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IN THE SUPREME COURT OF THE STATE OF DELAWARE

VORTEX MANAGEMENT AGGREGATOR, LP; VORTEX HOLDCO, LLC; and VORTEX COMPANIES, LLC,	)	No. 83,2026
Plaintiffs-Below/ Appellants,	)	**CONFIDENTIAL FILING**
v.	)	Court Below: Court of Chancery of the State of Delaware
NICHOLAS J. PATRICK,	)	C.A. No. 2025-1305-NAC
Defendant-Below/ Appellee.	)	**PUBLIC VERSION** **EFILED:** April 7, 2026

APPELLANTS' OPENING BRIEF

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Dated: March 23, 2026

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NATURE OF PROCEEDINGS

This appeal raises the critical question of when Delaware courts may permit a party to reap the benefits of a bargain while evading his own obligations—and, conversely, when they may deprive the counterparty of any recourse. Delaware courts consistently enforce restrictive covenants that are reasonable in geographic and temporal scope, support a legitimate business interest, raise no contract formation concerns, and are supported by adequate consideration. The trial court here upended that standard, effectively holding that restrictive covenants cannot be enforced—even if otherwise reasonable—unless they are drafted with absolute perfection, extending no farther than strictly necessary in every detail.

Appellants Vortex Management Aggregator, LP, Vortex HoldCo, LLC, and Vortex Companies, LLC (collectively, and with their direct and indirect subsidiaries, "Vortex") respectfully ask this Court to correct that error by reversing the Court of Chancery's February 6, 2026 Order denying Appellants' Motion for Preliminary Injunction ("PI Order") and February 11, 2026 Order granting in part Appellee Nicholas J. Patrick's Motion to Dismiss ("MTD Order," together, "Orders").[1]

Patrick was a high-level executive and equity-holder who, in connection with the arm's-length sale of Vortex's business, agreed to non-competition and non-

[1] On February 20, 2026, the trial court entered an agreed Final Order dismissing the remaining claims without prejudice and rendering final judgment.

solicitation covenants (the "Covenants") contained in the Limited Partnership Agreement ("LPA"), in exchange for the right to roll over his equity. Patrick was represented by counsel in the transaction, and he admits he received a "significant benefit" from the deal that ultimately [redacted]. Upon his departure, he misled Vortex into buying out that equity at fair market value. He then immediately became President of a direct competitor, investing his buyout proceeds in the venture and leveraging five years of Vortex-funded customer relationships and confidential information against the very business that developed them. He has not meaningfully disputed violating the Covenants; he simply (and explicitly) counted on a court refusing to enforce them.

Despite a preliminary record evidencing Patrick's planning, deceit, and violations, the Court of Chancery denied Vortex's Motion for Preliminary Injunction ("PI Motion") and granted almost entirely Patrick's Motion to Dismiss ("MTD"). In a brief order, the court below found the Covenants facially overbroad—without adverse findings on their two-year duration, geographic scope, or business coverage—based solely on *sua sponte* misinterpretations of two definitional sub-clauses that neither party had briefed. This marked a stark departure from every known Delaware precedent, which requires courts to consider restrictive covenants holistically and in their entirety. The court apparently applied the more searching employment-covenant standard rather than the sale-of-business standard appropriate here, and it conclusively declined to blue pencil even minor overbreadth based upon a preliminary record. Each of these rulings was error.

Finally, the court compounded these errors by dismissing three additional claims—not dependent on any reasonableness analysis—that would have provided Vortex some redress for the benefits Patrick gained from Vortex in bad faith: the separately-pled forfeiture claim (which Patrick never challenged), as well as Vortex's fraudulent inducement and unjust enrichment claims. The result left Patrick with his ill-gotten proceeds while stripping Vortex of any remedy to challenge the benefits he wrongfully obtained.

Vortex respectfully seeks reversal of the Orders, reinstatement of their dismissed claims, and remand with instructions to enter preliminary injunctive relief enforcing the Covenants pending final adjudication.

SUMMARY OF ARGUMENT

1. The Court of Chancery erred in finding the Covenants facially overbroad for three interrelated reasons:

a. Invalidating the Covenants as a matter of law at the preliminary injunction stage contravened this Court's ruling in *Sunder Energy, LLC v. Jackson*, and dismissal on the pleadings is equally unsupported. The court below bypassed the required holistic reasonableness analysis, instead striking the Covenants solely based on sub-clauses of two definitions. No Delaware precedent supports that result.

b. The court below incorrectly applied the stricter employment standard to the Covenants even though they arose from a business sale and none of the employment-related concerns (lack of consideration, unequal bargaining power, or adhesion contract) apply here.

c. Under either standard, the record supports reversal. The court below made no adverse findings on the Covenants' two-year duration, geographic scope, and business coverage, which are reasonable under Delaware law. Patrick's role, knowledge, and breaches give Vortex legitimate interests in protecting its goodwill and confidential information, and the equities favor Vortex. The court below also incorrectly interpreted the meaning or import of the "Affiliate" and

"Client" definitions. The former's relevant clauses do not support the court's reading, and the latter's breadth is limited given the non-solicit targets only actual competition against Vortex.

