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IN THE

Supreme Court of the State of Delaware

S. CHRISTOPHER NEY, Plaintiff-Below/Appellant, v. 3i GROUP PLC and 3i CORPORATION, Defendants-Below/Appellees.	**No. 247, 2025** COURT BELOW: SUPERIOR COURT OF THE STATE OF DELAWARE C.A. No. N24C-08-357-PAW [CCLD]

APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS

After resounding defeats in four separate courts, Plaintiff S. Christopher Ney ("Ney") seeks yet another bite at the apple through this meritless appeal. Ney's serial lawsuits arise out of a 2019 transaction through which Defendant 3i Group plc ("3i Group") indirectly acquired Magnitude Software Inc. ("Magnitude") from its prior stockholders—including Ney who held a minority stake—for $340 million. Despite his latest suit in Delaware being plainly time-barred, Ney argues for the *fifth* time that he entered a supposed undocumented oral agreement—outside of the seven comprehensive, fully integrated written contracts governing the sale[1]—which would allegedly pay him alone a separate $20 million "kicker." That bold and baseless position has been rejected by four different courts in three separate jurisdictions, including by the Superior Court below. This Court should easily affirm.

Consistent with the three previous courts to reach the same issue, including the United States Court of Appeals for the Fifth Circuit, the Superior Court dismissed

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[1] The Superior Court limited its analysis to four of the seven interlocking agreements as it did not believe consideration of all seven agreements was necessary for its ruling. Opening Br., Ex. A ("Op.") at 22 n. 96. Those four agreements were: the Stock Purchase Agreement ("SPA"), two Incentive Unit Grant Agreements (the "IU Grant Agreements"), and the Rollover Contribution and Subscription Agreement (the "Rollover Agreement") (together, the "Transaction Agreements"). Although 3i Defendants (defined below) maintain that the Court can consider all seven agreements, this Court need not do so to dispose of Ney's appeal. Therefore, for ease of reference, 3i Defendants will focus on the four most relevant Transaction Agreements.

Ney's claims. First, it correctly concluded that Ney's claims were time-barred by Delaware's three-year statute of limitations and that the Delaware Savings Statute was inapplicable because the prior courts' dismissals were not "through no fault of [Ney's] own" given his repeated and intentional disregard of clearly applicable Delaware forum selection clauses. *See* 10 *Del. C.* § 8118. Second, the Superior Court correctly addressed the merits of Ney's claim. It properly found, as the prior courts had, that the integrated Transaction Agreements governing Magnitude's sale applied to the case, and that the plain terms of those Transaction Agreements foreclosed Ney's claims. Third, and for the same reasons, the Superior Court concluded that Ney's quasi-contractual claims failed as a matter of law. The Court should follow the Superior Court's well-reasoned analysis and affirm its dismissal of Ney's complaint, with prejudice.

SUMMARY OF ARGUMENT

1. Denied. Ney's claims are facially untimely. Ney invoked the Savings Statute to try to rescue his claims. But the Savings Statute applies only when a plaintiff's claims are technically barred "through no fault of his own." Contrary to Ney's characterizations on appeal, the Superior Court did not add a new requirement to the Savings Statute that Ney needed to file a placeholder suit or abandon his appeal. Rather, the Superior Court properly determined—relying on both binding and persuasive authority—that the Savings Statute does not save Ney's time-barred claims because Ney attempted to strategically avoid plainly applicable Delaware forum selection clauses in the Transaction Agreements. As he did below, Ney again provides no contrary authority.

2. Denied. The Transaction Agreements foreclose Ney's breach of contract claims. As a preliminary matter, the Superior Court can consider the Transaction Agreements. Given the other judicial decisions that determined the Transaction Agreements apply to the same claim when enforcing the forum selection clauses, Ney is collaterally estopped from arguing that they do not apply to his claims. Moreover, the Transaction Agreements can be independently considered because they are incorporated into Ney's Complaint and integral to his claims. Once considered, the Transaction Agreements bar his claims because they are fully integrated agreements that contain merger, disclaimer, and no-modification

provisions. Separately, Ney's breach of contract claim fails for the independent reason that he does not plead an enforceable contract.

3. Denied. Because the Transaction Agreements apply to Ney's claims, the Superior Court properly dismissed his quasi-contractual claims, too. Delaware law does not permit quasi-contractual claims where fully integrated, written agreements govern the alleged promise or subject matter at issue.

COUNTERSTATEMENT OF FACTS

A. The Transaction and the Transaction Agreements

In 2018, Magnitude explored a potential sale. A0015. Ney was a minority owner and one of Magnitude's negotiators for the Transaction. A0016. Following a competitive bidding process, in 2019, Defendants 3i Corporation ("3i Corp") and 3i Group's (together "3i Defendants") affiliate purchased Magnitude for $340 million. A0019-20. The SPA was then executed in March 2019 and a few months later, in May 2019, the Transaction closed. A0084-173. Ney continued as the CEO following the Transaction but was terminated in July 2020. A0022-23.

The Transaction, as well as Ney's post-closing incentive compensation as CEO, are governed by seven comprehensive and related agreements, which were signed or authorized by Ney: the SPA, the Restrictive Covenant Agreement, the IU Grant Agreements, the Rollover Agreement, the Amended and Reinstated Agreement of Limited Partnership, and the Amended and Reinstated Agreement of Limited Liability Company Agreement. *See* A0084-368. In addition, and as relevant here, the IU Grant Agreements comprehensively govern Ney's post-closing employment role and incentive compensation. *See, e.g.*, A0189 (IU Grant Agreement – Main Pool ("IU Grant Agreement – Main") § 2(a)-(b)); A0210 (IU Grant Agreement – CEO Pool ("IU Grant Agreement – CEO") § 2(a)).

Three sets of provisions in the Transaction Agreements are particularly relevant here. *First*, each contains an integration clause stating that such agreement

"contain[s] the *complete agreement* by, between and among the parties and *supersede[s] any prior understandings, agreements or representations by, between or among the parties*, *written or oral*, which may have related to the subject matter hereof *in any way*." A0163 (SPA § 12.09) (emphasis added); *see also* A0196 (IU Grant Agreement – Main § 7) (same); A0216-217 (IU Grant Agreement – CEO § 7) (similar); A0233 (Rollover Agreement § 4(f)) (similar). Further, the Transaction Agreements generally refer to one another. For example, the SPA expressly incorporates "Ancillary Agreements," which are broadly defined as the Rollover Agreement (which is also an exhibit to the SPA), the Restrictive Covenant, and "each other agreement or certificate delivered in connection with the [T]ransaction." A0146 (SPA § 11.01). These three Agreements were executed the same day, March 19, 2019. The remaining Agreements were executed shortly thereafter, on May 2, 2019.

