed a motion in this court to vacate the default judgment" and "sought relief under Rule 60(b)." *Id.* at *5. In denying defendant's motion to vacate, the Court of Chancery held that the "extraordinary" principles of Rule 60(b) "apply with even more force when [defendant], which was properly served and chose not to respond, seeks to use Rule 60(b) to reopen a default judgment." *Id.* "Such a party is in the least equitable position to seek to argue the merits anew, because it consciously chose not to do so at the correct time." *Id.* "To permit a defaulting party a free shot to reargue the merits would make defaulting a cost-free option for the defaulting party, but impose on litigation adversaries and society as a whole great costs in terms of delay, expense, and the inefficient use of judicial resources." *Id.* That is precisely the case here. Accordingly, the Court of Chancery was well within its discretion to only set aside the default judgment in a limited respect.

2. The Court of Chancery gave the Company several opportunities to participate in the action and assert defenses, which the Company ignored.

Since the outset of this action, the Court of Chancery graciously gave the Company every opportunity (and extension) to participate in the action and assert any defenses the Company believed it had. Each time, the Company chose to flagrantly violate court-ordered deadlines.

For example, under the Scheduling Order, the Company was required to answer the Complaint by September 16, 2024. B14. The Company failed to submit any answer or otherwise respond to the Complaint. Accordingly, Plaintiff moved for default judgment against the Company. A0099-235. Scott Oakes, a principal of the Company's manager, Harvest Capital Management ("Harvest Capital"), appeared but had no explanation for the Company's failure to comply with the Court of Chancery's orders. B26-27.

At the hearing, the Court of Chancery noted that the Company "hasn't retained Delaware counsel" despite the fact that "[t]hey have had sufficient time to do that at this point[.]" B28. The Court of Chancery further acknowledged that "the time for a responsive pleading has passed." B28. Despite this, the Court of Chancery, with Mr. Oakes present at the hearing, generously granted the Company an extension "to file an answer by one week." B28. The Court of Chancery could not have been clearer that it would not "entertain any further extensions of the deadline" and "[i]f

no answer is filed on the docket, then I will enter default judgment." B28. Despite the Court of Chancery's extension, the Company disregarded the Court, ignored the extension, and failed to meet the Court-ordered deadline again. The Company never filed a responsive pleading or provided any sort of explanation by the extended deadline. Accordingly, on October 23, the Court of Chancery granted Plaintiff's motion for default judgment. A0236-37.

When the Company failed to comply with the default judgment order, Plaintiff sought sanctions. A0238-59. Getting the sanctions motion heard took additional time. The Company finally appeared through Delaware counsel, at the last possible moment, when threatened with sanctions. A0260-82. At the eleventh hour before the hearing on Plaintiff's motion for sanctions, and nearly a month after the Company was told to have counsel enter an appearance if it wanted to dispute the Complaint, counsel appeared seeking a do-over. *Id.* Again, the Court of Chancery gave the Company another chance, instructing the parties to meet-and-confer instead of imposing any sanctions and granting the Company an additional two weeks to comply with the Default Judgment. B87-88.

Despite the fact that the Default Judgment Order explicitly required "copies of each and every requested book and record in unredacted form," such as the Member List, the Company refused to provide an unredacted member list even after the parties' meet-and-confer efforts. A0236-37; A00778. Still, the Court of

Chancery did not impose sanctions. Although the Court of Chancery rejected the Company's legal arguments and held that the default judgment was valid (A1307; A2092, A2097) the Court of Chancery gave the Company *another* chance and set aside a small aspect of the default judgment "solely for the purpose of determining whether the member list must be produced in unredacted form and/or subject to a confidentiality order." A1307; A2094. Essentially, the Court of Chancery was merely voiding the word "unredacted" from the default judgment order to accommodate potential concerns of third parties. The Court of Chancery ordered supplemental briefing addressing only the confidentiality of the Member List. A1307.

Again, the Company squandered the opportunities afforded to it by the Court of Chancery, disregarded the Court of Chancery's explicit instructions, and chose to brief different issues about the merits. *See generally* A1310-37.

