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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

APPELLANT'S REPLY BRIEF

Dated: January 6, 2026

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INTRODUCTION[1]

No matter what the Answering Brief says, the Expulsion of PJT from the Company was wrongful and should be invalidated. Thus, the Trial Court erred in upholding the Expulsion, and the Court should rule for PJT on this appeal.

PJT has appealed several rulings, but all other errors were precipitated by the Summary Judgment Ruling, which approved the Expulsion by written consent in violation of the Operating Agreement's unambiguous terms. The Trial Court's endorsement of PJT's wrongful Expulsion was erroneous, and that decision's implications on current and future participants in Delaware alternative entities are thus considerable.

PJT was the Company's sole source of capital, and its investment was protected by, among other things, contract language giving it control over fifty percent of the Company's voting rights, plus the right to break deadlocks. The Operating Agreement was thus negotiated to establish a 50/50 governance structure in which PJT held tie-breaking control.

The Trial Court's Summary Judgment Ruling strips PJT of that bargained-for right and converts the agreed-upon framework into one of unilateral control by Founders. That result contradicts the Operating Agreement's unambiguous language,

[1] Unless defined in this brief, capitalized terms have the same meanings as in PJT's Opening Brief (the "Opening Brief" or "OB"). "Answering Brief" and "AB" refer to Founders' Amended Answering Brief.

violates core principles of Delaware law, and sets a dangerous precedent that undermines negotiated governance arrangements.

In short, the primary question for this Court is whether the Trial Court's interpretation of the Operating Agreement—and the Expulsion it endorsed—can be reconciled with the Operating Agreement's unambiguous language and Delaware law. It cannot. Thus, for the reasons detailed below and in the Opening Brief, the Trial Court's Summary Judgment ruling should be reversed, and, to the extent necessary, all other issues should be resolved in PJT's favor.

Finally, resolving the Trial Court's errors is not advanced by Founders' injection of hyperbole and irrelevant issues, which cannot be fully addressed within the space of this brief. That said, Founders' strategy should be recognized for what it is: an attempt to shade the Court's view and distract from the merits, on which Founders cannot prevail.

ARGUMENT

I. THE COURT SHOULD REVERSE THE SUMMARY JUDGMENT RULING.

A. THE EXPULSION IS INVALID BECAUSE FOUNDERS IGNORED UNAMBIGUOUS LANGUAGE IN THE OPERATING AGREEMENT GOVERNING MEMBER ACTION.

The Court should reverse the Summary Judgment Ruling because:

- Founders breached the Operating Agreement's unambiguous language by purporting to expel PJT via written consent, in lieu of a duly-called, contractually required Member meeting;[2] and
- Even if expulsion by written consent were permissible, Founders failed to comply with the Operating Agreement's unambiguous language governing action by written consent.[3]

Founders' arguments to the contrary, which do not fully engage with the Trial Court's reasoning, fail.

1. The Operating Agreement's Unambiguous Language Controls.

As required by Delaware law, when interpreting an LLC agreement, the Court "enforce[s] the plain meaning of clear and unambiguous language," which displaces conflicting, discretionary provisions in the LLC Act. *Holifield v. XRI Inv. Holdings LLC*, 304 A.3d 896, 922, 924 (Del. 2023). *See also Achaian, Inc. v. Leemon Fam.*

[2] OB at 22-24.
[3] *Id.* at 25-36.

LLC, 25 A.3d 800, 803 (Del. Ch. 2011). Those fundamental principles prevail in this analysis, not the ad hoc, generalized principles of construction that Founders proffer.

To begin with, despite Founders' urging, the *contra proferentem* doctrine is inapplicable.[4] Because the relevant contract provisions are unambiguous, Founders' argument that the Operating Agreement should be "construed against" PJT[5] has no merit. *See Woodward v. Farm Fam. Cas. Ins. Co.*, 796 A.2d 638, 642 (Del. 2002). That the Operating Agreement stemmed from an arm's-length negotiation[6] is yet another reason why *contra proferentem* does not apply. *See E.I. du Pont de Nemours & Co. v. Shell Oil Co.*, 498 A.2d 1108, 1114 (Del. 1985).

