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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAMDEN FOLEY and SAMUEL BERTAIN, Plaintiffs Below-Appellants, v. SESSION CORP., ESTHER LENOIR RAMIREZ, and VINH PHO, Defendants Below-Appellees.	No. 459, 2025 APPEAL FROM THE COURT OF CHANCERY OF THE STATE OF DELAWARE, C.A. NO. 2023-0186-JTL

APPELLANTS' OPENING BRIEF

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NATURE OF PROCEEDINGS

This action concerns Session Corp. ("Session" or the "Company"), a Delaware corporation founded in May 2018 by Camden Foley ("Foley"), Samuel Bertain ("Bertain"), Esther LeNoir Ramirez ("Ramirez"), and Vinh Pho ("Pho"). Session, a start-up focused on developing and selling modern smoking accessories to the growing legalized cannabis market, grew out of a project in which Foley, Bertain, and Pho – three design professionals who worked together – designed products for an earlier start-up that employed Ramirez. When that business failed, Foley secured the intellectual property rights over the designs and invited Ramirez to join him, Bertain, and Pho in a new venture. After working many nights and weekends to create what became Session, the four co-founders were close friends.

When the four founders created Session, they split ownership of the Company and Board representation equally among themselves. As the only founder who did not otherwise have full-time employment, Ramirez was chosen to be Chief Executive Officer and handle day-to-day business responsibilities. It was not long, however, before Ramirez began to resent this division of labor and started demanding a greater share of Session's stock than her three partners. Foley, Bertain, and Pho, each of whom had invested capital in Session (unlike Ramirez, who lacked funds and invested "sweat equity") and believed that each founder contributed equally to the Company, did not agree to Ramirez's demands.

By 2021, Ramirez discovered a path toward obtaining the control and greater equity stake she thought she deserved. When various "advisors" and outsiders – all of whom had their own self-interest to promote – began telling Ramirez that outside investment was vital to Session's future success, she seized on the opportunity to solicit additional funding with which she could compensate herself. She also resumed her demands for additional equity, but this time she used Session's fundraising efforts to justify them to her co-founders.

Pho, who had little business experience and often deferred to Ramirez, went along with her plan. Foley and Bertain, however, pushed back, raising valid concerns about the risks that outside investment would present and questioning whether it was necessary for sustaining the Company's steady growth. When Ramirez and Pho insisted that outside capital was critical and needed urgently, Foley and Bertain trusted their friends and reluctantly agreed. Similarly, when Ramirez and Pho insisted that Session could not raise capital if the four co-founders continued holding equal shares of stock, Foley and Bertain again trusted that their friends were doing what was best for the Company and agreed to redistribute their equity. Ultimately, Foley and Bertain agreed to cede a controlling majority of Session's stock to Ramirez and Pho – once again, because Ramirez and Pho insisted this was essential to access outside investment – but only because all four co-founders

committed to entering into a contract that would protect Foley and Bertain's now-minority position from being exploited by Ramirez and Pho.

To effectuate the recapitalization, Ramirez presented two contracts to Foley and Bertain. One contract would shift majority control over the Company's equity to Ramirez and Pho by "cancelling" shares Foley and Bertain already owned. The other contract would impose a new "vesting schedule" on Foley and Bertain's previously vested shares of Session stock and give Session the right to "repurchase" those shares for virtually nothing upon a separation from the Company, whether voluntary or involuntary. While Ramirez purported to act on Session's behalf, the Company's Board of Directors never authorized the cancellation of Foley and Bertain's stock or the contracts purportedly giving Session a repurchase right.

Once again, Ramirez and Pho assured Foley and Bertain that executing these contracts was essential to securing outside investment capital for Session; in actuality, however, they were entirely one-sided agreements under which Foley and Bertain received no consideration in exchange for giving the Company the right to effectively cancel their shares without cause. While a "founders' agreement" had not yet been finalized, Foley and Bertain signed the contracts and trusted that their friends would later agree to minority stockholder protections as they had promised.

Once Foley and Bertain had ceded control to them, however, Ramirez and Pho never followed through on their promise. Without any protections for Foley and

Bertain, Ramirez and Pho then purported to exploit the unauthorized contracts – and the trust Foley and Bertain had placed in them – to execute a secret plan for forcing Foley and Bertain out of Session. With the assistance and encouragement of their "advisors," Ramirez and Pho devised and actively concealed from Foley and Bertain a scheme to terminate their employment with Session and then, under the contracts they coerced and misled Foley and Bertain into signing, cause the Company to redeem their stock holdings for pennies. Once again, however, Session's Board of Directors never authorized the Company to repurchase those shares.

Foley and Bertain (together, "Plaintiffs") then filed a Verified Complaint in the Court of Chancery against Session, Ramirez, and Pho (together, "Defendants") alleging causes of action for breach of fiduciary duty (Count I), fraud (Count II), conversion (Count III), and, in the alternative, breach of contract and/or breach of the implied covenant of good faith and fair dealing (Count IV). *See* A0045-A0050. As relief for these claims, Plaintiffs requested an award of damages equal to the value of the shares of Session stock that Defendants had taken from them. *See* A0051. Defendants moved to dismiss, and on October 17, 2023, the Court of Chancery denied the motion in large part, sustaining all but Plaintiffs' breach of contract claim. *See* A0061-A0063, A0166-A0185.

On February 11-13, 2025, The Court of Chancery heard trial on Plaintiffs' remaining claims for breach of fiduciary duty, fraud, and conversion. *See* A0706-

A0708. After briefing and oral argument, the Court issued a Post-Trial Opinion on September 9, 2025, holding that Plaintiffs proved their claim against Defendants for converting their shares of Session stock. *See* Ex. A at 16. Specifically, the Court found that Session's Board never authorized the Company to take the actions necessary to cancel and repurchase Plaintiff's stock, as required by the Delaware General Corporation Law. Without an affirmative vote taken at a Board meeting or the unanimous written consent of directors approving these actions, Session had no authority to enter into the contracts with Plaintiffs or exercise its purported rights to cancel and repurchase Plaintiff's shares. *See id.* at 16-24. Since those actions were void, the Court of Chancery held Defendants liable for conversion when they cancelled and redeemed Plaintiffs' stock without the legal right to do so. *See id.* at 24-25.

