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IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUMMIT HEALTHCARE OPERATING PARTNERSHIP, L.P., Plaintiff Below, Appellant, v. BEST YEARS, LLC, Defendant Below, Appellee.	No. 183, 2026 Court Below: The Court of Chancery of the State of Delaware C.A. No. 2025-1258-JTL

PLAINTIFF BELOW, APPELLANT SUMMIT HEALTHCARE OPERATING PARTNERSHIP, L.P.'S OPENING BRIEF ON APPEAL

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NATURE OF PROCEEDINGS

Plaintiff Below-Appellant, Summit Healthcare Operating Partnership, L.P. ("Summit") filed this action in the Court of Chancery on October 31, 2025, against Defendant Below-Appellee, Best Years, LLC ("Best Years"). D.I. 1. Summit alleged that the parties reached a binding agreement on all terms for Summit to acquire Best Years' 90% membership interest in certain senior housing and care facility portfolios owned through their joint venture for a purchase price of $16 million, and that Best Years wrongfully refused to consummate the transaction. *Id.*; D.I. 67. Summit asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief, seeking specific performance. *Id.*

Best Years filed its Answer on November 17, 2025. D.I. 13. Best Years denied any liability and claimed that no binding agreement was formed because the alleged agreement was never finalized or executed and was subject to final approval by Best Years' parent, Union Life Insurance Company, Ltd., which Best Years never obtained. *Id.*; D.I. 67.

The Court of Chancery expedited the proceedings. The parties engaged in expedited discovery, including document discovery, depositions, and the exchange of trial exhibits. Trial was held on March 6 and 16th, 2026, before the Honorable J. Travis Laster, Vice Chancellor.

With agreement of the parties, and the Court, post-trial briefing was not submitted. On April 10, 2026, the Court heard post-trial oral argument and received both parties' post-trial argument slide deck presentations. *See* A461-A534. On April 10, 2026, immediately following the post-trial oral argument, the Court of Chancery issued a post-trial transcript ruling in favor of Best Years. The Court concluded the parties did not form any binding contract. A96:24-A97:1. The Court accordingly entered judgment in favor of Best Years on all claims. A127:14-15.

On April 17, 2026, Summit timely moved for reargument pursuant to Court of Chancery Rule 59(f). D.I. 90. Summit argued that, accepting the Court of Chancery's factual findings, Delaware law required the court to determine and conclude as a matter of law that the parties formed an enforceable Type II preliminary agreement implicitly obligating the parties to negotiate in good faith toward a final agreement under *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A.3d 330 (Del. 2013), and *Cox Communications, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752 (Del. 2022).

On April 29, 2026, the Court denied reargument. D.I. 97. On May 6, 2026, the Court entered a Final Order and Judgment. D.I. 99.

Summit timely filed its Notice of Appeal to this Court on May 8, 2026. This appeal followed.

SUMMARY OF ARGUMENT

1. The Court below erred in its application of its factual findings to existing Delaware law, with regard to the formation of a Type II preliminary agreement. The Court found, "There was an agreement on the terms. But there was also an understanding that the agreement would not be binding until it was signed." A117:11-13. Under existing binding Delaware law, those findings establish an enforceable Type II preliminary agreement. The Court of Chancery nevertheless held incorrectly that there was "no agreement" because the parties anticipated a later signed definitive agreement.

2. The Court below erred when misapprehending existing Delaware law, with regard to Type II preliminary agreements, and should have also determined from its factual findings, that Best Years breached the Type II preliminary agreement. The court's own factual findings further establish breach as a matter of law. The Court found that the parties had finalized the transaction terms and that Best Years later suspended the transaction because "improved Sino-US relations" and changes to Union Life's "internal strategy" caused Best Years to reconsider the deal. No unresolved material terms remained. No further substantive negotiations occurred after July 31, 2025. Best Years simply abandoned the transaction for reasons extrinsic to the agreed framework. Under *SIGA*, that conduct constitutes breach of a Type II agreement as a matter of law. 67 A.3d at 349 n.85.

3. The Court below erred when misapprehending existing Delaware law, with regard to Type II preliminary agreements, and should have also determined from its factual findings, that Best Years' breach of the Type II preliminary agreement, entitled Summit to expectancy damages, which could include the remedy of specific performance on the MIPA, which had fully negotiated and agreed terms. Delaware law permits expectation damages for breach of a Type II agreement where the evidence establishes that the parties would have reached a final agreement but for the breaching party's bad faith conduct. *SIGA*, 67 A.3d at 351. Here, the Court of Chancery found, "On July 5, Summit sent an initial draft of the agreement to Best Years … On July 15, Best Years sent a revised draft agreement to Summit. … Over the next few weeks, Summit and Best Years continued to exchange comments and revisions about the draft agreement. Eventually, Pagliarini emailed Feng 'the last few issues.' … Feng responded on July 31. The two quickly came to an agreement on those four items." A104:18-A105:14. Under those findings, expectancy damages—not merely reliance damages—are warranted.

STATEMENT OF FACTS

A. The Parties' Longstanding Joint Venture Relationship

Summit is a Delaware limited partnership. Summit's general partner is Summit Healthcare REIT, Inc., ("Summit REIT") a Maryland corporation. Summit REIT manages Summit's affairs. *See* A97:16-21.

Summit and Best Years have operated as business partners for more than a decade through a joint venture formed to own and manage senior housing and skilled nursing facilities in the United States. *See* A98:5-10.

In 2015, Summit and Best Years formed Summit Union Life Holdings, LLC ("Holdco"), a Delaware limited liability company through which the parties jointly own a portfolio of healthcare real estate assets. *Id.* Summit owns a 10% membership interest in Holdco, while Best Years owns the remaining 90% interest. A98:18-20. At one time, the joint venture held ownership interests in seventeen senior housing and skilled nursing facilities. A98:21-22.

