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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PJT HOLDINGS, LLC, Plaintiff Below Appellant, v. DANIEL COSTANZO, BENJAMIN COSTANZO, and BRIAN FITZPATRICK, Defendants Below, Appellees.	: : : : : : : : : : : :	No. 366, 2025 On Appeal from the Court of Chancery of the State of Delaware C.A. No. 2023-0665-JTL

APPELLEES' AMENDED ANSWERING BRIEF

Dated: December 23, 2025

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NATURE OF PROCEEDINGS

On June 8, 2023, Plaintiff PJT Holdings LLC ("**PJT**") was expelled from PBM Group Holdings LLC ("**Company**" or "**PBM**") by the other members, Daniel Costanzo, Benjamin Costanzo, and Brian Fitzpatrick ("**Founders**"). PJT asserts that the expulsion was procedurally defective because there was no "meeting" or "unanimous consent of the members." But the expulsion provision provides that the *other members* may expel a member if they have unanimity without the to-be-expelled member. If a "meeting" of *all members* were required, it would allow PJT to block its own expulsion by failing to participate. A contractual provision is not construed to be absurd or ineffectual. The trial court agreed.

After that ruling, the parties proceeded to trial on the expulsion itself. After three days of trial, the trial court correctly concluded that PJT had breached the operating agreement in several fundamental ways justifying expulsion, including acting unilaterally, repudiating the investment requirements of the operating agreement, and terminating the Company's only asset: a very valuable restaurant lease in Beverly Hills, California, *the very purpose of the Company*.

The trial court correctly held that the Founders were entitled to be indemnified by PJT for attorneys' fees and costs in defending PJT's challenge to the expulsion. This was an ironic twist of fate because PJT was the one who initially procured a ruling from the trial court that such indemnity was available to the prevailing party.

Post-trial, the trial court correctly held that the operating agreement allowed the Founders to choose the remedy of forfeiture against PJT.

PJT's arguments on appeal focus primarily on phantom issues that never actually arose or elevate form over substance. For example, PJT argues that the trial court determined the procedural validity of the expulsion based on grounds that were never argued, but that is not true and it would not matter if it was because this Court can affirm on any basis in the record. PJT argues that forfeiture requires a particular form of notice under the operating agreement, but then ignores that the Founders' counterclaim here was *for forfeiture*. There could be no more direct form of notice than that.

SUMMARY OF ARGUMENTS

1. Denied. The Founders were entitled to expel PJT through a vote among only themselves. The trial court correctly agreed because (there is no other logical conclusion) no other interpretation makes sense.

2. Denied. The trial court's ruling on the procedural validity of the expulsion was based upon the parties' arguments but this Court can affirm on any basis in the record anyway.

3. Denied. The trial record was replete with facts justifying PJT's expulsion, including its admission that it was acting in its own best interest, not the Company's, when it terminated the Beverley Hills lease.

4. Denied. The operating agreement plainly provides the Founders' the option to choose the remedy of forfeiture. The trial court properly agreed.

5. Denied. The Founders did not breach the operating agreement.

STATEMENT OF FACTS

The statement of facts below are organized in the same manner as PJT, starting with facts relevant to the summary judgment ruling on the procedural validity of the expulsion. Repetitive facts are, for the most part, not included, but certain repeated facts are highlighted for importance.

I. FACTS RELEVANT TO SUMMARY JUDGMENT ON PROCEDURAL VALIDITY OF EXPULSION

The purpose of the operating agreement was for the Founders to contribute their sweat equity and intellectual property from the restaurant they founded, Plant Based Mafia in Florida, to create additional restaurants based on that theme.[1] In exchange, PJT was to provide capital of $3,500,000.[2]

Trial would eventually reveal that PJT contributed less than $200,000 to the Company in its lifespan, despite initially representing otherwise.[3]

Article 8 of the operating agreement, titled "Meeting of Members," states, in part [emphasis added]:

> (a) A quorum shall be present at a meeting of Members if the holders of a Simple Majority are represented at the meeting in person or by proxy. With respect to any matter, other than a matter for which the affirmative vote of the holders of a specified portion of the Percentage Interests of all Members entitled to vote is required by the Act or this Agreement, the affirmative vote of a Simple Majority at a meeting of

[1] B157-58 ¶2-6.
[2] B23.
[3] A547:12-14; A736:1-3; A847:12-18; A1138:20-23; A1142:10-21; A1143:3-5 and 13-22.

> Members at which a quorum is present shall be the act of the Members or by another specific provision in this Agreement. So long as PJT Holdings owns fifty (50%) percent or more of the Membership Interests in the Company, in the event of any deadlock of the Members, PIT Holdings shall have the deciding vote to break the deadlock…
>
> …
>
> (g) Written or printed notice…shall be delivered…at the direction of the person calling the meeting, **to each Member entitled to vote at such meeting** [emphasis added].
>
> (h) The date on which notice of a meeting of Members is mailed or the date on which the resolution of the Members declaring a distribution is adopted…shall be the record date for the determination of the Members **entitled to notice of or to vote**...[4]

Under paragraph 1.01 of the Operating Agreement, "Simple Majority" is defined as "one (1) or more Members having among them more than fifty percent (50%) of the Percentage Interests of all Members."[5]

Paragraph 8.05(a) of the Operating Agreement, titled "Action by Unanimous Written Consent Without a Meeting," states:

> Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, by unanimous written consent of the Members or committee members, as the case may be, setting forth the action so taken…[6]

[4] A300-303.
[5] A288.
[6] A303.

Paragraph 15.04 of the operating agreement provides the conditions under which a Member can be expelled from the Company, which is discussed further below, but clearly excludes the to-be-expelled member from voting.[7]

Paragraph 18.11 of the operating agreement states [emphasis added]:

> To the fullest extent permitted by law, each Member shall indemnify the Company, each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney's fees) they may incur on account of **any breach by that Member of this Agreement**.[8]

The Operating Agreement was drafted by PJT's attorney, Brian Louis Lipshy, Esq. Mr. Lipshy is PJT's attorney on other matters.[9]

In a March 14-15, 2023 text message exchange with Danny Costanzo, PJT's principal, Peter Trematerra, asserted that all decisions regarding the Company were "[his] final decision," contrary to his interpretation here.[10] This became a consistent theme at trial in affirming the expulsion: Mr. Trematerra often acted unilaterally despite what he asserts as his interpretation now.[11]

Despite that the Company made decisions, such as for potential restaurant locations and payment of vendors, no meeting of the Members was ever held and no

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[7] A314.
[8] A319.
[9] B157 ¶10.
[10] Id.
[11] A1141-42:19-23; 1143:19-22; 1157-58:1-15; 1175-76:22-14; 1210:6-11; 1244-1247; 1249-50:18-24.

unanimous written consent of the Members was ever obtained, at least under PJT's all-inclusive interpretation.[12]

Beginning in March 2023, Mr. Trematerra, as representative of PJT, declined multiple requests by the Founders to meet in person or have a phone conversation, including on: March 8, 2023 (request to meet); March 14, 2023 (cancellation of meeting); March 15, 2023 (declining phone conversation).[13]

On June 7, 2023, the Founders adopted a resolution expelling PJT from the Company ("**Resolution**").[14] There is no dispute the Resolution was properly served on PJT.[15]

By June 9, 2023, PJT had retained counsel, who contacted the Company and challenged the Resolution.[16] From June 9, 2023 through June 20, 2023, PJT, through counsel, and the Company, through a representative, discussed various items related to the Resolution, including an accounting of PJT's contributions to the Company and rescission of the Resolution.[17] [18] [19] [20]

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[12] B157 ¶22,23,28.
[13] B76, 77, 78, and B157¶24.
[14] B 91 and B 1571¶30.
[15] B94-111 and B157 ¶¶31-33.
[16] B111-13, B157 at ¶35.
[17] B114-127 and B157 at ¶ 35, 37.
[18] Id at B157 at ¶36-37.
[19] *Id.* at ¶37.
[20] *Id.* at ¶38.

Paragraph 8.06 of the Operating Agreement provides that the June 9-20, 2023, communications between PJT's representative and the Company's constituted a "meeting" under Article 8 of the Operating Agreement.[21]

On June 28, 2023, PJT filed its complaint in this litigation.[22] Several key facts warrant highlighting on the procedural validity of the expulsion.

Paragraph 8.01(g). of the operating agreement clearly states that a meeting can be conducted on notice only of those members "entitled to vote."[23] The expulsion provision clearly says the same.[24] Paragraph 8.06(b) of the operating agreement similarly states that unanimous written consent without a meeting can be effectuated by "members entitled to consent."[25] This is the basis upon which the trial court properly affirmed the procedural validity of the expulsion.