Despite ruling in Plaintiffs' favor on the conversion claim, the Court of Chancery declined to award damages as Plaintiffs had requested, finding the evidence offered to estimate the value of Plaintiffs' shares was "too speculative." Ex. A at 37. Instead, the Court granted rescission and ordered Defendants to reissue 2,000,000 shares of Session stock to each of Foley and Bertain. *See id.* at 39. Because Session had paid Foley and Bertain $19.50 for 1,950,000 of those shares, the Court of Chancery further ordered each Plaintiff to pay the Company $19.50, plus pre-judgment interest, to restore the status quo. *See id.* at 39-40. The Court

entered a Final Order and Judgment granting this relief on October 10, 2025. *See* Ex. B.

Plaintiffs now respectfully ask this Court to reverse the Court of Chancery's grant of rescission as relief for Defendants' conversion and award Plaintiffs damages equal to the estimated value of the property unlawfully taken from them – *i.e.*, the value of their Session stock at the time of the conversion, which is the remedy provided under longstanding Delaware case law.

SUMMARY OF ARGUMENT

1. It was legal error for the Court of Chancery to grant rescission as relief for Defendants' conversion of Plaintiffs' stock, rather than award damages. For years, Delaware courts have held that conversion of property (and particularly, conversion of stock in Delaware corporations) is remedied by damages in an amount equal to the value of the property at the time it was taken. Even if there were precedent in Delaware for rescinding a statutorily invalid transaction through which stock is converted, at common law it is the plaintiff's option in an action for conversion to decide whether to accept the property or damages. Here, Plaintiffs intentionally sought only damages and did not request, in their Complaint or subsequent filings, that the Court of Chancery rescind the transactions by which Defendants unlawfully cancelled and redeemed their stock. Additionally, contrary to the Court of Chancery's ruling, the evidence Plaintiffs presented at trial met their burden to provide a reasonable estimate of their converted shares' value and justified an award of damages in their favor.

STATEMENT OF FACTS

A. Plaintiffs And Defendants Form Session As Equal Co-Owners And Directors.

In 2018, Foley, Bertain, Ramirez, and Pho founded Session as a start-up "dedicated to moments of indulgence, thoughtfully expressed through permissible vices" by creating modern cannabis smoking accessories to address shifting cultural attitudes and de-stigmatization as state legalization of cannabis use progressed and created new markets. *See* A0188, A0717. The Company grew out of a project that brought the four founders together. Foley and Bertain met in college and then worked at the same design consulting firm, IDEO, after graduation. *See* A0715-A0716, A1326. At IDEO, Foley and Bertain met Pho, who hired Foley and became his mentor. A0715-A0716.

Before co-founding Session, Ramirez worked at an online cannabis accessory start-up called Billowby. *See* A0951-A0952. Through a co-worker at IDEO, Foley learned about Billowby, which was looking to design its own line of cannabis products. A0713-A0714. After Foley had an initial meeting with Billowby to discuss a design project, he invited Bertain and Pho to participate. A0714-A0715. Billowby then engaged Foley, Bertain, and Pho for a freelance consulting project, and it was through this project that they met Ramirez. *See* A0714, A0953.

Billowby ultimately failed in late 2016, due in part to financial mismanagement by Ramirez's partner in the venture. *See* A0714. Foley, Bertain,

and Pho wanted to capitalize on the work they had done for Billowby, so Foley secured the intellectual property rights for their design project from Billowby. *See* A0714-A0715, A0956. Foley then invited Ramirez, who had been out of work since Billowby's demise, to join him, Bertain, and Pho in their venture. *See* A0715, A0956. The four co-founders worked throughout 2017 to develop a brand and products before formally launching Session in May 2018. *See* A0715, A0958-A0959. During this time, when they were working evenings and weekends on the new business, the co-founders became close friends. *See* A0716.

At the outset, the founders agreed that each of them would hold an equal share of the Company's stock and serve as a director. A0717, A0722-A0723. Relying on Gust Launch, a start-up investment website, Ramirez decided that Session initially would have 10 million authorized shares of common stock. A0895, A1022, A1109-A1110. From this pool, each founder was granted 2 million shares of Session common stock, leaving 2 million shares unissued. A1022, A1104, A1108. In exchange for their shares, Foley, Bertain, and Pho invested cash. A0718, A1197, A1327. The founders agreed that Ramirez would serve as Session's Chief Executive Officer and only needed to contribute "sweat equity" for her shares, because she was the only founder who did not have full-time, salaried employment and had the most time to devote to the Company. A0718, A0722, A0725-A0726, A0956-A0957, A1103-A1104. Foley, Bertain, and Pho each contributed $10,000 of initial capital,

although Pho agreed to pay $8,000 of Bertain's portion. A0718, A0957, A1197, A1327. Later, Session gave Foley, Bertain, and Pho promissory notes to repay these funds as a loan. *See* A1613-A1618.

The founders acquired their Session stock subject to a vesting schedule, under which 25% of the shares vested after one year and the remaining shares vested monthly, in equal increments, over the subsequent three years. *See* A1448-A1450; *see also* A0719-A0720, A1111, A1192, A1327. Ultimately, each founder's 2 million shares would be fully vested as of May 2022. *See id.*

In addition to serving as one of Session's four directors, each founder held an officer position with the Company – Ramirez was Chief Executive Officer, Pho was Chief Operating Officer, Bertain was Chief Creative Officer, and Foley was Chief Product Officer. A0720-A0722, A1327.

B. Defendants Persuade Plaintiffs To Seek Outside Investment And Redistribute Session's Equity.

Beginning in 2019, Session funded its operations through loans Foley, Bertain, and Pho secured from their friends and family. A0727-A0728. In total, the Company raised $155,000 in debt financing, $105,000 of which Foley's friends and family invested. A0728. Ramirez did not secure investment from any parties. A0729.

