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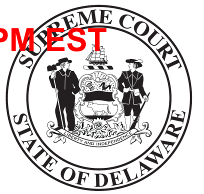

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID A. HANDLER, Defendant-Counterclaim and Third-Party Plaintiff Below, Appellant, v. CENTERVIEW PARTNERS HOLDINGS LP, Plaintiff-Counterclaim Defendant Below, Appellee, and CENTERVIEW PARTNERS ADVISORY HOLDINGS LLC, CENTERVIEW HOLDINGS GP LLC, ROBERT PRUZAN, And BLAIR EFFRON, Third-Party Defendants Below, Centerview Defendants.	Case No. 269, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2022-0767-BWD **Public Version** **File On November 7, 2025**

APPELLANT'S REPLY BRIEF

BERGER MCDERMOTT LLP
Richard I.G. Jones, Jr. (No. 3301)
Harry W. Shenton, IV (No. 6919)
1105 North Market Street, 11th Floor
Wilmington, Delaware 19801
Telephone: (302) 655-1140
rjones@bergermcdermott.com
hshenton@bergermcdermott.com

CLARK SMITH VILLAZOR LLP
Christopher J. Clark (admitted *PHV*)
Brian T. Burns (admitted *PHV*)
Geoffrey H. Coll (admitted *PHV*)
P. Pauline Oostdyk (admitted *PHV*)
J. Adam George (admitted *PHV*)
666 Third Avenue, 21st Floor
New York, New York 10017
Telephone: (212) 377-0850
clark@csvllp.com
brian.burns@csvllp.com
geoffrey.coll@csvllp.com
pauline.oostdyk@csvllp.com
adam.george@csvllp.com

Attorneys for Defendant and Counterclaim Plaintiff and Third-Party Plaintiff Below-Appellant David Handler

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PRELIMINARY STATEMENT

The Centerview Defendants[1]—in a concession that they cannot prevail under the governing standard—loaded their Answering Brief with inadmissible, extrinsic facts outside of the SAC that cannot be considered on this appeal from the grant of a Rule 12(b)(6) motion to dismiss on collateral estoppel grounds. For example, in the very first paragraph of their Answering Brief, the Centerview Defendants improperly inject a quote—taken out of context—from Handler's deposition in the related books-and-records action. The Centerview Defendants' selective quotation to support their assertion that the 2008 Letter upon which Handler's claims in the SAC are based was "gone" leaves out the full context, where Handler only testified that he believed that the terms of his 2008 Letter employment agreement had been replaced (were "gone") by an oral partnership agreement he believed was reached. Improper attempts to inject matters outside the SAC pervade the Centerview Defendants' Answering Brief.

Yet neither that improper effort—nor anything else in the Centerview Defendants' Answering Brief—can remedy the Court Below's fundamental mistake in construing Vice Chancellor Glasscock's literal words against Handler, as the non-

[1] Defined terms used herein shall have the same meanings as in Handler's Opening Brief.

moving party, on a motion to dismiss. Vice Chancellor Glasscock indisputably wrote the following findings in the Standing Opinion:

- "[T]he Plenary Action should proceed" because while not a partner, Handler was still "an employee with certain vested rights in Centerview (to be determined in the Plenary Action.)" (A00065);

- Following the November 8, 2012, meeting in New York, "the parties met again to discuss a partnership agreement in March 2013, but at the meeting's conclusion, the 2008 Letter, i.e. the employment agreement, **remained operative**." (A00044) (emphasis added);

- This finding that the 2008 Letter "remained operative" was directly supported by reference to a March 27, 2013, memo by Centerview's counsel that all parties understood the 2008 Letter "remained operative." (A00044 n.55 (citing A00073));

- In advance of the November 8, 2012, meeting in NYC, "Handler and St. Jean sent the Founders an addendum to the 2008 Letter, which addressed their compensation. Afterwards, Handler's compensation was consistent with the addendum to the 2008 Letter." (A00064-65.)

- The addendum so referenced by Vice Chancellor Glasscock explicitly states that "the [2008] Letter Agreement shall remain in full force and effect." (A00068.)

