



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

COURT BELOW:
COURT OF CHANCERY OF THE
STATE OF DELAWARE

C.A. NO. 2023-0186-JTL

APPELLEE'S ANSWERING BRIEF

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NATURE OF THE PROCEEDINGS

Appellees Session Corp. (“Session” or the “Company”), Esther Lenoir Ramirez (“Ramirez”), and Vinh Pho (“Pho”) (Ramirez and Pho are the “Individual Defendants” and with Session, collectively, the “Defendants”), by their undersigned counsel, respectfully submit this Answering Brief in response to the Opening Brief of Appellants Camden Foley (“Foley”) and Samuel Bertain (“Bertain”) (collectively, “Plaintiffs”).

This action concerns a dispute over a start-up company and is a familiar tale of a group of four friends turned business partners who struggled to get a company off the ground. Plaintiffs filed their lawsuit after they were terminated in October 2022 when the Company ran out of funds and could not sustain six-figure salaries for four founders, two of whom (Plaintiffs) had months of performance issues. Pursuant to an agreed upon business restructure of the Company’s equity structure earlier that year, Session repurchased Plaintiffs’ stock in the Company.

Plaintiffs filed their Verified Complaint on February 15, 2023, alleging three causes of action for (1) breach of fiduciary duty, (2) fraud, and (3) conversion – all arising out of the terminations of employment and the subsequent repurchase of the Plaintiffs’ stock in Session. A three-day trial on Plaintiffs’ claims commenced on February 12, 2025 and ended on February 14, 2025, with Vice Chancellor J. Travis Laster presiding.

The evidence at trial painted a clear picture. One founder, Ramirez, took the laboring oar to get the Company off the ground, working as Session's only full-time founder from 2018 through fall of 2021 without any compensation (save remuneration from Session for using her apartment as a storage unit). The Chancery Court found that Plaintiffs' assertion that "they all were contributing equally" to the startup in these early years was "objectively inaccurate, but '[t]he weakness of human nature prevents men from being good judges of their own deservings,' and 'soundness of judgment is easily obscured by self-interest.'" *See* Plaintiffs' Opening Brief ("Pls. Opening Brief"), Dkt. 11, Ex. A, p. 6.

As each year passed, with no outside capital, any cashflow entirely consumed by inventory outlays and repayment of friends and family short term borrowings, Sessions had no ability to pay Ramirez. Consequently (and repeatedly), Ramirez demanded that her co-founders give her an increased share of equity in Session to compensate her for her disproportionate labor and risk. Finally, in May 2021, the parties agreed to give Ramirez more equity in Session. In November 2021, the parties entered into a Mediated Agreement that resolved their years-long equity dispute. The parties agreed that Plaintiffs would cancel 50,000 shares and all parties would re-vest their shares. Ramirez had Session's counsel draw up corporate documents that the parties reviewed and executed. Unfortunately, after all founders finally joined Session as full-time employees in

February 2022, performance issues arose with Foley and Bertain and the Company failed to meet target revenue. By fall of 2022, Session had negative net income of over \$400,000, and Ramirez, as CEO, was faced with the harsh reality of firing her friends and co-founders in order to keep Session alive. In October 2022, Ramirez was advised to and did fire Plaintiffs. Session then repurchased Plaintiffs shares pursuant to the deal all co-founders executed.

Following the trial, the Vice Chancellor found that there was no fraud or breach of fiduciary duty, and ruled in Defendants favor on those claims. Pls. Opening Brief, Ex. A, p. 1-2. The Chancery Court ruled in Plaintiffs favor on their conversion claim, finding that Defendants had failed to observe corporate formalities when Ramirez cancelled and re-allocated shares pursuant to the parties' agreements without approval of the board. *Id.* There is no dispute that Ramirez was acting pursuant to the parties' mediated agreement, but the Court found that the failure to adhere to corporate formalities tainted the agreements. *Id.*, p. 24-25. In fashioning a remedy, the Vice Chancellor determined that Plaintiffs' claim for \$2.4 million in damages was "unwarranted because the valuation is too speculative." *Id.* at p. 37. In light of Plaintiffs' speculative evidence of damages, the Court exercised its discretion to grant the equitable remedy of rescission. *Id.* The Vice Chancellor rescinded (i) the stock cancellation agreement and (ii) the stock issuance. *Id.* at p. 38-39.

The sole issue that Plaintiffs have raised on appeal is their claim that the Court of Chancery could not award rescission as a remedy and was required to award monetary damages. This argument is without merit. The Chancery Court weighed the evidence and credibility of the witnesses and found that Plaintiffs' evidence of damages was speculative and mere "puffery." *Id.*, at p. 38. The Court's factual analysis of the evidence is subject to the deferential "clearly erroneous" standard, and should not be disturbed.

Delaware law does not permit the recovery of damages that are "merely speculative or conjectural." *OptimisCorp v. Waite*, 2016 WL 2585871, at *3 n.11, 137 A.3d 970 (Del. 2016) (quoting *Henne v. Balick*, 146 A.2d 394, 396 (Del. 1958)). Despite Plaintiffs' failure to prove its damages, the Vice Chancellor decided to use his equitable powers to fashion a remedy that best fit the case: rescission of the relevant agreements. The law is well established that the Chancery Court has broad discretion to award an equitable remedy, including rescission, particularly where, as here, monetary damages are speculative. *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983).

Appellees Session Corp., Esther Lenoir Ramirez, and Vinh Pho respectfully request that this Court affirm the sound judgment of the Court of Chancery.

SUMMARY OF ARGUMENT

1. The sole issue in dispute is the Court of Chancery’s choice of damages. Plaintiffs assert that “[i]t was legal error for the Court of Chancery to grant rescission as relief for Defendants’ conversion of Plaintiffs’ stock, rather than award damages.” Pls. Opening Brief, p. 7. Defendants deny this assertion. As a matter of law, the Court of Chancery has broad, “complete” powers “to fashion any form of equitable and monetary relief as may be appropriate, including rescissory damages.” *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983); *Johnson & Johnson v. Fortis Advisors LLC*, 2026 WL 89452, at *13 (Del. Jan. 12, 2026) (“we review the court’s choice and measurement of a damages remedy for abuse of discretion”). The Court appropriately awarded the remedy of rescission because it determined that the evidence of damages was speculative and did not support monetary damages. There is no dispute that “[t]he Court of Chancery is authorized to grant equitable rescission...” when “damages are not available... [and] the amount of damages are not ascertainable...” Pls. Opening Brief, p. 32. Plaintiffs have not (because they cannot) prove that the Court’s factual findings that Plaintiffs’ evidence of damages is speculative was “clearly erroneous.” This is because the Court’s factual findings were not made in error, they were made based on the Court’s sound evaluation of witnesses and the documentary evidence presented at trial. The Court of Chancery did not abuse its discretion in finding

that Plaintiffs failed to meet their burden of proving monetary damages with reasonable certainty, and the court's factual findings were not clearly erroneous.