Contrary to the Company's assertion, the Court of Chancery did not "prevent[] the Company from challenging Appellee's purpose," "require[] the Company to forego a statutorily protected, meritorious defense," or otherwise "prohibit[] Appellant from raising a statutory defense." OB at 16-17. In fact, the Court of Chancery granted the Company extensions to allow it to make those arguments. B28. The Company chose not to do so until it defaulted and was threatened with coercive sanctions.

The Company must face the consequences of its choices. As a consequence of failing to file a timely answer, "the defaulting party has no further standing to contest the factual allegations of the claim." *Gebelein v. Four State Builders*, 1982 WL 17829, at *2 (Del. Ch. Oct. 8, 1982). The Company's purported defenses are thus waived. *Hauspie v. Stonington P'rs, Inc.*, 945 A.2d 584, 586 (Del. 2008) ("The effect of a default in answering . . . is to deem admitted all the well-pleaded facts in the complaint."); *Creative Rsch. Mfg. v. Advanced Bio-Delivery LLC*, 2007 WL 286735, at *1 (Del. Ch. Jan. 30, 2007).

3. The Court of Chancery's decision to tailor the Rule 60(b)(6) relief was well within its discretion.

The Court of Chancery's decision to modify the default judgment in a limited respect, essentially voiding the word "unredacted" from the default judgment order to permit consideration of confidentiality protections, was well within its discretion under Court of Chancery Rule 60(b)(6).

"An abuse of discretion occurs when a court has . . . exceeded the bounds of reason in view of the circumstances, or . . . so ignored recognized rules of law or practices so as to produce injustice." *Chaverri v. Dole Food Co.*, 245 A.3d 927, 932 (Del. 2021). Here, the record is clear that the Court of Chancery did not exceed the bounds of reason, did not ignore recognized rules of law or practice, and did not produce injustice. Rather, the Court of Chancery followed well-established law,

statutes, and court rules, and was well within its discretion to enforce a valid default judgment and only lift it for the narrow purpose of determining what, if any, confidentiality restrictions should apply to the Member List given that "the confidentiality of personal information of third parties is implicated." A1303-07; A2095-99. The record demonstrates that the Court of Chancery, in an expedited, summary, books-and-records proceeding, gave the Company chance-after-chance, including multiple extensions and opportunities, to plead its case and comply with court orders. Each time the Company rebuffed the Court of Chancery.

Court of Chancery Rule 60(b)(6) grants a court "broad power," *Rembrandt Techs., L.P. v. Harris Corp.*, 2009 WL 2490873, at *2 (Del. Super. Ct. Aug. 14, 2009), and "is addressed to the Court's sound discretion." *Christina Bd. of Educ. V. 322 Chapel Street*, 1995 WL 163509, at *3 (Del. Super. Ct. Feb. 9, 1995), *aff'd sub nom. Chrysler First Fin. Servs. Corp. v. Porter*, 667 A.2d 1318 (Del. 1995) (TABLE). Rule 60(b)(6) permits the Court to set aside a judgment for "any [] reason justifying relief from the operation of the judgment." Ct. Ch. R. 60(b)(6). Subsection 6 in particular is "more exacting than under the other subsections of Rule 60(b)" and "requires a special showing" of extraordinary circumstances. *SARN SD3, LLC v. Czechoslovak Grp. A.S.*, 2023 WL 3145917, at *5 (Del. Super. Ct. Apr. 27, 2023), *aff'd*, 326 A.3d 1170 (Del. 2024). Rule 60(b)(6) has been described by Delaware courts as providing "a 'grand reservoir of equitable power.'" *Rembrandt*

Techs., 2009 WL 2490873, at *2. Thus, while the Court of Chancery could have upheld the default judgment in its entirety, the Court of Chancery was well within its "grand reservoir" of sound discretionary authority to decide whether and how to modify the Default Judgment Order.