Second, the IU Grant Agreements state that "[n]o modification, amendment or waiver of any provision … shall be effective … unless such modification, amendment or waiver is approved in writing …." A0196 (IU Grant Agreement – Main § 7); A0216-217 (IU Grant Agreement – CEO § 7); *see also* A0163 (SPA § 12.08) (requiring amendment or waiver in writing).

Third, the Transaction Agreements, and the SPA in particular, disclaim legal recourse against any entity that is not a signatory to that agreement and specifically

preclude claims against stockholders, affiliates, and agents, who are not subject to "any liability or obligation whatsoever" related to the "negotiation, execution, or performance" of the SPA "or the transactions contemplated [t]hereby." *See* A0167, SPA § 12.16(b). Both 3i Defendants are parties for whom liability is disclaimed.

B. Ney's Texas Complaint

In early 2020, Ney alleged in Texas state court a $20 million side deal related to the Transaction in a suit brought against New Amsterdam Software Holdings LP, New Amsterdam Software GP LLC (together, "New Amsterdam") and Defendant 3i Group. Like here, he claimed that he made a pre-closing "oral" contract for $20 million in exchange for keeping Defendant 3i Group at "the front of the line" and remaining Magnitude's CEO after closing. A0076-77; A0078. New Amsterdam moved to dismiss for failure to comply with the Transaction Agreements' Delaware forum selection clauses. *Ney v. 3i Group*, *P.L.C.*, 2023 WL 6121774, at *2 (5th Cir. Sept. 19, 2023). Defendant 3i Group simultaneously filed a Special Appearance to challenge personal jurisdiction in Texas. *Id*. In October 2020, the Texas state court granted New Amsterdam's motion, leaving 3i Group as the only remaining defendant. *Id*.; *see also Ney v. 3i Grp. PLC*, 2021 WL 8082411 (W.D. Tex. Apr. 13, 2021), *report and recommendation adopted*, 2021 WL 8082324 (W.D. Tex. Apr. 30, 2021) ("WDTX R&R").

Ney then amended his Texas Petition to remove New Amsterdam as the counterparty to the supposed oral agreement and replace it with Defendant 3i Corporation as an additional defendant, who was a non-signatory to the Transaction Agreements. *Ney*, 2023 WL 6121774, at *3. In response, 3i Defendants removed to federal court and moved to dismiss. WDTX R&R, 2021 WL 8082411, at *1. In April 2021, the magistrate court recommended dismissal, and the district court adopted its report and recommendation shortly thereafter. *See generally* WDTX R&R.

In doing so, the district court concluded that it could properly consider the Rollover Agreement and SPA for two independent reasons. *First*, the district court noted that, generally, documents outside the pleadings could be considered when analyzing *forum non conveniens*. WDTX R&R, 2021 WL 8082411, at *8. *Second*, the district court concluded that, Ney's "pleaded claims *sufficiently implicate the underlying written agreements*." *Id*. at *8 n.13 (emphasis added).

Next, the district court assessed whether to apply the Delaware forum selection clause found in the Rollover Agreement and SPA. On these issues, the district court held that "Ney's claims unequivocally fall within the scope of the Rollover Agreement," *id*. at *11, and that as closely related parties, the 3i Defendants could enforce its Delaware forum selection clause. *Id*. at *10. Further, noting that "Ney has no claim but for the existence of the [SPA]," the district court held that 3i

Defendants could also enforce the SPA's Delaware forum selection clause. *Id*. at *11, *13. Accordingly, the district court dismissed the case. *Id.*

C. Fifth Circuit Affirms Dismissal.

Ney appealed. On October 11, 2023, the Fifth Circuit affirmed the dismissal, including the district court's holding that it could properly consider the Rollover Agreement. *Ney*, 2023 WL 6121774, at *2-3. In addition to noting that such documents could be considered for a *forum non conveniens* analysis, the Fifth Circuit held that "the Rollover Agreement and the [SPA] *are central* to Ney's petition, as the amended petition repeatedly references and relies on the purchase, the closing, and the completion of the Magnitude sale." *Id*. at *3 (emphasis added). It also explained that "Ney's compensation with respect to [the Transaction] is governed by [the] various interlocking [Transaction Agreements]" and that "*all seven agreements constitute the complete agreement by, between and among the parties*." *Id*. at *2 (internal quotations omitted) (emphasis added). The Fifth Circuit explained that "the Rollover Agreement contains a merger clause which … is expansive and *clearly encompasses Ney's alleged oral contract*." *Id.* at *4 (emphasis added).

D. Ney Sues in Delaware to Enforce a Purported Side Deal.

Almost a year later, on August 28, 2024, Ney brought this action in the Delaware Superior Court, again alleging that he is party to a separate oral agreement

with 3i Defendants for a $20 million "kicker" based on Ney's role in negotiating the Transaction, keeping 3i Group at the "front of the line," and remaining as CEO after closing to oversee the successful transition to the new owner. A0016-17; A0020. Ney's claims and allegations are essentially the same as those from his prior lawsuits in Texas, and he expressly acknowledges he is referring to the same supposed side deal. A0018. His only innovation is that, instead of pleading an oral contract, Ney now claims that the "precise terms of this agreement are largely documented in emails that are now in the sole possession of Magnitude or 3i [Defendants]." A0016-17.

Ney also included in his Complaint (A0015-27) a series of partial screenshots from a February 8, 2019 text conversation between Ney and Andrew Olinick (Former Partner, Co-Head of North American Private Equity, Global Head of Business & Technology, 3i Group) as purported evidence of this side deal A0019; A0020-22; *see* A0370-371 (more complete screenshots of text messages included in Complaint).[2] None reflects any such agreement.

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[2] While Ney's partial screenshots are undated, the dates and times are available at A0370-371, showing full screenshots of the conversation. As 3i Defendants argued below, the Superior Court could properly consider here "more complete versions of documents referred to or quoted from in the Complaint." *Silverberg ex rel. Dendreon Corp. v. Gold*, 2013 WL 6859282, at *4 n.4 (Del. Ch. Dec. 31, 2013); *see also In re Gen. Motors (Hughes) S'holder Litig.*, 2005 WL 1089021, at *6, *29 n.259 (Del. Ch. May 4, 2005) (court may consider on a motion to dismiss "portions [of documents] necessary for the Court to discern a complete and accurate context"), *aff'd*, 897 A.2d 162 (Del. 2006).

3i Defendants then moved to dismiss. On May 20, 2025, the Superior Court issued a memorandum opinion granting that motion on several independent bases and dismissing Ney's Complaint with prejudice. *See generally* Op. The Superior Court held that Ney's claims are untimely because they were filed beyond the three-year limitations period. Op. at 12. Relatedly, it held that Ney's claims are not saved by Delaware's Savings Statute because, pursuant to applicable precedent, that statute does not apply "where a litigant disregards or strategically tries to avoid an applicable forum selection clause." *Id*. at 13-17.