Accordingly, there is no basis to overturn the Chancery Court's decision.

Defendants respectfully request that this Court affirm the judgment of the Court of Chancery.

STATEMENT OF FACTS

A. The Parties Start Session

The parties to this litigation met in 2016. A0952-A0953. Billowby, a cannabis company co-founded by Ramirez, hired Foley, Pho, and Bertain to assist Ramirez with designing a line of glass cannabis smoking accessories. A0713-A0714, A0951-A0953. The four successfully completed that project together. A0952-A0953.

In February 2017, due to e-commerce regulatory pressures on the cannabis industry, Billowby went out of business. A0952. Ramirez wanted to continue on with its product line and worked as a consultant for other cannabis projects to save up so that she could potentially re-engage Foley, Bertain, and Pho. A0953-A0954.

In the summer of 2017, Ramirez reached out to Foley to gauge his interest. A0954-A0955. The four subsequently met in person and discussed launching Billowby's glassware line as a new company. A0956-A0958. All agreed that due to her experience, contacts, and good reputation in the cannabis industry, Ramirez would lead the team as CEO. A0713-A0714, A0722, A0956-A0958. At that time, Pho, Foley and Bertain continued on as fulltime employees for IDEO and Ramirez focused on building the new company. A0713-A0714, A0722, A0956-A0958.

All agreed that Pho, Bertain, and Foley would contribute \$10,000 as initial capital and Ramirez would contribute sweat equity. A0956-A0958. In May 2018, the parties agreed on a company name: Session Corp. A0959.

The parties' agreement of the company's structure was memorialized in Session Bylaws, appointing Ramirez as President and CEO. B0006 (Section 3.1). As CEO, Ramirez had the authority to terminate other officers. B0007 (Section 3.3) ("The CEO, and any Officer who appointed another Officer, may remove that other Officer at any time with or without cause, except that they may not without Board approval remove Officers appointed by the Board."). The founders understood that they were at-will employees who could be terminated at any time by Ramirez. A0925, A1377-A1378.

Pursuant to Article 4 of its Certificate of Incorporation, Session was authorized to issue 10,000,000 shares of Session Stock. B0001. The founders agreed to split 80% of the shares in Session Stock among themselves and set the rest aside for employee grants. A1191-A1192. On May 7, 2018, in its "First Action by the Board of Directors of Session Corp.," Ramirez (as the initial board member) authorized a stock grant of 2,000,000 shares of Session Stock to each of the founders and valued those shares at \$.00001 per share. B0012-B0013; A0850-A0851. The parties also agreed to the use of specific forms of documents to make these stock grants (designating them as "Grant Documents"), and agreed that: "the

CEO is authorized to sign and make such addenda and modifications to the Grant Documents as the CEO deems appropriate, and to extend engagement agreements on behalf of Session promising stock grants.” B0013 (Article 4).

Ramirez used online forms to organize the formal structure of Session and ran all documents by her co-founders. A1106. The May 25, 2018 Stock Grant Notice (the “2018 Stock Grant Notice”) outlined the terms and the vesting schedule. A1448-A1450, A1451-A1453. That 2018 Stock Grant Notice included a provision that “this stock grant, by itself, does not establish any initial or ongoing right of employment or engagement by Session, or affect in any way any right you or Session may have to terminate your employment or engagement.” A1448-A1450, A1451-A1453. The 2018 Stock Grant Notice incorporated terms to be found in a Stock Purchase Agreement to follow; that original 2018 Stock Purchase Agreement was attached to the First Action by the Board of Directors, dated May 7, 2018 (the “2018 Stock Purchase Agreement”). B0028- B0036.

B. A Dispute Ensues Over Compensating Ramirez For Her Disproportionate Efforts And Risk

From May of 2018, Ramirez took the laboring oar of getting Session off the ground, and during the first several months of startup work, the parties’ efforts were relatively equal. A0961-A0962.

Once the first product went live in October of 2018, the day-to-day operations ramped up exponentially. A0961-A0964. Ramirez personally handled

all daily aspects of running the business. A0961-A0965, A0969, A1204-A1206.

While Ramirez worked full-time hours for Session, her co-founders assisted on nights and weekends and were frequently unavailable due to IDEO extensive overseas work-travel on projects. A0961-A0965, A0979, A1204-A1206.

By 2019, the entirety of the day-to-day operations work was on Ramirez. A0967, A0979-A0983. She cut her hours bartending (which was her sole source of any income) to keep up with the demands of Session, which never had any available cash to pay a salary. A0913-A0914, A0979-A0983. Session reinvested all of its revenue into growing Session – paying back family loans, buying product, and eventually hiring an employee to help Ramirez manage the workload. Bertain, Foley, and Pho did not have the time to put in more hours since they were working full-time, six-figure jobs. A0729-A0730, A0913-A0914, A0979-A0983. As Ramirez worked for free to keep Session growing and the Company used her apartment as storage, her co-founders requested that the \$10,000 they initially invested in Session be paid back to them from the profits. A0968-A0969. This did not jive with the initial agreement and Ramirez felt she was being “taken advantage of.” A0982-A0983.

The matter escalated, and in 2019, Ramirez met with Pho, Foley, and Bertain and requested the following: (i) she be compensated in equity for her sweat contribution because Session did not have funds to pay her a salary, and (ii)

she be reimbursed for the \$12,000 in rent that she paid to store product in her apartment. A0912-A913, A0967-A0969, A0982-A0984, A1193-A1196. The founders agreed to reimburse Ramirez for rent starting in 2020 and also decided to convert Foley, Pho, and Bertain's \$10,000 investment into a Company loan, but the founders could not reach any agreement to compensate Ramirez for her continued full-time commitment. A0718, A0856-A0857, A0967-A0969, A1016-A1017, A1193-A1196. Bertain and Foley disagreed and believed that the time they were putting in on nights and weekends was "equal" to the daily hours that Ramirez was contributing. A0749, A1343-A1344. The Vice Chancellor found at trial that this assertion was "objectively inaccurate," and that Plaintiffs' judgment of their own contribution was "obscured by self-interest." Pls. Opening Brief, Ex. A, p. 6. The friction continued to fester without resolution and Ramirez was now receiving "a crumb" of compensation in the form of rental payments for the storage of the products. Ramirez still received no compensation for her work. A1016-A1017.