At the same time, Ramirez began feeling "taken advantage of" by her co-founders and by September 2019, she started complaining to Foley, Bertain, and Pho

that she deserved a greater share of Session's equity than them. *See* A0749-A0750, A0983-A0984, A1131, A1193-A1194. In February 2020, Ramirez asked the other co-founders for additional compensation and equity redistribution, but Foley, Bertain, and Pho did not agree, as they believed all four individuals' efforts were contributing equally to the Company. *See* A0999-A1000, A1016-A1018.

Later in 2020, still feeling unappreciated and unrecognized, Ramirez realized that seeking greater levels of outside investment for Session would provide a path toward paying herself compensation and increasing her equity share. *See* A0995, A1000, A1017. In the Summer of that year, Ramirez received a "cold e-mail" from a consultant, Mollie Fehlig ("Fehlig"), who Ramirez then hired to create financial projections and models for Session. A1000-A1101. At Fehlig's invitation, Ramirez joined a "start-up incubator," a group intended to give participants advice and ideas for raising capital, for female founders of early-stage businesses. A0733-A0736, A1012-A1013. While Ramirez admittedly lacked knowledge or understanding of start-up fundraising, by early 2021 Fehlig and the other incubator participants convinced her that Session could not grow without pursuing a dilutive equity raise. A1015-A1016, A1120, A1345-A1346.

In April 2021, Ramirez contacted an attorney – purportedly to represent Session, but without informing her co-founders (A0764, A1142-A1143, A1147) – "to help lead a conversation [or] renegotiation of our founding team's equity."

A1508. When the attorney advised Ramirez that Session's 2 million unissued shares of common stock were excessive, she seized on this as an opportunity to redistribute the founders' stock in her favor. A1022-A1024, A1146. In May 2021, Ramirez revisited the issue of equity redistribution with her co-founders, but this time she used the pretext of fundraising to justify her demands for a larger share. Citing what she told the co-founders she had learned at the incubator, Ramirez insisted that Session must solicit and obtain outside investment – beyond just their friends and family – to grow the Company. *See* A0752, A1345-A1346. She also claimed that a start-up with four equal stockholders would be unattractive to investors and, therefore, restructuring Session's equity holdings between the co-founders was essential to raising capital. *See* A0752, A1343-A1344.

Pho, who deferred to Ramirez on all financial matters involving Session, agreed to her plan. A1273-A1276, A1346. Foley, however, believed it was too aggressive and raised concerns about the risks posed by a large influx of capital and rapid growth strategy when Session had grown slowly, but successfully and consistently, since its inception. A0733-A075, A1330-A1333. Brushing Foley's concerns aside, Ramirez and Pho were adamant that Session must pursue outside equity investment and implored Foley and Bertain to trust them. *Id*. Because Ramirez and Pho led the initiative for investment while Foley and Bertain handled more day-to-day operations, Foley and Bertain ultimately placed their trust in

Ramirez and Pho and acceded to their demands that Session must secure additional capital by issuing equity to outside investors. A0737-A0739, A1332. Foley and Bertain also agreed to restructure the founders' shareholdings in the Company, relying on Ramirez and Pho's representations that doing so was essential to raise outside investment. A0754.

C. Session Solicits And Secures Outside Investment At A $12 Million Company Valuation.

After persuading Foley and Bertain to restructure their equity, Ramirez decided to solicit investment in Session through Simple Agreements for Future Equity ("SAFEs") – contracts which entitled the holder to shares of Company preferred stock upon the issuance of such shares in connection with a future financing round – after she learned about them through her incubator group. A0738, A1117-A1121. Ramirez made this decision without consulting the other founders or considering any alternatives. *See* A1120-A1121.

Using financial projections prepared by Fehlig, Ramirez decided to issue SAFEs with a "post-money valuation cap" of $14 million, which represented the highest aggregate price at which Session would issue shares of preferred stock to SAFE holders upon a later financing or liquidity event. *See, e.g.*, A1454; *see also* A0739-A0740, A0742, A1132-A1133. This included an assumed "pre-money" valuation of $12 million for the Company (A1033-A1034), a value at which Ramirez "felt we could get people to invest" in Session. A0291. Between August 2021 and

January 2022, Session raised $960,000 in additional capital from investors through SAFEs. A0747, A1032. In capitalization tables created in September 2022, Session internally recorded the SAFE holders' total $960,000 capital investment as representing 6.86% of the Company's converted equity, which valued Session at nearly $14 million. *See* A0748-A0749, A1607.

When soliciting those funds from prospective investors, Session's founders affirmatively and consistently represented that the Company was valued at $12 million. For example, Ramirez and Pho created executive summary and pitch deck documents for distribution to potential investors expressly stating that Session was valued at $12 million "pre-money." *See* A1466-A1467, A1474-A1498. Similarly, Pho gave Bertain text to include in e-mails to prospective investors representing that "our company is valued at $12M." *See* A1468-A1473. Bertain communicated Pho's $12 million valuation to the investors he solicited, and at no time did Ramirez or Pho contradict these statements or suggest to Bertain or prospective investors that they were inaccurate. A1127-A1128, A1295-A1299, A1335-A1336, A1342-A1343. To the contrary, Ramirez and Pho both believed that the statements made to prospective investors were true and accurate. *See* A1126-A1128, A1292.

D. Defendants Restructure Session's Equity To Give Them Majority Control Over The Company.

In August 2021, the four co-founders met to discuss how to reallocate the Company's shares between them, but they could not agree on a percentage split. *See*

A0749-0751, A1343-A1344. While Ramirez insisted on getting more equity ownership in the Company throughout this process, at no time did she ever threaten to quit if she did not receive it. A0751, A1136-A1137, A1212-A1213, A1313-A1314, A1344-A1345. After the founders were unable to reach agreement, Ramirez proposed that they meet with Bryant Galindo ("Galindo"), an advisor and executive coach introduced to her by Fehlig, to move forward with redistributing their respective ownership shares in the Company. *See* A0754-A0756, A1043-A1045, A1210-A1211.