On a motion to dismiss, these findings compel a Handler-favoring inference (because they are what Vice Chancellor Glasscock's literal words say) that Handler can enforce—in this proceeding—"vested rights" under an agreement that "remained operative." Yet remarkably, rather than draw that inference in Handler's favor, the Court Below drew the exact opposite inference (that Handler had no rights) and dismissed Handler's counterclaims. In doing so, the Court Below

committed an error requiring reversal under this Court's *de novo* review. No amount of the Centerview Defendants' resort to evidence outside the pleadings can salvage that error.

In addition, the few compensation findings the Court Below instead relies upon are not "necessary and essential" to the Standing Opinion's conclusion that Handler was not a Topco partner, a second basis for finding on which the Court Below erred. The Centerview Defendants' insistence that everything Vice Chancellor Glasscock said about Handler's compensation was necessary and essential to the judgment also cannot be squared with their position that, when Vice Chancellor Glasscock wrote that Handler had "vested rights" and an agreement that "remained operative," he meant something other than what he actually wrote. Finally, the Court Below further erred in dismissing Handler's unjust enrichment counterclaims by stretching the meaning of "discretion" to include not paying Handler in 2022, when he earned Centerview [REDACTED] in eight months, and on his departure seizing Handler's earned and vested deferred income from his priority capital account and his vested ownership in Centerview that was issued to him in 2013, both of which he paid taxes on and for which he received annual K1s.

For the reasons set forth in Handler's Opening Brief and below, the Opinion Below's dismissal on collateral estoppel grounds counterclaims III (breach of contract), IV (breach of the implied covenant) and V (unjust enrichment) based on

the 2008 Letter should be reversed with an order directing that (i) the motion to dismiss counterclaims III, IV and V of the SAC be denied, and (ii) the plenary action should proceed, as Vice Chancellor Glasscock intended, to address Handler's rights under the 2008 Letter.

ARGUMENT

I. THE STANDING OPINION'S FINDINGS THAT THE PLENARY ACTION SHOULD PROCEED TO DETERMINE HANDLER'S "VESTED RIGHTS" AS AN EMPLOYEE UNDER THE 2008 LETTER THAT "REMAINED OPERATIVE" CANNOT BE IGNORED.

The Centerview Defendants do not contest that Vice Chancellor Glasscock directed in the Standing Opinion that "the Plenary Action should proceed" because, while not a partner, Handler was still "an employee with certain vested rights in Centerview (to be determined in the Plenary Action)." (A00065.) In fact, they conspicuously fail to cite Vice Chancellor's reference to "vested rights" at all, which, consistent with the SAC, include Handler's vested rights as an employee under the 2008 Letter to compensation and equity in Topco (SAC ¶¶ 8-12, 28-31, 69-71, 79-80, 140-164), to his 2013 CPAH equity award (SAC ¶¶ 9, 161), and to his priority capital account (SAC ¶¶ 11, 160). The Centerview Defendants instead attempt to diminish these statements as merely reflecting "Vice Chancellor Glasscock's conclusion that the stay of the Plenary Action was lifted." Centerview Defendants' Answering Brief ("AB") at 28. But that ignores the literal meaning of the words Vice Chancellor Glasscock used. "Vested" is defined in Black's Law Dictionary as

"[h]aving become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute." *Vested*, BLACK'S LAW DICTIONARY (12th ed. 2024).[2] While the Centerview Defendants cite dictionary definitions of the word "discretion" to argue that Vice Chancellor Glasscock's decision meant that Handler had no rights (*see* AB at 42-43), Vice Chancellor Glasscock's use of the word "vested"—and *that* word's dictionary definition as an unconditional and absolute right—leaves no room for the Centerview Defendants' position, especially on a motion to dismiss.

The Centerview Defendants also do not contest that in addressing the applicability of the 2008 Letter in his Standing Opinion, Vice Chancellor Glasscock found that, following the November 8, 2012, meeting in New York, "the parties met again to discuss a partnership agreement in March 2013, but at the meeting's conclusion, the 2008 Letter, i.e. the employment agreement, remained operative." (A00044.) Instead, the Centerview Defendants diminish this finding as a "snippet," (AB at 5), while ignoring that Vice Chancellor Glasscock directly supported this finding by also citing to a March 27, 2013, memo by Centerview's counsel that makes clear that all parties understood that the 2008 Letter "remained operative." (A00044 n.55 (citing A00073).)