None of the Company's cited authority supports the argument that the Court of Chancery abuses its discretion by only partially setting aside a default judgment or tailoring proceedings to the sole issue remaining. The Company cites *Apartment Communities Corp. v. Martinelli*, 859 A.2d 67 (Del. 2004). OB at 17. But *Apartment Communities* expressly recognizes that the "policy in favor of resolving cases on their merits" is "counterbalanced by considerations of social goals, justice and expediency, a weighing process [that is] *largely within the domain of the trial judge's discretion*.'" 859 A.2d at 69 (emphasis added) (alteration in original). Further, whether a "meritorious defense to the action existed" is just a consideration in determining whether default judgment should be lifted among other factors, including "whether culpable conduct of the defendant led to the default and, if so, was it excusable" and "whether the plaintiff will be prejudiced." *Id.* at 69-70, 72. The factor of a meritorious defense is not dispositive as the Company seems to suggest, nor does it trump all other factors. *Apartment Communities* notes that it is "well-established" that the trial court should only consider "the possibility of a meritorious defense" "if a satisfactory explanation has been established for failing

to answer the complaint." *Id.* at 72. Here, the Court of Chancery correctly found that the default judgment was valid, only reopening it to address the narrow issue of confidentiality issues implicating third parties. A2087-88; A2092; A2097 n.2. The Court of Chancery never found that there was a "satisfactory explanation" "for failing to answer the complaint" and so, even under *Apartment Communities* (the Company's own authority), should not have considered "the possibility of a meritorious defense." *Apartment Cmtys.*, 859 A.2d at 72. As the Delaware Supreme Court did in *Apartment Communities*, the Delaware Supreme Court should similarly here find that the Court of Chancery did not abuse its discretion and affirm the Court of Chancery's holding. *Id.*

The Company's other cited authority, *Dao v. Liberty Life Assurance Co. of Boston* is inapposite. 2015 WL 457814 (N.D. Cal. Feb. 3, 2015). In *Dao*, the court found that every single factor weighed in favor of defendant, noting that defendant's failure to answer was the result of an excusable oversight because the company's agent for service of process provided the wrong date of service, the defendant had a meritorious defense, and there was no evidence that plaintiff would be prejudiced by setting aside the default. *Id.* at *2-3. By contrast, here, none of the factors weigh in favor of the Company.

The Company's reliance on *Borden v. Briggs* similarly does not help it. There, the trial court vacated a default judgment "without condition" where "the agent of

defendant failed to notify his attorneys of the existence of the action" but "upon learning of its pendency, his attorneys acted promptly to protect his interest." 142 A. 144, 145 (R.I. 1928). The plaintiff appealed and argued that the trial court abused its discretion by not imposing a condition that defendant could not plead the statute of limitations. *Id.* The appellate court rejected plaintiff's argument holding that there was no abuse of discretion and that "[t]he imposition of terms as a condition for the removal of a judgment by default is within the discretion of the trial justice." *Id.* Contrary to the Company's assertion, the Supreme Court of Rhode Island did not hold that "requiring a party to waive a meritorious defense would constitute an abuse of discretion." Rather, the appellate court simply held that whether the trial court would impose a condition was within the court's discretion. Moreover, in *Borden*, the defendant failed to answer because its agent never notified his attorneys of the existence of the action, but "upon learning of it[]" "acted promptly." *Id.* Here, the Court of Chancery found that the Company was properly served (A2092). Further, Mr. Oakes, a representative of the Company, appeared before the Court of Chancery and was granted an additional week to file an answer before, as the Court of Chancery informed Mr. Oakes, it would not "entertain any further extensions of the deadline" and "[i]f no answer is filed on the docket, then I will enter default judgment." B28. Unlike the defendant in *Borden*, the Company did not act promptly but instead did nothing and let the deadline pass.

Mitchell v. Campbell is also inapposite. 14 Or. 454 (1886). First, in *Mitchell*, the court recognized that, ordinarily, "the court will not interfere with the discretion of the trial court in matters of practice before it. The law has wisely vested those courts with very large discretionary powers in such matters[.]" *Id.* at 457-58. In *Mitchell*, the appellate court noted that the defendant was not even in default when the trial court entered the default judgment order because (i) the defendant had moved to strike the complaint, a fact which the trial court did not consider in its decision, (ii) "[n]o service of the amended complaint was made"; and (iii) the trial court did not "specify[] the time within which defendant should answer." *Id.* In denying defendant's motion to open the default, the trial court entered a "stipulated" order "that said default may be vacated and set aside, upon the condition that the defendant shall withdraw" certain defenses. *Id.* In light of the above circumstances, the appellate court held that the default judgment should have been set aside and thus that the "stipulation" "was extorted from the defendant" through adverse rulings. *Id.* Having found that no default judgment should have been entered, the appellate court reversed the trial court. *Id.* Again, none of the factors in *Mitchell* are present here where the Company did not file any timely motion, service was proper, and the Court of Chancery gave the Company an extension and explicitly told the Company it would enter a default if no answer was filed by the extended deadline.