All four founders met with Galindo on November 22-23, 2021. A0341. By that time, Pho had aligned himself with Ramirez and decided that he and Ramirez deserved greater shares of Session's stock than Foley and Bertain. *See* A0753. During the meetings with Galindo, Ramirez insisted it was "necessary for investment that two of the founders" – *i.e.*, Ramirez and Pho – "had to end up with a majority of the company, and that [Ramirez], as CEO, had to end up with the most." A0756. To justify this, Ramirez told Foley and Bertain that "investors wanted to see that there were two founders who had the most … [and] they wouldn't invest in the company … unless we redistributed this equity." A0757. *See also* A1285-A1286, A1348-A1349. Therefore, "these weren't conversations of whether we should redistribute or basically have any possibility that [Bertain and Foley] would end up

with more; it was a discussion of how much [Bertain and Foley] would lose and how much [Ramirez and Pho] would gain." A0756-A0757.

When Foley and Bertain justifiably expressed concerns about ceding majority control of Session's stock to Ramirez and Pho, Galindo suggested that the four co-founders enter into an contract, alternatively called a "team charter" or "founders' agreement," with protections for minority stockholders, including a requirement that no founder could be removed from Session without the affirmative vote of the other three founders. *See* A0758-A0760, A0762-A763, A1139-A1141, A1233-A1234, A1302-A1303. Ramirez and Pho promised Foley and Bertain that they would agree to such a contract after the founders completed the supposedly critical task of restructuring their equity shares. *See* A0761-A0762, A0772, A1139-A1141, A1352-A1354. Relying upon this commitment and trusting Ramirez and Pho's representations that Session would be unable to secure outside investment without first giving Ramirez and Pho a majority share of the Company's stock (A0762-A0763), Foley and Bertain agreed to the following revised capital structure:

Ramirez	26.5%
Pho	24.5%
Bertain	19.5%
Foley	19.5%
Employee Option Pool	10.0%

See A0759-A0760, A1351-A1352. The founders documented this redistribution in a so-called "Mediated Agreement" which they signed at the conclusion of their

meetings with Galindo. *See* A1499-A1501. In this document, the founders also agreed to "work with a startup business attorney to formally codify this understanding" and "have additional conversations regarding," among other things, a "team charter." *Id.*

E. Defendants Pressure Plaintiffs To Surrender Valuable Ownership Rights In Their Session Stock In Connection With The Company's "Restructuring."

Shortly before the founders' meetings with Galindo, Ramirez – again, without including Foley or Bertain in the communications – re-engaged the attorneys she had first contacted in April 2021 to assist with "renegotiating" Session's equity structure. *See* A1505, A1147. On November 17, 2021, Ramirez e-mailed these attorneys, who purportedly represented Session, and asked them to "reset [the founders'] vesting schedule" because, among other reasons, she feared a scenario where Foley "threatens to leave with what he has already vested." A1505. During the founders' meetings with Galindo, Ramirez told Foley and Bertain that resetting the vesting schedule for their shares was necessary to prevent the founders from leaving Session voluntarily. A0767-A0768.

On December 13, 2021, after the founders' meetings with Galindo, Ramirez asked the same counsel to prepare documents that would reallocate the founders' shares according to the percentages they had agreed upon. *See* A1504. On January 19, 2022, the attorney delivered to Ramirez drafts of a "Share Cancellation and

Release Agreement" and "Stock Restriction Agreement" to be executed by Foley and Bertain. *See id.* At the same time, counsel provided Ramirez with a draft unanimous written consent by Session's Board of Directors to approve the two contracts and issue 1.1 million additional shares of Company stock to Ramirez and Pho. *See id.*

Under the Share Cancellation and Release Agreements (the "Cancellation Agreements"), each of Foley and Bertain would agree that 50,000 of their 2,000,000 shares of Session common stock were "cancelled," thereby reducing their individual equity stakes to 1,950,000 shares each. *See* A1517-A1521, A1542-A1546. Pursuant to the Stock Restriction Agreements (the "Restriction Agreements"), all of Foley and Bertain's remaining shares of common stock – more than 1,750,000 of which they already owned without restrictions and already were fully vested under the 2018 stockholder agreement – would revert to being unvested and Foley and Bertain would hold them subject to a new "vesting schedule." *See* A1522-A1541. The new schedule provided that 25% of Plaintiffs' shares of common stock would vest again upon completing 12 months of employment with Session after executing the contract. *See* A1522-A1523. Following the initial 12 months, 1/48th of the remaining shares then would re-vest when Foley or Bertain completed an additional month of employment, up to a total of 36 months. *See id.* In other words, even though Plaintiffs already owned most of their shares of Session common stock free

and clear, those shares now would not fully "vest" again under the Restriction Agreement until a full four years had elapsed.

The Restriction Agreement further provided that, until Plaintiffs' shares of common stock vested again, Session would have a right to "repurchase" the shares for the nominal price of one one-thousandth of one cent ($0.00001) per share. *See* A1522-A1523. Specifically, each contract stated in relevant part that:

> Until they vest in accordance with Subsection (b) below, the Purchased Shares shall be Restricted Shares and shall be subject to the Company's Right of Repurchase. … The Company may exercise its Right of Repurchase only during the Repurchase Period following the termination of the Purchaser's Service, but the Right of Repurchase may be exercised automatically under Subsection (e) below. If the Right of Repurchase is exercised, the Company shall pay the Purchaser an amount equal to the Purchase Price for each of the Restricted Shares being repurchased. Notwithstanding anything to the contrary herein, in the event that the Purchaser's Service is terminated by the Company for Cause, the Company may repurchase 100% of the Shares (whether vested or unvested) at the Purchase Price during the Repurchase Period following such termination.

A1522. Thus, the Restriction Agreements purported to give Session the right to effectively cancel Plaintiffs' shares if their employment with the Company was terminated for ***any*** reason, not just in the event of a voluntary departure.

After receiving the two contracts from Session's attorney, Ramirez delivered them to Foley and Bertain and demanded that they be executed "immediately."