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[2] As the Centerview Defendants note, Delaware Courts look to dictionaries for assistance in determining a term's plain meaning. (AB at 43 (citing *Lorillard Tobacco Co. v. Am Legacy Found.,* 903 A.2d 728, 738 (Del. 2006)).)

The Centerview Defendants also do not contest that Vice Chancellor Glasscock also found that "Handler and St. Jean sent the Founders an addendum to the 2008 Letter, which addressed their compensation. Afterwards, Handler's compensation was consistent with the addendum to the 2008 Letter." (A00064.) Nor do the Centerview Defendants contest that the addendum referenced by Vice Chancellor Glasscock explicitly states that "the [2008] Letter Agreement shall remain in full force and effect." (A00068.)[3]

Rather than accepting these facially clear findings that demonstrate that the 2008 Letter "remained operative," the Centerview Defendants instead embrace the Court Below's erroneous efforts to ignore and rewrite these findings to conclude that the 2008 Letter was modified to extinguish the claims in the SAC that Handler now asserts. (AB at 22-30.) The Centerview Defendants argue that the Court Below

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[3] The Centerview Defendants wrongly argue that Handler has waived arguments based on Vice Chancellor Glasscock's references to the addendum by first pointing out the reference at oral argument on the motion to dismiss before Vice Chancellor David. (AB at 29-30.) But pointing out language in the Standing Opinion to interpret its meaning is not a "new legal issue" subject to a waiver analysis. It is interpreting the Standing Opinion to argue that Vice Chancellor Glasscock did not intend to decide that Handler had no rights after leaving Centerview, as the Court Below erroneously found. If anything, reference to the 2008 addendum was an additional reason in support of arguments already presented, which does not result in waiver. *Mundy v. Holden*, 204 A.2d 83, 87 (Del. 1964) (quoting *Kerbs v. Cal. E. Airways*, 91 A.2d 62 (Del. 1952) ("when the argument is merely an additional reason in support of a proposition urged below, there is no acceptable reason why . . . the argument should not be considered.").

correctly held that Vice Chancellor Glasscock in his Standing Opinion determined that the parties modified the 2008 Letter as to compensation, and that "there is only one possible construction of the [Standing] Opinion," notwithstanding Vice Chancellor Glasscock's own words to the contrary. (AB at 25-26.)

But even if this was "one possible construction" of the Standing Opinion, it is clearly not the only possible construction. Vice Chancellor Glasscock's finding that the 2008 Letter "remained operative"—and his analysis of the addendum which provides that the 2008 Letter remained in full force and governed compensation—creates a second plausible, indeed more likely, construction of the Standing Opinion at variance with the Court Below's and the Centerview Defendants' insistence that compensation was not provided for by the 2008 Letter, but instead was subject only to the Founder's discretion. (Handler's Opening Brief Ex. A at 18; AB at 22-30.)[4]

On a motion to dismiss, when "competing inferences" may be drawn from the operative facts, the court must draw the inferences that favor the non-moving party.

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[4] The argument that the 2008 Letter "remained operative" is also not inconsistent with the SAC's now dismissed counterclaims for fraud and breach of fiduciary duty, as the Centerview Defendants argue. (AB at 27.) Those dismissed counterclaims (not part of this appeal) were based on allegations that Handler had reached an oral partnership agreement with Centerview that were rejected by Vice Chancellor Glasscock. (Handler's Opening Brief Ex. A at 14-16). Accepting Vice Chancellor Glasscock's ruling that no oral partnership existed, it is not inconsistent to then argue that the 2008 Letter that still "remained operative" governs Handler's relationship to Centerview as an employee with "certain vested rights" still to be determined in the plenary action, as the SAC alleges. (SAC ¶¶ 8-12, 28-31, 69-71, 79-80, 140-164.)