Founders also cite the uncontroversial principle that "[a] contract is not construed to lead to an absurd result that no reasonable person would have accepted . . . ."[7] But at the same time, "[p]arties have a right to enter into good and bad contracts, the law enforces both." *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010). LLC "disputes amplify these contractarian principles," *Mehra v. Teller*, 2024 WL 4249822, at *6 (Del. Ch. Sept. 20, 2024), and the Court will not "impos[e] its notion of reasonableness" in interpreting an alternative entity's governing document. *Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 677 (Del. 2024). At bottom, no

[4] AB at 37.
[5] *Id.*
[6] A884-86.
[7] AB at 37 (quotation omitted).

matter what Founders say, the Operating Agreement's unambiguous language controls.

2. Founders Breached the Operating Agreement by Purporting to Expel PJT Without a Member Meeting.

Under the Operating Agreement's unambiguous language, expulsion requires a Member meeting and cannot be accomplished by written consent.[8] Thus, because Founders claim to have expelled PJT by written consent without a meeting,[9] the Expulsion was ineffective.

Founders disagree with that conclusion based on 6 *Del. C.* § 18-302(d).[10] But Section 18-302(d) is conditional, not absolute. Indeed, Section 18-302(d) lets LLC Members act by written consent "[u]nless otherwise provided in a limited liability company agreement."[11]

According to Founders, Section 18-302(d) allowed them to expel PJT by written consent without a meeting because the Operating Agreement does not require Members to act via meetings.[12] But as PJT has painstakingly explained, expulsion under the Operating Agreement's expulsion provision—Paragraph 15.04—is effectuated by a "vote,"[13] rather than "consent," and is thus action

[8] OB at 22-25.
[9] SJR at 15. *See also* A162, A682.
[10] AB at 38-40.
[11] Emphasis added.
[12] *Id.*
[13] A1485.

requiring a meeting.[14] Because it conflicts with Section 18-302(d), Paragraph 15.04 controls. *See Achaian*, 25 A.3d at 803 n.11.

In an attempt to avoid that unwelcome outcome, Founders suggest that the word "vote" does not require a meeting because it supposedly means the same thing as "consent."[15] But as previously explained, the terms "vote" and "consent" are not interchangeable as used in the Operating Agreement.[16] Those terms are also not synonyms in Section 18-302(d), which, as in the Operating Agreement, assumes that a "vote" occurs at a meeting, while "consent" signifies action without a meeting.

It bears emphasis that PJT's arguments, on the critical point of why the word "vote" in Paragraph 15.04 requires a meeting, are tied to the unique language of the specific Operating Agreement at issue here. That key point separates PJT and Founders on this issue and is at least one factor that makes Founders' reliance on *Paul v. Delaware Coastal Anesthesia, LLC*, 2012 WL 1934469 (Del. Ch. May 29, 2012)[17] misplaced. The Court in *Paul* also did not consider an argument similar to what Founders assert here, which is another reason why *Paul* does not provide the support Founders seek. *See Donovan v. Whitney*, 1992 WL 1368643, at *6 (Del. Ch.

[14] OB at 23-25.
[15] AB at 40.
[16] OB at 23-25.
[17] AB at 39-40.

Oct. 16, 1992) ("The absence from the opinion of any such discussion is yet another reason not to rely on it generally or to give it any deference in this case.").

Further, the Court of Chancery's analysis in *Paul* suggests that an LLC agreement must expressly opt out of an LLC Act default rule. *See Paul*, 2012 WL 1934469, at *3 ("Certainly nothing in the Operating Agreement specifically disallows votes by written consent."). As thoroughly explained in PJT's Opening Brief, that proposition conflicts with the LLC Act and this Court's precedent.[18]

In sum, for these reasons and those in the Opening Brief, Members must convene a meeting and "vote" to effectuate an expulsion under the Operating Agreement. As Founders failed to follow those formalities, the Expulsion is invalid, and the Court should reverse the Trial Court's Summary Judgment Ruling.

3. Even if Expulsion by Written Consent Were Permitted, Founders' Attempt to Expel PJT Failed Because They Disregarded the Operating Agreement's Unambiguous Language.

The Expulsion was invalid even if, *arguendo*, the Operating Agreement permitted expulsions by written consent.[19] Founders' arguments to the contrary have no merit.