A0768-A0769, A0771-A0772, A1356-A1357, A1360. Ramirez and Pho pressured Foley and Bertain to restructure Session's equity, claiming that the founders must do so quickly to access desperately needed capital. *See* A0768-A0769, A0771, A0836-A0837. As she did before, Ramirez again insisted that Session could not secure additional capital investment until Plaintiffs executed the contracts and thereby conveyed majority stock ownership of Session to her and Pho. *See id.* Bertain signed the contracts right away because he trusted Ramirez and relied upon her representations that restructuring Session's equity ownership would permit the Company to bring in outside investment and be successful. *See* A1356-A1357, A1360. Bertain also relied upon reassurances from Ramirez and Pho that they would enter into the founders' agreement that was being discussed, believing that his rights as a minority stockholder would be protected. *See* A1361-A1362.

Foley took longer to execute the contracts because, while drafts of a founders' agreement document had been circulated by Galindo (*see, e.g.*, A0773, A1554-A1558, A1565-A1574), Ramirez and Pho still had not yet agreed to final terms, despite Foley's repeated requests. *See* A0772-A0773; *see also* A1235 (Pho testifies that the founders spent "months" working with Galindo on a draft founders' agreement). Eventually, Foley relented and executed the contracts in March 2022 after Defendants continued to pressure him, saying that "the signing of the contracts was the most important thing" and "was the thing standing between us and money."

A772. Defendants reassured Foley, however, that they would finalize the founders' agreement, telling him "don't worry. We will get to it." *Id.* Foley signed the contracts because he "fully believed that we would keep working on [the founders' agreement] and we would complete it and codify it." *Id.*

Session's Board, however, never passed resolutions approving the contracts. Months later, in October 2022, Ramirez signed the "Action by Written Consent of the Sole Member of the Board of Directors in Lieu of a Meeting" previously drafted by counsel but backdated it to January 31, 2022, purporting to adopt resolutions authorizing Session retroactively to enter into the Cancellation Agreements and the Restriction Agreements with Plaintiffs. *See* A1547-A1552. At trial, Ramirez admitted that she was not the "sole" director of Session when she executed the consent but, rather, the Company's four founders all remained directors as of January 31, 2022. *See* A1153-A1155.

F. Exploiting Their Newfound Control Over Session, Defendants Secretly Plot To Terminate Plaintiffs' Employment And Seize Their Stock.

Once Plaintiffs executed the Cancellation Agreements and the Restriction Agreement, Defendants went back on their promises to Plaintiffs and refused to finalize the founders' agreement. Suddenly, the draft founders' agreement "was more or less buried in excuses and other work" by Defendants, to whom the document "was not a priority any longer." A0776. In an e-mail exchange he had

with Galindo in April 2022, Pho acknowledged Foley and Bertain's concern that he and Ramirez "can kick other founders out of the company" and conceded that "originally we thought a team charter would solve that." A1576. In the same e-mails, however, Pho wrote to Galindo that this issue had "blown up" because he and Ramirez decided that a founders' agreement would be a "renegotiation" of the equity split and would not be "legally binding." *Id.* Notwithstanding their promises to Foley and Bertain, Ramirez and Pho never entered into the founders' agreement. A0775-0776.

After securing Plaintiffs' agreement to the restructuring, Ramirez and Pho began excluding Foley and Bertain from management decisions. *See* A0777-A0779, A1362-A1363. Foley and Bertain then started questioning Defendants' management, particularly their excess spending on marketing, personnel, and product. *See* A0778-0781. Defendants' shift in strategy caused Session to have very high overhead and, by Fall 2022, the Company was "bleeding cash" – even though its revenues for 2022 were on pace to meet or slightly exceed 2021 revenues. *See id.*, A0534, A1057-A1058.

Before Session's founders restructured their shareholdings, Ramirez began confiding in Michael Gilvary ("Gilvary"), an investment advisor who Fehlig introduced to Ramirez in July 2021 following an incubator event. *See* A0779, A1353-A1354. After meeting Ramirez, Gilvary personally invested $50,000 cash

in Session through a SAFE in August 2021 and secured an additional $250,000 from his family and contacts. *See* A1080, A1460-A1465, A1607. To protect his personal interests, Gilvary then began inserting himself into Session's operations and exerting greater influence over Ramirez's decision-making. *See* A0779-A0780, A1080. In 2022, Ramirez routinely e-mailed, spoke, and met with Gilvary (without including or notifying Foley or Bertain) to discuss Session business and solicit Gilvary's advice. *See* A1080, A1157-A1159, A1553, A1559-A1564, A1575, A1578-A1580, A1585-A1586.

In September 2022, as Session was running out of cash, Ramirez desperately implored the other co-founders to ask their friends and family for additional investment to cover the Company's high operating costs. *See* A0794. To help Session, Foley reached out to his father, who agreed to loan $100,000 to the Company. *See* A0794-A0795. On September 14, 2022, Session issued Foley's father a promissory note under which the Company agreed to repay $100,000 in 12 months, with a Company option to extend the term to 24 months, at 12% simple interest – a rate far lower than those being charged by other lenders Session had contacted. *See* A1166-A1167, A1581-1584.

When Gilvary learned about the loan, however, he placed a "frantic" phone call to Ramirez during which he went "crazy" and put "pressure" on Ramirez to make "significant changes" to Session's operations and cut personnel. A1174-

A1175, A1188-A1189. Gilvary then brought in Dan Schneider ("Schneider"), another consultant, who Gilvary introduced to Defendants as someone who would create a "turnaround strategy" for Session and could serve in an interim CEO role. *See* A0780-A0781, A1083, A1157, A1255-A1256, A1319. Beginning around September 25, 2022, Ramirez and Pho began e-mailing Gilvary and Schneider repeatedly and surreptitiously, without including Foley or Bertain in the communications. *See* A0780-A0781, A1157-A1159, A1365-A1367, A1587-A1606. Ramirez and Pho also began sharing Session's internal financial information with Schneider, again without notifying Foley or Bertain. *See id*.