By the fall of 2020, Ramirez could not afford to pay her expenses, lost her health insurance due to minimal part-time bartending hours to sustain herself, and could not find housing because she was not receiving any salary from Session. A0994-A0996. Ramirez once again demanded more equity. A0999, A1204-

A1206. The founders agreed that something should be done to compensate Ramirez but could not agree on how this was to be achieved. A1206.

C. Session's Growth And Need For Outside Funding

In March of 2020, the COVID-19 pandemic hit and sales for Session's smoking accessories sky-rocketed. A0989-A0990. But Session was cash poor, and could not afford to keep any stock inventory or purchase enough product to keep up with demand. A0989-A0993. Session's lack of capital critically obstructed its growth, budget for employees and marketing, and ability to launch new products. A0991-A0993, A1002-A1003, A1007-A1008.

At this point, Session was only generating cash by taking out loans from family and friends, but it was not enough to keep up with the demands of the rapidly growing company. A0991-A0993. Because the cannabis industry remains federally illegal, Session could not obtain loans or credit or open a bank account. A0997-A0998.

Ramirez began to network with professionals in the industry and read as much as she could about startups and fundraising. A1000-1001, A1003 Ramirez then engaged Molly Fehlig, a financial expert, to work up a financial model in the fall of 2020 that intended to show Session's revenue potential if the Company was adequately funded. A0739, A1003, A1005-A1006. Successful fundraising meant

availability of capital to keep up with the product demand, spend to develop new products, pay for marketing, and provide Ramirez with a living salary.

In 2021, Ramirez joined the six-week “HER” incubator, a program designed to mentor female founders, and learned a host of fundraising strategies, including fundraising logistics, strategies, and agreements. A1013-A1016, A1020-A1021. The Chancery Court found that Ramirez concluded, based on what she learned, that the Founders needed to restructure the Company’s equity to give the founder-CEO a dominant equity stake “to attract investors.” Pls. Opening Brief, Ex. A, p. 7. Ramirez shared this knowledge and the resources she obtained in the incubator with her co-founders. A0752-A0753, A0862-A0864, A1015-A1016, A1020-A1024, A1343-A1346, A1379. Ramirez also met with the Company’s attorney and the attorney “ultimately recommended reallocating the equity and imposing a new four-year vesting schedule”. A1507-A1508; Pls. Opening Brief, Ex. A, p. 8.

Ramirez once again demanded that she be given greater compensation in the form of equity so that the equity structure would fairly reflect the reality of the parties’ contributions and the risks. She further explained, as she learned from the incubator, that her increased equity would benefit the Company, making it a more attractive investment opportunity, rather than a four-way co-founder tie. A0752-A0753, A0862-A0864, A1015-A1016, A1020-A1024, A1343-A1346, A1379; Pls. Opening Brief, Ex. A, p. 8. Pho supported the restructure. A1212-A1213, A1343-

A1346, A1379-A1381. The Court found that: “Bertain remained skeptical but agreed. Foley opposed the idea, but agreed to go along with the majority.” Pls. Opening Brief, Ex. A, p. 8.

With their agreement to adjust equity ownership, the parties focused on fundraising and sketched out hypothetical exit scenarios based on Session growing from a cash-strapped start-up to millions of dollars to share among the co-founders. A0867-A0868. In short, the parties were all hopeful that the agreed-upon investment strategy would make them rich. A0867-A0868, A0927, A1379-A1381.

D. SAFE Fundraising

Meanwhile, Ramirez led the effort to fundraise. Ramirez estimated the Company needed to raise \$1.5 million. Pls. Opening Brief, Ex. A, p. 7. Through the HER incubator, Ramirez learned about the Simple Agreement for Future Equity (“SAFE”). *Id.*, p. 7; A1015-A1016. A SAFE is an instrument that allows investors to contribute capital in exchange for the right to receive equity upon the triggering of a future event. Pls. Opening Brief, Ex. A, p. 7. The Court made a finding of fact that “Early stage startups use SAFEs to raise capital without a near-term valuation.” *Id.*; *see* A1030-A1031. Ramirez, as the CEO, determined that the Company would be a good candidate for SAFEs because it “had a promising business model, but was difficult to value because it lacked consistent cash flow and needed to gain scale.” Pls. Opening Brief, Ex. A, p. 8.

Accordingly, Ramirez and Fehlig created financial projections for the Company that supports a pre-money valuation of \$12 million. *Id.*, p. 8-9; A1034-A1035. The SAFE contemplates a post-money valuation cap of \$14 million, which represents the highest valuation at which the Company would issue shares of preferred stock to SAFE investors if there was a later financing (an actual priced round) or a liquidity event. Pls. Opening Brief, Ex. A, p. 9; A1032.

By the fall of 2021, the Company raised approximately \$960,000 through SAFEs, which was well below the \$1.5 and 2 million that Ramirez had targeted, but it was enough for Pho and Bertain to join full-time and for Ramirez to begin to receive a salary. B0195-B0197; A1032; Pls. Opening Brief, Ex. A, p. 9. Foley had still not made any plans to join the Company because he did not want to lose the security of full-time employment with a six-figure paycheck – something he indicated would be the prerequisite to his joining Session full time. A1038-A1040.

E. The Parties Mediate Their Dispute

While Ramirez's two co-founders, Pho and Bertain, joined Session and received a six-figure salary immediately, the parties could not agree upon the specific allocation of equity they promised to Ramirez, who still did not have the compensation she had been demanding for years and that was agreed-upon in May of 2021. Foley and Ramirez, in particular, disagreed over how much equity Ramirez would have, and the discussions between the founders quickly turned

argumentative and unproductive. A0870-A0871, A1025-A1027, A1346. The parties agreed to mediate their dispute in November of 2021, and the parties all agreed in principle to giving Ramirez a greater equity share than the other founders. A0870, A1212-A1213; *see also* B0037-B0047, B0198-B0202, B0203-B0210; Pls. Opening Brief, Ex. A, p. 10.

On November 23, 2021, the parties executed a Mediated Agreement, in which they agreed to restructure the total shares of Session as follows: Ramirez 26.5%, Pho 24.5%, and Foley and Bertain 19.5% each - all to vest over the next 48 months of continued employment with Session. B0048-B0050; Pls. Opening Brief, Ex. A, p. 10.

Thereafter, Ramirez contacted the start-up attorney to prepare documents memorializing the co-founders' mediated settlement to move forward with their respective full-time commitments to Session, re-allocated equity ownership, and other ancillary agreements that were part and parcel of getting through the co-founder impasse to position the Company for success and the next round of financing.¹ A1053-A1054, A1502-A1516.