[21] A303 and B22.
[22] A39, and B157 at ¶39.
[23] A1471-72.
[24] A1485-86.
[25] *Id.*

II. TRIAL FACTS RELATED TO AFFIRMANCE OF THE EXPULSION

Though PJT and the Founders had equal membership in the Company, PJT had the power to break tie votes.[26] For that reason, he was the controlling member.

A. The Consideration For The Operating Agreement

Under a contribution agreement incorporated into the operating agreement, PJT was required to contribute the "PJT Holdings Initial Capital Contribution…at closing."[27] It has the same effective date as the operating agreement.[28] "PJT Holdings Initial Capital Contribution" is defined in the contribution agreement as the entirety of $3,500,000.[29]

The recitals in the contribution agreement required PJT to make a contribution "in the initial amount of $200,000 and a committed capital investment up to $3,500,000 as provided in the [operating agreement]."[30] The contribution agreement states that PJT and the Founders agreed to the following exchange, i.e. consideration: the "PJT Holdings Initial Capital Contribution" for assignment of intellectual property from Plant Based Mafia LLC to PBM— Plant Based Mafia LLC is the entity that controls the original restaurant.[31] Daniel Costanzo testified that the

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[26] A1471.
[27] A1462, B438, 442.
[28] *Id.* B442.
[29] B438 and 441.
[30] *Id.*
[31] *Id*. at ¶2.1 and B408.

exchange was: "Peter was going to put up 3.5 million…for 50% equity"[32] and the Founders contributed the intellectual property they developed for Plant Based Mafia:[33]

> …. Basically, our—the last five or six years of developing the brand, developing the—excuse me—th intellectual propeirty, all of the logos, all of the recipes that you know took us years to develop and tens of thousands of dollars. So basically giving him 50 percent ownership of all that.

The Founders spent nearly $1,000,000 over the years developing the intellectual property, i.e. the brand.[34]

The parties executed an "Agreement and Assignment of Intellectual Property Rights" effective January 21, 2022. [35] This was near the same time as execution of the operating agreement and contribution agreement.[36]

At trial, Mr. Trematerra inexplicably testified that the Founders never contributed intellectual property to PBM, though he signed on PBM's behalf to accept it.[37] Given multiple opportunities to simply acknowledge that the contribution of intellectual property was necessary to the operating agreement and contribution agreement and that it had meaningful value, Mr. Trematerra refused.[38]

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[32] A718:15-17.
[33] A719-720:20-2.
[34] A720:15-17.
[35] A1494.
[36] *Id*., 1455, and B438.
[37] A1148-49:16-5 and A1494.
[38] A1150-1151:2-23.

"Capital Contribution" is a defined term in the operating agreement referencing a contribution that has already occurred.[39] The operating agreement states that, as of the date of execution, PJT has contributed $200,000.[40] It is undisputed that contribution did not occur at closing on the operating agreement and contribution agreement and ultimately ever.[41] The only way PJT gets to even a $200,000 contribution is including money spent for Mr. Trematerra's personal benefit and including expenses that never occurred, like funding the Beverly Hills lease.[42] Mr. Trematerra conceded at trial that he did not contribute $200,000 in actual expenditures to PBM, with the precise number being $199,048.[43] But $46,000 of that number was for his personal benefit— hiring a lawyer to settle with the Beverly Hills landlord on Mr. Trematerra's personal guaranty after PJT directed the Company to breach the lease.[44] These expenditures are addressed below.

"Capital Commitment" is a separately defined term in the operating agreement referencing future capital "such Member has agreed to contribute…"[45]

The "Capital Contributions" section of the operating agreement distinguishes between "Capital Contribution," as defined, and "Committed Capital," as defined.

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[39] A1457.
[40] A1463, sec. 4.01).
[41] A1142:10-13.
[42] A1138-1139:3-5.
[43] B165.
[44] Id and B572.
[45] A1457.

"Exhibit A" to the operating contains PJT's initial capital contribution of $200,000 to be paid "contemporaneously" with execution of the operating agreement. [46] The only part of the operating agreement that references PJT's total "Capital Commitment" is in the recitals, listing a total of $3,500,000.[47] Reading the operating agreement in paria materia establishes that: (i) PJT's initial "Capital Contribution" was required to be at least $200,000; and (ii) that PJT had an additional capital contribution of $3,300,000 for a total "Capital Commitment" of $3,500,000.

While Mr. Trematerra disputed the "Capital Commitment" at trial and argued it was discretionary,[48] he conceded that: (i) in entering the operating agreement and contribution agreement, he never considered that PJT could choose *not* to fund a restaurant;[49] (ii) that a restaurant could not be developed and operated for the "Capital Contribution" alone;[50] (iii) that all estimates for a single restaurant at the time of execution for the operating agreement and contribution agreement were less than the "Capital Commitment";[51] and (iv) no one expected PBM to open two or three restaurants at once, potentially exceeding the "Capital Commitment."[52] He conceded that the fundamental idea was to open a *single* "concept" restaurant and

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[46] Id.
[47] A1454.
[48] A1128-1129:19-2 and 1142:14-21, and 1142:20-23.
[49] A1142:6-9 and A1156:18-23.
[50] A1146:15-23.
[51] A1144:1619, A1145:3-15, A1146:12-14; B432.
[52] A111015-16 and 22-23; 1153-1154:20-5.

then build from that: "you wouldn't just randomly open three stores at once..."[53] Danny Costanzo meanwhile testified that the Founders would never have given up the intellectual property for $200,000 and that one-to-two restaurants was part of the "core agreement."[54]

Mr. Trematerra testified that he expressed to the Founders that "funding was at my discretion," but he never expressed that; instead, what he expressed was that he controlled the "timeframe" of funding.[55]

On December 2, 2021, Mr. Lipshy, Mr. Trematerra's personal attorney, stated in an email that he would "discuss with Peter to confirm exact amounts [of the OA and Contribution Agreement]" because the draft at that time contained no amounts.[56] The result was the "Capital Commitment."

B. How The Parties Arrived At The Capital Commitment of $3,500,000

The "Capital Commitment" was based on conversations and analyses among PJT, the Founders, and a consultant, Christopher Russo.[57] Numerous pre-operating agreement spreadsheets prepared by Mr. Russo show projections of $1,000,000 to open one restaurant to between approximately $3,500,000 to $4,000,000 to open

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[53] A1154:6-11.
[54] A730: 2-13; A823:2-4 and A823:24; A829:5-9.
[55] A1156-1158:18-15, 53.42 and A1936.
[56] A867-868:14-6, B452, 455-56.
[57] B248:1-25; A721-722:4-21; B432.

three restaurants.[58] Neither the operating agreement nor the contribution agreement limit PJT's obligations to restaurants in Florida or require a certain minimum number of restaurants.[59] At trial, Mr. Trematerra changed this answer, but the answer is obvious: there is no such limitation.[60]

C. PBM's Attempts To Open A New Restaurant And PJT's Attempt To Re-Negotiate The Operating Agreement And Contribution Agreement

After execution of the operating agreement and contribution agreement, PBM worked with a variety of professionals and consultants to locate a suitable location for a new restaurant.[61] These efforts spanned 2022 and through spring 2023.[62] The consultants and professionals included: (i) Mr. Russo; (ii) Gravity, an architectural consultant; (iii) Push, a marketing consultant; and (iv) Jay Nartowicz, a food service consultant.[63]

By late 2022, PBM focused on a restaurant in California. PBM signed a letter of intent for a space in Beverly Hills in mid-January 2023.[64]

Around the same time, Mr. Russo began preparing updated spreadsheets on opening a new restaurant in California. On January 27, 2023, Mr. Russo sent PJT

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[58] B432 and B457 A724-725:9-23.
[59] B350-51:13-10.
[60] A1154:12-22.
[61] A725:1-22; A725-726:24-16; A743:5-20; A744:17-20; A746:12-14; A1002:3-5.
[62] *Id*.
[63] A389-390:16-25.
[64] A7471-20.

and the Founders a "Rough Store Development Proforma V1…based on the market conditions it took to find a location." This document showed the "build out cost and turn key operating package" for one restaurant at $1,350,000.[65] In another document the same day, Mr. Russo estimated the "total spend store one" at $2,007,901.[66]

In late January 2023, Mr. Trematerra, the Founders, and Mr. Russo met at Mr. Trematerra's residence in Singer Island, Florida.[67] Mr. Trematerra proposed changing the membership in the operating agreement to provide PJT with ninety percent (90%) equity because "we need all these stores to be relevant I'm going to be spending all these millions of dollars [in California]."[68] Mr. Trematerra disputes that he proposed ninety percent (90%), but agrees that he proposed at least seventy percent (70%) equity.[69] Mr. Trematerra believed that three restaurants in California would cost "5 million dollars" and had to be opened "simultaneously."[70] At trial, he obviously said the opposite about the strategy of PBM: open one restaurant and prove the concept.[71]

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[65] A751:5-9; A752:2-17; B434-35398.
[66] B473-74.
[67] B322:1-25; A759:10-18.
[68] A759:1-6.
[69] A1072:1-14 and A1146:2-7.
[70] B324:1-5.
[71] A1154:4-8.