Further, the Superior Court held that it could properly consider the Transaction Agreements on a Rule 12(b)(6) motion to dismiss. Like the Texas courts, the Superior Court determined that the Transaction Agreements are incorporated by reference and integral to the Complaint. *Id.* at 19-22. It held that the Texas court rulings addressed that same issue and thus collaterally estopped Ney from relitigating whether "the [SPA] and the Rollover Agreement apply to Ney's claims and binds Ney." *Id*. at 24; *see also* WDTX R&R, 2021 WL 8082411, at *8 n.13; *Ney*, 2023 WL 6121774, at *2-3. The Superior Court also noted that the IU Grant Agreements contain provisions allowing only "[written] modification, amendment or waiver." Op. at 24-25. Given these rulings, the Superior Court concluded that the integration and no-modification provisions in the Transaction

Agreements precluded Ney's claims, including his quasi-contractual claims. *Id*. at 24-26.

On June 6, 2025, Ney filed a notice of appeal. No relief is due.

ARGUMENT

I. NEY'S CLAIMS ARE UNTIMELY.

A. Question Presented

Whether the Superior Court properly held that Delaware's Savings Statute cannot save Ney's otherwise untimely claims because he disregarded and strategically avoided applicable forum selection clauses. These issues were raised by 3i Defendants below (A0046-48; A0535-539) and considered by the Superior Court (Op. at 12-17).

B. Scope of Review

The "interpretation of a statute of limitations is a question of law, which we review *de novo*." *Reid v. Spazio*, 970 A.2d 176, 180 (Del. 2009). Likewise, "[i]ssues of statutory interpretation are 'purely legal.'" *Wilkerson v. State*, 2025 WL 39625, at *7 (Del. Jan. 7, 2025) (citations omitted). The scope and standard of review are thus *de novo*. *Id.*

C. Merits of Argument

Ney does not dispute that his 2024 lawsuit, which is related to an alleged 2019 agreement, is untimely under the applicable three-year statute of limitations. Opening Br. at 12 (acknowledging that his claims could only be timely under the Savings Statute); 10 *Del. C.* § 8106 (providing the relevant three-year limitations period). Ney nonetheless argues that his claims are saved by the Savings Statute and that *Huffington v. T.C. Grp., LLC* is inapposite and not binding. *Id.* at 14-15 (citing

2012 WL 1415930 (Del. Super. Ct. Apr. 18, 2012)). He further asserts that the Superior Court erred by supposedly requiring him to file a placeholder action in Delaware. *Id.* at 15-16. These arguments, based on misunderstandings of both the Superior Court's ruling and *Huffington*, are unavailing. Because Ney cannot meet his burden to establish that the Savings Statute applies, this Court should affirm.

1. The Savings Statute Does Not Apply.

Under the Savings Statute, "a new action may be commenced, for the same cause of action, at any time within 1 year after the abatement or other determination of the original action." 10 *Del. C.* § 8118(a). But the Savings Statute applies only where a plaintiff, "*through no fault of his own* finds his cause technically barred by the lapse of time." *Savage v. Himes*, 2010 WL 2006573, at *2 (Del. Super. Ct. May 18, 2010) (quoting *Giles v. Rodolico*, 140 A.2d 263, 267 (Del. 1958)), *aff'd*, 9 A.3d 476 (Del. 2010) (TABLE).

As Delaware courts have explained, the "no fault of his own" language indicates that the Savings Statute "is not meant to be 'a refuge for' … mistaken strategic decisions by counsel" or litigants. *Kaufman v. Nisky*, 2011 WL 7062500, at *3 (Del. Super. Ct. Dec. 20, 2011) (citations omitted). Accordingly, the Savings Statute does not apply "where the initial action was intentionally brought in an improper forum." *In re Rosetta Genomics, Inc.*, 2025 WL 1942378, at *8 (Bankr. D. Del. July 14, 2025); *see also Towles v. Mastin*, 2007 WL 3360034, at *2 (Del.

Super. Ct. Oct. 18, 2007), *aff'd*, 959 A.2d 28 (Del. 2008) (TABLE) (similar). Applying this longstanding precedent, the Court in *Huffington* held that where, as here, "a plaintiff *purposely disregards a forum selection clause*," it is "inappropriate to apply the Savings Statute." *Huffington*, 2012 WL 1415930, at *10 & nn.144-46 (emphasis added).

Consistent with the Superior Court's ruling, the Court should adopt *Huffington's* sound reasoning and conclude that the Savings Statute does not apply to these facts. For four years, Ney repeatedly and intentionally disregarded the mandatory forum selection clauses contained in the Transaction Agreements and strategically chose to pursue his claims in Texas. The defect in his Texas lawsuits was neither "technical" nor "through no fault of his own," but rather was a deliberate effort to avoid Delaware courts, despite the Transaction Agreements' mandatory forum-selection provisions. Under such circumstances, Delaware courts have repeatedly determined that the Savings Statute is inapplicable. *Id.*; *Towles*, 2007 WL 3360034, at *2 (declining to apply Savings Statute where initial suit was dismissed in New Jersey for lack of personal jurisdiction, and plaintiff had "no basis" to believe New Jersey would have had personal jurisdiction); A0405, *Hall v. Fulton*, C.A. No. 2018-0738-JTL, at 33 (Del. Ch. Mar. 12, 2019) (TRANSCRIPT) (Savings Statute does not apply where there are "clear abuses, such as a breach of the mandatory forum selection clause"); *cf. Tilden v. Cunningham*, 2018 WL 5307706,

at *15 & n.164 (Del. Ch. Oct. 26, 2018) (citing *Huffington*'s declination to apply the Savings Statute in support of finding that claims filed elsewhere in the face of a forum selection provision were barred by laches and that such consequence "[wa]s entirely self-inflicted"); *CMS Inv. Hldgs., LLC v. Castle*, 2016 WL 4411328, at *3 (Del. Ch. Aug. 19, 2016) ("Having chosen to disregard that [forum selection] clause, ... [plaintiffs] cannot now present the Colorado State Action as a basis for avoiding application of laches.").

Ney contends that his decision to file in Texas does not render the Savings Statute inapplicable because his claims are pursuant to a separate oral agreement that is not subject to any forum selection clause. *See* Opening Br. at 8, 15. But this argument again reflects an intentional and tactical choice to try to circumvent the Delaware forum selection clauses, which, at best for Ney, was a "mistaken strategic decision[ ]" to which the Savings Statute does not apply. *Kaufman*, 2011 WL 7062500, at *3. It is also foreclosed by the Texas courts' determinations that the Transaction Agreements do apply to his claims. *See infra* at 23-27.