Simply put, the Company has no basis to escape liability for its own disregard for the Court of Chancery's rules. The Company had ample opportunity to raise its purported "meritorious defenses" had it timely answered the Complaint. It admittedly did not do so. OB at 10. Enforcing portions of the default judgment against it thus is not "extraordinary" and is not one of those "rare" cases where Rule 60(b)(6) applies. *See High River Ltd. P'ship v. Forest Lab'ys, Inc.*, 2013 WL 492555, at *9 (Del. Ch. Feb. 5, 2013). Adopting the Company's position that, even in the face of default judgment, a defendant still has the unfettered right to litigate defenses it waived would render default judgment toothless and court-ordered deadlines meaningless. The Court of Chancery was well within its "grand reservoir" of discretion in only setting aside the default judgment in a limited respect to address the Company's confidentiality concerns.

4. The defense of improper purpose was already (and correctly) rejected by the Court of Chancery.

In determining whether there was an abuse of discretion, this Court considers whether the outcome of the action would be different from what it would be if the default judgment is permitted to stand. *Battaglia*, 379 A.2d at 1135. Here, the Court of Chancery already determined the outcome would be no different because the Company had no meritorious defense to producing the Member List. Thus, even if

the Company timely asserted its defense of improper purpose, it would not have changed the outcome of the action.

The Company's counsel acknowledged the scope of the issues in a colloquy with the Court. He stated "[o]ur understanding is the production of the member list is being ordered with the *only question open for briefing* is whether it should be produced in redacted or unredacted form and, if produced in unredacted form, if it be subject to a confidentiality agreement" to which the Court of Chancery responded, "[t]hat is correct." A1308 (emphasis added). Yet, the Company again disregarded the Court of Chancery, wasted its opportunity to address the issues the Court of Chancery requested, and tried to litigate purported defenses it waived in failing to timely answer the Complaint. As the Court of Chancery recognized "Defendant's supplemental briefing does not address privacy issues[.]" A2094. "The Court did not invite the parties to relitigate the propriety of Plaintiff's purpose; it expected the parties to address potential harm to third parties in revealing confidential information without the protection of a confidentiality order." A2095. Accordingly, the Company's claim that it "never got a meaningful chance to apply the above framework to this case" is belied by the over 60 pages of briefing that the Company forced on the Court of Chancery. A1310-A1959; A1960-A2061; A2067-2086.

Despite expressly not requesting such briefing (and contrary to the Company's assertion that the Court of Chancery undertook a "shallow analysis" (OB at 21)), the Court of Chancery nonetheless fully considered and addressed the Company's purported defense and properly denied it. A2095 ("even if Plaintiff's purposes were at issue, the Demand plainly states a proper purpose for the member list"). The Court of Chancery supported its decision by referencing on-point Delaware precedent. A2095-97 (citing Delaware statutory law and cases). In doing so, the Court of Chancery correctly held that Plaintiff identified a facially proper purpose for seeking a Member List. As the Court of Chancery explained, "[t]he Demand states that Plaintiff seeks to value her interests in the Company, investigate potential mismanagement, and call a meeting of the Company's members" and "also wishes to 'discuss with other Members their experiences in receiving information' from management." A2094-95. The Court of Chancery cited several Delaware cases in support of this conclusion. A2096 (citing *Marilyn Abrams Living Tr. v. Pope Invs. LLC*, 2017 WL 1064647, at *4 (Del. Ch. Mar. 21, 2017), *aff'd*, 177 A.3d 69 (Del. 2017); *Arbor Place, L.P. v. Encore Opportunity Fund, L.L.C.*, 2002 WL 205681, at *3–4 (Del. Ch. Jan. 29, 2002); *Stock v. Sustainable Energy Techs., Inc.*, 2023 WL 7131028, at *10 (Del. Ch. Oct. 30, 2023); *LeRoy v. Hardwicke Cos.*, 1983 WL 21022, at *2 (Del. Ch. Feb. 16, 1983)).