In a torturous series of non-responsive answers, Mr. Trematerra refused to concede that there was no agreement at the January 2023 meeting,[72] despite previously testifying at his deposition there was no agreement at the meeting.[73] At his deposition, he testified that "word got back to me afterwards" through Mr. Russo that the Founders agreed; at trial, Mr. Trematerra testified he did not understand his prior testimony or the meaning of the word "afterwards."[74] [75] This fit a pattern at trial of Mr. Trematerra not understanding his own words or the English language.[76]

Mr. Russo testified that there was no agreement at the January 2023 meeting on if or how to renegotiate the operating agreement and contribution agreement.[77] He testified there was never an agreement at any point and had no personal knowledge of one.[78] He testified that he never told Mr. Trematerra there was.[79]

As the parties discussed a potential amendment to the operating agreement and contribution agreement, the Beverly Hills lease negotiations were ongoing.[80]

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[72] A1163:2-15: A1164: 1; A1165-1165:6-6 and A1166-1167:10 – 23; A1167-1168:4-24; A1169:2-24.A1170:1-7.
[73] B322:11-17.
[74] A1167-1168:4-24.
[75] A1168:18-23.
[76] As illustrative: A1174:12-23; A11743-13; A1176-1176: 8-1; A1179:8-21; A1180-1182:14-12; A1190:2-18.
[77] B246:17-22.
[78] 424:17-24, I B24710-22.
[79] A424-425:25-14.
[80] A1854-1860; and A1895.

The lease was ultimately signed March 8, 2023.[81] In February 2023, there is no evidence that the discussions on potential amendment went anywhere; there are no communications or even testimony about meaningful discussions during that time. The discussion resumed in early March 2023;[82] the discussions included not just a change in the membership allocation, but salaries for the Founders, the increased amount of PJT's capital contribution, and a non-dilution clause.[83] The discussions were convoluted and hard to follow, but there was no agreement.[84]

On March 3, 2023, to "appease" Mr. Trematerra, Benjamin Costanzo sent an offer to PJT that included ninety percent (90%) membership for the first two restaurants and then back to fifty-fifty (50-50%) for additional restaurants; the offer included some of the "asks" required by the Founders, such as salaries for at least two of them.[85] The same day, Benjamin Costanzo had a phone call with Mr. Trematerra and Mr. Russo to discuss the offer; there was no agreement.[86]

On March 4, 2023, Daniel Costanzo texted Mr. Russo with "deal points" to convey to Mr. Trematerra, including the "asks" of the Founders.[87] Mr. Russo relayed

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[81] A1861-1197, JTX-144.
[82] A768-:22-24.
[83] A768-770:22-23.
[84] A772:18-23; A773:2-6; A777-778:15-12; A783-786:19-15; A786-787:19-17; A788: 12-21; AA2563; A1832; A2581.
[85] A768-771:22-12;B478.
[86] A775-779:9-17. A2563-2573.
[87] A778-780:3- 19; A2571-2573 and B478-79.

this information to Mr. Trematerra.[88] The same day, Mr. Trematerra, Mr. Russo, and the Founders had a remote meeting. Mr. Trematerra then texted them:

> Gentlemen, I wish you the best of luck. I will not be abused and disrespected in this manner **lets figure out what we have to do for you to move forward for you to buy out my percentage of the company**.[89]

As of March 4, 2023, Mr. Trematerra understood there was no agreement to change the operating agreement and contribution agreement.[90] At his deposition, he said the opposite.[91] According to the Beverly Hills landlord, the lease was supposed to be signed March 6, 2023.[92] In a voicemail on March 7, 2023, the landlord said the lease was supposed to be signed "yesterday."[93] Trial showed that Mr. Trematerra was holding off signing the lease, angering the landlord, while he postured to change the operating agreement and contribution agreement.[94]

By March 8, 2023, the Founders were worried that Mr. Trematerra was going to tank the Company and refuse to sign the Beverly Hills lease unless he got what he wanted.[95] Two things occurred simultaneously that day: (i) the Founders explore

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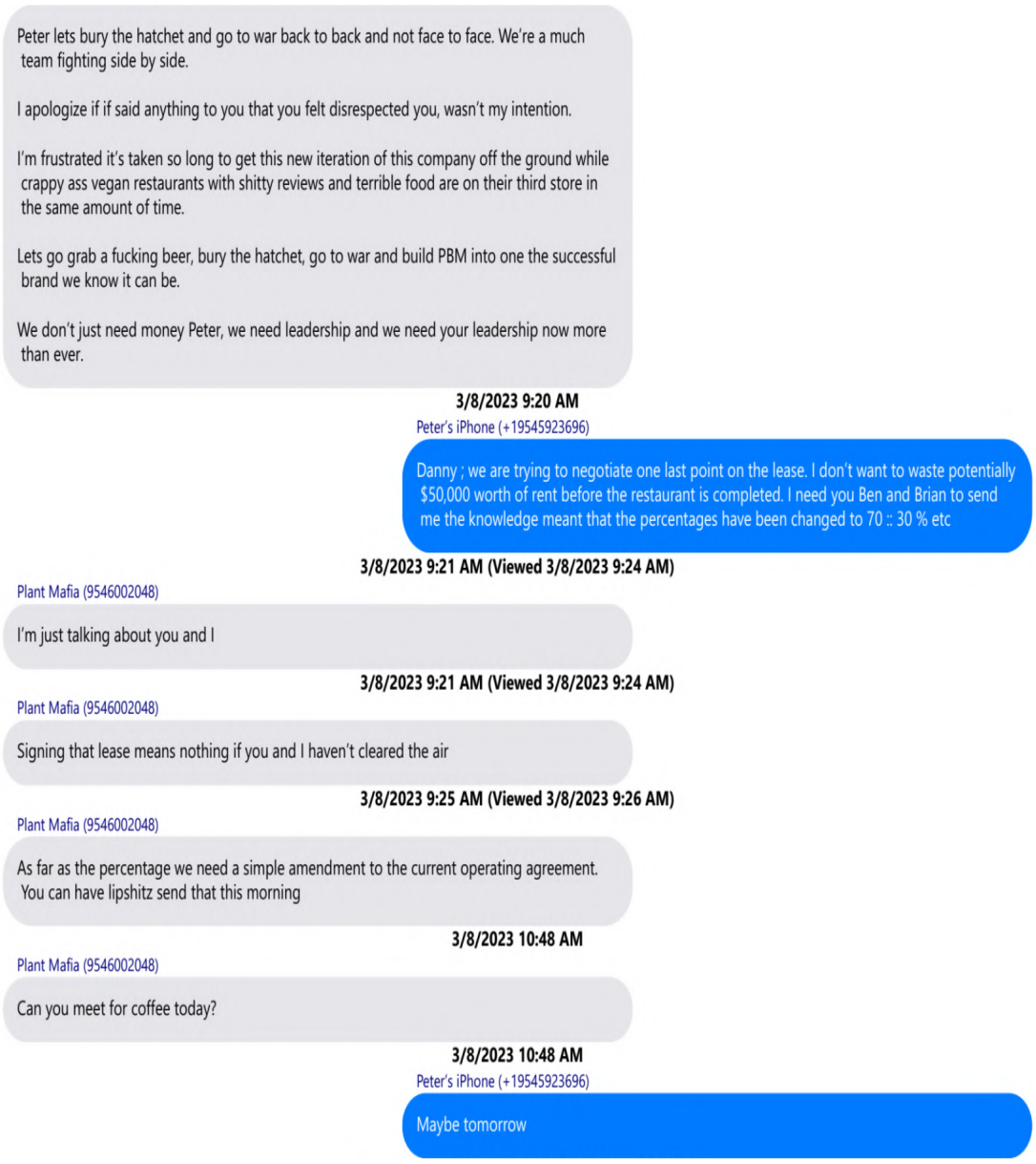
[88] A783:8-11.
[89] A783-784:19-16 and A1832.
[90] A1176-1177:22-1.
[91] B32863:3-25.
[92] A795-796:9-6, A2745, A2140.
[93] A789-790: 10-9 and A2586.
[94] A790:13-20; A2699; A1086:17-24 , A1930.
[95] A791- :9-17; A792:17-24; A22699-2670.

their options to declare PJT in default[96] and (ii) Daniel Costanzo attempts to reconcile with Mr. Trematerra. Exploring default against PJT was a "contingency plan" in the event reconciliation did not work because the Founders had to protect themselves from Mr. Trematerra's "toxic patterns."[97]

On March 8, 2023 starting at 8:26 am, the same date Trematerra signed the Beverly Hills lease, Daniel Costanzo attempted to reconcile with Mr. Trematerra via text exchange:[98]

[96] A2745-2748; A793- :2-13; A795-798:5-5.
[97] A796-A797:23-10.
[98] A2354-2355; A799:3-15, B462-64.