As the Superior Court held, by no later than October 20, 2020, when the Texas state court first dismissed Ney's claims based on the Delaware forum selection clauses in the Transaction Agreements, Ney was on notice that at least the SPA and Rollover Agreement apply to his claims. Op. at 14. Yet, despite such notice, he chose to further press his claims in Texas by amending his complaint to *delete the*

signatory to the Transaction Agreements as the counterparty to his supposed oral contract and replace it with another *non-signatory* defendant. *Id*. Ney then continued to pursue his claims in Texas even after they were removed to federal court, and then appealed the *forum non conveniens* dismissal to the Fifth Circuit after the Western District of Texas, *also* confirmed, on April 30, 2021, that the forum selection clauses applied. *Id*. at 16. Given the Texas state court's ruling, which was later independently confirmed by the Texas district court, there can be no dispute that no later than April 30, 2021, Ney's pursuit of his claims in Texas constituted a "purpose[ful] disregard[]" of these forum selection clauses. *Huffington*, 2012 WL 1415930, at *10.

Ney nonetheless contends that the Superior Court erred in relying on *Huffington* because it is "inapposite and is not binding authority." Opening Br. at 14. Ney ignores, however, that *Huffington* follows binding precedent. Specifically, the "no fault" requirement to invoke the Savings Statute derives from *Giles*, a case this Court decided nearly 70 years ago. *Huffington*, 2012 WL 1415930, at *10 (citing *Giles*, 140 A.2d at 267). In *Giles*, in stark contrast to here, the Supreme Court applied the Savings Statute, finding that the plaintiff's counsel had made a "careless oversight" in issuing a summons to the defendant to the wrong address, only for counsel to then miss the issuance deadline while on his honeymoon. *Giles*, 140 A.2d at 264-67. The Supreme Court reasoned that the plaintiff should not be "denied his

day in court" due to a technicality that was "no fault of his own." *Id.* at 267. *Huffington* merely applies this longstanding requirement to the modern context of forum selection clauses, holding that the Savings Statute cannot be applied where intentional gamesmanship, as opposed to "careless oversight," is involved.

Further, *Huffington's* facts are nearly identical to those here. Ney attempts to distinguish them by arguing that the plaintiff there sued pursuant to a specific written agreement, whereas Ney here maintains his claims are not covered by any of the Transaction Agreements—only pursuant to the side deal. Opening Br. at 14-15. But this misapprehends *Huffington*'s facts.

Specifically, in connection with the plaintiff's investment in a business, the parties signed a subscription agreement with a Delaware forum selection clause. *Huffington*, 2012 WL 1415930, at *2. After the investment failed, the plaintiff brought various claims in Massachusetts state court. *Id*. at *1-2. He asserted that such claims were "predominately based on fraudulent misconduct that occurred prior to execution of the Subscription Agreement." *Huffington v. T.C. Grp., LLC*, 685 F. Supp. 2d 239, 241-42 (D. Mass. 2010), *aff'd*, 637 F.3d 18 (1st Cir. 2011). After removal to federal court, the district court dismissed the plaintiff's claims due to the Delaware forum selection clause. In doing so, the court rejected the plaintiff's argument that his claims were not "covered" by the Subscription Agreement's forum selection clause because the plaintiff's claims sounded in fraud. *Id.* The plaintiff

then appealed to the First Circuit. *Huffington*, 2012 WL 1415930, at *2. While awaiting the appellate ruling, the plaintiff filed in Delaware but after the limitations period for his claims had already expired. *Id.* The Superior Court held that the plaintiff's claims were time-barred because he "created his predicament" when "[h]e decided to pay no heed to the forum selection clause he agreed to in the Subscription Agreement, and he chose to file his cause of action in Massachusetts." *Id*. at *10.

Ney offers no reason why the Court should not follow *Huffington*'s reasoning that artful pleading to circumvent mandatory forum selection clauses does not entitle a plaintiff to the Savings Statute. In fact, he does not even attempt to argue that *Huffington* was wrongly decided or challenge the other cases that have endorsed *Huffington*'s reasoning. *See Tilden*, 2018 WL 5307706, at *15; *CMS Inv. Hldgs., LLC*, at *3; A0405, *Hall*, C.A. No. 2018-0738-JTL, Tr. at 33. Tellingly, Ney cites no contrary authority undermining *Huffington*. On this record, the Savings Statute does not apply.

2. No Placeholder Suit Was Required.

Based on *Reid v. Spazio*, 970 A.2d 176 (Del. 2009), Ney additionally asserts that the Superior Court erred because Delaware law does not "require" him to file a "placeholder suit." Opening Br. at 15. As a preliminary matter, Ney failed to make this argument or cite *Reid* below. As such, he has waived this argument. *Ravindran*

v. GLAS Tr. Co. LLC, 327 A.3d 1061, 1078 (Del. 2024); Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review ….").

In any event, this argument fails for the independent reason that Ney mischaracterizes the Superior Court's ruling. The Superior Court merely used Ney's decision to pursue an appeal in Texas as a further indication of his attempts to avoid the forum selection clauses. Op. at 16-17 (citing *Huffington*, 2012 WL 1415930, at *9). It did not impose a "require[ment]" to file placeholder suits.

Moreover, *Reid* is distinguishable. In *Reid*, the plaintiff initially won in the trial court on a personal jurisdiction dispute, only to later lose on appeal, after which he pursued a further discretionary appeal. *Reid*, 970 A.2d at 179. The question was whether the Savings Statute's one-year filing window should begin to run when the plaintiff lost his appeal as of right, or when he lost his discretionary appeal. This Court held that the Savings Statute applies to both appeals as of right and discretionary appeals. *Id*. That issue is irrelevant here.

3. Delaware Policy Supports Refusing to Save Claims Where a Party Ignores Forum Selection Clauses.

Ney makes one last unavailing appeal to fairness, claiming he should not be "punished for suing in a jurisdiction he believed was appropriate." Opening Br. at 16. Regardless of whether he actually maintained this subjective "belief," a plaintiff is not absolved from untimeliness by intentionally filing and staying in the wrong jurisdiction, and with good reason. Ney made a strategic choice to amend his

Texas Petition and remain in Texas despite notice that the limitations period was running out and that Delaware courts do not apply the Savings Statute where a plaintiff ignores a forum selection clause.

Ney's conduct is not the type where, as this Court described, "it appears that no harm will result from the allowance of a second suit." *Giles*, 140 A.2d at 267. Rather, when plaintiffs, like Ney, repeatedly and strategically avoid Delaware forum selection clauses *to which they contractually agreed*, it imposes undue burdens of time and money on defendants, like 3i Defendants, who must then litigate a case multiple times over. Condoning Ney's strategy would incentivize plaintiffs to strategically avoid forum selection clauses, without concern for the enforcement of a statutory limitations period. Therefore, this Court should affirm the sound, longstanding policy of Delaware courts against strategically avoiding agreed-upon forum selection clauses. *Huffington*, 2012 WL 1415930 at *10; *cf. Tilden,* 2018 WL 5307706, at *15; *CMS Inv. Hldgs., LLC*, at *3; A0405, *Hall*, C.A. No. 2018-0738-JTL, Tr. at 33.