See, e.g., *IBEW Loc. Union 481 Defined Contribution Plan & Tr. ex rel. GoDaddy, Inc. v. Winborne*, 301 A.3d 596, 632 (Del. Ch. 2023) ("At the pleading stage, the court does not decide between competing inferences. The plaintiff receives the benefit of the inference that favors its case."). With respect to collateral estoppel, if an inference or conclusion sought to be drawn from a judgment "is the product of one of several possible constructions of the" ruling, then it "does not have collateral estoppel effect." *Brandywine 100 Corp. v. New Castle Cnty.*, 1984 WL 484491, at *1 (Del. Super. Ct. Oct. 1, 1984) (denying collateral estoppel effect to jury's verdict on an issue where multiple inferences could be drawn from verdict); *see also Salt Pond Inv. Co. v. Wilgus*, 1987 WL 20183, at *3 (Del. Ch. Nov. 16, 1987) (refusing to grant collateral estoppel where prior court ruling was "ambiguous" on the issue); *Emps.' Liab. Assur. Corp. v. Madric*, 183 A.2d 182, 188 (Del. 1962) (noting, in the context of equitable estoppel, that "an estoppel may not rest upon an inference that is merely one of several possible inferences"). The Court Below erred when it chose one, at best, plausible inference from arguably ambiguous language in the Standing Opinion over explicit statements that favored Handler as the non-moving party on a motion to dismiss. The Centerview Defendants' efforts to cast the Standing Opinion as unambiguously and conclusively favoring their position cannot be squared with what the Standing Opinion actually says.

II. THE COURT BELOW ERRED IN CONCLUDING THAT VICE CHANCELLOR GLASSCOCK'S STATEMENTS ON COMPENSATION WERE NECESSARY AND ESSENTIAL TO THE CONCLUSION THAT HANDLER WAS NOT A TOPCO PARTNER

A. The Centerview Defendants Misstate the Applicable Collateral Estoppel Test by Arguing an "Obvious Causal Relationship" for the First Time.

To challenge Handler's argument on this appeal that none of the compensation findings in the Standing Opinion were "necessary and essential" to the narrow standing question of whether Handler was a Topco partner, the Centerview Defendants wrongly argue that Handler "misstates the relevant test." (AB at 32.) In tacit recognition that they cannot meet the "necessary and essential" test, the Centerview Defendants instead argue for the very first time that "[i]t is not correct, as Handler claims, that the compensation findings needed to be outcome determinative to the ultimate legal question in order to be necessary for issue preclusion purposes. Instead, an 'obvious causal relationship' between a finding in a prior case and the judgment 'renders the determinations on the [prior judgment] sufficiently necessary for collateral estoppel to apply.'" (AB at 32 (quoting *Rogers v. Morgan,* 208 A.3d 342, 353 (Del. 2019)).)

It is the Centerview Defendants who misstate the relevant collateral estoppel test. Delaware law is clear that for collateral estoppel to apply, among other things, "the determination of the issue in the prior action must have been *necessary and essential* to the resulting judgment." *Sprout v. Ellenburg Cap. Corp.*, 1997 WL

716901, at *6 (Del. Super. Ct. Aug. 26, 1997) (emphasis added). "The test for applying collateral estoppel requires . . . a question of fact essential to the judgment . . . ." *Smith v. Guest*, 16 A.3d 920, 934 n.83 (Del. 2011) (quoting *Messick v. Star Enter.,* 655 A.2d 1209, 1211 (Del. 1995)). Crucially, "the determination [must be] essential to the prior judgment." *Weber v. Weber*, 2015 WL 1811228, at *2 (Del. Ch. Apr. 20, 2015). "The requirement that an issue be essential to the resulting judgment is applied narrowly and only precludes those issues vital or crucial to the previous judgment without which the previous judgment would lack support." *BuzzFeed Media Enters*, *Inc. v. Anderson*, 2024 WL 2187054, at *15 (Del. Ch. May 15, 2024) (cleaned up).[5]

The Court Below recognized the applicability of the outcome-determinative "necessary and essential" test by supporting its dismissal below by stating (without analysis) that everything in the Standing Opinion on compensation was "essential to – the very basis for – [Vice Chancellor Glasscock's] ultimate holding on standing." (Handler's Opening Brief Ex. A at 13.) The Centerview Defendants never argued that *Rogers* created a different, less rigorous test for collateral estoppel in their