[18] OB at 28-31.
[19] *Id.* at 25-36.

a. *If Permitted, Expulsion by Written Consent Would Require Approval by All Members.*

Paragraph 8.05(a) states that action by written consent requires the "unanimous written consent of the Members . . . ,"[20] which includes Founders *and* PJT. Thus, Founders' contention that expulsion by written consent only required approval by some Members—those "entitled to vote" on expulsion[21]—fails because it contradicts the Operating Agreement's unambiguous language.

Founders argue that Paragraph 8.05(a) "contemplates consent of less than all members because,"[22] in full, that provision states that Members may act "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 . . . ."[23] Founders waived this argument by not making it below. *See State Farm Mut. Auto. Ins. Co. v. Spine Care Delaware, LLC*, 238 A.3d 850, 859 (Del. 2020).

In any event, this argument lacks merit. Paragraph 15.04 does not refer to Members taking action to expel another Member as a "committee."[24] And under Paragraph 6.01(l) of the Operating Agreement, a "committee" must be formally

[20] A1474 (emphasis added).
[21] AB at 38-39.
[22] *Id.* at 40.
[23] A1474 (emphasis added).
[24] A1490.

formed and empowered.[25] Nothing in the record suggests that a "committee" was formed for the purpose of expelling PJT.

Founders' citation to Paragraph 8.05(b) of the Operating Agreement[26] does not help them either. Indeed, no matter the "[t]he record date for determining Members entitled to consent to action in writing without a meeting . . . "[27] under Paragraph 8.05(b), action by written consent requires "unanimous written consent of the Members . . ." under Paragraph 8.05(a).[28]

Simply put, Founders' contention that the Expulsion could be approved by less than all of the Company's Members fails because it contradicts the Operating Agreement's unambiguous language. Thus, the Expulsion was invalid because it was only approved by Founders, rather than all of the Company's Members.[29]

b. *PJT Was "Entitled to Vote" on the Expulsion.*

Building from its misplaced contention that expulsion by written consent would only require approval by Members who are "entitled to vote," Founders argue that the Expulsion was valid because PJT was not "entitled to vote" on that issue.[30]

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[25] A1469.

[26] AB at 39-40. The Answering Brief's reference to "Paragraph 8.06(b)" is a mistake – no such provision exists, and the language quoted in the Answering Brief is in Paragraph 8.05(b). (*See* A1474).

[27] A1474.

[28] *Id.* (emphasis added).

[29] A2757.

[30] AB at 37-38, 40.

The Court need not reach this argument because, again, expulsion by written consent, if permitted, would require approval of all Members in accordance with Paragraph 8.05(a). For argument's sake, however, PJT *was* "entitled to vote" on the Expulsion.

Founders claim that Paragraph 15.04 "expressly excludes" to-be-expelled Members from the expulsion process.[31] While Founders do not say so, one can only presume that they are relying on the following underlined phrase from Paragraph 15.04: "A Member may be expelled from the Company by unanimous vote of all other Members (not including the Member to be expelled) . . . ."[32]

That language does not rescue Founders because, as explained in the Opening Brief, it "refers to the *votes necessary* at a meeting to expel a Member—the voting standard that must be achieved to effectuate an expulsion—not those '*entitled to vote*' at an expulsion meeting."[33] Founders fail to substantively address this point, which speaks volumes as to the merits of their position.

Similarly lacking is Founders' resort to arguing that "[i]t makes perfect sense" for Founders to have the ability to unilaterally expel PJT on the flimsy basis that they "built the [Plant Based Mafia] brand" and had "no prior relationship" with PJT.[34] How these points make Founders' interpretation of Paragraph 15.04 "sensible"

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[31] *Id.* at 40.
[32] A1485 (emphasis added).
[33] OB at 34 (emphasis in original).
[34] AB at 41.

is unclear. The capital investment exclusively came from PJT.[35] It is thus unreasonable to assume that the parties would have agreed to an expulsion provision allowing Founders to expel PJT, take its investment and Company interest, and leave it without even notice rights and the opportunity to appear at an expulsion meeting to make its case before such a draconian result could prevail.[36]

Ultimately, though, what makes "sense" is beside the point because this dispute depends on the Operating Agreement's unambiguous language, not the Court's "notion of reasonableness." *Cantor Fitzgerald*, 312 A.3d at 677. Founders could have tried to negotiate for the right to expel PJT while excluding PJT from the process, but Delaware law does not enforce language the parties do not agree to. *See Glaxo Grp. Ltd. v. DRIT LP*, 248 A.3d 911, 919 n.31 (Del. 2021).