For the reasons noted above, Ney's claims are untimely. On this basis alone, the Court may affirm.

II. THE TRANSACTION AGREEMENTS BAR NEY'S CLAIMS.

A. Question Presented

Whether the Superior Court was correct in concluding that: (i) Ney was collaterally estopped from arguing that the Transaction Agreements did not apply to his claims; (ii) it could separately consider the Transaction Agreements because they were incorporated into his Complaint and integral to his claims; and (iii) the Transaction Agreements preclude Ney's breach of contract claim. These issues were raised by 3i Defendants below (A0053-62; A0539-545) and considered by the Superior Court (Op. at 17-25).

B. Scope of Review

The Court reviews "questions of law and interpret[s] contracts *de novo*." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010) (citing *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 2010 WL 779992, at *2 (Del. Mar. 8, 2010)). Thus, it should review the questions of whether collateral estoppel applies and whether the Transaction Agreements foreclose Ney's breach of contract claims *de novo*.

The Court reviews matters of trial court discretion, such as whether it can consider documents outside of the pleadings, for abuse of discretion. *Allen v. Encore Energy P'rs, L.P.*, 72 A.3d 93, 96 (Del. 2013) ("A judge *may* consider documents outside of the pleadings only when: (1) the document is integral to a plaintiff's claim and incorporated in the complaint or (2) the document is not being relied upon to

prove the truth of its contents.") (emphasis added) (citation omitted); *see also Mason v. State*, 963 A.2d 139 (Del. 2009) (ORDER) ("The word 'may' generally is permissive, not mandatory," and affords trial courts discretion). Courts in the federal appellate context likewise review such rulings for abuse of discretion. *See, e.g.*, *Spizzirri v. Zyla Life Scis*., 802 F. App'x 738, 739 (3d Cir. 2020) (applying abuse of discretion standard to whether district court properly took notice of memo "integral to or explicitly relied upon in the complaint"); *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012) ("[A] district court's decision to take judicial notice of extrinsic evidence shall be reviewed for abuse of discretion."); *Bristol v. Nassau Cnty*., 685 F. App'x 26, 28 (2d Cir. 2017) (similar).

C. Merits of Argument

In the alternative, the Court may affirm on the basis that the Transaction Agreements bar Ney's breach of contract claims. His arguments to the contrary fail as a matter of law.

1. Collateral Estoppel Applies.

Ney first contends that the Superior Court erred in determining that he is collaterally estopped from denying that the Transaction Agreements apply to his claims. Opening Br. at 17-19. Simply, the applicability of the Transaction Agreements was a threshold issue that the Texas courts had to resolve to dismiss his complaint on *forum non conveniens* grounds, and thus, the Superior Court correctly applied collateral estoppel.

The Parties agree that, as the jurisdiction of the initial case, the Fifth Circuit's standard for collateral estoppel applies. *See Pyott v. La. Mun. Police Emps.' Ret. Sys.*, 74 A.3d 612, 614, 616-17 (Del. 2013). Under this standard, courts give preclusive effect to previous determinations if: "(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision." *Bradberry v. Jefferson Cnty., Tex.*, 732 F.3d 540, 548 (5th Cir. 2013) (citation omitted). Ney challenges only the Superior Court's determination that the first factor is satisfied here. Opening Br. at 18. In particular, he contends that the Texas courts' rulings were "limited to whether the suit should be brought in Delaware" and that "the only thing" they concluded "was that the action should be dismissed on *forum non conveniens*." *Id.*

But as 3i Defendants explained below, and consistent with the Superior Court's ruling, the Texas courts adjudicated the "identical issue" using the same legal standard that is invoked here. To dismiss on *forum non conveniens* grounds based on the forum selection clauses contained in the SPA and Rollover Agreement,[3] the Texas courts first had to conclude that these agreements applied to Ney's claim. For instance, the Western District of Texas found that Ney's Texas complaint "*sufficiently implicate[d] the underlying written agreements*" and that "Ney's claims

[3] It is also worth noting that the Rollover Agreement is attached to the SPA as an exhibit.

unequivocally f[e]ll within the scope of the Rollover Agreement." WDTX R&R, 2021 WL 8082411, at *8 n.13, *11 (emphases added). The Fifth Circuit likewise held that "the Rollover Agreement *contains a merger clause which … is expansive and clearly encompasses Ney's alleged oral contract.*" *Ney*, 2023 WL 6121774, at *3-4 (emphasis added); *see also id.* ("Ultimately, *we find* that the subject matter of Ney's lawsuit is intertwined with and implicates the subject matter of the Rollover Agreement …" (emphasis added)). The applicability of the SPA and Rollover Agreement was thus a necessary predicate issue that the Texas courts had to resolve in determining whether to dismiss (and to affirm dismissal) based on those Transaction Agreements' forum selection clauses. Ney ignores that, without directly resolving this issue, the Texas courts could not have otherwise granted dismissal.

Ney does not raise the second and third elements in his appeal, nor did he raise such issues below. As such, any arguments on those factors are waived. Supr. Ct. R. 8. Nevertheless, even if Ney had raised these factors, such factors would be easily satisfied. The Texas courts issued a decision on the motion to dismiss, which satisfied the second factor. *United States ex rel. Gage v. Rolls-Royce N. Am., Inc.*, 760 F. App'x 314, 317 (5th Cir. 2019) (determining that the second factor was satisfied where a district court issued a decision on a motion to dismiss). Further, because a determination on the applicability of the SPA and Rollover Agreement was necessarily a threshold issue for the courts to apply their forum selection clauses,

such a determination was—by definition—required for the courts to issue their decisions. Thus, the third factor is satisfied. *See, e.g.*, *Palacios v. City of Crystal City*, 2013 WL 12177177, at *7 (W.D. Tex. Sept. 30, 2013) (plaintiff was collaterally estopped from litigating a threshold legal issue that had been decided in a prior case).

Ney's remaining arguments on collateral estoppel are meritless. First, he argues that "[a] substantive determination of whether the [SPA and the Rollover Agreement] *barred* Ney's claims was never made." Opening Br. at 18 (emphasis added). But this argument is a straw man. 3i Defendants never argued—nor did the Superior Court rule—that the Texas courts determined that the SPA and the Rollover Agreement foreclose Ney's claims. Rather, 3i Defendants only argued that the Texas courts' determination that the SPA and Rollover Agreement *applied* to Ney's claims was entitled to preclusive effect. Ney is thus conflating two different issues: (i) whether the Texas courts' conclusion on the applicability of the SPA and Rollover Agreement to Ney's claims has preclusive effect; and (ii) whether the SPA and Rollover Agreement contain provisions that foreclose Ney's claims. However, only the first issue is relevant to 3i Defendants' collateral estoppel argument and the Superior Court's determination on this issue.