At Gilvary and Schneider's request, Ramirez and Pho made plans to meet with them in person, without Foley and Bertain, during the first week of October 2022 at Schneider's home in Pennsylvania. *See* A0781-A0782, A1163. By this time, Ramirez already had decided that Session was going to terminate Plaintiffs' employment. *See* A0396, A1163-A1164. Before traveling to meet with Schneider, Ramirez asked Pho to join her and confided in him that Plaintiffs would be fired – but Ramirez and Pho concealed this from Plaintiffs. *See* A1164-A1166. Instead, when Plaintiffs asked Defendants if they could attend the meeting, Ramirez and Pho lied, telling Plaintiffs the only purpose for the meeting was to be introduced to Schneider, who Ramirez told Plaintiffs might be hired as Session's interim CEO. *See* A0782-A0783, A1367-A1368. Ramirez and Pho never disclosed to Foley or

Bertain that employee terminations (let alone the termination of their own employment) would be discussed with Gilvary and Schneider. *See* A0783, A1369.

While Ramirez and Pho were in Pennsylvania meeting with Gilvary and Schneider, they shared no details with Foley or Bertain in response to their questions. *See* A1087-A1088, A1268-A1271, A1369. Growing increasingly suspicious of Defendants' motives, Plaintiffs reviewed Company files stored on the founders' shared cloud storage. A0785-A0787, A1369-A1370. Plaintiffs discovered a budget forecast, prepared by Ramirez on September 23, 2022 but concealed from them, projecting cost savings to Session that would result from terminating Plaintiffs' employment with the Company. *See* A0787, A1369-A1371. Plaintiffs also discovered that Ramirez and Pho scheduled an appointment with lawyers in New York City, a meeting that had not been disclosed to Plaintiffs with a law firm that Session had not previously engaged. *See* A0787, A1392.

After making these discoveries, Plaintiffs were justifiably concerned and pointedly asked Pho if they were being terminated, but Pho denied it. *See* A0788-A0789, A1371-A1373. This was a lie, however – at that time, Ramirez and Pho admittedly were discussing the termination of Plaintiffs' employment with Gilvary and Schneider. *See* A1082-A1083, A1264-A1265. Upon Schneider's recommendation, Ramirez and Pho decided to terminate Plaintiffs' employment with Session. A1264-A1265. Ramirez and Pho then met with their new counsel

who Defendants engaged for the express purpose of planning and preparing for Plaintiffs' termination. *See* A1268, A1322-A1324.

Ramirez and Pho scheduled a video conference with Plaintiffs for October 7, 2022, without disclosing the matters to be discussed. A0790. At the outset of the video conference, which Gilvary also attended, Ramirez told Plaintiffs that their employment with Session was terminated immediately. *See* A0789-A0791, A1373-A1374. Gilvary then interjected that Plaintiffs should leave Session "quietly" and should not pursue legal claims against the Company. A0790, A1374. During the video conference, Plaintiffs were told only that there were "financial" reasons for their termination, and at no time did Ramirez or Pho say Plaintiffs' employment was being terminated for cause. A0791. Shortly after the video conference ended, Plaintiffs discovered that their access to Session's files, accounts, networks, programs, and e-mails had been cut off. *See* A0792, A1374.

Then, on October 10, 2022, Ramirez sent e-mails to Foley and Bertain attaching confirmation of their "final" paychecks and a document purporting to be a "Notice of Repurchase of Common Stock." *See* A0792, A1608-A1611. According to the "Notice," Session opted to repurchase all of Plaintiffs' now unvested shares of Company stock, pursuant to the Restriction Agreements, due to the termination of their employment. *See* A1608-A1611. The Notice further stated that Session purported to purchase all of Plaintiffs' stock for the "Repurchase Price" of $0.00001

per share – or in the aggregate, total payment of $19.50 to each of Foley and Bertain. *See id.*, A0792-A0794, A1375.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO DAMAGES, RATHER THAN RESCISSION, AS RELIEF FOR DEFENDANTS' CONVERSION.

A. Question Presented.

Should the Court of Chancery have awarded damages, rather than rescission, as relief for the conversion of Plaintiff's stock? *See* A0639-A0641, A0670-A0671, A0697, A1660-A1665, A1709-A1712, A1740-A1744.

B. Scope of Review.

The Court "reviews *de novo* whether an equitable remedy exists or was applied using the correct standards." *In re Tesla, Inc. Derivative Litig.*, 2025 WL 3689114, at *9 (Del. Dec. 19, 2025) (citing *SIGA Techs., Inc. v. Pharmathene, Inc.*, 67 A.3d 330, 341 (Del. 2013)).

C. Merits of Argument.

1. An Award of Damages Is The Correct Remedy for Conversion of Stock.

Conversion is an "act of dominion wrongfully exerted over the property of another, in denial of his right, or inconsistent with it." *McGowan v. Ferro*, 859 A.2d 1012, 1040 (Del. Ch. 2004), *aff'd*, 873 A.2d 1099 (Del. 2005) (quoting *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 678 A.2d 533, 536 (Del. 1996)). Delaware law recognizes a claim for conversion of stock when a corporation acquires or repurchases shares without legal authority to do so. *See Tansey v. Trade Show News Network, Inc.*, 2001 WL 1526306, at *6-7 (Del. Ch. Nov. 27, 2001) (hereinafter,

"*Tansey I*"); *Arnold*, 678 A.2d at 536; *Drug, Inc. v. Hunt*, 168 A. 87, 93-94 (Del. 1933). "To prove conversion of an equity interest in an entity, a claimant must show cancellation or transfer of the shares in question in a statutorily invalid acquisition." *McGowan*, 850 A.2d at 1040.

Under Delaware law, the remedy for conversion is to award Plaintiffs the "value of the property at the time of conversion, with interest." *Tansey I*, 2001 WL 1526306, at *8 (quoting *Wyndham, Inc. v. Wilmington Trust Co.*, 59 A.2d 456, 459 (Del. Super. Ct. 1948)). *Accord Blake v. Town of Delaware City*, 441 F. Supp. 1189, 1205 n.63 (D. Del. 1977). When the converted property is stock in a Delaware corporation, this is an award of damages measured by the value of Plaintiffs' shares as of the conversion date. *See Tansey v. Trade Show News Network, Inc.*, 2002 WL 31521092, at *1 (Del. Ch. Oct. 28, 2002) (hereinafter, "*Tansey II*"). This has been the law in Delaware for over a century. *See Layman v. F.F. Slocomb & Co.*, 76 A. 1094, 1095 (Del. Super. Ct. 1909) (noting that the measure of recovery for conversion of stock is "the value of such shares of stock at the time of the conversion"); *Stewart v. Bright*, 6 Houst. 344, 347 (Del. Super. Ct. 1881), *reported at* 1881 WL 2561 ("The measure of [conversion] damages will be the value of the two hundred shares of stock in the said company represented in the certificate at the time of its conversion ….").