Over the course of the parties' relationship, the joint venture sold off many of those properties. A98:22-23. Through those prior transactions, Summit developed an understanding of how Best Years communicated approvals and authorized transactions. Best Years had only one employee, Bin Feng, but Feng operated in coordination with Union Life, Best Years' Chinese parent company. A100:23-24.

Nikki Yang, a Union Life investment manager, supervised Feng and communicated extensively with him regarding approvals and transactions. A109:16-18.

As the Court of Chancery found, the parties had a lengthy history of working together on asset sales requiring internal approvals from Union Life. A113:15-19. Summit understood that Best Years and Union Life maintained internal approval procedures for transactions, including review by Union Life's investment committee. A104:8-11. At the same time, Summit historically received approval communications through Feng or Yang and relied on those communications in prior transactions.

By 2023, Summit REIT sought to unwind its joint venture structures, including Holdco, as they were an impediment for an exit strategy to generate liquidity and maximize enterprise value for its shareholders. 99:1-10.

By April 2025, Summit and Best Years had previously agreed on the sale of eight of their seventeen properties. The remaining nine Holdco assets consisted of four properties in process of sale with third parties and five skilled nursing facilities located in Texas and Oregon (the "Creative and Gateway Portfolios"). Because Summit already managed the properties and owned 10% of Holdco, Summit viewed acquisition of Best Years' interests in the Creative and Gateway Portfolios as a strategic opportunity to consolidate ownership and eliminate joint venture complications. A99:19-24

At the same time, Best Years and Union Life internal documents from the investment management committee hearing on June 26, 2025, revealed its motivation for the proposed transaction as driven by "ongoing tensions in U.S.-China geopolitical relations" and efforts "to mitigate risks associated with overseas assets and protect the company's interests." A1091-A1092. Against that backdrop, the parties began discussing Summit's potential acquisition of Best Years' 90% interest in the Holdco Creative and Gateway portfolio assets.

B. The Parties Negotiated and Reached Agreement on the Major Terms of the Transaction

In April 2025, Summit proposed acquiring Best Years' 90% interest in the five skilled nursing facilities located in Texas and Oregon. A99:19-21. Summit sought to consolidate ownership of the remaining joint venture assets while Best Years and Union Life, in order to mitigate risks with their overseas assets, initiated a strategy for the divestment process of these assets in April 2025. A1093.

Over the next several months, the parties negotiated the economic terms of the transaction. The negotiations principally focused on purchase price because of the parties familiarity with the assets. Summit initially offered $14.5 million for Best Years' 90% interest in the Creative and Gateway Portfolios. A100:6-7. Best Years countered at $18 million and later increased its counterproposal to $19.5 million. A100:7-8. Summit then raised its offer to $15 million and told Best Years that Summit could close quickly upon signing definitive agreements as Summit would

not need due diligence for these assets it was already managing. A100:14-17. Best Years responded with a counteroffer of $16.5 million. A100:18.

On June 17, 2025, Summit made what it described as its final offer of $16 million and proposed that, "[i]f we have a deal," the parties "skip the LOI phase" and proceed directly to preparation of a Membership Interest Purchase Agreement ("MIPA"). A100:18-22.

Two days later, on June 19, 2025, Bin Feng—Best Years' sole employee and Union Life's designated representative for the transaction—texted Summit CEO Elizabeth Pagliarini: "Approved. I will send a formal email later." A909; A100:23-101:3. Feng then sent a formal email stating that Best Years was "aligned on moving forward at the $16 million purchase price" and was agreeable to proceeding without an LOI. *Id.* at 111:4-7. The June 19 email further stated that Best Years would "begin [its] internal approvals promptly while [Summit's] counsel proceed[ed] with drafting the MIPA." A964; A111:11-13.

Following those communications, Summit updated its board regarding the proposed transaction and the parties' movement toward definitive documentation. As the Court of Chancery found, Summit's board discussed that "no definitive agreement ha[d] been signed" and that "[b]oard approval happens prior to PSA/definitive agreement." A102:3-7. Best Years also requested that Summit prepare and circulate a memorandum outlining the transaction's principal terms to

support its internal review and approval process, while Summit prepared draft definitive transaction documents. A102:18-24.

C. The June 20 Memorandum Memorialized the Agreed Transaction Framework

On June 20, 2025, Summit CEO Elizabeth Pagliarini sent Bin Feng a written memorandum summarizing the proposed transaction titled "acquisition of Membership Interests in the Creative and Gateway Skilled Nursing Facilities." A102:18-19. The memorandum followed Feng's request for a written summary "to help ensure mutual understanding and support [for the] internal review process." A101:7-10; A113:7-10.

The Court found that the memorandum "purported to list 'the principal terms agreed upon by the parties[.]'" A102:22-24. The memorandum addressed the proposed acquisition structure and contemplated preparation of a Membership Interest Purchase Agreement ("MIPA").

Following circulation of the memorandum, the Court found that Best Years took steps consistent with advancing the transaction through its internal review and approval process. Specifically, the Court found that Feng cancelled meetings with brokers who had been assisting Best Years with market valuations for the assets. A103:11-13. On June 25, Feng informed Pagliarini that Best Years had "a few questions about the memo" because Union Life's investment committee was scheduled to discuss the proposed transaction the following day. A103:13-14. Feng

then transmitted detailed questions regarding the memorandum's positions governing the transaction expenses and balance-sheet treatment. A103:19-22; A103:5-6.