2. Even if the definitional provisions are overbroad, the court erred in declining to blue pencil or sever the sub-clauses. Bargaining power was far more equal than in a typical employment setting, and Patrick knowingly violated the Covenants while banking on a court refusing to enforce them. Any blue penciling here would be minimal, consistent with the LPA's language, and in line with Delaware's strong pro-contractarian policy.

3. The court erred in dismissing Vortex's forfeiture claim without analysis. Vortex adequately pled the claim, and Patrick never challenged it. This Court's precedent expressly authorizes such provisions, and they are not subject to reasonableness review like restrictive covenants.

4. The court below further erred in dismissing Vortex's non-contract claims. Vortex sufficiently pled fraud under Rule 9(b), as Patrick's false statement of present intent required only a general averment of his state of mind. And if the Covenants are unenforceable, unjust enrichment remains available to prevent Patrick from retaining the agreement's benefits while avoiding its obligations.

STATEMENT OF FACTS

Vortex is a leader in the specialized trenchless pipe rehabilitation industry, providing services and products, including resins, liner systems, robotic systems, sensors, and software. Compl. ¶¶14–16, 26.[2] These products allow plumbers and contractors to repair water and sewer pipes without excavation. Compl. ¶¶15, 18. Vortex and its subsidiaries operate exclusively within this industry. Compl. ¶¶21, 24. Although the bulk of Vortex's business is in the United States, with sales in 50 states, Vortex also has sales and presence in several other countries. A1171 at 9; A1330 at 26:9–27:10.

A. Over Five Years, Patrick Helped Advance Vortex's Global Business Strategy Through Market and Product Leadership

In January 2020, Vortex acquired Patrick's company, Trenchless Pipe Repair Services, LLC ("TPR"). Compl. ¶29. Patrick was a seasoned industry executive, and TPR was the second company for which he served as President. A0388 ¶¶4–5. Represented by counsel, Patrick negotiated and agreed to a five-year non-compete and non-solicit.[3] A0579; A0589–A0590; A1221 at 323:8–13. Patrick received over

[2] "Compl." refers to Vortex's Verified Complaint, located at A0033 *et seq*., and "Answer" refers to Patrick's Answer, located at A0165 *et seq*.

[3] These covenants are not directly at issue in this case.

[redacted] including incentive equity units, plus employment with Vortex and [redacted]. Compl. ¶29.

By August 2020, Patrick became National Product Manager at Vortex Subsidiary Schwalm USA, LLC, where he led research and development ("R&D"), product testing, and sales of Vortex products, including the AccuPower and VeriCure systems. Compl. ¶¶37–39; Answer ¶¶37–39. In that role, Patrick became involved in virtually every aspect of Vortex's Schwalm robotics offerings, traveling nationwide to train and sell to Vortex customers. A0241 (and materials cited therein, *e.g.*, A0643, A0637, A0639, A0644); Compl. ¶¶39–45; Answer ¶¶39–45. Vortex's "one-stop shop" and cross-selling model required all customer-facing employees to master the full spectrum of its products business, and Patrick did. Compl. ¶¶22, 44–45; Answer ¶¶44–45; A0659.

In January 2022, Vortex promoted Patrick to General Manager for Vortex's Technologies Division, which added responsibility for directing R&D for all of Vortex's products, including resins, liners, and trenchless curing technologies. Compl. ¶46; Answer ¶46. In that role, Patrick accompanied senior Vortex leadership to Europe, where he met [redacted] of Hungarian manufacturer Polinvent Kft. ("Polinvent"), and evaluated Polinvent's Sewerbot (formerly, TyvLight) LED curing system. Compl. ¶¶57–58; Answer ¶¶57–58; A0646. The group also visited German manufacturer IMS Robotics Group and evaluated its MICROcure (a.k.a.

MAXIcure) LED curing system. *Id*. Vortex charged Patrick with running head-to-head proprietary testing of both systems to assess comparative strengths and weaknesses. Compl. ¶¶62–63; A0654; A0656; A0657; A0683; A0688; A1221 at 272:22–273:6. Ultimately, [redacted], Vortex decided to distribute the MICROcure. Compl. ¶62; Answer ¶62; A0686; A0695; A0709; A1221 at 272:22–273:6.