Next, Founders argue that giving PJT a right to vote defeats the purpose of Paragraph 15.04 because PJT could prevent its expulsion by not appearing at a meeting.[37] This argument was previously debunked.[38] To recap, Paragraph 15.04 is not surplusage because, "[f]or example, PJT and a Founder could call a meeting to expel another Founder."[39]

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[35] A895.
[36] OB at 32, 34-35.
[37] AB at 37-38.
[38] OB at 35.
[39] *Id.*

Founders' retort—that it is "unlikel[y] that a Founder would vote to expel another Founder"[40]—misses the mark. Since there is a scenario in which Paragraph 15.04 has meaning, that provision is not superfluous. *See Boardwalk Pipeline Partners, LP v. Bandera Master Fund LP*, 288 A.3d 1083, 1117 (Del. 2022) ("Surplusage means a provision has no meaning. If there is a reasonable construction, it is not for courts to assign a meaning beyond what was written.") (footnote omitted).

4. Founders' Acquiescence/Waiver Argument Has No Merit.

Founders argue that PJT waived or "abandoned [its] challenge to the" Expulsion's "procedural validity" because PJT's counsel supposedly participated in a "remote meeting" that "ratified" the Expulsion and PJT "ultimately declined reinstatement."[41] This argument must be rejected as revisionist history that lacks legal merit.

First, the supposed "remote meeting" was a series of settlement calls and correspondence between Founders' representative, on one hand, and PJT's counsel, on the other hand, in the days following the Expulsion, before PJT sued.[42] Founders cite Paragraph 8.06 of the Operating Agreement,[43] which permits meetings "by means of conference telephone or similar communications equipment . . ."[44] and

[40] AB at 41.
[41] *Id.* at 41-42.
[42] *See, e.g.*, A258-A334.
[43] AB at 41.
[44] A1474.

similar language in 6 *Del. C.* § 18-302(d).[45] Respectfully, there is no world in which settlement discussions constitute a "meeting" in this context.

Second, Founders' claim that PJT approved or "ratified" the Resolution is wrong. In the back and forth mentioned above, PJT's counsel said, "The Resolution is unlawful and invalid under Delaware law,"[46] and, "We do not believe the resolution was valid, and Mr. Trematerra reserves all rights."[47]

Third, PJT did not "decline[] reinstatement."[48] Founders' representative indicated that Founders would reinstate PJT, saying that, "as an olive branch [Founders] would like to either void the Resolution or proceed with any other reasonable means you propose to rescind/void/etc. and restore the entity to what it was prior to the Resolution."[49] When PJT's counsel asked for proof that the Expulsion had been rescinded,[50] Founders backtracked and declined to cancel the Resolution, while their representative urged PJT to sue: "To make things clear: They reject the offer. They aren't sending any documents . . . . Do what you have to do. Enough with the threats and posturing. Get on with it."[51]

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[45] AB at 42.
[46] A279 (emphasis added).
[47] A328 (emphasis added).
[48] AB at 42.
[49] A330.
[50] A333.
[51] A332.

Fourth, not least of all, Founders' representation that the Trial Court "did not rule on this" argument misstates the record.[52] Contrary to what Founders represent, the Trial Court expressly rejected this argument in the Summary Judgment Ruling:

> There's another argument we didn't hear a lot about today, but it was in the papers, and that's ratification or acquiescence. I will tell you that I don't see any basis to think that PJT ratified or acquiesced in its expulsion. There were references to a ten-day meeting, but that wasn't a meeting to vote on the expulsion; it was settlement negotiations. I'm not going to dissuade parties from engaging in settlement negotiations by putting them to a Hobson's Choice, where if they try to settle a case, they're at risk of ratifying or acquiescing or waiving their claims.[53]

Finally, Founders cite 6 *Del. C.* § 18-302(e) without explaining why.[54] Section 18-302(e) concerns amending LLC agreements, an issue that is irrelevant to Founders' argument (or any other issue on appeal).

B. THE TRIAL COURT DISREGARDED PARTY PRESENTATION PRINCIPLES IN REACHING THE SUMMARY JUDGMENT RULING.

Merits aside, the Summary Judgment Ruling is flawed because it is based on at least three issues the Trial Court raised *sua sponte* in violation of party presentation principles (the "*Sua Sponte* Issues").[55] Founders contend that the parties introduced the *Sua Sponte* Issues,[56] but they are wrong in that assertion. Founders

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[52] AB at 41.