Daniel Costanzo interpreted "etc" to mean the "asks that [we] were asking for…"[99] His response of "simple amendment" assumed that the document would include these "asks."[100]

[99] A800:1-8.
[100] A800:10-23.

Mr. Trematerra testified that he has a habit of writing "etc" in text messages and did not mean anything by it.[101] The text messages produced by Mr. Trematerra do not contain any evidence of such a habit. More importantly, Mr. Trematerra testified that he did not know the full "agreement" he alleges on March 8, 2023, only the parts *he agreed to*.[102] He testified he just accepted the part of the "deal" he liked and called it an "agreement."[103]

For five days after this exchange, and after PJT has signed the Beverly Hills lease, nothing much happened; PJT even failed to *pay the first month's rent and security deposit under the lease that was due immediately*.[104] PJT sent no form of an "agreement" for review by the Founders. PJT failed even to send the Founders the signed Beverly Hills lease.[105]

On March 13, 2023, PJT sent an "assignment of membership interest" to the Founders. It contained only the change of the equity in PBM to seventy/thirty (70%/30%) in PJT's favor,[106] and none of the terms requested by Founders. Mr. Trematerra testified at his deposition that the "assignment of membership interest"

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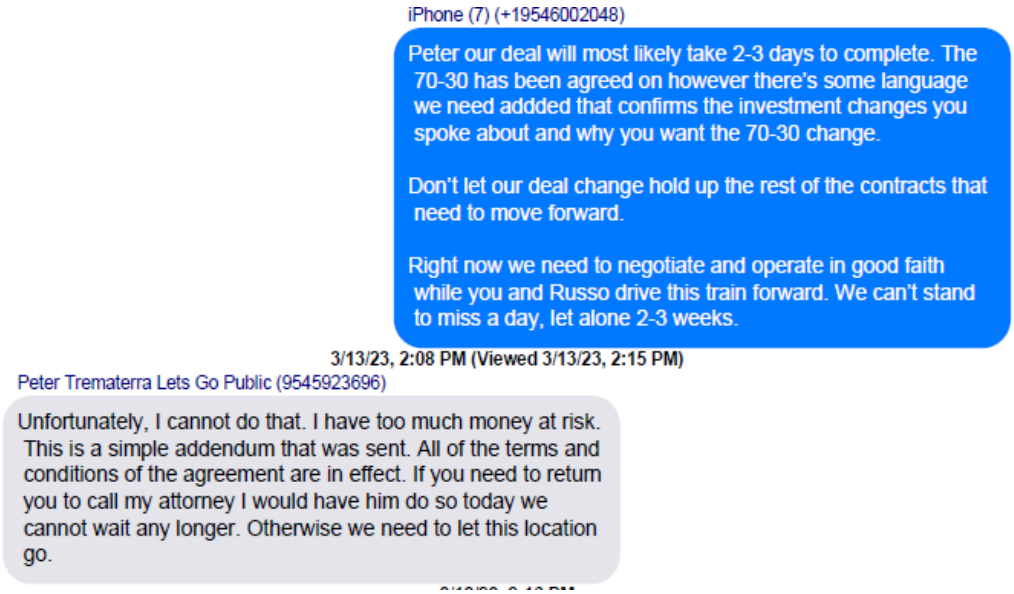
[101] A1200:2-8.
[102] A1182-1184:4-14; A1185-1186:15-17; A1186-1188:20-22; A1188-1189:23-11.
[103] A1188-89L23-11.
[104] A1862 sec. 2 and 1876 sec. 48.
[105] A804:3-20.
[106] A1887-1894.

was sent to the Founders before the signing of the Beverly Hills lease, but conceded at trial that was false.[107]

After receiving the "assignment of membership interest" for the first time on March 13, 2023, Daniel Costanzo and Mr. Trematerra had the following text exchange:[108]



Mr. Trematerra then tells Daniel Costanzo to contact, Mr. Lipshy, with any changes.[109] Daniel Costanzo does so and Mr. Lipshy expresses confusion as to why he is calling; he says he works for Mr. Trematerra and does not have authority to do anything: "I don't know why I'm on this phone call with you."[110]

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[107] B332:22-25) and A1170-1171:17-14.
[108] A2325.
[109] *Id.*
[110] A811:1-24.

Mr. Trematerra's statement of "all terms and conditions of the agreement are in effect" was a clear trap for the Founders: sign the "assignment of membership interest" without their "asks" and then PJT would deny later that they were included. In another tortuous series of answers, Mr. Trematerra gave several bizarre and incomprehensible answers about what he meant, never able to dispel that it was a trap.[111] Mr. Trematerra attempted to say that "all the terms and conditions of the agreement" referred to the "assignment of membership interest" itself, which was contrary to his deposition.[112]

The "assignment of membership interest" was never changed to contain any provisions requested by the Founders. On March 14, 2023, the Founders emailed Mr. Trematerra. They said they declined the "assignment of membership interest" as presented and could not agree to go to California under the "plan" of opening five stores simultaneously with PJT's demands of changing the operating agreement and contribution agreement.[113] As Daniel Costanzo put it, Mr. Trematerra "did not have their back."[114] Mr. Trematerra then replied:[115]

> Team ; I have invested well over $250,000 at this time plus my resources. Additionally, my time, travel efforts etc. I will cancel the California transaction today .until we can get a path That is an agreeable I cannot spend any more time on this venture. Let me know when you have something that you think is viable in Florida..

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[111] A1191-1193:5-23; A1204-1208:1-18.
[112] *Id.*
[113] A817:1-10; A820-821:16-24; A825-926:9-5; A2753-2354.
[114] A818:19-22.
[115] B480; A828-829:22-4.

Mr. Trematerra agreed at trial that the "$250,000" number was false.[116]

From March 13 through 14, 2023, Mr. Trematerra expressed in writing several times that if the Founders would not agree to amend the operating agreement and contribution agreement he would simply "cancel" the Beverly Hills lease.[117] Mr. Trematerra testified at his deposition that he had the right to cancel the lease.[118] That was his plan all along: cancel the lease if he could not leverage the Founders to change the operating agreement and contribution agreement.[119] At trial, Mr. Trematerra gave several different answers about whether he believed he had a right to cancel the lease: "no,"[120] "yes,"[121] and yes but with "mitiga[tion" and "settlement" with the landlord,[122] a conspicuously lawyer-like answer for someone who did not know what "afterwards" meant in his own testimony. Mr. Trematterra "cancelled" the lease on March 14, 2023, but continued discussions with the landlord for much of the rest of March 2023 (according to Mr. Russo).[123]

On March 15, 2023, Mr. Trematerra and Daniel Costanzo had an extensive text exchange. It began with Daniel Costanzo expressing that "we can still do LA

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[116] A1130:9-20.
[117] A2325.
[118] B342-43:24-10.
[119] A1209:6-11.
[120] A1209:12-16.
[121] A1248-1249:18-4.
[122] A1250:1-7.
[123] B391, B197-98:23-16.

and just open[] it up as one store…stick with the deal that we have on the table…"[124] Mr. Trematerra then says "the basis of the deal has changed"[125] but the Founders never changed the "deal"— PJT did. [126] "It made no sense…we never wanted the deal to be changed…Peter wanted five stores, which didn't make any sense…"[127]

After Daniel Costanzo proposed to continue as planned in California, and Mr. Trematerra rejected that, the discussion turned to declaring PJT in default under the operating agreement and contribution agreement; Mr. Trematerra demanded a buyout, conceded he had an obligation on the "Capital Commitment," but argued that he had no timeframe to do so.[128]

The same day, Mr. Trematerra texted Daniel Costanzo and said:

> Well, I have numerous text messages from him [Mr. Russo] confirming the discussions [on a deal].[129]

Neither Mr. Trematerra nor Mr. Russo produced any such texts in discovery.[130] [131]

In still another torturous series of answers, Mr. Trematerra was unable to explain how he produced no texts with Mr. Russo prior to March 8, 2023, conveniently leaving out the entire period of that time mattered. He said he

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[124] A2359; A830-831:13-6.
[125] *Id.*
[126] *Id.*
[127] A831:3-7.
[128] A2359-2361; A834:16-21; A835:14-18.
[129] A833:13-23; A2364.
[130] A1488 ¶17.02(a).
[131] A1200: 2-18.

inadvertently deleted them (maybe), then he said he misspoke about their existence (maybe), then he said maybe Mr. Russo produced them (not true).[132] All the while, there was evidence of selective production, such as screenshots within text messages of Mr. Russo showing communications with PJT alone.[133]

Post-trial, Mr. Trematerra disclosed the existence of a voluminous number of texts. The parties then stipulated to their use. These texts show: machinations between Mr. Trematerra and Mr. Russo to open a competing business, texts contradicting Mr. Trematerra's trial testimony, and statements to Mr. Russo that PJT would not proceed with the Company.