¹ The Mediation Agreement (B0048-B0050), Share Cancellation and Release Agreement ("Cancellation Agreement") (A1517-A1521, A1542-A1546.), Stock Restriction Agreement ("Restriction Agreement") (A1522-A1531, A1532-

Two months after the mediation, on January 24, 2022, Ramirez sent the new Restructure Agreements to Pho, Bertain, and Foley for execution. Foley and Bertain executed identical Share Cancellation and Release Agreements (“Stock Cancellation Agreements”). A1517-A1521, A1542-A1546. Therein, both Plaintiffs agreed to cancel 50,000 of the Shares they each held pursuant to that certain Stock Grant Notice, dated as of May 26, 2018 (A1448-A1450, A1451-A1453), as amended by the Cancellation Agreement to re-set the vesting schedule for the remaining 1,950,000 shares (the “Unvested Shares”). A1517-A1521, A1542-A1546. The Cancellation Agreement provided that the Unvested Shares shall vest as set forth in the Stock Restriction Agreement, dated as of January 24, 2022, by and between the Stockholder and the Company. A1517-A1521, A1522-A1531, A1532-A1541, A1542-A1546.

Similarly, to accomplish the purposes of the Restructure Agreements, Ramirez and Pho executed Restricted Stock Purchase Agreements as of January 24, 2022 (B0063-B0075) providing for the added adjusted equity share of 650,000 shares to Ramirez and 450,000 shares to Pho.

A1541.), and Employee Confidentiality and Invention Assignment Agreements are referred to collectively as the “Restructure Agreements.”

Under the Restructure Agreements, the re-vesting and the re-purchase upon termination restrictions for Session's shares impacted all co-founders equally. Pho, Ramirez, Foley and Bertain all executed either a Stock Restriction or a Restricted Stock Purchase Agreement, with a vesting schedule over the following 48 months. Session had the ability to repurchase shares of stock in the event of employment termination. B0063-B0075, B0076-B0085, A1522-A1531, A1532-A1541. Irrespective of the Restructure Agreements, all co-founders remained employed at-will and could be terminated at any time without cause. *See* B0063-B0075, B0076-B0085, A1448-A1450, A1451-A1453, A1522-A1531, A1532-A1541. Bertain signed his Restructure Agreements within one day without asking any questions or consulting an attorney at all about the restructuring. A1382-A1383. Foley finally signed the Cancellation Agreement and the Stock Restriction Agreement on March 3, 2022. B0086-B0094.

The Chancery Court's ultimate ruling on conversion turned upon the corporate formalities surrounding these agreements. The Court found the Stock Cancellation Agreements and the Stock Restriction Agreements were invalid because the Board never authorized the Company to (i) enter into these agreements, (ii) exercise the cancellation rights, or (iii) exercise the redemption rights. Pls. Opening Brief, Ex. A, p. 16. Ramirez mistakenly purported to act "by written consent as the sole member of the board," but the Court found this was

inaccurate because – at that time – “all four Founders were directors, so Ramirez could not act unilaterally as the sole director.” *Id.*, p. 13, 17-25. The Court found that because “[n]o one properly exercised the Company’s corporate power to enter into the Stock Cancellation Agreements or the Stock Restriction Agreements... the Company could not cancel 50,000 of [Plaintiffs’] shares... [and] could not repurchase the rest of their shares.” *Id.*, p. 24-25. By failing to adhere to the corporate formalities, Defendants “committed the tort of conversion.” *Id.*, p. 25.

F. Session In Crisis And Out Of Cash By Fall Of 2022

Foley was the last co-founder to join Session on a full-time basis after executing the Restructure Agreements and the Employment Agreement on March 3, 2022. B0086-B0094; A1038-A1040, A0917. Each founder was allocated a distinct role in the organization under Ramirez’s leadership as the CEO. Funds raised from SAFE enabled Session to pay salaries and employ additional staff. *See* A0887-A0888. Galindo was hired to provide management and executive training to the founders as they adjusted to their new roles. A1043, A1215-A1217.

The Chancery Court found that Foley and Bertain believed they would receive legal protection in exchange for reducing their equity stake through a “Founders Agreement.” Pls. Opening Brief, Ex. A, p. 11. However, with the Restructure Agreements in place, the discussions over the Founders Agreement stalled. The Chancery Court rejected Plaintiffs’ fraud theory arising out of the

Founders Agreement as unsupported by the facts. Instead, the facts at trial showed the mere failure to fulfill a promise – which, without the pre-meditated intent not to perform, is not actionable fraud. *Id.*, p. 27-29. The evidence at trial showed that the Founders Agreement “was not a priority,” and was thus never finalized. *Id.*, p. 29.

Unfortunately, around this same time, employee tensions were rising and friction among the parties grew because Pho, Bertain, and Ramirez discovered that Foley was “kind of a jerk to work with...” A1237. All of the co-founders had challenges working with Foley at some point or another and Ramirez was increasingly working to manage disputes between employees and Foley. B0117; A1059-A1062, A1238-A1244. Meanwhile, Bertain lacked the organization, experience, and confidence to manage his marketing team. A1059-A1062, A1083-A1086, A1248-A1251.

By April 2022, Foley’s poor management style was disrupting the entire Company. Four of Session’s employees submitted complaints against Foley and Session’s advisory board informed Ramirez that she needed to address Foley’s unprofessional conduct. B0095-B0016, B0117; A1063-A1064, A1238-A1240. Concerned about legal exposure and losing employees, Ramirez, Pho, and Bertain approached Galindo to help coach Foley. A1063-A1064. Galindo coordinated a “Restorative Justice Process” the week of April 14, 2022, to address the numerous

complaints about Foley's conduct in the work-place. A1243-A1245. The Restorative Justice Process was a multi-day workshop that involved two sessions: (i) a founders session, and (ii) a session with the aggrieved employees. A1246-A1247. This process cost thousands of dollars and consumed valuable time, money, and manpower during a critical sales period for Session. A1237-A1238.

The founders decided to invest in Foley's rehabilitation, even though Bertain agreed that he could have been terminated "for-cause" for his misconduct. A1247-A1249, A1393-A1394. Contrary to Plaintiffs' termination theory, Defendants spent significant time and money to improve Foley's performance to keep him at Session. And the Chancery Court found there was no merit to Plaintiffs' claims for fraud and breach of fiduciary duties arising out of their termination.

Meanwhile, due to cost overruns (largely in marketing and product acquisition – the two areas within Plaintiffs' responsibilities), and high co-founders salaries, the Company's financials turned grim by the end of the first quarter. By summer of 2022, the projected sales for Q1 and Q2 did not materialize, and Session's cash burn rate was unsustainable. Session had poured cash into marketing, but Bertain's marketing team was disorganized, ineffective, and failing to achieve objectives or target sales. A1059-A1061, A1083-A1086, A1248-A1251. To compound the problems, Foley failed to track inventory, shipments,

and sales in an organized or effective manner or accurately track of costs of goods sold. A1083-A1086.