Neither party signed the memorandum, but the Court found that, on June 26, Union Life's investment committee "met and authorized the project team to continue to negotiate the potential transaction with Summit." A103:24–A104:3. Shortly thereafter, Feng informed Pagliarini that the investment committee meeting "went well" and that Best Years was "waiting [for] them to sign." A104:14-17.

D. Union Life Internally Approved the Transaction and the Parties Finalized the MIPA

The Court of Chancery found that Union Life maintained "a separate approval chain that has to be followed before entering into a contract." A104:12-13. The Court further explained that Union Life's investment committee was "a seven-member group of senior executives that evaluates potential deals and decides whether they make business sense for the company." A104:4-6. The Court found that "[t]he investment committee approval doesn't constitute approval to enter into a contract; it constitutes sign-off on the business concept." A104:8-13.

The Court further found that, after the investment committee approval, the parties continued negotiating and revising the MIPA over the following weeks. A 104:18-A105:14. By July 31, 2025, the parties had resolved the remaining issues relating to the MIPA. When Summit asked whether Best Years still needed "final

IC approval before signing," Feng responded that "there shouldn't be any further IC approvals needed, since there haven't been any material changes." A105:17-18, A106:23-A107:2. Feng further explained that the transaction was "just going through the usual review steps before we get the final signature." A107:2-4. Based on the record developed at trial, the Court expressly found that "the parties had largely agreed on the terms of the transaction by the end of July" and that "the terms were largely finalized." A116:22-24, A117:10-11.

E. Best Years Abandoned the Transaction for Strategic Reasons Unrelated to the Negotiations

Although the parties had finalized the operative transaction terms by the end of July 2025, the transaction was never executed. The Court of Chancery found that, after July 31, 2025, "[t]hings might have seemed on the way to a signed agreement and a happy transaction," but that "internally Union Life grew concerned about macroeconomic and geopolitical factors." A107:13-16. The Court further found that Union Life also had "some interactions with its financial regulator" concerning its U.S. assets. A107:16-17. Specifically, Union Life internal documents in November 2025, describe the background of the transaction and reason for their change in position as, "After several rounds of negotiations the two parties reached agreement on the equity price of $16 million in June 2025 … the proposal for the sale was approved by the investment committee … as of early August 2025 … the terms [of the draft purchase agreement] were largely finalized … Later, due to signs of

improved Sino-US relations and adjustments to the company's internal strategy, our company decided in early August 2025 to temporarily suspend this sale." A1298.

Over the following weeks, Summit repeatedly requested updates regarding execution of the MIPA. A107-108. On August 11, 2025, Summit asked for the "ETA on the MIPA," and Feng responded that he would "touch base with Union Life." A107:19-23. On August 12, Feng informed Summit that Union Life was "still reviewing" the proposed sale and that it was "still going through the internal approval process." A107:19-A108:16.

On August 31, 2025, Summit again asked for an update regarding the MIPA signing. A108:13-14. Feng responded that there was "[n]ot much" progress and that he would "check again Tuesday." A108:14-15. On September 3, Feng informed Summit that "the approval's been delayed since regulation got stricter and they need more review time." A108:17-20. On September 5, Feng further advised Summit that "[t]he regulator wants to pause the sale." A108:21-23.

The Court found that Summit's representatives became skeptical of those explanations and confronted Feng directly regarding the asserted regulatory concerns. A109:1. Nevertheless, the Court found that Best Years never identified any unresolved transaction term, proposed any new economic condition, or resumed substantive negotiations concerning the MIPA after the parties finalized the

agreement in late July 2025. This is supported by the Court's finding that, "There was agreement on the terms". A117:11-12.

The Court ultimately found that Union Life later attributed the suspension of the transaction to changing strategic and geopolitical considerations. Specifically, the Court cited Union Life's internal acknowledgment that, "[a]s of early August 2025," the parties' "terms were largely finalized," but that Union Life later reconsidered the transaction after it "grew concerned about macroeconomic and geopolitical factors." A1297-A1299; A117:3-18.

F. Summit was Harmed by Best Years' Abandonment of the Transaction

Following post-trial arguments, the Court of Chancery entered judgment in favor of Best Years. A127:14-15. The Court found that the parties had negotiated and revised the MIPA over several weeks, resolved the remaining open issues, and proceeded toward execution of the agreement. A104-A107.

The Court nevertheless concluded that no binding agreement existed because the parties contemplated execution of a final signed agreement before becoming fully bound. A117-A119. However, the Court found there was an agreement on terms. Although, the Court determined that "there was an understanding that the agreement would not be binding until it was signed," and that "the record shows that there was an understanding that no one would be bound until there was a formal signed agreement." A117:11-18.

With regard to a Type II preliminary agreement, the Court noted that a Type II agreement still requires a "threshold agreement." A127:7-8. The Court specifically held that it "didn't think there was ever an agreement to agree," and that "[w]hat there was was an agreement that no one would be bound until there was an actual fully signed agreement." A127:8-12. The Court therefore concluded that the parties had "no agreement." A127:13.

Because the Court concluded no agreement existed, it rejected Summit's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory relief. The Court further held that "even if there was some type of contract formed," the MIPA "conditions performance on" the execution and delivery of a signed agreement and that "no enforcement could be granted because the conditions for performance were never met." A121:18-A122:2.

ARGUMENT

I. THE COURT OF CHANCERY ERRED BY CONCLUDING NO TYPE II PRELIMINARY AGREEMENT EXISTED

A. Question Presented

1. Whether the Court of Chancery erred as a matter of law in holding that no enforceable Type II preliminary agreement existed where the court found that the parties initially agreed on major terms of the transaction, such as the purchase price, Union Life's investment committee approved the proposed business concept authorizing the project team to continue to negotiate the proposed transaction, later the parties reached agreement on all terms, and the parties agreed a formal definitive agreement was required for the transaction. (Preserved at, *e.g.*, A27:21-A28:1; A29:10-15; A46:2-9; A92:4-17; A95:22-A96:2; A126:22-A127:13).