On March 15, 2023, in a series of texts, Mr. Russo expressed that "a lot of bridges" were burned by PJT's conduct, that it would be extremely difficult to restart in Florida, and "we have wasted a lot of people's time."[134] As Daniel Costanzo put it, "Peter just turned down" every "single location."[135] Two days later, Mr. Russo—PJT's ally— suggested "another investor asap."[136]

On March 31, 2023, the Founders made one more attempt at appeasing PJT with another offer.[137] The offer had no effect.[138]

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[132] A1176-1181:2-17.
[133] A2598-2599.
[134] A2609.
[135] A838:4-23.
[136] A2618. A839:8-16.
[137] B487; B489; A840-841:23-13.
[138] A843:1-3.

On or around May 25, 2023, the Founders had a conversation with Mr. Trematerra, explaining that Mr. Russo may have been "sabotaging" the relationship. Mr. Trematerra was non-responsive and the same day declared an "impasse" and that PBM should be wound down.[139] Daniel Costanzo testified: [140]

> After spending, you know, almost two years doing this with him, it was really disheartening, knowing that we were so close to opening up this amazing location. You have put so much time and energy and effort. You've invested everything that you have. You have put your family through this process. You know, knowing that he holds the purse strings, it's like he holds the key to your future. And it's so quick for him to just turn it off like that. It was disheartening.

At trial, Mr. Trematerra attempted to portray himself as the nice guy who would not have sold Plant Based Mafia's intellectual property as part of a dissolution and simply given it back.[141] He even initially testified he never threatened to sell it: "I've never even thought along those lines." [142] But of course he did: he said in writing that is what he wanted to do.[143] This was the Founders' great fear and that they would not have the resources to fight PJT if he did that.[144]

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[139] A2327.
[140] A844: 2-11.
[141] A1195:2-19.
[142] A1160:7-12.
[143] A2382; A1195-1196:20-2.
[144] A1022-23:20-6.

D. The Beverly Hills Lease Was A Once-In-A-Business Opportunity That PJT Tanked For Its Own Personal Interest

The Beverly Hills lease was the culmination of over a year of work and frustration within PBM. As the landlord expressed on March 17, 2023 in an email, it would be an "understatement" to say that PBM's cancellation of the lease was a "disappointment, especially in light of the protracted negotiations/retrading he [PJT] engaged in over the course of months, including to eight months of free rent inserted into an executable lease…disagreement within the tenant ownership structure is not an excuse for repudiation."[145] A representative for the Beverly Hills landlord, Carie Boyce, testified that Mr. Russo was communicating updates to the landlord between March 8, 2023, when the lease was signed, and March 17, 2023 that the Members' dispute might be "worked out."[146] In other words: the lease was not over on March 14 or 15, 2023. Indeed, in one of the undisclosed texts, Mr. Russo told Mr. Trematerra on *March 26, 2023* that "we are in a good space right now" with the landlord.[147]

Ms. Boyce testified that PBM could not have negotiated a more favorable lease than the one for Beverly Hills, given "this specific space…how the market was

[145] B482.
[146] B196-97:19-7.
[147] B391; B197-98:23-16.

going, how many people were looking at it, how serious people were."[148] She testified PBM would not be able to obtain the same conditions again.[149]

At trial, Mr. Trematerra testified that he tanked the Beverly Hills lease "in the best interest of PBM."[150] But that is not true: at his deposition, he testified he tanked the Beverly Hills lease *for his own personal interest*: "I thought it was in my best interest not to move forward."[151]

E. PJT's Expulsion

On June 8, 2023, the Founders expelled PJT from the Company via the Resolution.[152] They did so in consultation with a business manager they hired.[153] Daniel Costanzo testified to the overall reason for PJT's expulsion, which encapsulates the specific bases in the resolution:

> Well, when we went over the OA and looked at the breach of contract clause, it just – it made sense that Peter had broken many of these clauses, you know, by not paying vendors, by not putting up the 3.5 million, backing out of the L.A. lease, negotiating the L.A. lease on his own, agreeing to sign the L.A. lease, signing it, and then changing terms in the lease, which was -- we were just completely shocked that he did that…So just a culmination of all of those things and his behavior from the beginning, we just knew that it -- it seemed like we had just cause to remove him from the OA.[154]

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[148] *Id.* at 205-206:12-10.
[149] *Id.*
[150] A1253-1254:2-3.
[151] B343:6-10.
[152] A2755.
[153] *Id.*; A844:17-19;
[154] A845-846:19-11.

F. PJT Did Not Honor The "Capital Contribution" or "Capital Commitment"

There is no dispute that PJT's actual capital contribution to PBM is less than $200,000.[155] By PJT's own calculation, it is $199,048 inclusive of $10,000 for Seltzer Law— the attorney Mr. Trematerra personally hired to settle with the Beverly Hills landlord— and $36,000— the settlement to the landlord,[156] which occurred after PJT's expulsion on June 8, 2023.[157]

Because PJT asserted attorney-client privilege over Seltzer Law, it is precluded from relying or commenting on that expenditure. Del.R.Evid. 512.[158] Regardless, there is no evidence Seltzer Law was an expenditure of PBM; there is no check by PBM and no retainer with PBM.

The settlement with the Beverly Hills landlord was to protect Mr. Trematerra and the payment was weeks after his expulsion.[159]

Removing Seltzer Law and the settlement with the Beverly Hills landlord lowers PJT's contribution to less than $155,000.

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[155] A1138:20-23; A1138-1139:24-5.
[156] B496.
[157] B572; see also B165.
[158] B502.
[159] A2359.

G. Mr. Trematerra Generally Lacked Credibility and Tried In Subtle (or Not So Subtle) Ways to Influence Mr. Russo's Testimony

As set forth above, Mr. Trematerra was often combative at trial, changed his deposition testimony, professed lack of knowledge as to the meaning of his own words, and could not explain why key documents like texts with Mr. Russo were not produced. But, in the largest sense, Mr. Trematerra's lack of credibility was evident in his reliance on Mr. Russo's testimony. There are two parts to this.

The first part is the tortured history of Mr. Russo's "testimony," which was given via deposition, but was based on written "statements" produced by PJT.[160] Mr. Trematerra testified that he asked Mr. Russo to provide a "timeline" of PBM in response to "whatever their [the Founders] claims were."[161] The ostensible result of this request is the written statement identified as JTX4.[162] The path that Mr. Russo takes to JTX4 suggests this was manufactured testimony, not a "timeline." This is clearly established by Mr. Trematterra's post-trial revelation of additional text messages.

Mr. Russo testified JTX4 was prepared at PJT's request "before the suit."[163] This testimony is false. It was prepared on January 16, 2024, nearly a year later.[164]

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[160] A460-461:18-16.
[161] A1047-1048:24-9; A1210:1-17.
[162] B398-407.
[163] A376:8-10; A39:11-13 and A379:20-22.
[164] B508; and A1213:1-12.

[165] A second draft is provided to Mr. Trematerra via email on February 6, 2024.[166] A third version is given to Mr. Trematerra on February 14, 2024 and contains a very opinionated "summary" and *a lot of notes*— it was originally withheld by PJT.[167] There is no email of him receiving it, however, and he could not explain how he got it.[168]

At trial, Mr. Trematerra inexplicably testified "I don't know where the document [JTX270] came from."[169] He testified that he had no idea how JTX270, which contains extensive notes, became JTX4, which does not contain the notes.[170] [171] The notes include Mr. Russo telling PJT that his narrative "don't make sense."[172] That note was not included in JTX4.[173]

Mr. Trematerra's explanation for all the holes in the story for JTX4 is he was on a "cruise in the middle of the motion" for "the entirety of January and February 2024."[174]

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[165] B508-09.
[166] B516-25.
[167] A1216:8-14.
[168] A1216-1217:19-22 and A12182-5.
[169] A1217:13-17.
[170] A1218-1219:15-11.
[171] A1215:12-18; A1219:12-24.
[172] B526, 537.
[173] B398.
[174] A1212:10-22.