In early 2023, Patrick became Technologies Technical Manager, a role he held until his April 2025 departure. Compl. ¶51; A0702. In this role, his responsibilities expressly included MICROcure. A0702; A0963; A0704. Documents spanning 2023 to 2025 confirm Patrick's intimate involvement in the product's development, testing, training, troubleshooting, pricing, and sales. A0248–A0249; A0414–A0415 (and materials cited therein, *e.g.*, A1114–A1125; A0706; A1091–A1097; A1099; A0819; A0856; A0981). Patrick ultimately was forced to concede as much during his deposition, despite prior sworn statements to the contrary.[4] A1221 at 33:1–34:1, 294:5–308:16.

[4] At his deposition, Patrick repeatedly made untruthful claims that he later recanted when confronted with documentary evidence. *See generally* A0414–A0416; *compare, e.g.*, A1221 at 108:9–24 (claiming he viewed Vortex as a customer, not competitor, of Polinvent) *with id*. at 70:19–23, 153:17–155:13 (admitting Vortex is also a competitor and that Polinvent USA's business plan accurately reflects this); *compare id*. at 42:14–44:13 (claiming he never solicited any Vortex customer) *with id*. at 229:7–230:23, 233:19–234:10, 241:2–243:5 (agreeing he tried to sell to Apex, NuFlow, and NGI, all of which he knew were Vortex

Throughout 2024, Vortex funded Patrick's testing of a re-engineered Sewerbot against the MICROcure, during which he offered to demonstrate to Vortex executives that Sewerbot was "a better system than MICROcure or SpeedyLight." A0325–A0326 (and materials cited therein, *e.g.*, A1141–A1143; A0982); A1221 at 220:24-221:3; A1330 at 55:8–25. Vortex once again preferred the MICROcure and asked Patrick in October 2024 to return the Sewerbot demo unit to Polinvent; however, Patrick delayed informing Polinvent of Vortex's decision until January 2025. *See* A1002; A1101; A1103; A1105; A1109. By then, he was instead offering Polinvent his own services to establish Polinvent's U.S. distribution for the Sewerbot. A1002.

Over his five-year employment, Patrick attended trade shows and on-sites worldwide at Vortex's expense, where he developed customer relationships and promoted Vortex's products. A1330 at 51:19–52:8, 74:18–75:2; A1221 at 48:18–49:13, 49:20–50:24. He admitted the scope of his work encompassed "the entire

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customers); *see also, e.g.*, *id.* at 278:6–279:2 & 283:4–286:19 (after claiming he gained zero Vortex-specific knowledge other than on AccuPower and VeriCure, agreeing he obtained extensive confidential information about virtually *all* of Vortex's products, including financial, market outlook, customer, competitor, product initiative, product strength/weakness, and strategic planning information). He makes other factual assertions wholly lacking in credibility. *See, e.g.*, *id*. at 324:10–327:11 (suggesting coercion during LPA equity rollover process, despite being unable to point to a single communication or concrete fact to support such conclusion).

world" and "everywhere Vortex did business," and that he interacted with "hundreds of customers," deepening many of those relationships during his tenure. A1221 at 29:11–30:10; 109:13–21. Indeed, there was virtually no part of Vortex's business he did not touch in some way, including Vortex's subsidiaries. Compl. ¶73; Answer ¶73; *see also* Compl. at A0033 (defining "Vortex" to include direct and indirect subsidiaries).

As a member of Vortex's leadership team, Patrick attended exclusive executive, strategy, and business development meetings, gaining comprehensive knowledge of Vortex's financial performance, forecasts, budgets, customers, growth plans, R&D, pricing, and competitive strategy. Compl. ¶47; Answer ¶47; A0628; A0629; A0632; A0681; A0840; A0641. He also gained significant confidential information about specific customers and about different LED curing systems and associated resins and liners. A0643; A0665; A0649; A1127–A1139; A1143–A1170; A1330 at 53:11–54:10.

Patrick held the second-highest level of access to Vortex's confidential information—behind only top executives—with effectively unfettered access to customer lists and pricing and financial data. A1201 at 8:20–9:7; *see also* A0327–A0328 (citing evidence of confidential information Patrick accessed)). He admitted this information was exactly the sort he would not want in a competitor's hands. A1221 at 285:3–10.

B. Patrick Accepted the Covenants in Exchange for Substantial Consideration and in Circumstances Indicating Fairness

In 2023, Vortex restructured as part of a private-equity acquisition, and all managers holding equity units—including Patrick—received the option to roll over their existing equity into Vortex Management Aggregator, LP (the "Partnership"). A0944. These management equity holders were represented by separate counsel who negotiated the terms of the LPA, including the Covenants, on their behalf and provided them with advance drafts. A0952; A0954; A0956; A0844–A0848; Compl. ¶¶77–78.