[5] The Centerview Defendants criticize Handler for citing to the United States Supreme Court decision in *Bobby v. Bies*, 556 U.S. 825, 835 (2009) as additional authority because it applied federal law, but the Delaware Chancery Court in *Buzzfeed* relied on this same federal case in interpreting Delaware law, *see Buzzfeed*, 2024 WL 2187054, at *15. In any event, as detailed above, there is ample Delaware case law for the requirement that the issue in the prior action must have been "necessary and essential" to the resulting judgment.

briefing to the Court Below; instead, they cited *Rogers* in their Reply Brief with a parenthetical that ties the "obvious causal relationship" test to the requirement that the issue be "essential" to the judgment. (A01055-56 (*citing Rogers*, 208 A.3d at 353 (stating "issue in previous litigation is 'essential' to judgment when 'there is an obvious causal relationship between the' issue and judgment."')).)

The Centerview Defendants' failure to brief or argue this issue to the Court Below is not surprising, because they are plainly incorrect that there is no requirement under Delaware law that an issue needs to be "necessary and essential" to the outcome of the case to have a preclusive effect, but instead that there need only be the less rigorous "'obvious causal relationship' between a finding in a prior case and the judgment" for collateral estoppel to apply. (AB at 31 (quoting *Rogers*, 208 A.3d at 353) (other citations omitted).)

Handler has been unable to identify any decision—by this Court or any other Delaware court—that has purported to hold that a question need not be "essential" to a judgment for collateral estoppel to apply; indeed, each of the cases the Centerview Defendants themselves cite when attempting to rebut the "necessary and essential" test expressly cites and affirms that same requirement, including *Rogers*. *See Rogers*, 208 A.3d at 346 ("A claim will be collaterally estopped only if the same [factual] issue was presented in both cases, the issue was litigated and decided in the first suit, and the determination was essential to the prior judgment." (quoting *Smith*

v. Guest, 16 A.3d 920, 934 (Del. 2011))); *Lane v. Cancer Treatment Ctrs. of Am., Inc.*, 2002 WL 1732381, at *1 n.6 (Del. Ch. July 3, 2002) (same); *Stevanov v. O'Connor*, 2009 WL 1059640, at *10 (Del. Ch. Apr. 21, 2009) (same).[6]

The Centerview Defendants contention that *Rogers* is a "governing authority" supporting a less rigorous, "obvious causal relationship" test under Delaware law that is not outcome-determinative is based on a misreading of this Court's decision in *Rogers*. The appellant Rogers had previously been charged with resisting arrest and several counts of assault. 208 A.3d at 344. At Roger's criminal trial, the court denied his motion to suppress evidence related to a police officer's entrance into his home, finding that the police officer had consent to be in the home; Rogers was subsequently convicted of resisting arrest. *Id.* In a subsequent civil trial, the court dismissed Roger's claims for invasion of privacy, in part because the criminal court's finding that the police officer had consent to enter the home collaterally estopped the claims in the civil action. *Id*. Rogers argued on appeal to this Court that—because a charge of resisting arrest can be based on either lawful or unlawful

[6] The Centerview Defendants also argue "[t]he Restatement (Second) of Judgments . . . confirms that the [Standing Opinion's] compensation findings were essential to the ruling." (AB at 35.) The Restatement (Second) of Judgments provides no support to the argument that the compensation findings were essential to the holding that Handler was not a Topco Partner because it merely restates in different words the outcome-determinative "necessary and essential" test (whether a judicial finding was "essential . . . [means] whether the issue was actually recognized . . . by the trier as necessary to the first judgment").

arrest—the criminal court's ruling on the consent issue in the motion to suppress evidence was not "necessary and essential" to his conviction and that collateral estoppel therefore did not apply. *See id.* at 351-52.