[53] SJR at 56 (emphasis added).

[54] AB at 41-42.

[55] OB at 38-41. The *Sua Sponte* Issues are the issues listed in Paragraphs 1, 2, and 3 on pages 39 and 40 of the Opening Brief.

[56] AB at 43.

generally cite the parties' summary judgment briefing as support,[57] but the *Sua Sponte* Issues are not discussed in those briefs.

Founders throw in the standard for determining whether a party has preserved an issue for appeal as somehow addressing PJT's argument[58] in addition to claiming that the Trial Court was substantively correct about one of the *Sua Sponte* Issues.[59] These arguments are irrelevant to the issue at hand – the Trial Court's reliance on issues no party raised, which warrants reversal and/or remand.[60]

Founders also incorrectly suggest that PJT wants to avoid a full analysis of the Operating Agreement's unambiguous language.[61] As discussed above and previously,[62] the Summary Judgment Ruling contravenes the Operating Agreement's unambiguous language. Assuming *arguendo* that the Court disagrees with that conclusion, reversal/remand is warranted because the *Sua Sponte* Issues create ambiguities and questions about the parties' intent that should not have been resolved on summary judgment,[63] rendering the proceedings flawed and requiring

[57] *Id.* at 43 n.191.
[58] AB at 43-44.
[59] *Id.* at 44 (contending that the Trial Court was "correct that it is a basic principle in the LLC Act that the vote requirement flows into the consent requirement").
[60] OB at 41.
[61] AB at 44.
[62] OB at 22-36.
[63] *Id.* at 41.

this Court's correction to ensure the proper resolution of this important dispute concerning the governance of a Delaware LLC.

* * *

For the reasons above and in the Opening Brief: (1) the Expulsion was ineffective because Founders failed to comply with unambiguous language in the Operating Agreement governing Member action; and (2) the Trial Court impermissibly based the Summary Judgment Ruling on the *Sua Sponte* Issues. Thus, the Court should reverse the Summary Judgment Ruling.

II. FOUNDERS "EXPELLED" PJT WITHOUT SATISFYING THE OPERATING AGREEMENT'S EXPULSION PROVISION.

As with the Summary Judgment Ruling, Founders generally advance their own reasoning, separate from the Trial Court's, as to why the Expulsion was supposedly warranted under Paragraph 15.04, including by asking this Court to make findings the Trial Court did not make. The Court should decline that invitation. *See, e.g.*, *Seiler v. Levitz Furniture Co. of E. Region*, 367 A.2d 999, 1007 (Del. 1976) ("In this very complex fact case we decline to consider the argument in an appeal context without prior findings of fact and a determination by the Trial Judge."). Otherwise, for the reasons discussed below, nothing Founders say satisfies the Operating Agreement's expulsion standards.

A. PJT DID NOT COMMIT A WILLFUL VIOLATION OF THE OPERATING AGREEMENT.

Founders argue that PJT committed a Willful Violation under Paragraph 15.04(a) by failing to pay what Founders refer to as the "Capital Commitment,"[64] which is the "PJT Holdings Committed Capital" referred to in the Operating Agreement[65] that consists of: (1) a $200,000 commitment (the "Initial Capital

[64] AB at 46-49.
[65] A1455.

Contribution"); and (2) the up to $3.3 million Additional Capital Contribution.[66] The Court should reject this argument.

1. Founders Misunderstand the Willful Violation Expulsion Standard.

The Trial Court found that a Willful Violation requires a Member to "know[] that its conduct would constitute a breach and yet go[] forward anyway."[67] Founders disagree with this interpretation and argue that a Willful Violation requires a "disregard of the operating agreement that results in a breach even if the breach was not the conscious object of the act."[68] The Court should ignore this argument because Founders did not appeal the Trial Court's ruling on what constitutes a Willful Violation. *See McElrath v. Kalanick*, 224 A.3d 982, 992 n. 50 (Del. 2020); *Greenlaw v. United States*, 554 U.S. 237, 244 (2008).