In its briefing in the case below, the Company argued that this was all pretext and Plaintiff's true purpose was to contact other members to replace the Company's management. A1326-27; A2095-96. The Court of Chancery held that, "[e]ven if Defendant is correct that Plaintiff seeks to communicate with stockholders to change management, that purpose is proper." A2096. Again, the Court of Chancery supported its holding with well-established precedent. A2095-96 (citing *Marathon P'rs L.P. v. M&F Worldwide Corp.*, 2004 WL 1728604, at *8 (Del. Ch. July 30, 2004) (holding that inspection of a stock list to communicate with other stockholders to effect a change in management was a proper purpose); *Skoglund v. Ormand Indus., Inc.*, 372 A.2d 204, 214 (Del. Ch. 1976) (holding that inspection of a stock list "to communicate with other shareholders on matters relating to their common interest, including, among other things, the desirability of changing the board of directors[,]" was proper)).

In its arguments, the Company, through its manager, does not even hide its self-interested motivations. The Company's arguments boil down to one self-interested concern: "replacing" management. OB at 23. The Company essentially argues that Plaintiff's purpose is improper because Plaintiff might convince members to take certain actions, such as "replacing management," or prevent certain actions which the Company assures "would benefit all members." OB at 23. In advancing this argument, the Company's true motive is laid bare. The Company's

manager wants to shield itself from any accountability or challenge simply because the Company's manager believes that it knows best. But the manager's desire to be immune from criticism or evade accountability is not a basis to shirk contractual and statutory books-and-records obligations. The proper or best manager of the Company is a question for the members, not the Company's manager. In short, it has long been proper, if not the quintessentially appropriate use of a books and records action, to obtain contact information for other equityholders in furtherance of concerns over mismanagement.

The Company's argument that it can entrench itself by preventing its members from contacting one another or that it can abuse Section 7.2 of the Operating Agreement to thwart member rights have also been squarely rejected by this Court. Such paternalistic motivations in which managers claim to try to save members from themselves are insufficient to withhold a member list. *Marilyn Abrams*, 2017 WL 1064647, at *6. In *Marilyn Abrams*, a member sought a member list to investigate potential mismanagement where the company, among other things, never held a member meeting and released audited financial statements over a year late in violation of the timing required by the operating agreements. *Id.* at *4. Just as the Company is doing here, the company in *Marilyn Abrams* argued that plaintiff's "primary purpose is to harass the Manager" and that plaintiff could not inspect the member list because "the Manager [] designated it confidential." *Id.* at *5. And,

like here, the operating agreement in *Marilyn Abrams* contained a provision granting the manager the right to keep certain information confidential. *Id.* The Court of Chancery rejected the company's argument that the provision gave "the Manager effectively unlimited authority to designate information confidential" as "meritless." *Id.* at *5-6. In reaching this conclusion, the Court of Chancery held that "member lists bear no resemblance to trade secrets, nor are member lists typically the kind of information 'the disclosure of which . . . could damage the Company's business' (as opposed to the *Manager's* business)." *Id.* at *6 (emphasis in original). In response to the manager's argument that plaintiff "might persuade the other members into an action that would be not beneficial for their interests," the Court of Chancery noted that "[w]hen capitalists . . . assert that other capitalists . . . must be protected from themselves, it is always worthwhile for the court to inquire whether the argument is more self-interested than selfless." *Id.* (internal quotation marks omitted) (quoting *Gotham P'rs L.P. v. Hallwood Realty P'rs, L.P.*, 2000 WL 1521371, at *3 (Del. Ch. Sept. 27, 2000)). The Court of Chancery concluded that "[r]egardless of the motive for the Manager's paternalism, it is not a basis for withholding the members list." *Id.* "Delaware law consistently permits stakeholders to communicate with each other regarding the management of an entity." *Id.* "This includes communication with other stakeholders 'to try to effect a change in management policies.'" *Id.* (quoting

Marathon P'rs, 2004 WL 1728604, at *8). Again, the Company fails to address *Marilyn Abrams* even though it is directly on point.