The second important part of the Trematerra/Russo relationship is how Mr. Russo continually chased, and Mr. Trematerra continually encouraged him to chase, Mr. Trematerra's money in other investments as PBM fell apart and this litigation occurred. Mr. Trematerra's testimony on this subject was somehow worse than about JTX4.

Mr. Trematerra nobly volunteered at trial that he considered it a conflict of interest "to engage in any other negotiations with Mr. Russo or Mr. Nartowicz [one of PBM's key vendors] while the litigation was pending."[175] He explained: [176]

> I used to be a world-renowned professional boxing judge. And we were always taught to walk a fine line and not show any sense of favoritism in any shape, form, or manner. And I did not want anyone to feel that -- especially based on what my attorneys told me, that they might be potential witnesses, that it would be best that I did not do any business with anyone.

He repeated several times that he refused to engage in any such negotiations.[177] He was given several opportunities to caveat or clarify this answer, but "the answer to your question is no [no negotiation]."[178]

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[175] A1220:8-23.
[176] *Id.* at 16-23.
[177] A1220-1221:24-15; and A1221-1222:23-9.
[178] *Id.*

Of course, this was false. He engaged with negotiations with Mr. Nartowicz in August 2023, exchanging specific offers about an investment or loan in Mr. Nartowicz's venture in Orlando, Florida connected to Mr. Russo.[179] [180] [181] [182]

Mr. Russo was presenting Mr. Trematerra with multiple business opportunities in April-May 2023 and thereafter as PBM fell apart. This included the venture with Mr. Nartowicz.[183] Mr. Russo expected compensation if Mr. Trematerra invested in some way in these opportunities, such as through a salary paid by PJT.[184] [185] [186]

"If ever a case demonstrated the validity of the old legal maxim, *falsus in uno, falsus in omnibus* -- false in one thing, false in everything -- this is it." *Schmeusser v. Schmeusser*, 559 A.2d 1294, 1300 (Del. 1989).

But the above actually got far worse after trial, when Mr. Trematterra disclosed that he had "found" more texts with Mr. Russo. These texts include:

(i) Mr. Trematerra telling Mr. Russo on March 15, 2023 that he has no interest in pursuing any locations in Florida

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[179] B428.
[180] A1223-1224:10-24; A1223:4-12.
[181] *Id.* at 11-22 and A1223-1224:23-10.
[182] *Id.*
[183] B415 and B490-91.
[184] B 490.
[185] *Id.*
[186] A1224-1225:13-23: A1226:2-11; A1226-1227:19-8.

(ii) On April 5, 2023, Mr. Trematerra and Mr. Russo apparently *plotting to open a competing business with a similar name*, like "Plant Based Mamma" or "Plant Based Nation, and continuing to do so on May 21 and May 21, 2023

Then, on Mr. Russo's "written statement," there were the following incredible revelations contrary to trial testimony:[187]

In 2024, Mr. Trematterra had exchanges via text with Mr. Russo about the writing of a written statement by Mr. Russo. (JTX-289.104-.116) The text messages reference phone calls between Mr. Trematerra and Mr. Russo. On January 14, 2023, Mr. Trematerra says: "Will you be able to send by tomorrow?" On January 17, 2024, Mr. Russo writes: "did you see what I did" and "did you like that. I have most of it done." On January 21, 2024, Mr. Trematerra says: "Please don't forget they embellished their numbers…"; "P and any other misleading	Trial Tr. at 520: "The only discussion I ever had with him is to provide an honest timelines of the events that transpired in the relationship." Trial Tr. at 519: "You received it [JTX255] from Mr. Russo on January 16, 2024, right" Trial Tr. at 524: Q: "And the reason you didn't provide an email between February 7 and February 14, 2024 is because that email contains what you asked Mr. Russo to put in the document": A: "Absolutely false. In fact, Chris Russo testified to the fact that I never asked him to put anything in a document."

[187] *Id.*; B395-96.

information or lies." (JTX-289.107) On January 29, 2024, Mr. Trematerra says: "It will be so easy to add all the mishaps, poor judgment, etc." (JTX-289.108) On February 7, 2024, Mr. Trematerra says: "Please remember all facts with push and how they stalled us misled us…" (JTX-289.111) On February 9, 2024, Mr. Trematerra says "I'm happy that you have realized what truly transpired." (JTX-289.115) On February 14, 2024, Mr. Trematerra says "I know you would lead down the Primrose path sort of but in reviewing everything you did a lot of work" (JTX-289.117.)	

ARGUMENT

I. THE TRIAL COURT PROPERLY HELD PJT'S EXPULSION TO BE PROCEDURALLY VALID

A. QUESTIONS PRESENTED

Whether the trial court correctly ruled that the Founders were permitted to expel PJT without notice to or a meeting with PJT, where the operating agreement's relevant provisions clearly state and imply that expulsion is for those entitled to vote.

B. STANDARD OF REVIEW

The Founders agree with PJT's recitation of the standard of review on the procedural validity of the expulsion.

C. MERITS OF ARGUMENT

The Court is required to read the operating agreement as a whole, harmonizing it as much as possible, particularly with the conduct of the parties that gives it practical life. *Weinberg v. Waystar, Inc*., 294 A.3d 1039, 1044 (Del. 2023); *Estate of Osborn v. Kemp*, 991 A.2d 1153, 1160 (Del. 2010). A contract shall be construed against the drafter. *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 398 (Del. 1996). Here, that is PJT. A contract is not construed to lead to an "absurd result that no reasonable person would have accepted when entering the contract" or construed to render a provision meaningless or ineffectual. *Weinberg*, 294 A.3d at 1044.

If the operating agreement's expulsion provision could be defeated by PJT refusing to attend a "meeting," that would certainly be an "absurd result" that renders

the entire provision meaningless and ineffectual. But PJT's reading has no relation to common sense contractual interpretation and does not offer a harmonious reading at all. But the Founders do: (i) they can have a meeting without PJT when PJT is not entitled to vote; and (ii) they can adopt a resolution without PJT when PJT is not entitled to vote. This is precisely what the trial court held.

A. The Operating Agreement Does Not Require A "Meeting" or "Unanimous Written Consent of The Members" For Every Decision of The Company

In analyzing the "internal affairs" of PBM, there are three steps: (i) does the operating agreement "address the issue"; (ii) if it does not, does a default provision of the LLC Act apply; and (iii) "if neither source addresses the matter, then the LLC Act instructs that the rules of law and equity...shall govern." *Godden v. Franco,* 2018 Del.Ch. LEXIS 283 at *19-20 (Del. Ch. 2018). The trial court properly held the operating agreement did not require every Company decision to be at a "meeting" or by unanimity.

First, paragraph 6.01 of the operating agreement does not describe any particular process for management and merely says "sole and exclusive control" and that "the Members shall make all decisions and take all actions for the Company not otherwise provided for in this Agreement." The phrase "otherwise provided" is a clear reference to the LLC Act, which is a gap-filler for the operating agreement. *Godden, supra*. The LLC Act says:

> Unless otherwise provided in a limited liability company agreement…the members may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing…by members having not less than the minimum number of votes that would be necessary…take such action at a meeting…

6 Del. Code § 18-302(d).

Article 8 of the Operating Agreement merely describes *how* "meetings" are to be conducted. It does not say *they must occur*. In other words: Article 8 does not "otherwise provide" differently than § 18-302(d) and therefore the latter applies, per the LLC Act. *Godden, supra*.

This was precisely the holding in *Paul v. Del. Coastal Anesthesia, LLC,* 2012 Del.Ch. LEXIS 107 at *7-8 (Del. Ch. May 29, 2012), where it was held that the operating agreement did not "specifically disallow votes by written consent." The same is true here: the operating agreement does not "specifically disallow" votes except at a "meeting."

Second, the expulsion provision of the Operating Agreement must be read in conjunction and harmonized with Article 8. *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 56 (Del. 2019). There is an obvious, reasonable harmonization: "unanimous written consent of members" means *those entitled to vote*. Paragraph 8.06(b) supports this harmonization because it defines the "record date for determining Members **entitled to consent** to action in writing without a

meeting…" [emphasis added].[188] This is one of the facts in *Paul*. This fact alone negates PJT's attempted distinction between "voting" and "consent." The operating agreement may use different terms, but it is talking about *the same thing*: the right to participate and provide a yes or no. See Del. Code 6 § 18-302.

B. PJT's Argument On The Language of The Operating Agreement Defy The Overall Language Itself

It is worth emphasizing that several of PJT's key arguments on the expulsion provision are completely divorced from the actual wording at issue here.