Once the Court of Chancery found that Plaintiffs' stock had been invalidly canceled and redeemed, Plaintiffs should have been awarded damages equal to the value of the shares at the time of conversion, which is the "traditional remedy for a conversion claim." *Tansey I*, 2001 WL 1526306, at *8. Plaintiffs are unaware of, and research has not found, any prior precedent for a Delaware court to remedy a conversion of stock by rescinding a statutorily invalid transaction and reissuing the converted shares. In the Post-Trial Opinion, the Court of Chancery did not address whether rescission is an available remedy for conversion of stock under the foregoing case law or cite precedent for granting rescission as relief for such a conversion claim; instead, the Court of Chancery relied upon authorities generally recognizing rescission as an equitable remedy. *See* Ex. A at 37-39.

Following the established law in Delaware, Plaintiffs intentionally and consistently requested damages as relief for their conversion claim, rather than rescission, in their Complaint and subsequent filings. *See, e.g.*, A0048, A0051, A0639-A0641, A0670-A0671, A0697, A1660-A1665, A1709-A1712. Even if rescission were available as a conversion remedy under Delaware law, Plaintiff's choice of relief is significant because at common law, "[t]he owner of converted property has an option of bringing an action either for its specific recovery or for its market value." 18 Am. Jur. 2d Conversion § 65. *See also* 90 C.J.S. Trover and Conversion § 51 ("Where property has been wrongfully taken or seized, the owner

may waive the right to claim the return of the property and may sue for conversion."). The Court of Chancery's decision to grant rescission *sua sponte* was inconsistent with this principle.

Plaintiffs' election of remedies is logical, because the value of converted property may have changed materially between the time of conversion and a judgment of liability. Recognizing this, when converted shares of stock are widely traded, courts often calculate damages by measuring value at the highest price realized within a reasonable time after the plaintiff learned of the conversion, "based on the premise that the wrongdoer ought to bear the risk of market fluctuations that occur during the period of conversion." *Tansey I*, 2001 WL 1526306, at *8 n.31. In this case, returning Plaintiff's shares through rescission benefits Defendants, since those shares today are almost certainly worth *less* than they were at the time of conversion, given the Company's poor financial performance since October 2022 under Defendants' mismanagement.

Returning Plaintiffs' shares now also is inequitable after Plaintiffs have spent three years and many thousands of dollars in attorneys' fees and costs seeking to hold Defendants liable for actions that the Court of Chancery rightly found were unlawful. While an award of damages with pre-judgment interest would have compensated Plaintiffs for their time and expenses, rescission fails to make Plaintiffs whole and forces them to accept equity in a corporation being managed by

individuals whom they can no longer trust. Simply restoring the parties to the *status quo* as it existed before Defendants converted Plaintiffs' stock also fails to hold Defendants liable for their conduct and will not dissuade future corporate fiduciaries from taking similar actions.

2. The Record Evidence Supports a Reasonable Estimate of Value On Which to Award Damages.

The Court of Chancery is authorized to grant equitable rescission only "when damages are not available; when the amount of damages are not ascertainable; or when damages are inadequate to do justice." *Russell v. Universal Homes, Inc.*, 1991 WL 94357, at *2 (Del. Ch. May 23, 1991). Here, the Court of Chancery declined to award damages, and instead granted rescission, based solely upon its finding that the evidence offered to value Plaintiffs' shares of Session stock at the time of conversion was too speculative. *See* Ex.A at 37-38. Under established Delaware law, however, Plaintiffs met their burden to estimate the damages to which they were entitled.

Because the Company's stock is not traded on a public market, conversion damages may be based on "a responsible estimate" of the shares' value, determined through "a good faith effort to craft a sensible remedy." *Tansey II*, 2002 WL 31521092, at *1. Expert opinion testimony is not required to prove valuation damages; rather, a party can "direct the court to other evidence" of value, "including documentary evidence" and "fact witness[] testimony." *Buck v. Viking Holding Mgmt. Co. LLC*, 2024 WL 4352368, at *21 (Del. Super. Ct. Sept. 30, 2024).

Additionally, Delaware law does not "require certainty in the award of damages where a wrong has been proven and injury established," but recognizes that "[t]he quantum of proof required to establish the amount of damage is not as great as that required to establish the fact of damage." *Beard Research, Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch.), *aff'd sub nom. ASDI, Inc. v. Beard Research, Inc.*, 11 A.3d 749 (Del. 2010). "Responsible estimates of damages that lack mathematical certainty are permissible so long as the court has a basis to make such a responsible estimate." *Id.*

In the record here, the most reliable evidence of Session's value available at the time of conversion is what Defendants themselves represented to investors, and the price at which SAFE holders invested in the Company. There are multiple examples of Session's founders soliciting investment from prospective SAFE holders with representations that the Company had a "pre-money valuation" of $12 million. The pre-money valuation estimate was not a guess or puffery, but was calculated based on projections prepared by Fehlig, at Ramirez's request, using Session's financial records. *See* A0739-A0740, A0742, A1132-A1133. Relying upon these representations, investors entered into SAFEs with the expectation that their investment would be converted into shares of Session stock at a price up to and including the *pro rata* share of $14 million. In the Company's internal records, Defendants used this $14 million valuation in recognizing that the SAFE holders'

total $960,000 capital investment represented 6.86% of the Company's equity. *See* A1607. Additionally, on September 27, 2022 – just days before terminating Plaintiffs' employment and seizing their stock – Ramirez told Schneider that she would sell her shares of Session stock for $2 million, demonstrating that Ramirez believed the Company's total valuation was at least $7.5 million. *See* A1588; *see also* A1161-A1163 (Ramirez testifies that her e-mail to Schneider accurately represented how she valued her stock at the time). In response to the same question, Pho told Schneider that "a fair market assessment" for his shares was "$4-4.5M Valuation, based on 2021 gross revenue, and a rough estimate of where 2022 will end." A1612.