After full briefing on this issue, the Court of Chancery fully considered the Company's arguments regarding alleged improper purpose. A2095-96 ("Even if Defendant is correct that Plaintiff seeks to communicate with stockholders to change management, that purpose is proper."). Citing a host of Delaware authority, including *Marilyn Abrams*, which is directly on point, the Court of Chancery correctly concluded that Plaintiff stated a proper purpose and, even if the Company's argument that Plaintiff's stated purpose was merely pretext in order to "convince as many Members as possible of [her] theory that the Company has been mismanaged," even that was a proper purpose under Delaware law. *Id.*

The Court of Chancery did not prevent the Company from challenging Plaintiff's purpose. The Court of Chancery considered the Company's unrequested briefing and correctly denied the Company's requested relief with the support of Delaware precedent.

5. Plaintiff will suffer substantial prejudice if default judgment is further reopened.

In determining whether there was an abuse of discretion, the Court also considers whether substantial prejudice will be suffered by the non-defaulting party. *Battaglia*, 379 A.2d at 1135. Here, Plaintiff would suffer continued and significant

prejudice through the Company's bad faith delay, which has allowed the Company to evade its contractual and statutory obligations and thwart vindication of Plaintiff's rights. *La. Mun. Police Emps. Ret. Sys. v. Morgan Stanley & Co.*, 2011 WL 773316, at *3 (Del. Ch. Mar. 4, 2011) (holding that Delaware law "dictates against" practices that "would tend to promote delay, thereby undercutting the statutory mandate and policy that the proceeding be summary in character"). The Company's bad faith conduct has unjustifiably extended and increased the costs of litigation in this summary, expedited books-and-records action, which Plaintiff commenced almost a year ago. The Company's repeated failure to abide by court orders has forced months of delayed additional litigation and briefing, purportedly based on concerns of confidentiality. But, when the Court of Chancery invited the Company to brief the issue of confidentiality, the Company did not even address it thus demonstrating that those concerns were a false and baseless front. The Company should not be permitted to work additional prejudice against Plaintiff and further delay effectuation of her inspection rights.

The Court of Chancery's judgment should be affirmed.

II. THE COURT OF CHANCERY PROPERLY DENIED DISCOVERY IN LIGHT OF THE DEFAULT JUDGMENT.

A. Question Presented

Whether the Court of Chancery abused its discretion by refusing to allow a statutory, expedited, summary proceeding to be derailed further after five months by the Company's attempt to litigate merits defenses through an improperly filed answer and plenary discovery when the Court of Chancery set aside only a narrow portion of a default judgment regarding "whether the member list must be produced in unredacted form and/or subject to a confidentiality order." A2093-95.

B. Scope of Review

The parties agree that this Court reviews the denial of a motion to vacate a default judgment under Rule 60(b)(6) for abuse of discretion. *Senu-Oke*, 2013 WL 5232192, at *1; OB at 28. This Court reviews discovery rulings for abuse of discretion. *In re Oracle Corp. Deriv. Litig.*, ___ A.3d ___, 2025 WL 249066, at *7 (Del. Jan. 21, 2025).

C. Merits of the Argument

For all the reasons stated above, the Court of Chancery's decision to set the default judgment aside solely to determine any confidentiality issues implicated by the production of the Member List was proper and well within the Court of Chancery's discretion.

Decisions regarding vacating a default judgment under Rule 60(b)(6) are vested in the "sound discretion of the trial court" and "will be disturbed only on an abuse of that discretion." *Chaverri*, 245 A.3d at 950. "Because of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted." *Id.* at 935. Accordingly, such relief is "an extraordinary remedy" and is limited to a showing of "extraordinary circumstances." *Id.*

This Court has been clear that "where, as here, conduct 'has been intentional or willful,' Rule 60(b)(6) 'cannot be used "to relieve a party from the duty to take legal steps to protect his interests."'" *Nat'l Indus. Grp. Hldg. v. Carlyle Inv. Mgmt. L.L.C.*, 67 A.3d 373, 386 (Del. 2013). Yet, that is exactly what the Company seeks to do here. In *Carlyle*, for example, this Court upheld a default judgment that, not only prevented discovery, but barred a party from litigating at all by enforcing an anti-suit injunction. *Id.* Similarly, just last month, this Court ordered a summary affirmance upholding a default judgment in its entirety where a defendant relied on representations that another party would be representing defendant's interests in the action. *Next Gen Nutrition Inv. P'rs, LLC v. Garson*, 2025 WL 1589292 (Del. June 5, 2025) (ORDER).