B. Scope of Review

Questions of contract formation, such as the existence and legal effect of a Type II preliminary agreement, and the application of Delaware's preliminary agreement doctrine are reviewed *de novo*. *Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 760 (Del. 2022).

This appeal does not require this Court to disturb the Court of Chancery's underlying factual findings. The principal issue presented is whether, under *de novo* review applying existing Delaware law, must those findings establish an enforceable Type II preliminary agreement and a corresponding implicit obligation to proceed

in good faith toward consummation of the transaction. Further, whether under *de novo* review applying existing Delaware law, the Court's findings establish a breach of the Type II preliminary agreement, where Best Years' unilaterally renounced the transaction, after the parties reached agreement on all terms. Those questions are reviewed *de novo*. *Cox*, 273 A.3d at 760.

C. Merits of Argument

1. Delaware Law Recognizes Enforceable Type II Preliminary Agreements.

Delaware law recognizes two categories of enforceable preliminary agreements: Type I agreements and Type II agreements. *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 348–49 (Del. 2013); *Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 761 (Del. 2022).

A Type I preliminary agreement "reflect[s] a consensus 'on all points that require negotiation' but indicate the mutual desire to memorialize the pact in a more formal document." *Cox*, 273 A.3d at 761. By contrast, a Type II preliminary agreement "does not commit the parties to their ultimate contractual objective but rather to the obligation to negotiate the open issues in good faith in an attempt to reach the ultimate contractual objective within the agreed framework." *Id.* at 349; *accord Cox*, 273 A.3d at 761.

Delaware courts repeatedly have recognized that Type II agreements are enforceable even where material terms remain open for future negotiation and the

parties contemplate a later definitive agreement. *See Cox*, 273 A.3d at 761 (recognizing enforceable preliminary agreements where parties "agree on certain major terms, but leave other terms open for future negotiation"); *Greentech Consultancy Co. v. Hilco IP Servs.*, LLC, 2022 WL 1499828, at *12–13 (Del. Super. May 11, 2022) (holding term sheet constituted a Type II agreement where parties agreed on "general terms and conditions" while contemplating later "Transaction Documents" and further negotiations); *Boston Consulting Grp., Inc. v. GameStop Corp.*, 2023 WL 2683629, at *6–8 (D. Del. Mar. 29, 2023) (applying Delaware law and holding agreement created enforceable obligation to negotiate unresolved compensation terms in good faith).

Further, Delaware law does not require that a Type II preliminary agreement follow any particular form (such as requiring a formal signed term sheet or letter of Intent), and thus to the extent that Best Years attempts to distinguish *SIGA*, *Cox* and *Greentech* on the grounds that those cases involved signed term sheets, the Court should reject that argument. First, as the Court of Chancery found, the parties here did exchange writings that contain the terms of their preliminary agreement when Bin Feng texted Ms. Pagliarini "Approved" (A100:23-A101:3), asked for her to send a "memo outlining the key business terms" (A101:7-10), asked Ms. Pagliarini follow up questions regarding the memo "because Union Life's investment committee was slated to discuss the proposed transaction the next day (A103:15-18), and the Union

Life Investment Committee then "met and authorized the project team to continue to negotiate the potential transaction (A103:24-A104:3) which constituted "sign-off on the business concept" (A103:8-11).

Accordingly, notwithstanding that the parties did not formally execute a term sheet, the Court found that the parties did exchange writings setting forth the terms of a Type II preliminary agreement. Indeed, in one prior decision interpreting Delaware law regarding Type II agreements, the Superior Court found that even an oral agreement could constitute a binding Type II preliminary agreement. *Straine DM Holdings LLC v. Breault,* 2025 WL 275408, at *5 (Del. Super. Ct. Jan. 22, 2025) (holding that an oral agreement can constitute a binding Type II preliminary agreement where parties agreed on major terms, even if other terms remained open, and rejecting argument that such agreement was an unenforceable "agreement to agree").

As the Delaware Supreme Court explained in *SIGA*, parties operating under a Type II agreement are not free to walk away from the transaction once the essential framework has been established. Rather, a Type II agreement "bars a party from renouncing the deal, abandoning the negotiations, or insisting on conditions that do not conform to the preliminary agreement." *SIGA*, 67 A.3d at 349 n.85.

The Delaware Supreme Court reaffirmed these principles in *Cox*, holding that Delaware law recognizes enforceable preliminary agreements even where parties

contemplate execution of a later "definitive" agreement. 273 A.3d at 761. The Court explained that Type II agreements arise where parties "agree on certain major terms but leave other terms open for further negotiation." *Id.* (internal citations omitted).

The existence of a contemplated future definitive agreement does not preclude formation of a Type II agreement. Rather, Type II agreements exist precisely where parties intend to memorialize their agreement in later definitive documentation while nevertheless binding themselves to proceed in good faith within an agreed transactional framework. *SIGA*, 67 A.3d at 349; *Cox*, 273 A.3d at 761–62.

Delaware courts also have recognized that the obligation to negotiate in good faith may arise implicitly from the parties' agreement and course of dealing, even absent an express "good faith" provision. *See Cox*, 273 A.3d at 761–62; *Greentech*, 2022 WL 1499828, at *13 ("The lack of an express good faith obligation therefore does not hinder this Court's conclusion that the Term Sheet is a Type II preliminary agreement."); *Omega Cap. Mgmt. Partners, LLC v. Schrage*, 2022 WL 17847192, at *2 (3d Cir. Dec. 22, 2022) (applying Delaware law and confirming an obligation to negotiate in good faith may arise implicitly from the parties' agreement on a negotiation framework).