PJT says that it "has a right to attend and vote at expulsion meetings; to-be-expelled Members also have notice rights and the right to be heard."[189] The operating agreement says *literally the opposite*: "**other than a matter for which the affirmative vote of the holders of a specified portion of the Percentage Interests of all Members entitled to vote is required by the Act or this Agreement**." The expulsion provision is a "specified portion" different than a "Simple Majority" because it expressly excludes the "to-be-expelled member." The "unanimous consent" provision says: "by unanimous written consent of the Members **or committee members**, as the case may be." This contemplates consent of less than all members because it references "or committee members," not *all members*.

[188] A1476 at ¶ 8.06(b); B157.
[189] Brief at 34.

C. The Expulsion Provision Makes Eminent Sense Given The Structure Of The Company

Remember the structure of this Company. PJT was the investor with no prior relationship to the Founders. The Founders built the brand. It makes perfect sense that the Founds could expel PJT without its participation, but the converse is not true: PJT could not unilaterally expel any of the Founders without unanimity among the remaining Founders. PJT tries to elide this point by saying "PJT and a Founder could call a meeting to expel another Founder."[190] Yes, that could happen, *and the to-be-expelled Founder could not block the meeting by failing to attend*. The protection the latter has in that situation is the unlikelihood that a Founder would vote to expel another Founder.

D. PJT Acquiesced In The Resolution and Otherwise Waived Challenge to The Procedural Validity of The Resolution

Regardless of the interpretive dispute above, PJT abandoned his challenge to the procedural validity of the Resolution. The trial court did not rule on this because it did not have to, but this falls under "any basis in the record" set forth below.

Under 6 Del. C. § 18-302(e), PJT ratified the only alleged procedural invalidity in the Resolution— notice of a "meeting" under Article 8 of the operating agreement— by his counsel's participation in a 10-day "remote meeting" from June 9, 2023 through June 20, 2023 under paragraph 8.06 of the operating agreement.

[190] Brief at 43.

Under § 18-302(e), the failure of notice was waived and ratified when PJT chose to engage in substantive discussions on the Resolution but ultimately declined reinstatement. See Del. Code 6 § 18-302(d) (remote meeting, proxy, electronic transmission); *XRI Inv. Holdings LLC v. Holifield*, 2022 Del.Ch. LEXIS 229 at *158 n.101-102 (Del. Ch. 2022) (voidable act can be ratified); See *Paige Capital Mgmt., LLC v. Lerner Master Fund, LLC,* 22 A.3d 710, 727 (Del. Ch. 2011) (settlement discussion admissible for another purpose).

II. THE TRIAL COURT DID NOT BASE ITS RULING ON THE PROCEDURAL VALIDITY OF THE EXPULSION ON UNRAISED ARGUMENTS

A. QUESTIONS PRESENTED

Whether the trial court addressed unraised issued in its ruling on the procedural validity of the expulsion, where it referenced raised arguments and explained their common import and consequence

B. STANDARD OF REVIEW

Summary judgment may be affirmed on any basis in the record and may be affirmed on grounds other than those on which the trial judge relied. *Riverbend Community, LLC. v. Green Stone Engineering, LLC., 55 A. 3d 330 (Del. 2012).*

C. MERITS OF ARGUMENT

PJT's argument on "party presentation principles" is tortured.

First, it is simply not true that "no party raised" the three items listed at page 39 of PJT's appellate brief: there were numerous arguments about the meaning of "entitled to vote," the "meeting requirement flow[ing] into the consent requirement," and "vote," "consent," "simple majority," and the expulsion provision.[191]

Second, PJT's literalism with "no party raised" is striking for how similar it is to its substantive arguments, missing form over substance. It is well-settled that to be "raised," an "issue" need only be "fairly presented," not literally word-for-word

[191] A100, A165, A200, A212.

what the trial court said or relied on. *Scion Breckenridge Managing Member, LLC v. ASB Alligiance Real Estate Fund*, 68 A.3d 665, 679-80 (Del. 2013).[192]

Third, the trial court was eminently correct that it is a basic principle in the LLC Act that the vote requirement flows into the consent requirement. Del. Code Ann. 6 § 18-302 (West).

Fourth, PJT's "party presentation principles" argument makes no difference because the interacting provisions of the operating agreement are *in the record* and this Court can *read them and reach its own determination*. *See Riverbend Community, LLC,* 55 A.3d at 334 (any basis in the record). This is where PJT gives away the game. Because instead of making *that argument*, PJT argues inexplicably for a *remand* to determine "intent." The trial court made this distinction itself when it said *it did not need to reach* the Founders' arguments that the practice of PJT and the Founders in the operating agreement could determine intent.[193]

[192] A174, A191, A194, A207, A209, A211, A238, and A239.
[193] Exhibit A to Appellant's Brief at 54-55:21-9.

III. THE TRIAL COURT'S AFFIRMANCE OF PJT'S EXPULSION WAS UPON OVERWHELMING EVIDENCE

A. QUESTIONS PRESENTED

Whether the trial court properly affirmed the expulsion, where it was beyond dispute that PJT repudiated the operating agreement in numerous ways in order to try to leverage a "better deal" while tanking the Company.

B. STANDARD OF REVIEW

The Founders agree with PJT's standard of review for the trial court's affirmance of PJT's expulsion.

C. MERITS OF ARGUMENT

Under the LLC Act, there is no statutory right to expel a member. *Robinson v. Darbeau*, 2021 Del. Ch. LEXIS 36 at *18-19 (Ch. Mar. 1, 2021). Instead, that right must be set forth in the operating agreement (or other contract) among the LLC's members. *Id.*

The operating agreement provides several grounds for expulsion.[194]

> 15.04 **Expulsion**. A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) if that Member (a) has willfully violated any provision of this Agreement; (b) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, (c) engaged in wrongful conduct that adversely and materially affects the business or operation of the Company or (d) met any other condition that allows a Member to be expelled under the Act. Such a Member shall be considered a Defaulting Member, and the Company or other Members may also exercise any one or more of the remedies provided for in Paragraph 15.01. The Company may offset any

[194] A1485 at ¶15.04.

Aside from the Resolution, the Founders provided extensive explanation of the bases for expulsion in discovery responses.[195]

A. PJT Willfully Violated The Operating Agreement

The operating agreement provides for expulsion its "willful violation." The parties disputed the meaning of "willful violation. The trial court held that "willful" meant "intentionally and know that its action would cause a breach." The Founders disagreed with this interpretation because the language of the operating agreement is vastly different than in *Holifield*, 2024 Del.Ch.LEXIS 260 at *55-56, relied on by the trial court, where "willful" was interpreted to include knowledge the conduct would be a breach. There, "willful" and "gross negligence" were in the same clause and *the object* was the operating agreement, so it makes interpretive sense in that context because "both terms are relational." Id. [emphasis added]. Here, "willful violat[ion]" refers to the operating agreement, but "gross negligence" does not, so the traditional understanding of "willful" should apply: disregard of the operating agreement that results in a breach even if the breach was not the "conscious object of the act." *Hexion Specialty Chems., Inc. v. Huntsman Corp*., 965 A.2d 715, 748 (Del. Ch. 2008).

Regardless, PJT knowingly failed to honor the "Capital Commitment," ultimately stating on May 23, 2023 that the Company was at an impasse and should

[195] A2759.

be dissolved. At one point in May 2023, Brian Fitzpatrick texted Mr. Trematerra to try to speak to him and Mr. Trematerra did not even know who he was— his business partner![196] This is a perfect example of how this became a legal hostage situation (to the extent it was not already prior to mid-March 2023).

Mr. Trematerra held the "Capital Commitment" over the Founders' proverbial heads. PJT purported to bind PBM to the Beverly Hills lease and honor the lease's financial obligations. At that point, PJT obligated itself to fund the "Capital Commitment" in substantial part. PJT then dishonored the obligation, willfully violating the operating agreement.

No other interpretation of the operating agreement and contribution agreement makes sense.

First, they must be read together because they incorporate one another. *Narayanan v. Sutherland Glob. Holdings, Inc.*, 2016 Del. Ch. LEXIS 100 at *33 (Ch. July 5, 2016).

Second, the contribution agreement defines "PJT Holdings Initial Capital Contribution" as a "committed capital investment up to $3,500,000," including an "initial amount of $200,000." In exchange, Plant Based Mafia LLC assigned its intellectual property to PBM.[197] So, *at a minimum*, PJT has exchanged $3,500,000

[196] B492.
[197] B438 at ¶2.1.

for the intellectual property of Plant Based Mafia LLC. Equally importantly, what PJT *cannot do* is repudiate the operating agreement and contribution agreement by *requiring renegotiation* for a transaction that concededly costs less than $3,500,000 (or would not exceed that amount in the aggregate after prior contribution). See e.g. *CitiSteel USA, Inc. v. Connell Ltd. Pshp., Luria Bros. Div.,* 758 A.2d 928, 931 n.7 (Del. 2000).