Unsurprisingly, the Company does not cite a single case providing that a court must permit discovery after a validly entered default judgment order. This is but

another back-door attempt by the Company to circumvent a default judgment validly entered against it and the Court of Chancery's discretionary authority to permit the parties to address the narrow issue of confidentiality protections (protections which the Court of Chancery still issued despite the fact the Company did not even address them). A2099.

The Company's claim that it was denied due process or a meaningful opportunity to be heard is belied by the record. In reality, the Company was granted several opportunities but chose not to take them. *See supra* I.C.2. At bottom, the Company was not denied discovery. It had the opportunity to take discovery by participating in the action under the court-ordered case schedule, which provided for such discovery. B14. The Company repeatedly chose not to. Worse, the Company chose to completely ignore Plaintiff's discovery requests, which were served on the Company on September 18, 2024 and to which the Company never responded. B18-19. Instead, the Company made a back-door attempt to circumvent the default judgment by ambushing Plaintiff and the Court of Chancery several months into a summary expedited books-and-records proceeding, and tried to litigate its purported defenses instead of the issue the Court of Chancery requested, which was what confidentiality restrictions should apply to the Member List. A1314-37; A1307 (explaining that "defendant may submit a brief in support of its position on redactions to and confidentiality of the member list"). Even though the Court of

Chancery had no obligation to do so, the Court of Chancery nevertheless considered the Company's arguments but properly rejected them. A2087-99. And even though the Company disregarded the Court of Chancery and did not brief issues of confidentiality, the Court of Chancery *still* imposed confidentiality restrictions on the Member List. A2099 ("The Court will enter Plaintiff's proposed form of confidentiality order, which appropriately protects third parties' confidential information by prohibiting Plaintiff from disclosing member information without the member's permission, unless that information is publicly available, previously known, or independently acquired by Plaintiff.")

The Company is not asking for due process or an opportunity to be heard. What the Company wants is an unrestricted and unfettered right to do whatever it wants in this action, on its own timeline, and on its own terms without consequence while Plaintiff abides by the rules. That is not how due process works. The Court of Chancery has expressly recognized the perils of adopting the Company's argument here, warning that "[t]o permit a defaulting party a free shot to reargue the merits would make defaulting a cost-free option for the defaulting party, but impose on litigation adversaries and society as a whole great costs in terms of delay, expense, and the inefficient use of judicial resources." *Carlyle*, 2012 WL 4847089, at *5. Indeed, this Court has been clear that Delaware's policy in favor of deciding disputes on their merits is "counterbalanced by considerations of social goals, justice

and expediency, a weighing process [that is] largely within the domain of the trial judge's discretion." *Apartment Cmtys.*, 859 A.2d at 69 (alteration in original). The Company, in its briefing below, recognized as much noting that "the Court *may, in its discretion*, prescribe any limitations or conditions with reference to the production of the Member List." A1333. The Court of Chancery did just that by exercising its discretion and prescribing confidentiality conditions on the Member List. A2099.

The Court of Chancery did not prevent the Company from developing any relevant factual record nor did the Court of Chancery "tie[] Appellant's hands [] behind its back." OB at 31. The Company chose to forgo that opportunity by repeatedly choosing not to timely engage with a Scheduling Order that expressly provided for such discovery. B14. The Company's attempts to assert purported defenses came too late after it chose to forgo several opportunities to do so.

As this Court echoed in a similar context, "[s]ometimes when you gamble, you lose." *Nat'l Indus. Grp.*, 67 A.3d at 387. The Company gambled by choosing not to participate in the action despite multiple opportunities from the Court of Chancery at Plaintiff's expense. To the extent it sought delay of a clear legal right in an expedited proceeding, the Company won. To the extent it sought to prevent production of a member list, the Company lost. The Court of Chancery did not abuse

its discretion in ordering the Company to produce the Member List under confidentiality restrictions. It should be produced immediately.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Chancery should be affirmed.

/s/ Matthew D. Perri
Matthew D. Perri (#6066)
Mari Boyle (#6761)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
perri@rlf.com
boyle@rlf.com

Attorneys for Plaintiff-Below/Appellee Melissa Garlington

Of Counsel:

Randall M. Lending
VEDDER PRICE
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609-7564

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