2. The Court of Chancery's Findings Satisfy Delaware's Type II Preliminary Agreement Framework as a Matter of Law.

a. The Court of Chancery made the following key factual findings that the parties reached agreement on certain major terms, leaving other terms open for negotiation and a framework for a transaction.

i. On June 17, 2025, Summit made a final offer of $16 million and added, "If we have a deal, I suggest we skip the LOI phase" and move directly to drafting the member interest purchase agreement. A100:19-22.

ii. On June 19, 2025, Best Years replied by text message to Summit's CEO, "Approved. I will send formal email later". A908-A909, A100:23-A101:3.

iii. On June 19, 2025, Feng emails Pagliarini stating that Best Years was "aligned on moving forward at the $16 million purchase price". A964, A101:4-6.

iv. In that same June 19 email, Feng asked for "a brief summary memo outlining the key business terms to help ensure mutual understanding and support our internal review and approval process. A964, A101:7-10.

v. On June 20, 2025, Pagliarini emailed a one-page summary memo to Feng. It was titled, Acquisition of Membership Interests

in the Creative and Gateway Skilled Nursing Facilities." A102:18-21.

vi. On June 25, 2025, Feng texted Pagliarini that Best Years had "a few questions about the memo". Feng asked for responses as soon as possible because Union Life's investment committee was slated to discuss the proposed transaction the next day. A910, A103:13-18.

vii. Feng then sent Pagliarini detailed questions, including on aspects such as transfer taxes or other fees connected with the deal, and asked about what would happen to the cash on the balance sheet. A1022-A1023, A103:19-23.

viii. On June 26, 2025, Union Life's Investment committee met and authorized the project team to continue to negotiate the potential transaction with Summit. A103:24-A104:3.

ix. The investment committee's approval "constitute[d] sign-off on the business concept." A104:8-11.

x. On June 26, 2025, Pagliarini followed up with Feng, and asked whether the investment committee had met. Feng responded, that it "went well". A911, A104:14-17.

xi. On July 5, 2025, Summit sent an initial draft of the agreement to Best Years. A104:18-19.

xii. Over the next few weeks, Summit and Best Years continued to exchange comments and revisions about the draft agreement. Eventually, Pagliarini emailed Feng "the last few issues". A1198. On July 31, Feng responded and the two quickly came to an agreement on those four items. A105:9-14.

xiii. On July 31, 2025, Pagliarini replied, "We will make these changes and send a clean execution document. Do you still need to get final IC approval before signing?" A1197, A105:17-18.

xiv. On August 1, 2025, Feng replied, "In response to your question, there shouldn't be any further IC approvals needed, since there haven't been any material changes." Continuing, he said "It's just going through the usual review steps before we get the final signature" A1280, A106:22-A107:4.

b. The Court of Chancery made the following key factual findings, that the parties agreed the transaction would require further documentation, with a fully executed definitive agreement.

i. The Court stated, "I'm not going to skip over [June] 19 and [June] 20, because I think some of the evidence from that

helps support the conclusion that both parties understood that there wouldn't be a binding agreement until there was a fully signed and executed agreement." A112:17-22.

ii. On June 19, 2025 Feng emailed Pagliarini and said that "Best Years was aligned on moving forward at the $16 million purchase price … but in the same email Feng told Pagliarini that Best Years would begin our internal approval promptly … and he asked for a memo to ensure mutual understanding and support [for the] internal review process." A964. The Court found, "it seems to me that that email demonstrates that Best Years was not manifesting asset to forming a contract at that time." A113:5-13.

iii. On July 31, 2025, Pagliarini asked Feng whether he still needed to get "final IC approval." Feng responded, while "there shouldn't be any further approvals needed", the agreement was "going through the usual review steps" and that they should "wait to hear back from our attorney" and he said "we're getting close." A1280. The Court found, "I think that conversation is conclusive. I think while that email is encouraging, it affirmatively disconfirms the existence of an agreement." A115:9-20.

iv. The Court found, "This situation ultimately boils down to the difference between agreeing on terms and agreeing to be bound. I do think the record indicates that Summit and Best Years had largely agreed on the terms of the transaction by the end of July." A116:20-24.

v. The Court stated, "Best Years, in fact, noted this internally. In A1298, one of the Union Life representatives stated, "As of early August 2025, the lawyers for both parties had gone through multiple rounds of revisions to the draft share transfer agreement, and the terms were largely finalized, but it had not yet been formally signed." A117:3-9.

vi. Ultimately, the Court found, "There was an agreement on the terms. But there was also an understanding that the agreement would not be binding until it was signed." A117:11-13

vii. The Court found, "the record does not show that there was any type of agreement to be bound before the signing of the formal agreement." A117:14-16.

viii. The Court further found, "In fact, I think the record shows that there was an understanding that no one would be bound until there was a formal signed agreement." A117:16-18.

ix. Finally, the Court states, "The last issue I want to address is the argument about a Type 2 agreement. I have to digress for a little bit. I always dislike Type 1/ Type 2 categorizations because I can never remember which is which. Academics are always talking about Type 1 and Type 2 errors, and one is a false positive and the other is a false negative. And I can never remember which one is which. Here, thankfully, counsel has reminded me that a Type 2 agreement is an agreement to agree. Well, for an agreement to agree to exist, you still need a threshold agreement. I don't think there was ever an agreement to agree. What there was was an agreement that no one would be bound until there was an actual fully signed agreement". Then the Court found, "That's not a Type 1 agreement. That's not a Type 2 agreement. It's no agreement." A126:22-A127:13.