Additionally, Ney argues that collateral estoppel is inappropriate because of differences between the legal standard for a motion to dismiss on *forum non conveniens* grounds and under Rule 12(b)(6). Opening Br. at 18-19. Specifically,

Ney contends that, unlike a motion to dismiss on *forum non conveniens* grounds, the Court cannot consider documents outside of the pleadings on a Rule 12(b)(6) motion. *Id.* This argument fails on the merits.

Again, the determination that is entitled to preclusive effect here is the threshold issue of whether the SPA and Rollover Agreement apply. The 12(b)(6) standard, as explained more fully below, asks whether documents outside the pleadings are incorporated into the complaint and integral to a claim. *See infra* II.C.2. Pursuant to this standard, the Texas courts also considered the SPA and Rollover Agreement for the separate reason that they were integral to Ney's claims. *See* WDTX R&R, 2021 WL 8082411, at *8 n.13, *11; *Ney*, 2023 WL 6121774, at *3-4. Thus, regardless of any differences between these standards in other contexts, the Texas Courts and the Superior Court both considered these agreements by applying Rule 12(b)(6)'s standard.

2. The Transaction Agreements Can Be Considered Here.

Even if collateral estoppel does not apply, the Superior Court correctly considered the Transaction Agreements. As the Superior Court found, and consistent with the Texas courts' determinations, the Transaction Agreements are central to Ney's claims. Op. at 22; WDTX R&R, 2021 WL 8082411, at *8 n.13, *11; *Ney*, 2023 WL 6121774, at *3-4.

Recognizing that the Transaction Agreements foreclose his claims, Ney argues that the Superior Court erred by determining that they could not be considered at the motion to dismiss stage. Opening Br. at 22. He contends that the Superior Court should have "allowed the parties to develop the record more fully so that it could fully analyze the terms of the Post-Closing Agreement." *Id.* These arguments fail.

As Ney concedes, at the motion to dismiss stage, Delaware courts routinely consider documents outside of the pleadings "when the document[s are] integral to the plaintiff's claim and incorporated into the complaint." Opening Br. at 21. Here, both factors are easily satisfied. Specifically, the Transaction Agreements are in fact incorporated into the Complaint by reference. *See* A0018 (Compl. at 4 n.1) (referencing "written agreements" and the SPA); A0021-22 (Compl. ¶ 20) (discussing potential terms of the IU Grant Agreements); *see also Aramark U.S. Offshore Servs., LLC v. Amity Lodges LTD*, 2022 WL 17087052, at *1 (Del. Super. Ct. Nov. 21, 2022) (upon a motion to dismiss, "[t]he Court may consider documents attached to, or incorporated by reference into" pleadings).

The Transaction Agreements are likewise integral to Ney's claims. He "repeatedly references and relies on [the Transaction negotiations,] the purchase, the closing, and the completion of the Magnitude sale[,]" which are indisputably governed by the Transaction Agreements. *Ney*, 2023 WL 6121774, at *3-4; *see also*

A0016-17; A0019-20; A0022-23 (Compl. ¶¶ 3-5, 7, 15-17, 22-23). Under such circumstances, Delaware courts have consistently found that they can consider governing agreements even if they are not attached to a complaint. *See, e.g.*, *Massandra Cap. IV, LLC v. CEAI Aspen Place Manager, LLC*, 2024 WL 3411813, at *4 (Del. Super. Ct. July 15, 2024) (agreement was integral to a plaintiff's claim where the "litigation's factual basis flow[ed] from" the agreement defendant attached to their motion to dismiss); *Cont'l Fin. Co., LLC v. TD Bank, N.A.*, 2018 WL 565305, at *1-*2 (Del. Super. Ct. Jan. 24, 2018) ("Though [plaintiff] declined to attach the relevant documents to its complaint, the parties' relationship is governed by contracts, which define the extent of TD Bank's liability" and therefore the court "may consider the contract for purposes of a motion to dismiss."); *Black Horse Cap., LP v. Xstelos Hldgs., Inc.*, 2014 WL 5025926, at *3 n.16, *4 n.25 (Del. Ch. Sept. 30, 2014) (finding that agreements that were "not attached to the Complaint" could be "consider[ed] at the motion to dismiss stage" because the agreements and their "subject[s]" were "integral to [p]laintiff's claims"). And for good reason—consideration of the Transaction Documents on a Rule 12(b)(6) motion is critical because "[a] forum selection clause should not be defeated by artful pleading of claims … if those claims grow out of the contractual relationship." *Ashall Homes Ltd. v. ROK Ent. Grp. Inc.*, 992 A.2d 1239, 1252 (Del. Ch. 2010) (citation omitted).

Ney criticizes the Superior Court's holding for purportedly applying the wrong test. He claims that the Superior Court incorrectly considered whether the Transaction Agreements were "relate[d]" to his claims in determining if those Agreements were incorporated into his complaint. Opening Br. at 22. But this argument misapprehends the Superior Court's ruling. The Superior Court cited the very test that Ney says should apply. *Compare* Op. at 20 (citing *Fortis Advisors LLC v. Allergan, W.C.*, 2019 WL 5588876, at *3 (Del. Ch. Oct. 20, 2019)), *with* Opening Br. at 23 (citing same). It then correctly applied this test by finding that the Transaction Agreements were incorporated by reference and that they were integral to his claims because his claims relied on promises that were governed by the Transaction Agreements. *See* Op. at 20-21. Thus, the Superior Court did not just assess whether his claims "relate[d]" to the Transaction Agreements.

In a last-ditch argument, Ney contends that he is entitled to discovery so that the Court can "fully analyze the terms of the Post-Closing Agreement." Opening Br. at 22-24. But discovery would put the cart before the horse. As Delaware courts have consistently recognized, a plaintiff must first pass the Rule 12(b)(6) threshold before proceeding to discovery. *See, e.g.*, *Nebenzahl v. Miller*, 1996 WL 494913, at *3 (Del. Ch. Aug. 29, 1996). Rule 12(b)(6) does not permit a plaintiff to embark on a "fishing expedition … in the hope of finding something to support" his deficient

complaint. *Id.* Therefore, the Superior Court did not abuse its discretion in considering the Transaction Agreements at the pleading stage.