The parties began to discuss layoffs and implemented other cost-cutting measures. A1074-A1075, A1251-1253. By June of 2022, the parties had to reduce their own salaries to avoid running out of cash entirely and to meet other more pressing Sessions' obligations. A1251-1253. The first layoffs were in September 2022. A1074-A1075. The founders were crippled by disagreement and the weekly meetings were often contentious and unproductive. A1078-A1079. In September of 2022, upon Foley's recommendation, the founders agreed to take out a loan from Foley's father for \$100,000 with 12% interest. A1076-A1077, A1180, A1251-A1253. Alarm bells went off when Ramirez told her advisory board about this loan. A1174-A1175. Session's advisor, Michael Gilvary, told her that Session needed to cut costs and engage a turn-around experts for advice on how best to position Session to withstand its crushing liquidity crisis. A1174-A1175.

Ramirez discussed Gilvary's suggestion with Pho, Bertain, and Foley at their regular Monday meeting on September 26, 2022, and informed them that Pho and herself would be traveling to Allentown, Pennsylvania, for an intensive financial workshop with Dan Schneider and Gilvary. A1077-A1079. That same week, Ramirez terminated Session's marketing employee, who was also Ramirez's best friend. A1078, A1254-A1255. Meanwhile, knowing that their performance was

poor, Foley and Bertain looked through Session’s financial documents that they received every Monday, for the first time in the Google drive and saw a spreadsheet with various layoff scenarios, including scenarios in which they were laid off. A1081-A1082, A1403-A1404.

After a stressful weekend with the advisors, Schneider informed Defendants that they should terminate their co-founders during a dinner on Tuesday, October 4, 2022. A1083-A1086. Ramirez then terminated Plaintiffs on Friday, October 7, 2022. A1082, A1093. Pursuant to the Restructure Agreements, Session then exercised its repurchase rights of Plaintiffs’ vested shares of Session.

G. The Chancery Court’s Judgment

Plaintiffs filed their Verified Complaint on February 15, 2023, alleging claims for (1) breach of fiduciary duty, (2) fraud, and (3) conversion – all arising out of the terminations of employment and the subsequent repurchase of the Plaintiffs’ stock in Session. As relief, Plaintiffs requested monetary damages, “compensatory and/or rescissory damages,” and a “catchall” request for “such other and further relief as the Court deems just and proper.” A0051.

Trial commenced before Vice Chancellor Laster in this matter from February 12-14, 2025. After hearing testimony and seeing the documentary evidence, the Chancery Court ruled (i) “[I]n favor of the plaintiffs on their conversion claim”; and (ii) “otherwise it rules in favor of the defendants.” Pls.

Opening Brief, Ex. A, p. 1. The Court's ruling on the conversion claim was based solely on Defendants' failure to adhere to the corporate form in getting full Board approval for the Restructure Agreements and the cancellation and repurchase of Plaintiffs' shares. *Id.*, p. 34-36. The Court rejected Plaintiffs request for \$2.4 million in damages for the converted shares because "the valuation is too speculative." *Id.*, p. 37. Instead, the Court awarded rescission. *Id.* The Vice Chancellor rescinded (i) the stock cancellation agreement and (ii) the stock issuance. *Id.* at p. 38-39.

This remedy was appropriate given Plaintiffs' failure to establish the measure of monetary damages at trial.

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY EXERCISED ITS BROAD DISCRETION IN AWARDING RESCISSION RATHER THAN SPECULATIVE DAMAGES.

A. Question Presented.

The sole issue raised by Plaintiffs on appeal is whether “the Court of Chancery [should] have awarded damages, rather than rescission, as relief for” their conversion claim. Pls.’ Opening Brief, p. 28. The answer is a resounding, “No.” The Court properly fashioned the equitable remedy of rescission after finding that Plaintiffs had failed to establish facts sufficient to prove their alleged monetary damages of \$2.4 million. But it appears that, once again, “ ‘[t]he weakness of human nature prevents [Plaintiffs] from being good judges of their own deservings,’ ” *See id.*, Ex. A, p. 6.

B. Scope of Review.

Delaware law is clear that there is a “limited scope of appellate review of a damages award.” *Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1128 (Del. 2015). The analysis is twofold: (i) “[d]amages awards are reviewed for abuse of discretion” and (ii) the Court of Chancery’s factual findings underlying this award will be upheld “so long as they are not clearly erroneous.” *Id.*, p. 1130.

As a preliminary matter, the Court of Chancery’s decision to rescind the cancellation and the repurchase of Plaintiffs’ shares – rather than award damages –

is reviewed for abuse of discretion. *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 817 A.2d 160, 178 (Del. 2002) (The Court of Chancery’s decision to order rescission or damages “is properly within the discretion of a court of equity.”). Numerous cases stand for the proposition that the abuse of discretion standard governs the Court of Chancery’s selection and/or fashioning of remedies. *See, e.g., id.* at 175 (“This Court reviews the Court of Chancery’s fashioning of remedies for abuse of discretion.”); *Weinberger v. UOP, Inc.*, 457 A.2d 701, 715 (Del. 1983) (affirming “the broad discretion of the Chancellor to fashion such relief as the facts of a given case may dictate”); *Int’l Telecharge, Inc. v. Bomarko, Inc.*, 766 A.2d 437 (Del. 2000) (“we defer substantially to the discretion of the trial court in determining the proper remedy”); *Johnson & Johnson v. Fortis Advisors LLC*, 2026 WL 89452, at *13 (Del. Jan. 12, 2026) (“we review the court’s choice and measurement of a damages remedy for abuse of discretion”).

Accordingly, the Court’s fashioning of a remedy is within its broad discretionary powers. *RBC Cap. Markets, LLC v. Jervis*, 129 A.3d 816, 866 (Del. 2015); *Siga Techs., Inc.*, 132 A.3d at 1128 (Del. 2015) (“We review [the Court of Chancery’s] damages determination for abuse of discretion....”). And the Court of Chancery’s factual findings underlying its choice and measure of damages will be upheld “so long as they are not clearly erroneous.” *Siga Techs., Inc.*, 132 A.3d at 1130. “Where there is more than one permissible determination to be drawn from

the evidence, and the trial court chooses one, its finding cannot be clearly erroneous.” *Id.*

In the face of this standard of review, Plaintiffs attempt to cast the Court’s discretion to fashion an equitable remedy as an issue of caselaw. On these grounds, Plaintiffs assert that the Court ““reviews de novo whether an equitable remedy exists or was applied using the correct standards.”” Pls. Opening Brief, p. 28 (*quoting In re Tesla, Inc. Derivative Litig.*, 2025 WL 3689114, at *9 (Del. Dec. 19, 2025)). However, the law is clear that the Court has broad discretion to fashion a remedy, including equitable remedies. So the remedy clearly exists and the Court applied rescission correctly.