This case fits comfortably within Delaware's recognized Type II preliminary agreement framework. As in *Greentech*, the parties here agreed upon the essential transaction structure, contemplated later definitive agreements, and continued negotiating within an agreed framework toward consummation of the transaction. *See* 2022 WL 1499828, at *12–14. And as in *Cox*, the parties agreed on the major terms of the contemplated transaction while leaving only implementation and

execution details to be finalized through the definitive agreement process. 273 A.3d at 761–62.

The Court below recognized that Summit primarily argued that there was no evidence that the parties affirmatively agreed not to be bound until they signed a definitive agreement. Thus Summit was asserting Delaware's traditional law from *Universal Products,* which held "Where all substantial terms of a contract have been agreed on, and there is nothing left for future settlement, the fact alone, that it was the understanding that the contract should be formally drawn up and put in writing, did not leave the transaction incomplete and without binding force, in the absence of a positive agreement that it should not be binding until so reduced in writing and executed." *Universal Prods. Co. v. Emerson*, 36 Del. 553, 179 A. 387, 394 (1935); A117:20-A118:8. Best Years did not argue that there was a mutual understanding that only a signed definitive agreement would be effective. Rather, Best Year's primarily argued below that the approval process, which Best Years unilaterally terminated, was not completed and they were under no binding obligation to sell simply because the fully negotiated MIPA, with all terms agreed, was never executed. In any event, Summit does not challenge the Court's findings below, but rather submits that accepting the Court's findings, the Court should have determined those findings give rise to a Type II preliminary agreement under Delaware's modern precedent.

Under Delaware law, those findings establish, at minimum, an enforceable Type II preliminary agreement. The parties agreed on the essential framework of the transaction, reduced that framework to writing, and proceeded into the execution phase of the transaction while anticipating later formal execution of the MIPA. That is precisely the circumstance in which Delaware recognizes enforceable Type II preliminary agreements. *SIGA*, 67 A.3d at 349; *Cox*, 273 A.3d at 761–62.

3. The Court Improperly Collapsed the Distinction Between a Final Executed Agreement and a Type II Preliminary Agreement.

Despite finding that "[t]here was an agreement on the terms. But there was also an understanding that the agreement would not be binding until it was signed[,]" the Court of Chancery nevertheless concluded that there was never an agreement to agree. A117:11-13, A127:8-9. The Court reasoned that "[w]hat there was was an agreement that no one would be bound until there was an actual fully signed agreement[,]" and that "[t]hat's not a Type 1 agreement. That's not a Type 2 agreement. It's no agreement." A127:10-13.

That conclusion conflicts with Delaware's Type II preliminary agreement doctrine. Under *SIGA* and *Cox*, the existence of a contemplated future definitive agreement does not preclude formation of a Type II agreement. To the contrary, a Type II agreement exists precisely where parties contemplate and require a later definitive agreement while nevertheless binding themselves to proceed in good faith

within an agreed transactional framework. *SIGA*, 67 A.3d at 349; *Cox*, 273 A.3d at 761–62.

The Court of Chancery's ruling effectively treated the absence of a formally executed definitive agreement as dispositive of whether any enforceable preliminary agreement existed at all. But Delaware law recognizes that parties may bind themselves to a process—even where they have not yet bound themselves to the ultimate contractual objective. *SIGA*, 67 A.3d at 349.

The Court of Chancery concluded that the parties agreed "that no one would be bound until there was an actual fully signed agreement" only after finding that the parties had already substantially completed the transaction process and finalized the operative deal terms. A127:10-11. Specifically, the Court found that the parties agreed on the $16 million purchase price, that Union Life's investment committee approved the "business concept" of the transaction, that the parties negotiated and revised the MIPA through multiple rounds of comments, that all of the remaining open issues were quickly resolved by late July 2025, that Summit circulated a "clean execution document," and that Feng advised there "shouldn't be any further IC approvals needed" because there had been no "material changes." A101-A107.

The Court further found that "[t]here was an agreement on the terms. But there was also an understanding that the agreement would not be binding until it was signed." and that the parties had progressed to "the final signature" phase of the

transaction, and that Best Years later paused the transaction because "Union Life grew concerned about macroeconomic and geopolitical factors." A117:11-13, A107, A116-117. Thus, the Court's conclusion that "no agreement" existed rested not on an absence of agreement regarding the transaction's substantive framework, but instead on the Court's determination that the parties anticipated and required later formal execution of the finalized MIPA.

The Court of Chancery's reasoning effectively restored the pre-*SIGA* rule that preliminary agreements requiring future documentation are unenforceable absent a final executed contract. But *SIGA* and *Cox* expressly rejected that approach by recognizing enforceable Type II agreements precisely where parties intend to continue toward a later definitive agreement while remaining bound to negotiate within an agreed framework. *See SIGA*, 67 A.3d at 349; *Cox*, 273 A.3d at 761–62.

The Court's own findings establish exactly that circumstance here. The Court found that the parties had agreed on the material terms of the transaction, finalized the operative transaction documents, obtained investment committee approval, resolved the remaining open issues, and entered the execution phase of the transaction. The Court further found that the transaction later stalled not because negotiations broke down, over a transaction term that the parties could not resolve, but because "Union Life grew concerned about macroeconomic and geopolitical factors." A107:15-16.

Those findings are incompatible with the conclusion that "no agreement" existed as a matter of law.

At minimum, the Court's findings establish that the parties had agreed upon the essential framework of the transaction and had obligated themselves to proceed in good faith toward consummation of the deal. Under Delaware law, that constitutes an enforceable Type II preliminary agreement. The Court therefore erred by collapsing the distinction between a final executed contract and a Type II agreement and by concluding that the parties' expectation of a later signed definitive agreement necessarily defeated formation of any enforceable preliminary obligation.