3. The Transaction Agreements Preclude Ney's Breach of Contract Claims.

If the Court determines that it may consider the Transaction Agreements either based on collateral estoppel or because they are incorporated by reference and integral to the Complaint, it must affirm. As the Superior Court found, Ney's claims are expressly barred by the fully integrated Transaction Agreements and the extensive releases. Op. at 24-25. Tellingly, Ney has never meaningfully disputed that, if the Transaction Agreements apply, they bar his breach of contract claims.

In particular, the Transaction Agreements, which generally refer to one another, contain clear integration and no-modification clauses that, on their face, foreclose any purported contract. The integration clauses state that the respective contracts "contain the *complete agreement* by, between and among the parties and *supersede any prior understandings,* agreements or representations by, between or among the parties, *written or oral, which may have related to the subject matter* hereof in any way." A0163 (SPA § 12.09) (emphasis added); *see also* A0196 (IU Grant Agreement – Main § 7) (same); A0216-217 (IU Grant Agreement – CEO § 7) (similar); A0233 (Rollover Agreement § 4(f)) (similar). The Transaction Agreements further state that "*[n]o modification, amendment* or waiver of any provision … *shall be effective … unless* such modification, amendment or waiver is

approved in writing ….” A0196 (IU Grant Agreement – Main § 7); A0216-217 (IU Grant Agreement – CEO § 7); *see also* A0163 (SPA § 12.08) (requiring amendment or waiver in writing). Where, as here, integration clauses preclude separate oral or written agreements, claims based on any alleged separate agreement must be dismissed. *See Black Horse*, 2014 WL 5025926, at *24.

“Clauses indicating that the contract is an expression of the parties’ final intentions generally create a presumption of integration.” *Orthopaedic Assocs. of S. Del., P.A. v. Pfaff*, 2017 WL 6570028, at *6 (Del. Super. Ct. Dec. 22, 2017) (citation omitted); *Black Horse*, 2014 WL 5025926, at *24 (construing the integration clauses of transaction agreements “to indicate that there were no separate oral contracts regarding the subject matter of those Agreements, and that there was no separate consideration or inducement for entering into those Agreements”). Since Ney did not attempt to rebut this presumption below (and thus waived such arguments, Supr. Ct. R. 8), the Superior Court did not analyze whether Ney could overcome the presumption. However, as explained above and in Section II.C.4, Ney would not have been able to overcome this presumption.

Additionally, Ney’s claims fail because they fall within the scope of the Transaction Agreements’ release and disclaimer provisions. For example, the SPA disclaims all legal recourse against any entity that is not a direct signatory to that document. A0167 (SPA § 12.16(b)). Since 3i Group is a noncontrolling stockholder

of one of the signing entities and 3i Corp. is 3i Group's agent, as well as an affiliate, this disclaimer applies to both, and the plain text of the SPA expressly prohibits Ney's suit. *See RAA Mgmt., LLC v. Savage Sports Hldgs., Inc.*, 45 A.3d 107, 119 (Del. 2012) (affirming dismissal because contractual disclaimers and waivers "must be enforced").

4. Ney Fails to Plead Breach of Contract.

Although the Superior Court did not need to reach dismissal of Ney's claims for failure to plead an enforceable contract, this Court can separately affirm dismissal on that basis. *See Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (citing *Standard Distrib. Co. v. Nally*, 630 A.2d 640, 647 (Del. 1993)) ("We also recognize that this Court may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court."). Under Delaware law, a contract exists only when "(1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration." *Eagle Force Hldgs., LLC v. Campbell*, 235 A.3d 727, 731 (Del. 2020) (internal quotations omitted). For the same reasons 3i Defendants argued below, (*see* A0062-67; A0548-550), the purported side deal fails all three criteria.

First, it is not reasonably conceivable that the parties intended to be bound by an informal side deal where executed contemporaneous and comprehensive written

agreements exist. *Black Horse*, 2014 WL 5025926, at *12-14 (not reasonably conceivable that parties to a contract would have "intend[ed] to manifest assent to another, undisclosed, side agreement" when they had executed written agreements); *see also* A0491-492 (*Ney v. 3i Grp. PLC*, No. 20-cv-01142-LY, at 78-79 (W.D. Tex. Mar. 25, 2021) (TRANSCRIPT) (expressing skepticism that "a bunch of really smart pinhead lawyers put those contracts together [to] complete that acquisition" but weren't "involved in the negotiations about this side deal")). Additionally, the supposed side deal is too indefinite to enforce. For example, Ney has made inconsistent allegations concerning his counterparty. *Compare* A0077 (Tex. Pet. ¶ 15) (alleging 3i Group and New Amsterdam were responsible for paying him $20 million) *with* A0015 (*see generally* Compl.) (only bringing claims against 3i Defendants). Such inconsistencies demonstrate that there was no shared intent to be bound. *See Black Horse*, 2014 WL 5025926, at *17 (noting that the parties to an alleged side agreement were "sufficiently amorphous" such that said side deal was "too indefinite to enforce.").

Second, the alleged side deal lacks sufficiently definite terms. For instance, Ney does not allege how long he was required to "stay on" as CEO or how the parties could determine whether he had sufficiently "steer[ed]" or "set Magnitude up for continued growth and success," such that he would be entitled to $20 million. These glaring omissions are fatal. *See Black Horse*, 2014 WL 5025926, at *19 (dismissing

claims where the plaintiff "fail[ed] to allege facts from which a fact-finder reasonably could infer the existence of a shared understanding of the parties as to the meaning of" key terms).[4]

Third, Ney fails to plead consideration. His pre-existing duty to do his job competently as CEO (as evidenced by the IU Grant Agreements) is not valid consideration for the purported side deal. In fact, under Delaware law, "[a] commitment to honor a pre-existing obligation works neither [as a] benefit nor detriment [and] cannot support a binding contract …." *See James J. Gory Mech. Contracting, Inc. v. BPG Residential P'rs V, LLC*, 2011 WL 6935279, at *2 (Del. Ch. Dec. 30, 2011) (internal quotations omitted).

Accordingly, Ney's breach of contract claim fails because he cannot show that the supposed side deal was a valid contract.

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[4] Likewise, the purported side deal is internally inconsistent. Although Ney alleges that the side deal was a "Post-Closing Agreement," he also alleges that he promised to perform some conduct *prior to closing*. *See* A0017 (Compl. ¶ 7) ("Ney performed his part of the Post-Closing Agreement … Ney [] delivered on his promise to keep 3i at the 'front of the line' during the negotiations."). "These differing descriptions point to a vagueness that … any court would be ill-equipped to resolve." *Black Horse*, 2014 WL 5025926, at *19.

III. THE SUPERIOR COURT CORRECTLY DISMISSED NEY'S QUASI-CONTRACT CLAIMS.

A. Question Presented

Whether the Superior Court properly held that integrated, written Transaction Agreements preclude Ney's quasi-contractual claims. These issues were raised by 3i Defendants below (A0067-69; A0551-554) and considered by the Superior Court. (Op. 24-25).