Third, funding the Beverly Hills lease would not have exceeded $3,500,000 in the aggregate and the strategy was always to open one restaurant to prove concept.

Fourth, the Founders' assertion of repudiation is supported by the parties' course of conduct. See *AT&T Corp. v. Lillis*, 970 A.2d 166, 172 (Del. 2009) (course of conduct). If it were true that PJT had "discretion" on *any contribution*, then PJT *exchanged nothing for Plant Based Mafia LLC's intellectual property*, a completely absurd interpretation. See *Estate of Osborn* , 991 A.2d at 1160-1161. Trial established the intellectual property was approximately half the value of the "Capital Commitment," which— true to form— makes total sense.

Fifth, the operating agreement and contribution agreement must be interpreted consistent with its purpose. Id. at 1160 n.21. The purpose of the operating agreement was to develop *and operate* a restaurant. This purpose could not be achieved by $200,000.

Sixth, even if PJT had some discretion on the timing of the $3,500,000, he was required to use that discretion in good faith. *Terrell v. Kiromic Biopharma Inc.*, 297 A.3d 610, 620 n.37 (Del. 2023). The trial court properly held he did not.[198]

PJT's arguments against "willful violation" yet again rely on literalism to the point of absurdity.

PJT argues that the Resolution does not reference repudiation. Of course it does. It says PJT refused to pay the "Capital Commitment."

PJT argues that Mr. Trematerra "confirmed his continued willingness to pay." This should be called what it is: an outright falsehood. This is proven by the text messages that Mr. Trematerra *withheld at trial*, where he tells Mr. Russo that he is not willing to proceed as of mid-March 2023.[199] But he said this to the Founders outright on May 25, 2023, using the word "impasse,"[200] and multiple times before that.

PJT argues that Mr. Trematerra continued "paying expenses." This is an awfully loose argument and appears to reference Mr. Trematerra's payment *of expenses to defend himself on the personal guaranty after he directed the Company to breach the lease*.

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[198] Opinion at 42.
[199] B389, B393 and B495.
[200] A2327; A2369

And PJT argues that repudiation exists only in "outright refusal." This is clearly wrong and rewords precedent through omission. Repudiation obviously may occur through a series of acts evidencing rejection of an obligation *or* it may occur through *refusal to proceed without renegotiation of already-binding terms*. *CitiSteel USA Inc.*, 785 A.2d at 931.

B. PJT Engaged In Gross Negligence Against The Company or One or More Members And Engaged In Wrongful Conduct That Adversely and Materially Affects The Business or Operation of The Company

The "gross negligence" language in the operating agreement for expulsion corresponds with the "traditional duty of care." *In re Cadira Grp. Holdings, LLC Litig.*, 2021 Del. Ch. LEXIS 151 at *26-27 (Ch. July 12, 2021). PJT's use of its tie-breaking vote to destroy PBM and the Beverly Hills lease easily justified expulsion, as the trial court held, because it was "akin to recklessness."[201]

"Gross negligence," as a duty of care, does not require harm (at least here); it requires "awareness of and conscious[] disregard[] [of] a substantial and unjustifiable risk…of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." *Holifield*, 2024 Del. Ch. LEXIS 260 at *55-56.[202]

[201] Opinion at 28.
[202] Opinion at 49.

The trial court properly held that at least two actions by PJT satisfied at least "gross negligence": acting unilaterally to terminate the Beverly Hills lease, and terminating it when it was the Company's only substantial asset, on which the Company had secured very favorable terms.

PJT's refusal to fund the Beverly Hills lease after signing it warranted expulsion by itself because PJT wielded his tie-breaking vote in its own personal interest, not in the interest of PBM. This is a particularly sacrosanct principle of Delaware law:

> The duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a …controlling shareholder...

Deane v. Maginn, 2022 Del. Ch. LEXIS 315 at *27-29 (Ch. Nov. 1, 2022). The Delaware Supreme Court has explained this principle in stark terms and that it includes the duty to "**refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it**." *Cede & Co. v. Technicolor*, 634 A.2d 345, 361 (Del. 1993) [emphasis added]. But PJT acted "rashly" and "depriv[ed] the Company of a valuable asset."[203]

In this regard, PJT's (and Mr. Trematerra's) recklessness was particularly spectacular. PJT bound PBM to the Beverly Hills lease, after spending months

[203] Opinion at 48.

haggling with the landlord on the best possible terms. By all accounts, PJT achieved the best possible terms, including as testified to by Ms. Boyce. Then PJT blew up the Beverly Hills lease and PBM because the Founders would not give in to PJT's and Mr. Trematerra's personal interest to extract more equity in exchange for honoring the lease. The cancellation of the lease was the effective end of PBM and that choice was not made for any interest of PBM, but solely for PJT.

The Beverly Hills landlord— an outside observer— put it perfectly in responding to PJT's termination of the lease: a dispute over internal composition of PBM was not a basis for a reasonable person to cancel the Beverly Hills lease.[204] See *Holifield,* 2024 Del.Ch.LEXIS 260 at *55-56 (reasonable person standard for gross negligence).

PJT does not argue much in response to "gross negligence," other than to say that holding a meeting with the Founders or trying to work out their differences would have done no good. But that both ignores the record and misses the fundamental point. The record is clear that PJT cancelled the Beverly Hills lease as soon as it got an answer on renegotiation it did not like. While PJT suggests the Founders had rejected going to *California at all*, this is false; they rejected going under the unilateral terms imposed by PJT. The record is clear that the Beverly Hills

[204] B453-54.

lease was still available to be "worked out" after March 14, 2023 and through at least the end of March 2023, despite PJT's reckless termination.[205] [206]

The trial court's fundamental point in affirming the expulsion was correct: PJT was not permitted to act with the whimsy that it did simply because the Founders rejected PJT's bad faith attempt to change the operating agreement/contribution agreement.

[205] B391; 197:2:5 and 12-16.
[206] B391; B197-98:23-16.

IV. THE TRIAL COURT CORRECTLY UPHELD FORFEITURE AND ORDERED INDEMNIFICATION

A. QUESTIONS PRESENTED

Whether the trial court correctly upheld forfeiture, where the operating agreement expressly provides for it as a remedy against a "defaulting member" at the sole option of the other members and the Founders counterclaimed for forfeiture.

B. STANDARD OF REVIEW

The Founders agree with PJT's standard of review for the trial court's affirmance of PJT's expulsion.

C. MERITS OF ARGUMENT

The expulsion provision of the operating agreement expressly states that an expelled member is a "defaulting member." The "defaulting member" provision states that the Company, controlled by *the remaining Members after expulsion*, may choose among several remedies for a "defaulting member," including "forfeiture."[207] Accordingly, the Founders were properly awarded judgment on their counterclaim for forfeiture of PJT's membership. See e.g. *Cantor Fitzgerald, Ltd. P'ship v. Ainslie*, 312 A.3d 674, 692 (Del. 2024) (rejecting disfavor of forfeiture where contract provided for that remedy).

[207] A1485 at ¶15.01 and 15.04.

PJT argues that PJT was entitled to "notice" of forfeiture. No one disputes that. But PJT has a funny idea of notice. The Founders counterclaimed against PJT *for forfeiture*. PJT had notice for the year-and-a-half of the litigation. "Notice" is not defined in the operating agreement, but the basic definition is "reasonably calculated, under all the circumstances, to apprise interested parties." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Notably, PJT's argument about "notice" was not part of PJT's "issues of fact and law" for the trial.[208]

The trial court appropriately held that the Founders were entitled to indemnification under the operating agreement because it was, as PJT argued repeatedly prior to losing, a fee-shifting provision when the members sue each other for breach of the operating agreement.[209]

PJT's argument that a hearing on "fair value" could lead to indemnification for PJT makes no sense because the indemnification provision is triggered only by *breach of the operating agreement*. It does not reference failure to pay "fair value" in expulsion. "Fair value" is an assertion outside the operating agreement dependent upon a concept of Delaware law that the operating agreement chose not to include.

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[208] B1 at ¶4, B365-66.
[209] A1490 at ¶18.11; Exhibit A to Appellant's Brief at 59:9-12.

CONCLUSION

For the foregoing reasons, Appellees respectfully request the trial court's rulings above be affirmed.

Dated: December 23, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, a true and correct copy of the foregoing Appellees' Amended Opening Brief was caused to be served on the following counsel of record via File & Serve Express:

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