II. THE COURT'S FINDINGS ESTABLISH BREACH AS A MATTER OF LAW

A. Questions Presented

1. Whether the Court of Chancery's factual findings establish, as a matter of law, that Best Years breached its implicit obligation to proceed in good faith toward consummation of the transaction by abandoning the deal for unrelated strategic and geopolitical reasons after the transaction terms had been finalized. (Preserved at, *e.g.*, at A28:1-9, A45:15-17, A46:2-9, A92:4-17, A126:22-A127:13.)

B. Scope of Review

Whether the Court of Chancery's factual findings establish a breach of a Type II preliminary agreement presents a question of contract interpretation which is a question of law reviewed *de novo*. *Cox*, 273 A.3d at 760; *SIGA*, 67 A.3d at 348–49. Under Delaware law, whether conduct constitutes a breach of a Type II preliminary agreement—including whether a party improperly abandoned negotiations or renounced the agreed transactional framework—is likewise reviewed *de novo* to the extent it turns on the legal effect of the Court of Chancery's factual findings. *Cox*, 273 A.3d at 760.

C. Merits of Argument

1. A Party to a Type II Preliminary Agreement May Not Abandon the Transaction for Reasons Outside the Agreed Framework.

Under Delaware law, a Type II preliminary agreement imposes an enforceable obligation to proceed in good faith toward consummation of the transaction within the agreed framework established by the parties. *SIGA*, 67 A.3d at 349. Although a Type II agreement does not bind the parties to their ultimate contractual objective, it does prohibit a party from "renouncing the deal, abandoning the negotiations, or insisting on conditions that do not conform to the preliminary agreement." *Id.* at 349 n.85.

The Delaware Supreme Court reaffirmed in *Cox* that parties operating under a Type II agreement remain obligated to negotiate open issues in good faith toward completion of the transaction. 273 A.3d at 761–62. Once parties have agreed upon the essential framework of a transaction, Delaware law does not permit one side to abandon the process because changing business circumstances later make the transaction less desirable.

Delaware courts applying *SIGA* have repeatedly recognized that abandoning negotiations for extrinsic business reasons may constitute bad faith conduct under a Type II agreement. *See Greentech*, 2022 WL 1499828, at *14 (recognizing that bad

faith includes "renouncing the deal" or "abandoning the negotiations" after agreement on the governing framework); *SIGA*, 67 A.3d at 349 n.85.

That principle is particularly important where, as here, the parties have already finalized the operative transaction terms and moved into the execution phase of the transaction. At that stage, the obligation imposed by a Type II preliminary agreement requires the parties to continue proceeding in good faith within the agreed framework and prohibits unilateral abandonment for reasons extrinsic to the negotiations themselves.

Accordingly, once the Court of Chancery found that "[t]here was an agreement on the terms[,] and that the parties had progressed to "the final signature" phase of the transaction, Delaware law prohibited Best Years from abandoning the transaction for unrelated strategic or geopolitical reasons. A117:11-12.

2. The Court Found That Best Years Abandoned the Transaction for Changing Strategic and Geopolitical Reasons Unrelated to Any Ongoing Negotiation.

The Court of Chancery's findings establish that Best Years did not suspend the transaction because negotiations failed, because material terms remained unresolved, or because the parties continued bargaining over the MIPA. Rather, the Court found that the transaction stalled only after the parties had finalized the operative terms and Best Years later reconsidered the deal for unrelated strategic reasons.

The Court did not identify any unresolved economic issue remaining after late July 2025. Nor did the Court find that the parties continued substantive negotiations thereafter. To the contrary, the Court found, "Things might have seemed on the way to a signed agreement and a happy transaction, but internally Union Life grew concerned about macroeconomic and geopolitical factors." A107:13-16.

The Court further found that, after late July 2025, Summit repeatedly sought updates regarding execution of the MIPA, while Best Years responded that the transaction remained under internal review. On September 3, 2025, Feng informed Summit that "the approval's been delayed since regulation got stricter and they need more review time." A108:17-20. Two days later, Feng stated that "[t]he regulator wants to pause the sale." A108:21-23.

But the Court ultimately found the reason for Best Years' refusal to consummate the transaction, was "I think it's probably a combination of regulatory involvement as well as market moving or world events moving in Best Years' favor and against Summit." A120:4-7.

Those findings establish that Best Years abandoned the transaction for reasons extrinsic to the agreed transactional framework. The Court found no renewed negotiation over transaction terms, no unresolved issue preventing consummation, and no failure by Summit to proceed toward closing. Instead, the Court found that Best Years reconsidered the transaction because changing geopolitical and strategic

circumstances caused Union Life to reassess the desirability of the deal after negotiations had already concluded.

This is not a case where negotiations failed because the parties could not agree on material economic terms. *Compare Hindes v. Wilmington Poetry Soc.*, 138 A.2d 501, 503 (Del. Ch. 1958) (no enforceable agreement where royalty terms remained unresolved), and *Centreville Veterinary Hosp., Inc. v. Butler-Baird*, 2007 WL 1965538, at *8 (Del. Ch. July 6, 2007) (no enforceable agreement where future rent remained unresolved), with *SIGA*, 67 A.3d at 349, and *Cox*, 273 A.3d at 761–62. Here, the Court found that "[t]here was an agreement on the terms[,] and the parties had progressed to the "final signature" phase before Best Years suspended the transaction for unrelated strategic reasons. A117:11-12; A105:15-18.

Under *SIGA*, that conduct constitutes breach as a matter of law. A party to a Type II agreement may not "renounc[e] the deal" or "abandon[] the negotiations" because changing external circumstances later render the agreed transaction less advantageous. *SIGA*, 67 A.3d at 349 n.85. Yet that is precisely what the Court found occurred here.