B. Scope of Review

As stated above, *see supra* II.B., the Supreme Court reviews "questions of law and interpret[s] contracts *de novo*." *Osborn*, 991 A.2d at 1158.

C. Merits of Argument

Ney argues that the Superior Court erred by prematurely dismissing his quasi-contractual claims, including promissory estoppel and unjust enrichment. Opening Br. at 24-27. Not so. For the reasons noted above, *see supra* II.C, the Transaction Agreements apply to his claims and are fully integrated. As such, Ney's quasi-contractual claims fail as a matter of law.

Delaware courts have consistently recognized that fully integrated, written agreements preclude quasi-contractual claims premised on oral promises regarding the same "subject matter." *Black Horse*, 2014 WL 5025926, at *24; *see also Neurvana Med., LLC v. Balt USA, LLC*, 2020 WL 949917, at *21 (Del. Ch. Feb. 27, 2020) (describing this proposition as "well-settled Delaware law" as to promissory estoppel claims). Try as he might, Ney cannot dispute this well-established legal

principle, as the fully integrated Transaction Agreements relate to the same underlying deal and subject matter as his claims. *See supra* II.C.

Ney tries to circumvent the Superior Court's holding by arguing "the promises at issue in the Post-Closing Agreement were different from those in the Transaction Agreements." Opening Br. at 25-26 (citing *Neurvana*, 2020 WL 949917, at *21). This argument misapprehends the relevant authority. Based on Ney's own allegations, the purported side deal was connected to the Transaction (A0016-17; A0019-20; A0023) and was based on the successful implementation of those Agreements post-closing. A0016-17; A0022-23.

Moreover, the case law does not require that a fully integrated, written agreement *contain* the "promise at issue," only that it "*governs* the promise at issue." *Neurvana*, 2020 WL 949917, at *21 (emphasis added). For example, in *Neurvana*, a fully integrated, written agreement stated that the defendant would use "[c]ommercially [r]easonable" efforts to obtain regulatory approval. *Id*. at *4. Prior to the agreement's execution, an officer of the defendant-entity orally stated that the defendant could secure approval within 45 days. *Id*. at *3. The Court of Chancery held that, under "well-settled Delaware law," promissory estoppel did not apply because the alleged oral promise "relates to 'subject matter' of the" fully integrated, written agreement. *Id*. at *21.

Similarly, in *Black Horse*, the plaintiffs alleged that the defendants had made an oral promise that induced them into financing a bridge loan. *Black Horse*, 2014 WL 5025926, at *1. The Court of Chancery held that the fully integrated, written agreements governing the bridge loan defeated any quasi-contractual claims. *Id*. at *21-22, *26. As to promissory estoppel, the court explained that the plaintiffs, like Ney here, could not adequately plead the "reasonable reliance" element "where an oral promise was made that directly conflicted with the plain language of a subsequent written agreement covering the same subject matter." *Id*. at *22. As to unjust enrichment, the court held that the plaintiffs, like Ney here, could show neither the "enrichment" nor "impoverishment" elements because the fully integrated, written agreements were "the measure of the plaintiff's right." *Id*. at *26 (quoting *Addy v. Piedmonte*, 2009 WL 707641, at *22 (Del. Ch. Mar. 18, 2009)). In this case, consistent with this authority, the Supreme Court properly held that the Transaction Agreements preclude his quasi-contractual claims.

Ney's reliance on *Cytotheryx, Inc. v. Castle Creek Biosciences, Inc.*, 2024 WL 4503220 (Del. Ch. Oct. 16, 2024), does not alter this conclusion. *See* Opening Br. at 26. There, the trial court concluded that the written agreements at issue did not contradict precontractual understandings. 2024 WL 4503220, at *3-6. The Court of Chancery dedicated considerable time distinguishing the facts there from those in *Black Horse*, where the alleged oral promise "directly conflicted" with a subsequent

written agreement. *Id*.; *see also Park7 Student Hous., LLC v. PR III/Park7 SH Hldgs., LLC*, 2025 WL 1732934, at *3 (Del. Ch. June 20, 2025) ("While an integration provision alone does not preclude reliance on misrepresentations outside the four corners of an agreement, it precludes reliance on precontractual understandings of facts that are found within the four corners of that agreement.") (citations omitted).

Here, the Transaction Agreements "directly conflict[ ]" with the side deal. As explained above, the IU Grant Agreements governed Ney's post-closing role and incentive compensation. Even if Ney had a purported understanding that he would receive a $20 million "kicker" for keeping 3i Defendants "at the front of the line" and staying on as CEO post-Transaction (all under the table without the majority seller receiving any of these funds), this understanding was flatly contradicted by the CEO compensation packages Ney signed, neither of which contained the alleged $20 million. Like *Black Horse*, *see supra* II.C.4, it is not reasonably conceivable that Ney reasonably relied on a promise for an *additional $20 million cash* given these subsequent written agreements. *Black Horse*, 2014 WL 5025926, at *13-14; *see also Park7*, 2025 WL 1732934, at *3 (holding that representation of "unlimited extensions" conflicted with contract's grant of a "onetime right" to extension). Therefore, the Superior Court properly relied on *Black Horse* as more analogous than *Cytotheryx*.

Cytotheryx is further distinguishable because the court there found that the alleged promise was "presented with sufficient details." *Cytotheryx*, 2024 WL 4503220, at *6. As demonstrated above, *see* supra II.C.4., Ney fails to allege a promise that was "reasonably definite and certain," as required for promissory estoppel. *James Cable, LLC v. Millennium Digit. Media Sys., L.L.C.*, 2009 WL 1638634, at *5 (Del. Ch. June 11, 2009) (citation omitted).

Finally, as to unjust enrichment, Ney tries to avoid the fully integrated, written Transaction Agreements by arguing that in his post-closing role as CEO, he increased the value of the company, and "the subsequent sale of Magnitude by 3i … formed part of the basis of Ney's unjust enrichment claim." Opening Br. at 26-27. However, Ney misses what the Superior Court said: "Ney's references to his post-closing employment and compensation are governed by *the two Incentive Grant Agreements*." Op. at 21 (emphasis added). Thus, the written agreements alone "measure … [Ney]'s right." *Black Horse*, 2014 WL 5025926, at *26. Ney was CEO and he was paid pursuant to the IU Grant Agreements. Ney does not receive anything outside the fully integrated agreements governing his role, even if he believes that his CEO work made Magnitude more valuable for a later sale, over a year after his departure. Tellingly, Ney cites no authority supporting such a proposition. The Superior Court therefore properly concluded that the Transaction Agreements were the measure of Ney's rights.

CONCLUSION

For the foregoing reasons, the Superior Court's decision should be affirmed.

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