Appellants’ reliance on that case is unavailing. To the contrary, *In re Tesla* confirms that, “factual determinations and application of the facts to the correct standards are reviewed for whether the trial court exceeded its discretion. In fashioning remedies, this Court reviews whether the court exceeded its discretion.” *In re Tesla, Inc. Derivative Litig.* at *9 (citations omitted, emphasis added). In *In re Tesla, Inc. Derivative Litig.*, this Court and the Court of Chancery agreed that rescission was an available remedy and further agreed on the standard, i.e., rescission could be ordered only if it was possible to return the parties to the *status quo ante*. *Id.* at *4, 11. This Court disagreed with the lower court, however, that, given the unique *factual* circumstances of that case, it was possible to return the

parties to the *status quo ante*. *Id.* at *13. The abuse of discretion standard controlled the disputed issue in that case.

Plaintiffs' reliance on *Siga Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330 (Del. 2013) is likewise inapplicable. In *Siga Techs, Inc.*, the *de novo* standard applied to that purely legal question of whether there was a lack of consensus under Delaware law as to "whether expectation damages are available where the trial judge makes a factual finding that the parties would have reached agreement but for the defendant's breach." The only purely legal question Plaintiffs have raised is whether rescission is available as a remedy. It is, as the abundance of caselaw shows.

C. Merits of Argument.

1. *Plaintiffs' Attempts to Restrict The Court of Chancery's Broad Remedial Authority Is Unsupported by The Law*

Plaintiffs first argue the lower court should not have ordered rescission because an award of monetary damages is the "correct remedy" for a claim for conversion of stock. Pls.' Opening Brief, p. 28. This argument is without merit. The authorities affirm the Court of Chancery's broad, "complete" powers "to fashion any form of equitable and monetary relief as may be appropriate, including rescissory damages."² *Weinberger v. UOP, Inc.*, 457 A.2d 701, 714 (Del. 1983).

² "Rescissory damages are the economic equivalent of rescission...." *In re Tesla*,

“[O]nce a right to relief in Chancery has been determined to exist, the powers of the Court are broad and the means flexible to shape and adjust the precise relief to be granted so as to enforce particular rights and liabilities legitimately connected with the subject matter of the action.” *Wilmington Homes, Inc. v. Weiler*, 202 A.2d 576, 580 (Del. 1964); *Bullen v. Davies*, 209 A.2d 81, 85 (1965) (affirming “the Court of Chancery...has broad powers to tailor its relief to fit the circumstances,” which relief “may be adapted to the particular rights and liabilities of each party”). Rescission is an available equitable remedy that the Chancery Court appropriately applied to this case.

Although Plaintiffs insist that rescission was not available as a remedy as a matter of law, they fail to cite any authority that supports the existence of any such legal prohibition. Appellants misplace their reliance on *Tansey v. Trade Show News Networks, Inc.*, 2001 WL 1526306 (Del. Ch. Nov. 27, 2001). In that case, the court merely compared, on the one hand, the “traditional remedy” for conversion of awarding the value of the converted property *at the time of conversion* with, on the other hand, an award of the value of the converted property *at some later time*. *Id.* at *8. The court did not address rescission at all and certainly was not endorsing damages as the only remedy available. To the

Inc. Derivative Litig., 2025 WL 3689114, at *13 (Del. Dec. 19, 2025).

contrary, the court acknowledged the “case law is replete with various approaches to dealing with situations where the value of the converted stock rose between the time of conversion and the time the plaintiff learned of conversion.” *Id.* at *8 n.31.

The other cases cited by Plaintiffs for the same erroneous proposition, without any discussion, suffer from the same defect. Pls. Opening Brief, p. 29. None of them addresses – let alone prohibits – rescission. *See Hoffman v. Dann*, 205 A.2d 343, 347 (1964) (“The case, however, does not stand for the proposition for which Ezzes cites it.”).

Plaintiffs also assert that they could not find “any prior precedent for a Delaware court to remedy a conversion of stock by rescinding a statutorily invalid transaction and reissuing the converted shares.” Pls. Opening Brief, p. 30. However, “the fact that a particular form of relief is unprecedented does not mean it is unwarranted or unavailable.” *In re Stream TV Networks, Inc. Omnibus Agreement Litig.*, 283 A.3d 1183, 1194 (Del. Ch. 2022). “[W]here the circumstances of the case are such as to require the application of equitable principles, the fact that no precedent can be found in which relief may be granted under a similar state of facts is no reason for refusing relief.” *Id.* (quoting *Modern Dust Bag Co., Inc. v. Com. Tr. Co.*, 91 A.2d 469, 469 (Del. Ch. 1952)).

Plaintiffs also argue that they *chose* not to request rescission in their complaint, implying that their “choice of relief” should have been honored by the

lower court. Pls. Opening Brief, p. 30. First, although the complaint does not specifically request rescission *per se*, it does request “compensatory and/or rescissory damages” – the latter of which is the economic equivalent of rescission, as noted above. A0051. Moreover, the complaint also includes a “catchall” request for “such other and further relief as the Court deems just and proper.” A0051. Such a request is an invitation to the court to award *any* just remedy, including rescission, especially in view of the broad remedial powers of the court whose jurisdiction Plaintiffs invoked.

Second, the Court of Chancery “is not limited to choosing among the specific proposals the parties advanced; instead, ‘this Court frequently has relied on its own remedial discretion to fashion a different remedy than what the parties may have requested when the circumstances so require.’” *Ban v. Manheim*, 339 A.3d 41, 76 (Del. Ch. 2025) (quoting *PharmAthene, Inc. v. SIGA Techs., Inc.*, 2011 WL 6392906, at *2 (Del. Ch. Dec. 16, 2011)). In *Guarantee Bank v. Magness Const. Co.*, 462 A.2d 405, 409 (Del. 1983), for example, this Court declined to find an abuse of discretion where the remedy imposed by the Court of Chancery was inconsistent with the parties’ stipulated facts, citing the Court of Chancery’s broad equitable discretion to choose a remedy.