Even if the merits of this argument were considered, Founders are off base. A Willful Violation under Paragraph 15.04(a) requires a Member to have "willfully violated any provision of" the Operating Agreement.[69] In *XRI Investment Holdings LLC v. Holifield*, the Court of Chancery interpreted "willful breach" as "requir[ing] that a party intentionally act while knowing that the conduct would constitute a

[66] *Id.* To the extent applicable, the Initial Capital Contribution does not establish a Willful Violation for the reasons discussed in connection with the Additional Capital Contribution and vice versa.

[67] Opinion at 33.

[68] AB at 46 (quotations omitted).

[69] A1485.

breach." 2024 WL 3517630, at *23 (Del. Ch. July 24, 2024) (emphasis added). That reading matches the Trial Court's interpretation of the Operating Agreement's Willful Violation standard, which should be upheld.

Founders retort that *XRI* is inapt based on *Hexion Specialty Chemicals, Inc. v. Huntsman Corporation*, 965 A.2d 715 (Del. Ch. 2008).[70] But in *XRI*, the Court of Chancery distinguished *Hexion* because "[t]he LLC Agreement define[d] Disabling Conduct as 'gross negligence *or* willful breach of this Agreement.'" 2024 WL 3517630, at *20, *23 (emphasis added). The "juxtaposition of 'willful breach' with a breach that resulted from 'gross negligence'" increased the "mental state" needed for a "willful breach." *Id.*

That reasoning applies with equal force here. A Willful Violation under Paragraph 15.04(a) must have an enhanced mental state because Paragraph 15.04(b) permits expulsion for Gross Negligence. Thus, the Trial Court correctly held that a Willful Violation requires a Member to have "know[n] that its conduct would constitute a breach and yet go[ne] forward anyway."[71]

[70] AB at 46.
[71] Opinion at 33.

2. Nothing Relating to the Initial Capital Contribution Establishes a Willful Violation.

To begin with, it is important to highlight that the Trial Court rejected Founders' argument that an alleged breach relating to the Initial Capital Contribution justified the Expulsion.[72] Founders did not appeal that determination and have thus waived the right to oppose it. *See McElrath*, 224 A.3d at 992 n. 50; *Greenlaw*, 554 U.S. at 244.

Even so, Founders' Initial Capital Contribution arguments fail. First, the Trial Court correctly found that Founders "waived" any breach relating to the Initial Capital Contribution by "never [taking] issue with [PJT's] failure to make the Initial Capital Contribution" and "allow[ing] [PJT] to make [the] contribution by paying bills as they became due."[73]

Second, courts generally assesses actions taken under contractual expulsion provisions like Paragraph 15.04 based on the reasons for the expulsion, not any reason that can be identified after the fact. *See A & J Cap., Inc. v. L. Off. of Krug*, 2019 WL 367176, at *1, *11 n.128 (Del. Ch. Jan. 29, 2019), *aff'd*, 222 A.3d 143 (Del. 2019). A court, however, may consider "alternative grounds" that an expelling party discovers after the expulsion under the after-acquired evidence exception.[74] As

[72] *Id.* at 53-57.
[73] *Id.* at 56.
[74] *Id.* at 51.

the Trial Court correctly found, "Founders did not cite [PJT's] failure to make the Initial Capital Contribution in the Expulsion Notice, and they cannot meet the requirements of the after-acquired evidence doctrine" because the alleged failure to make the Initial Capital Contribution "was known to everyone" when the Expulsion occurred.[75]

For these reasons, any alleged failure to satisfy the Initial Capital Contribution cannot establish a Willful Violation.

3. Nothing Relating to the Additional Capital Contribution Establishes a Willful Violation.

Founders argue that a Willful Violation exists in connection with the Additional Capital Contribution by misstating PJT's position. PJT's is not arguing, as Founders suggest, that it never had to pay.[76] Rather, PJT's contention is that it had to pay the Additional Capital Contribution at some point but that there was no deadline for doing so. That position is based on the Operating Agreement's language[77] and is supported by Mr. D. Costanzo's trial testimony.[78]

Because PJT is not arguing that it never had to pay the Additional Capital Contribution, Founders' "absurdity" argument about PJT supposedly having

[75] *Id.* at 56-57.
[76] AB at 47-48.
[77] *See* A1455, A1463.
[78] A889-90.

"exchanged nothing for Plant Based Mafia LLC's intellectual property"[79] is misplaced.