Under these circumstances, the pre-money valuation of $12 million used by Defendants when soliciting SAFE investments is a reliable indicator of Session's value. This evidence is similar to that used by the Court of Chancery in *Tansey II* to reach a responsible estimate of damages for conversion of stock. In *Tansey II*, in the absence of a "formal valuation" of Trade Show News Network, Inc. ("TSNN"), the court considered a $500,000 investment made by a third party, on terms that were negotiated at arm's length, through which the investor acquired 9.9% of TSNN's equity and a note convertible into an additional 9.9% of equity, that valued the stock at $1.15 per share. *See* 2002 WL 31521092, at *2. The court also considered TSNN's stock grant to an officer that implied the same per share price. *See id.* at

*3. Additionally, the court considered an earn-out formula incorporated in the terms of the invalid merger through which the plaintiff's TSNN shares had been converted, and an internal TSNN budget, as evidence of the merger partner expected to pay for TSNN stock. *See id.* at *4-5. As in *Tansey II*, the SAFE holders who invested in Session purchased stock rights on terms that valued the Company at $12 million, a value that was supported by Session's internal projections. The evidence here similarly provides a reasonable basis to estimate the value of Plaintiffs' converted shares of Session stock.

Similarly, the Court of Chancery has acknowledged that, while "[i]n private, venture-backed companies, pre-money valuations for financing rounds are squishy," *Basho Techs. Holdco B, LLC v. Georgetown Basho Investors, LLC*, 2018 WL 3326693, at *39 (Del. Ch. July 6, 2018), this evidence nonetheless can be "helpful." *Hyde Park Venture Partners Fund III, L.P. v. FairXchange, LLC*, 2024 WL 3579932, at *19 (Del. Ch. July 30, 2024). The factor that led the Court of Chancery to discount pre-money valuations in these actions as "squishy" – *i.e.*, the negotiation of "key terms" contemporaneously with price, leading to "tradeoffs between the price and non-price terms" that can influence the price at which the buyer ultimately agrees – is not present here. *Hyde Park*, 2024 WL 3579932, at *19. *See also Basho Techs.*, 2018 WL 2018 WL 3326693, at *39 (finding that pre-money valuation was not "a reliable indicator of value" because it "[said] nothing about the other terms of

the Series G Financing"). The SAFE Defendants used to solicit investment in Session did not provide the holder with any special rights, powers, or preferences beyond an entitlement to receive shares of future preferred stock with terms that the SAFE holder would be bound to accept or consideration on par with common stock upon a liquidity event. Each SAFE holder decided to invest in Session based on Defendants' representations that the Company had a pre-money valuation of $12 million and on the terms that had been offered to them, as-is without any negotiation. Accordingly, given the facts of this case, the SAFE pre-money valuation represents a reliable, market-based indicator of Session's value. *See Hyde Park*, 2024 WL 3579932, at *20 ("Under different circumstances, a valuation round might provide probative evidence of fair value.").

Additionally, even if this evidence was Defendants' "best guesses" of value, as the Court of Chancery found (Ex. A at 38), Defendants should not now be allowed after the fact to minimize or question the significance of their own contemporaneous statements to Plaintiffs and third parties, and the projections Defendants themselves commissioned to support the pre-money valuation communicated to investors. This evidence proves what Defendants themselves believed was the Company's value and, therefore, the value of the stock they misappropriated from Plaintiffs. To the extent there is any doubt concerning the evidence's reliability, the Court of Chancery's ruling unfairly makes Defendants, rather than Plaintiffs, the

beneficiaries of that doubt. *See Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP*, 2020 WL 948513, at *20 (Del. Ch. Feb. 27, 2020) ("In accordance with public policy, Delaware courts place the burden of uncertainty where it belongs; so long as a plaintiff provides a reasonable method to calculate damages, the risk that such cannot be determined with mathematical certitude falls on the wrongdoer, not the wronged."); *Beard Research*, 8 A.3d 573 at 613 ("Public policy has led Delaware courts to show a general willingness to make a wrongdoer 'bear the risk of uncertainty of a damages calculation where the calculation cannot be mathematically proven.'") (quoting *Great Am. Opportunities, Inc. v. Cherrydale Fundraising, LLC*, 2010 WL 338219, at *23 (Del. Ch. Jan. 29, 2010)). As this Court has held, "certain presumptions apply when evaluating harm and loss" – for example, "[w]here the injured party has proven the fact of damages … less certainty is required of the proof establishing the amount of damages." *SIGA Techs., Inc. v. Pharmathene, Inc.*, 132 A.3d 1108, 1131 (Del. 2015). "In other words, the injured party need not establish the amount of damages with precise certainty 'where the wrong has been proven and injury established.'" *Id.* (quoting *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002)).

The Court of Chancery's decision to award rescission as a remedy for Defendants' conversion, rather than damages, runs contrary to these principles. Once the court correctly held Defendants liable for converting Plaintiffs' Session

stock, Plaintiffs were required to offer sufficient evidence from which the court could reasonably estimate the stock's value – and Plaintiffs did so, based on Session's records and Defendants' own contemporaneous statements to investors and others documenting what they believed were true and accurate valuations. Defendants themselves offered no contrary evidence of value at trial but instead attempted to minimize the import of their admissions through *post hoc*, self-serving testimony. If the Court of Chancery had any doubts about the reliability of Plaintiffs' valuation evidence, Delaware law required that those doubts be resolved *against* Defendants after the court found them liable for converting Plaintiffs' stock. Instead, the Court of Chancery erred by doing the opposite and declining to award damages.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the Court of Chancery's decision to grant rescission and award each Plaintiff damages equal to the estimated value of the stock converted by Defendants. Since Plaintiffs' individual holdings of converted stock each represented a 20% share of Session's total equity at the time of conversion, each Plaintiff is entitled to damages equal to no less than 20% of the Company's $12 million value, or $2.4 million.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 28, 2026, true and correct copies of the attached document were served upon the following counsel of record via File & ServeXpress:

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