Ultimately, Plaintiffs’ attempts to limit the lower court’s authority through restrictive doctrines or procedural technicalities are not only unsupported but also

irreconcilable with the lower court’s fundamental mandate to do what is equitable. *Bamford v. Penfold, L.P.*, 2022 WL 2278867, at *51 (Del. Ch. June 24, 2022) (“Unlike its extinct English ancestor, the High Court of Chancery of Great Britain, Delaware’s Court of Chancery has never become so bound by procedural technicalities and restrictive legal doctrines that it has failed the fundamental purpose of an equity court—to provide relief suited to the circumstances when no other remedy is available at law.”) (quoting William T. Quillen & Michael Hanrahan, *A Short History of the Delaware Court of Chancery: 1792–1992*, in *Court of Chancery of the State of Delaware: 1792–1992*, at 21, 22 (1992)), *aff’d sub nom. Manheim v. Ban*, 319 A.3d 268 (Del. 2024).

As a matter of law, it was within the Court’s discretionary power to fashion an equitable remedy, and the Court did so based on “conscience and reason.” *Siga*, 132 A.3d at 1130. There is no basis to disturb the Chancery Court’s decision.

2. *The Court of Chancery Properly Exercised Its Equitable Discretion in Ordering Rescission in Light of The Speculative Proof of Plaintiffs’ Damages*

As Plaintiffs were forced to admit, “[t]he Court of Chancery is authorized to grant equitable rescission...” when “damages are not available... [and] the amount of damages are not ascertainable...” Pls. Opening Brief, p. 32. Here, the Chancery Court evaluated the evidence at trial and found that monetary damages were unwarranted because “valuation is too speculative.” Instead of awarding no relief,

the Court generously used its broad discretionary powers to fashion an equitable remedy. *Id.*, Ex. A, p. 37.

Delaware law prohibits the recovery of damages that are “merely speculative or conjectural.” *OptimisCorp v. Waite*, 2016 WL 2585871, 137 A.3d 970, at *3 n.11 (Del. 2016) (*quoting Henne v. Balick*, 146 A.2d 394, 396 (Del. 1958)). When the Court of Chancery is acting as the fact finder, it **may not order a speculative award of damages** where a plaintiff fails to adequately prove them. *OptimisCorp v. Waite*, 2016 WL 2585871, 137 A.3d 970, at *3 n.11 (Del. 2016) (*citing Beard Research, Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch. 2010)). If the Court of Chancery “finds that monetary damages would be speculative or difficult to determine reliably,” then the court has “broad discretion” to “impose an equitable remedy tailored to address the harm...” *Brinckerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 247 (Del. 2017); *see also Weinberger v. UOP, Inc.*, 1985 WL 11546, at *7 (Del. Ch. Jan. 30, 1985) (declining to award rescissory damages “because of the speculative nature of the offered proof”), *aff’d*, 497 A.2d 792 (Del. 1985); *Ravenswood Inv. Co., L.P. v. Est. of Winmill*, 2018 WL 1410860 (Del. Ch. Mar. 21, 2018) (“The problem here is that Plaintiff again has provided no evidentiary basis for even a responsible estimate of rescissory damages.” (quotation marks omitted)), *aff’d*, 210 A.3d 705 (Del. 2019).

That is what the lower court did here, and there was no abuse of discretion in that respect because Plaintiffs' evidence of damages was too speculative. Damages can be awarded based on a "responsible estimate" of a stock's value. *Tansey v. Trade Show News Networks, Inc.*, 2001 WL 1526306, at *1 (Del. Ch. Nov. 27, 2001). Here, the Court reasonably concluded based on the testimony and documentary evidence that Plaintiffs failed to present sufficient non-speculative evidence in support of their damages. The Chancery Court found that the Company is a startup in the inherently risky cannabis industry that had never turned a profit. Pls. Opening Brief, Ex. A, p. 37. As Plaintiffs admit, the principal valuation evidence offered was the "price at which SAFE holders invested in the Company." *Id.*, p. 33. The Court analyzed the "marketing materials for the SAFE round, the projections they contain, and the SAFE round itself" and concluded, based on the evidence, that "[n]one of those materials are sufficiently non-speculative to support a damages remedy." *Id.*, Ex. A, p. 38.

Although Plaintiffs complain about the supposed inequity of rescission as a remedy here, they ignore that it is not uncommon for the Court of Chancery, in cases where a plaintiff fails to prove its damages to a reasonable certainty, to simply award nominal damages in a trivial amount (e.g., \$1). *See, e.g., Ivize of Milwaukee, LLC v. Complex Litig. Support, LLC*, 2009 WL 1111179, at *12 (Del. Ch. Apr. 27, 2009); *Oliver v. Bos. Univ.*, 2006 WL 1064169, at **34-35 (Del. Ch.

Apr. 14, 2006). The fact that the court did not do so here provides further support for the fairness of its decision.

3. *The Chancery Court’s Factual Findings Of Plaintiffs’ Damages Was Reasonable And Based On The Evidence*

Plaintiffs dispute the Court’s factual findings and argue that they “met their burden to estimate the damages to which they were entitled.” Pls. Opening Brief, p. 32. Under Delaware law, the deferential “clearly erroneous standard applies to factual determinations based on credibility and the evidence.” *Siga, supra*, 132 A.3d at 1130. Here, the Chancery Court reasonably interpreted the documentary evidence and testimony of the witnesses and found the evidence of damages was speculative.

Plaintiffs contend that the proper valuation of their shares – and the measure of their monetary damages – as of the time of cancellation and repurchase in October of 2022 was \$2.4 million. However, instead of engaging a financial expert to prepare a formal valuation based on the company’s actual financials, Plaintiffs based their damages calculation on SAFE materials. Specifically, (i) the documents shared with potential investors in 2021 that project a “pre-money valuation” of \$12 million, extrapolating it from the use of a \$14 million post-money cap in recognizing SAFE holders’ total \$960,000 capital investment in 2021 as representing 6.8% of the Session’s equity, (ii) a statement that Ramirez made to Schneider that she would sell her shares of Session stock for \$2 million,

and (iii) Pho's statement to Schneider that he *believed* his shares were worth \$4-4.5 million. *See* Pls.' Opening Brief, p. 33-34. Plaintiffs' demanded damages do not begin to represent a "responsible estimate" of the value of their allegedly converted shares.

The Chancery Court evaluated the evidence and found that "[n]one of those [SAFE] materials are sufficiently non-speculative to support a damages remedy." Pls. Opening Brief, Ex. A, p. 38. A SAFE is an instrument that allows investors to contribute capital in exchange for the right to receive equity upon the triggering of a future event. *Id.*, p. 7. Ramirez, as the CEO, determined that the Company would be a good candidate for SAFEs because it "had a promising business model, but was difficult to value because it lacked consistent cash flow and needed to gain scale." *Id.*, p. 8. The SAFE was based on financial projections created by Ramirez and Fehlig, based on the hope of a fully raised amount – which also did not happen. *Id.*, p. 8-9. The Court found that "[t]he projections were Ramirez's best guesses." *Id.*, p. 38.