Founders suggest that PJT repudiated the Operating Agreement because Mr. Trematerra insisted on the Restructuring in connection with the Lease.[80] This argument fails because the Operating Agreement did not require PJT to sign the Lease or open a particular restaurant. Thus, by not going forward with the Lease, PJT did not refuse to perform its Additional Capital Contribution obligation or insist on terms differing from those in the Operating Agreement. There was no repudiation.

Founders claim that communications from early March 2023 show repudiation.[81] But Mr. Trematerra continued discussions with Founders after the Lease Cancellation, and correspondence after the messages Founders cite corroborate Mr. Trematerra's testimony that he was willing to continue with the Company.[82] Indeed, he confirmed in mid-March 2023 that he was willing to open a restaurant in Florida.[83]

Founders cite a different text message—B393—in which Mr. Trematerra said he was not ready to start a restaurant in Florida.[84] B393 does not establish a refusal

[79] AB at 48.
[80] *Id.* at 46-50.
[81] *Id.* at 49 (citing B389).
[82] A2366; A1122-23; A1138; A2753.
[83] A2366.
[84] AB at 49 (citing B393).

to open a restaurant or pay the Additional Capital Contribution. Rather, subject to due diligence, Mr. Trematerra was, in fact, willing to proceed in Florida. For example, on the same date as B393, Mr. Trematerra told Mr. D. Costanzo, "You come up with a location it might be good it might not. I have to vet it and I will when I get back into town . . . ."[85]

As for text messages in which Mr. Trematerra mentioned an "impasse" and winding down the Company,[86] he never outright refused to pay the Additional Capital Contribution and confirmed at trial that he remained willing to pay.[87]

Founders scoff at that testimony and call it an "outright falsehood."[88] That is a very strong accusation that contradicts documentary evidence showing that Mr. Trematerra continued paying Company expenses during Q2 2023 until days before the Expulsion on June 7, 2023.[89]

Founders' claim that those payments were for personal expenses[90] is baseless and another smokescreen. For example, on April 11, 2023 and May 9, 2023, Mr. Trematerra made payments to American Express,[91] which he used to cover

[85] A2366.
[86] AB at 49 (citing A2327 and A2369).
[87] A1122-23; A1138; A2753.
[88] AB at 49.
[89] A1407-11.
[90] AB at 49.
[91] A1409.

Company expenses.[92] And on June 4, 2023, Mr. Trematerra paid Chris Russo,[93] the Company's project manager.[94]

The other points Founders raise are inconsequential. Founders urge the Court to read the Operating Agreement together with a contribution agreement.[95] But with or without the contribution agreement, Founders have not proved a Willful Violation.

Founders rely on the Trial Court's discussion in the Opinion regarding the implied covenant of good faith and fair dealing,[96] but Founders asserted no such argument below. Thus, this issue has not been preserved for appeal, and the Trial Court disregarded party presentation principles by raising that issue on its own.

Finally, in addition to everything else, no matter what they argue, Founders failed to prove that PJT had the necessary mental state to establish a Willful Violation.[97]

B. THE LEASE CANCELLATION DOES NOT ESTABLISH GROSS NEGLIGENCE.

Founders argue that the Lease Cancellation establishes Gross Negligence.[98] While Founders agree with the Trial Court's ruling that Gross Negligence requires

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[92] A1136-37.
[93] A1409.
[94] A681.
[95] AB at 48.
[96] *Id.* at 49.
[97] OB at 46.
[98] AB at 50-53.

recklessness,[99] the crux of their argument is that PJT was supposedly disloyal and acted in bad faith in cancelling the Lease.[100] Founders, again, are wrong.

As with before,[101] context matters. The Lease Cancellation occurred *after* Founders refused to open the Beverly Hills Restaurant.[102] Without Founders' participation, the Company could not operate the Beverly Hills Restaurant,[103] rendering performance under the Lease impracticable. In that regard, the Lease Cancellation prevented the Company from incurring further losses. Mr. Trematerra's Personal Guaranty reflected aligned financial exposure, not a separate motivation, and underscores the reasonableness of acting promptly to mitigate harm.

Founders argue that "a dispute over internal composition of" the Company "was not a basis for a reasonable person to cancel the" Lease[104] and that PJT should have stuck with the Beverly Hills Restaurant because it supposedly remained a viable opportunity after the Lease Cancellation and that Founders could have allegedly been persuaded to go to California despite their refusal to do so.[105] This argument does not succeed.