In finding in *Rogers* that collateral estoppel barred his claim anyway, this Court observed that the case presented a "unique factual situation" and that, while "technically and strictly speaking, the suppression decision may not have been necessary to the judgment of conviction . . . , the consent issue was central and essential to the motion to suppress, and the issue received careful attention and was resolved after an adversarial hearing." *Id.* at 352, 354. And indeed, in *Rogers* the consent issue *was* outcome-determinative, because had it been decided the other way, there would have been no case and no criminal judgment, as all evidence relevant to the crimes would have been suppressed and the case presumably dismissed. *See id.* at 352-53. Contrary to the Centerview Defendants' suggestion, this Court did not create a new "obvious causal relation" test but instead reiterated that the firmly established "necessary and essential" test governs the application of collateral estoppel. *See id.* at 346 ("A claim will be collaterally estopped only if the same [factual] issue was presented in both cases, the issue was litigated and decided in the first suit, and the determination was essential to the prior judgment" (quoting *Smith*, 16 A.3d at 934)). And the analysis in *Rogers* does not support the Centerview Defendants here: Vice Chancellor Glasscock's statements referring to Handler's

compensation being discretionary did not determine the outcome in any sense, and no alternative finding regarding his compensation would alone have changed the outcome, because, as noted below, Vice Chancellor Glasscock explicitly held that receipt of economic interests cannot alone establish a partnership. (A00057 at n.148; A00062.)

Handler applied the correct test that the compensation findings relied on by the Court Below were required to be "necessary and essential" to the standing question of whether Handler was a Topco partner to support dismissal on collateral estoppel grounds. And because that test was not satisfied, reversal is necessary.

B. The Compensation Findings in the Standing Opinion Were Not Necessary and Essential and Are Legally Irrelevant to the Holding that Handler Was Not a Topco Partner.

The Centerview Defendants additional arguments that collateral estoppel applies to the compensation findings in the Standing Opinion "because Handler could not have prevailed in the Partnership Action without proving his compensation was governed by an oral partnership agreement" (AB at 36-38) miss the mark in two ways: (1) because the compensation findings are not necessary and essential to the contract formation issues that determined whether Handler was a Topco partner, and (2) because Vice Chancellor Glasscock ruled that "receiving economic interests" is legally irrelevant to the standing question of whether Handler was a Topco Partner.

First, in making this argument, the Centerview Defendants do not contest the arguments Handler raises in its Opening Brief that "none of the findings on Handler's compensation following the November 8 meeting upon which the Court Below relies were 'essential to the judgment' of the Standing Opinion because none of them address the standing question of whether an enforceable contract existed to support Handler's partnership claim." (Handler's Opening Brief at 36-37.) The compensation findings are not outcome determinative because they do not address whether (1) "the parties have made a bargain with sufficiently definite terms," or (2) "the parties have manifested mutual assent to be bound by that bargain." (A00055.) The Standing Opinion contains pages of factual findings directly addressing these contract formation issues, and Vice Chancellor Glasscock's observations on compensation indisputably are not part of the contract formation analysis that he undertook to conclude Handler was not a Topco Partner. (A00055-65.)

Instead, the Centerview Defendants engage in the hypothetical exercise of arguing that Vice Chancellor Glasscock "could not have, as a matter of law, found a meeting of the minds on all material terms" of Handler's alleged oral partnership agreement without concluding that there was no meeting of the minds on Handler's compensation. (AB at 37-38.) In so arguing, however, the Centerview Defendants fail to point to anywhere in the Standing Opinion where Vice Chancellor Glasscock actually addresses this issue of whether there was a "meeting of the minds" on the

material term of compensation to support Handler's partnership claim, because Vice Chancellor Glasscock made no such finding. To the contrary, the Centerview Defendants must acknowledge that Vice Chancellor Glasscock instead ruled that, as a matter of law, "simply receiving economic interests does not provide that a partnership exists." (A00062 n.171 (citing *Grunstein v. Silva,* 2014 WL 4473641, at *23 (Del. Ch. Sept. 5, 2014), *aff'd,* 113 A.3d 1080 (Del. 2015).)[7] As a result, as Handler argued in his Opening Brief, any findings in the Standing Opinion on changes in Handler's compensation that the Centerview Defendants and the Court Below have argued had a preclusive effect are therefore legally irrelevant to the standing question of whether Handler was a Topco Partner under Vice Chancellor Glasscock's own analysis. (Handler's Opening Brief at 37-39.)