3. No Remand Is Necessary Because the Court Already Made the Findings Necessary to Establish Breach.

This Court need not remand for additional findings concerning liability. The Court of Chancery already made the factual findings necessary to determine both the

existence of a Type II preliminary agreement and Best Years' breach of that agreement.

The Court found that the "[t]here was an agreement on the terms[.]" A117:11. The Court also found that the transaction only later stalled because "Union Life grew concerned about macroeconomic and geopolitical factors." A117:3-18. The Court did not find that negotiations failed because of unresolved contractual issues, continued disagreement over material terms, or any inability by the parties to complete the MIPA.

Thus, the only issue before this Court is the legal consequence flowing from those findings. Once those findings are correctly analyzed under Delaware's Type II preliminary agreement doctrine, breach follows as a matter of law.

Accordingly, this Court should reverse the Court of Chancery's determination that no enforceable preliminary agreement existed and hold that Best Years breached its obligation to proceed in good faith toward consummation of the transaction.

III. EXPECTANCY DAMAGES ARE THE PROPER REMEDY

A. Questions Presented

1. Whether expectancy damages are the proper remedy under *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A.3d 330 (Del. 2013), where the record establishes the terms by which the parties would have consummated the transaction but for Best Years' bad-faith abandonment of the deal. (Preserved at, *e.g.*, at A28:22-A29:3, A44:3-18, A93:6-10, A95:24-A96:2.)

B. Scope of Review

The availability of expectancy damages for breach of a Type II preliminary agreement presents a question of law reviewed *de novo*. *SIGA*, 67 A.3d at 350–54 (Del. 2013). Delaware law permits recovery of expectation damages where the record supports a finding that the parties would have consummated the transaction but for the breaching party's bad-faith abandonment of the agreed negotiation framework. *Id.* at 351.

C. Merits of Argument

1. Delaware Law Permits Expectancy Damages for Breach of a Type II Preliminary Agreement.

Delaware law permits recovery of expectancy damages for breach of a Type II preliminary agreement where the evidence establishes that the parties would have reached a final agreement but for the breaching party's bad-faith conduct. *SIGA*, 67 A.3d at 351–54; *see also S'holder Representative Servs. LLC v. Alexion Pharms.,*

Inc., 341 A.3d 513, 542 (Del. Ch. 2025); *Greentech Consultancy Co., WLL v. Hilco IP Servs., LLC*, 2022 WL 1499828, at *16 (Del. Super. Ct. May 11, 2022); *Postbit, Inc. v. Look Dynamics, Inc.*, 2026 WL 1329174, at *2 (Del. Ch. May 13, 2026).

In *SIGA*, the Delaware Supreme Court rejected the argument that damages for breach of a Type II agreement are categorically limited to reliance damages. *SIGA*, 67 A.3d at 351. Instead, the Court held that "where the parties have a Type II preliminary agreement and the trial judge makes a factual finding, supported by the record, that the parties would have reached an agreement but for the defendant's bad faith negotiations, the plaintiff is entitled to recover contract expectation damages." *Id.*

2. The Court's Findings Establish That the Parties Would Have Consummated the Transaction But for Best Years' Abandonment.

The Court of Chancery's findings establish that the transaction would have closed absent Best Years' decision to suspend the deal for unrelated strategic reasons.

The Court found that, by the end of July 2025, '[t]here was agreement on the terms". A117:11-12. The Court further found that the parties had resolved the remaining open issues concerning the MIPA, circulated an execution copy of the agreement, and entered the "final signature" phase of the transaction. A105:15-18.

The Court identified no economic issue preventing consummation of the transaction and found no continuing substantive negotiations after late July 2025. Instead, the Court found that Best Years reconsidered the transaction only after "Union Life grew concerned about macroeconomic and geopolitical factors." A107:15-16.

Those findings establish far more than the existence of preliminary negotiations that might or might not have resulted in a final agreement. The Court found that the parties had already finalized the operative transaction terms, completed negotiations on the MIPA, obtained investment committee approval, and moved into the final execution phase of the transaction before Best Years suspended the deal for reasons unrelated to the negotiations themselves.

Under those circumstances, expectancy damages are appropriate because the Court's findings establish that the transaction would have closed but for Best Years' abandonment of the agreed framework. *SIGA*, 67 A.3d at 351–54.

3. Expectancy Damages Should Be Awarded

The Court of Chancery's factual findings establish both the existence of an enforceable Type II preliminary agreement and Best Years' breach of that agreement. No further proceedings are necessary concerning liability.

The Court found that the parties had substantially finalized the transaction terms, completed negotiations on the MIPA, resolved the remaining issues, and

progressed into the final execution phase of the transaction before Best Years abandoned the deal because of changing strategic and geopolitical considerations. Those findings establish that the transaction would have been consummated but for Best Years' improper withdrawal from the agreed framework.

Because the Court of Chancery concluded that "no agreement" existed, it did not reach the issue of expectancy damages. But once that legal conclusion is reversed, the Court's existing findings support an award of expectancy damages under *SIGA*. Accordingly, this Court should reverse the judgment below and award Summit expectancy damages together with such other relief as this Court deems just and proper.

CONCLUSION

For the foregoing reasons, Summit respectfully requests that this Court reverse the judgment of the Court of Chancery, hold that the parties entered into an enforceable Type II preliminary agreement that Best Years breached as a matter of law, and find that Summit is entitled to a determination of expectancy damages , for which specific performance may be appropriate as an adequate remedy, together with such other relief as this Court deems just and proper.

Respectfully submitted,

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