Next, the Court stated that the "marketing materials were puffery." *Id.* And the Court, citing to a publication from the Y Combinator (the leading startup accelerator and a company that publishes form SAFEs), concluded that "the point of a SAFE is to provide financing for a startup that does not have a reliable valuation." *Id.*, p. 7, 38. The Court then opined that, there could be a scenario

where SAFEs could be relied upon, but that Plaintiffs had failed to present evidence sufficient to show the reliability of SAFEs as a valuation indicator. *Id.*, p. 38.

The Court's findings of the credibility, sufficiency, and weight of the evidence presented at trial is not clearly erroneous, and should not be disturbed on appeal. Indeed, Foley admitted during the trial that valuation changes over time, and is thus inherently unreliable. A0800-A0801. The SAFE projection that Plaintiffs rely upon simply provides an estimate of the opportunity for investors to invest in Session in 2021, but Plaintiffs failed to present any evidence sufficient to show the reliability of this evidence to value shares, let alone the value a year later in October 2022. *See* A0852-A0853.

Second, Defendants proved at trial that the SAFE projection was developed in early 2021 and was based on assumptions of margin, total financing raised, units sold, and other aspirational factors embedded in financial modeling that *never materialized* – including the critical assumption that the SAFE funding round would bring in \$2,000,000. *See* A0805-A0806, A0819. (Foley admitted the accuracy of projections could be affected if future events did not occur); A1466-A1467, A1474-A1498. The SAFE round fell short of the hopeful \$2,000,000 by over one million. A1466-A1467, A1474-A1498. The \$12 million pre-money projection assumed a \$4.2 million revenue in 2021. A1466-A1467. This never

occurred. Instead, revenue was only \$1.8 million in 2021. B0118-B0192; A1420-A1421. Plaintiffs further admitted the projection Fehlig created in early 2021 was not updated in November of 2021 when it was clear that revenue would not hit \$4.2 million. A1424-A1426. Meanwhile, the financial state of Session plummeted in 2022, when sales failed to materialize as projected and overhead increased by multiple magnitudes. B0193-B0194; A0816. By October 2022, Session had no cash, had taken a predatory \$100,000 loan from Foley's father, and was forced to lay off its employees to stay afloat. Session was plainly not worth \$12 million in October 2022, when Ramirez was forced to terminate all of Session's employees save herself and Pho, just to keep the doors open. Instead, the record reflects Session had a net income of *negative* \$491,111.13 by the end of September 2022. B0193-B0194.

Plaintiffs admitted at trial that they did absolutely nothing to verify the reliability of the damages figures they cite to – they did not review P&Ls, revenues, or projections, or retain an expert to value Session. A0814. Defendants' statements during turnaround discussions about what their willingness to take \$2 million of \$4 million for their shares in order to exit Session are similarly not at all indicative of the value of the Company or its equity, as this was an “emotional number” that was not tied to any mathematical valuation or offer. A1177. Indeed, Foley admitted that no one ever offered to purchase Session for \$12 million.

A1177, A0815-A0816. Plaintiffs failed to prove that the SAFE projection in 2021 may be relied upon for valuing their damages for conversion in October 2022. The Court reasonably determined that the evidence of damages was speculative.

Plaintiffs' reliance on *Tansey* is misplaced. In that case, then Vice Chancellor Strine explicitly noted that the posture of the case was "unusual." *Tansey*, 2002 Del.Ch. LEXIS 127 at *2-3. He noted that (i) the parties had stipulated to a paper record in lieu of a trial; (ii) there was no formal valuation provided by a financial expert; and (iii) that his opinion was "a good faith effort to craft a sensible remedy based on an *inadequate* factual record." *Id.* at *3-4 (emphasis added). In so noting, Vice Chancellor Strine explained that the reason for the lack of an evidentiary hearing or an adequate record was due to the amount of damages the plaintiff sought: \$164,382.15. *Id.* Plaintiffs' failure to hire an expert or present any reliable evidence of any valuation of the stock they claim was converted in this case is not excusable as it was in *Tansey*. There is a great deal more at issue than \$164,382.15—Plaintiffs claimed entitlement to \$2,400,000.

Although *Tansey* is inapposite due to its unique circumstances, it is worth noting that in that case, the evidence that Vice Chancellor Strine deemed insufficient and only accepted due to the unique circumstances present in *Tansey* was superior to what Plaintiffs allege is sufficient in this case. In that case, there was a merger, and therefore, some more reliable and additional evidence than is

present here. Thus, although Vice Chancellor considered the price per share of an investment in the company at issue, he determined that much greater weight should be given to a merger formula and budget document. Plaintiffs cannot point to any evidence of similar reliability here. Indeed, Defendants, in speaking with potential investors, were transparent in providing all the Company's financials and further articulating that SAFE cap is not the same as "valuation". B0051-B0055, B00056-B0062.

Nor does *Hyde Park Venture Partners Fund III, L.P. v. FairXchange, LLC*, 2014 WL 3579932 (Del.Ch. July 30, 2024), help Plaintiffs. *Hyde Park* concerned an action seeking an appraisal of shares pursuant to 8 Del.C. §262. *Id.*, *15. This statute requires that "the Court shall determine the fair value of the shares" means that the court has to arrive at a valuation, even if none of the parties' attempts are persuasive. *Id.* (citing 8 Del.C. §262(h)). Here, Plaintiffs have not brought a claim for appraisal. This Court need not, and should not, assume Plaintiffs' burden of proof. Moreover, the Court in *Hyde* found that Series B1/B2 fundraise rounds was not probative evidence of fair value because the valuation was outdated and stale due to a variety of factors, and the abandoned Series C round was weak because FairX had failed to close the round at the pre-money valuation. *Id.*, *19. Here, the pre- and post-money valuation was much less sophisticated than that in *Hyde Park*, and the conditionality and ballpark nature of the factors used to create the

projection (such as an estimated \$4.2 million in revenue that never materialized) render the early 2021 projections for a company going through its very first funding round stale and speculative.

The Court weighed the evidence presented and found that Plaintiffs' evidence of damages were "speculative" and unreliable. This is a reasonable inference, and Plaintiffs have failed to show that Vice Chancellor Laster's interpretation of the evidence was "clearly erroneous." After properly concluding that he could not award speculative damages, the Vice Chancellor used his broad equitable powers to fashion an appropriate remedy in light of the facts: rescission.

CONCLUSION

For the foregoing reasons, Appellees Session Corp., Esther Lenoir Ramirez, and Vinh Pho respectfully request that this Court affirm the judgment of the Court of Chancery.

Dated: March 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certified that on March 6, 2026, true and correct copies of the attached document were served upon the following counsel of record via File & ServeXpress:

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