C. Handler is Not Estopped from Arguing His Compensation Was Not Essential to the Partnership Opinion.

The Centerview Defendants also argue that Handler is judicially estopped from arguing his compensation was not essential to Vice Chancellor's holding that

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[7] The Centerview Defendants accept Handler's argument in his Opening Brief "that compensation alone could not have established his Topco partnership," but then argue "the inverse is plainly true—a finding that Handler was not compensated in accord with his alleged oral partnership agreement did preclude a finding of partnership." (AB at 38 (citation modified).) Again, the Centerview Defendants are engaging in irrelevant hypotheticals because Vice Chancellor Glascock never addressed the Centerview Defendants' hypothetical in the Standing Opinion and never made any such purported finding that Handler not being compensated under an oral partnership agreement precluded a finding that Handler was a Topco Partner.

Handler was not a Topco Partner. (AB at 39-40.) In doing so, Centerview Defendants misapply the principles of judicial estoppel. "Judicial estoppel acts to preclude a party from asserting a position inconsistent with a position previously taken in the same or earlier legal proceeding. . . . However, . . . [t]he doctrine is not appropriate in all situations; parties raise many issues throughout a lengthy litigation such as this, and only those arguments that persuade the court can form the basis for judicial estoppel. '[J]udicial estoppel operates only where the litigant[] contradicts another position that the litigant previously took and that the Court was successfully induced to adopt in a judicial ruling.'" *Motorola Inc. v. Amkor Tech., Inc.*, 958 A.2d 852, 859-60 (Del. 2008) (quoting *Siegman v. Palomar Med. Techs., Inc.*, 1998 WL 409352, at *3 (Del. Ch. Jul. 13, 1998)).

Here, Vice Chancellor Glasscock expressly rejected Handler's arguments that his compensation after the November 2012 meeting supported his argument that he was a Topco partner, making the doctrine of judicial estoppel inapplicable. Indeed, in the same *Motorola* opinion the Centerview Defendants rely upon, the Delaware Supreme Court found that judicial estoppel was not available because "the Court was [not] successfully induced to adopt [the litigant's prior position] in a judicial ruling." *Motorola,* 958 A.2d at 859-60 (quoting *Siegman*, 1998 WL 409352, at *3). Judicial estoppel therefore does not bar Handler from arguing here that Vice

Chancellor Glasscock's compensation findings were not "necessary and essential" to the conclusion that Handler was not a Topco partner.

III. THE CENTERVIEW DEFENDANTS IMPROPERLY POINT TO ALLEGATIONS OUTSIDE OF THE PLEADINGS ON A MOTION TO DISMISS TO ARGUE THE COURT BELOW'S DISMISSAL OF HANDLER'S UNJUST ENRICHMENT CLAIMS WAS JUSTIFIED.

The Court Below erred in dismissing Handler's unjust enrichment counterclaim based upon (a) the failure to pay Handler any bonus compensation for the first eight months of 2022,[8] when he earned Centerview more than ████████, and (b) Centerview's seizure of the ████████ in Handler's priority capital account. (A00312.) In both cases, the Court Below pointed to Vice Chancellor Glasscock's finding that "[t]he Founders had discretion to implement compensation principles flexibly" to hold that the unjust enrichment counterclaim was barred by collateral estoppel. (Handler's Opening Brief Ex. A at 17-20.)

In response, the Centerview Defendants attempt to justify the dismissal of Handler's unjust enrichment claim based on the failure to pay him bonus compensation in 2022 by alleging facts nowhere in the SAC, arguing that "[o]n his way out the door . . . Handler solicited numerous Centerview employees and clients," misleadingly citing only to inadmissible, unsubstantiated statements that the Centerview Defendants themselves wrote without authority in their Opening Brief

[8] Handler received the pro rata portion of his $250,000 per year annual salary for the first eight months of 2022. (AB at 43 n.10.)

in Support of their Motion to Dismiss the SAC in the Court Below. (A00518-519.) These extrinsic statements concerning Handler's departure are false, and well known to the Centerview Defendants to be false, as will be demonstrated in the Plenary Action when permitted to proceed. This Court should disregard these blatantly improper factual allegations outside of and extrinsic to the SAC on an appeal from the grant of a motion to dismiss. *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.,* 860 A.2d 312, 320 (Del. 2004) (matters extrinsic to a complaint "may not be considered in a ruling on a motion to dismiss"); *Dover Hist. Soc'y v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1110 (Del. 2003) ("[F]actual matters outside the [complaint] may not be considered in ruling upon a motion to dismiss.") (citations omitted).