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[99] *Id.* at 50.
[100] *Id.* at 51-53.
[101] OB at 48-49.
[102] A2754.
[103] A1113.
[104] AB at 52.
[105] *Id.* at 52-53.

The Restructuring went hand-in-hand with the Beverly Hills Restaurant because Mr. Trematerra needed security for the hundreds of thousands of dollars in unplanned costs[106] arising from the parties' decision to change plans and launch in California.[107] And while a deal could theoretically have been struck after the Lease Cancellation to continue in California, there was "a major trust issue" after Founders refused to open the Beverly Hills Restaurant and reneged on the Restructuring.[108] Given all these circumstances, and those discussed above, it was reasonable for the Company and parties to regroup and focus on Florida where everyone lived, which is what Founders suggested[109] and Mr. Trematerra was willing to do.[110]

* * *

For the reasons above and in the Opening Brief, the Expulsion did not satisfy the Operating Agreement's expulsion standards. Thus, the Court should reverse the Trial Court's Expulsion Ruling.

[106] Opinion at 8.
[107] A411; A455; A1066-67; A1070-72.
[108] A1120-21.
[109] A2754.
[110] A2366.

III. IF NOTHING ELSE, THE COURT SHOULD REVERSE THE FORFEITURE RULING.

For argument's sake, even if the Court affirms the Summary Judgment Ruling and the Expulsion Ruling, it should reverse the Forfeiture Ruling because Founders did not provide notice of their intent to seek forfeiture as the Operating Agreement requires.[111] While Founders suggest otherwise,[112] PJT preserved this issue by discussing it in post-trial briefing.[113]

Founders argue that they satisfied the Operating Agreement's notice requirement because their counterclaim seeks forfeiture.[114] The Trial Court ignored the notice requirement, and so Founders are again asking this Court to act as a fact finder. At any rate, Founders have no authority providing that a contractual notice provision can be satisfied by pleadings filed in litigation. Founders simply failed to comply with the notice provision, the forfeiture remedy was thus unavailable, and the Trial Court erred in enforcing that remedy and granting judgment on the Fair Value Claim.

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[111] OB at 52-53.
[112] AB at 55.
[113] A1390.
[114] AB at 55.

IV. THE COURT SHOULD RULE FOR PJT ON INDEMNIFICATION ISSUES.

For the reasons discussed in the Opening Brief, to the extent the Court reverses the Summary Judgment Ruling and/or Expulsion Ruling, it should reverse the Trial Court's decision granting indemnification to Founders and remand so the Trial Court can determine PJT's indemnification.[115] Founders did not address these issues and have thus waived any counterarguments. *See Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived.").

With respect to the Forfeiture Ruling, if PJT were to prevail on the Fair Value Claim, it would be entitled to indemnification under Paragraph 18.11 of the Operating Agreement.[116] Thus, to the extent the Court has to reach the Forfeiture Ruling and decides that issue in PJT's favor, it should reverse the decision granting judgment for Founders on PJT's Indemnification Claim.

Founders contend that PJT cannot be indemnified in connection with the Fair Value Claim because the Operating Agreement is silent on whether expelled Members are entitled to fair value.[117] Thus, Founders claim that their failure to pay fair value is not a breach of the Operating Agreement, which would be necessary for indemnification under Paragraph 18.11.[118]

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[115] OB at 36-37, 49.
[116] *Id.* at 53.
[117] AB at 55.
[118] *Id.*

This argument conflicts with *Domain Associates, L.L.C. v. Shah*, in which the Court of Chancery held that LLC members breached an LLC agreement by failing to pay fair value to an expelled member in accordance with the LLC Act even though the agreement did not expressly require such a payment. 2018 WL 3853531, at *18 (Del. Ch. Aug. 13, 2018). Under *Domain Associates*, Founders breached the Operating Agreement by adopting the Expulsion without paying PJT fair value for its interest in the Company, and that breach gives PJT a right to indemnification under Paragraph 18.11.

CONCLUSION

For the reasons above and in the Opening Brief, PJT respectfully requests that the Court reverse and/or remand the Trial Court's Summary Judgment Ruling, Expulsion Ruling, Forfeiture Ruling, and/or indemnification rulings.

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CERTIFICATE OF SERVICE

I certify that on January 6, 2026, a true and correct copy of *Appellant's Reply Brief* was caused to be served on the following counsel of record via File & ServeXpress:

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