In addition, notwithstanding the Centerview Defendants' strained attempts to appeal to expansive dictionary definitions of the word "discretion," Vice Chancellor Glasscock's finding that "[t]he Founders had discretion to implement compensation principles flexibly, purportedly in a manner that benefited the firm and addressed issues for specific employees" (A00046) does not translate into the "flexibility" to pay Handler nothing but base salary for the eight months in which he contributed in business to Centerview, and to seize of Handler's Priority Capital Account and his 2013 CPAH equity grant, which were fully earned and vested. On a motion to dismiss where all inferences must be drawn in Handler's

favor, "discretion" cannot equal the right to retain the substantial benefit of Handler's services without adequate compensation or the right to seize earned, vested monies from a priority account in Handler's name and his 2013 CPAH equity grant, especially given Vice Chancellor Glasscock's express recognition in the Standing Opinion that Handler retained "certain vested rights" as an employee still to be determined in the plenary action. *See, e.g.*, *Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988) ("Unjust enrichment is defined as 'the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience'" (quoting 66 Am.Jur.2d, Restitution and Implied Contracts § 3, at 945 (1973))). Hander's well-pled unjust enrichment claim should be reinstated in full.[9]

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[9] The Court Below did not address whether Handler's counterclaim in paragraph 161 of the SAC that the Centerview Defendants were unjustly enriched because they "unjustly and wrongfully failed to issue the equity awarded to Handler in the 2008 Letter" was also precluded under collateral estoppel. Under these circumstances, Handler has not waived, as the Centerview Defendants argue (AB at 41-42), this additional basis for Handler's unjust enrichment counterclaim because the Court Below never addressed the issue. *Erb v. State*, Nos. N-80-11-0079 AR, N-80-12-0121 AR, 1981 WL 376979, at *1-2 (Del. Sup. Ct. July 17, 1981) ("[W]aiver presupposes the party had the knowledge and opportunity to frame an objection properly. . . Without such knowledge and opportunity, [the defendant] cannot be held to waive his objection"). The Court Below never found on the basis of any findings in the Standing Opinion that the terminal value interest Handler received in 2013 in the Topco subsidiary satisfied the requirements in the 2008 Letter that Handler be granted terminal value interest in Topco (CP LLC) which remains one of the factual issues to be decided in the case on remand.

CONCLUSION

For the foregoing reasons, the Opinion Below dismissing on collateral estoppel grounds counterclaims III (breach of contract), IV (breach of the implied covenant), and V (unjust enrichment) based on the 2008 Letter should be reversed with an order that the motion to dismiss counterclaims III, IV and V of the SAC be denied and, that the plenary action should proceed, as Vice Chancellor Glasscock intended, to address Handler's rights under the 2008 Letter.

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BERGER MCDERMOTT LLP

/s/ Richard I. G. Jones, Jr.

Richard I.G. Jones, Jr. (No. 3301)
Harry W. Shenton, IV (No. 6919)
1105 North Market Street, 11th Floor
Wilmington, Delaware 19801
(302) 655-1140
rjones@bergermcdermott.com
hshenton@bergermcdermott.com

Attorneys for Defendant and Counterclaim Plaintiff and Third-Party Plaintiff Below-Appellant David Handler

OF COUNSEL:

Christopher J. Clark (admitted *PHV*)
Brian T. Burns (admitted *PHV*)
Geoffrey H. Coll (admitted *PHV*)
P. Pauline Oostdyk (admitted *PHV*)
J. Adam George (admitted *PHV*)
CLARK SMITH VILLAZOR LLP
666 Third Avenue, 21st Floor
New York, New York 10017
(212) 377-0850
clark@csvllp.com
brian.burns@csvllp.com
geoffrey.coll@csvllp.com
pauline.oostdyk@csvllp.com
adam.george@csvllp.com