Signing the LPA and, importantly, the Covenants was a material inducement to Vortex's acquiror in consummating the merger (A0856), and a precondition of participating in the rollover, though participation itself was voluntary.[5] A0944–A0945. Patrick participated because he believed it would be a "good investment opportunity," and confirmed he received a "significant benefit" from signing—gaining equity in the Partnership and the right to receive distributions and share in any upside to Vortex's business. A1221 at 322:14–16, 329:6–8. He chose to exceed the minimum rollover amount (20%) by investing 34% of his incentive units originating from the sale of TPR. A0949; A1221 at 323:1–10, 327:12–328:14. His

[5] Several former equity holders did not participate in the rollover and received full cash value for their equity, with no negative employment consequences. A1330 at 70:7–71:7.

rollover equity [redacted] A1195.

The LPA[6] contained the Covenants, as well as a confidentiality provision barring disclosure of Vortex's confidential information. LPA §§12.10(a), (b) & (g). The non-compete states that Patrick "shall not, and shall cause its Affiliates not to, and shall direct [his family members] not to," for a period of 24 months following the end of employment (the "Restricted Period"),

> directly or indirectly . . . operate, engage in (or assist others to engage in), consult with, acquire, participate in, provide services to, be employed by, manage, control or own (or participate in the management, control or ownership of), or hold any Competing Business in the United States or any other jurisdiction in which Vortex Holdco or any of its Subsidiaries is engaged in the Business, or is considering engaging in the Business, at the applicable time (or, in the case of termination, at the time of termination).

Id. §12.10(d); *see also id.* at A0130, A0133 (defining "Competing Business" and "Restricted Period").

The non-solicit provides that Patrick

> shall not, and shall cause its Affiliates not to, and shall not direct [his family members] to, during the Restricted Period, directly or indirectly (through its Affiliates or otherwise), on its own behalf or on behalf of any other Person, (i) persuade or attempt to persuade, any Client not to hire Vortex Holdco or any of its Subsidiaries or to hire another company in each case in connection with the Business, (ii) in any way interfere with the relationship between Vortex Holdco or any of its

[6] The LPA is attached as Exhibit 1 to Vortex's Verified Complaint and can be found at A0074, *et seq*.

> Subsidiaries and any Client or business relationship in connection with the Business or (iii) solicit or induce any Client of Vortex Holdco or any of its Subsidiaries to purchase from a Competing Business goods or services pertaining to the Business in competition with Vortex Holdco or any of their respective Subsidiaries, or to aid any Competing Business in identifying or soliciting any such Client to provide services in connection with the Business.

Id. §12.10(b)(ii).

The LPA defines the terms "Affiliate" and "Client," both of which are set forth *infra* Section I.C.3.b for ease of reference.

The LPA defines the "Business" as "the business engaged in by" Vortex (including subsidiaries) "as of the date of the challenged activity" and the 18-month period preceding it. *Id*. at A0128. The definition describes this business generally as "provider of water and wastewater infrastructure rehabilitation services, solutions and products," and "any other business" Vortex or its subsidiaries engaged in during Patrick's equity ownership. *Id*.

C. Patrick Used False Pretenses to Secure a Buyout of His Equity

In November 2024, Patrick told Vortex he intended to leave in January 2025,[7] but his final day was postponed to April 4, 2025. Compl. ¶91; A1107; A1111; A1113; A1221 at 330:23–331:11. Unbeknownst to Vortex, by January 2025 Patrick was already contacting Polinvent [redacted] about leading U.S. distribution and

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[7] The same month his restrictive covenants from TPR's sale expired. A1221 at 331:6–11.

testing of the Sewerbot. A1002. Patrick ultimately became President and [redacted] Polinvent USA, Inc. ("Polinvent USA") and oversees U.S. distribution of Polinvent's Sewerbot and associated resins and liners today. A1026.

In conversations shortly before his departure, Patrick told senior Vortex executives that he intended to "take some time off" and that whatever he did next would not compete with Vortex. Compl. ¶¶90–92, 141–49. Patrick never disclosed his Polinvent-related plans. *Id*. Relying on Patrick's representations, Vortex agreed to purchase Patrick's equity at fair market value—[redacted]—though Vortex had no contractual obligation to do so. Compl. ¶93. Had Vortex known his statements (and omissions) falsely indicated his then-existing intent (Compl. ¶¶141–49; A1002), the outcome would have been different, as the LPA required Patrick to forfeit his equity if he violated the Covenants. Compl. ¶92; LPA § 9.7(a).

Discovery bore out Plaintiffs' allegations. *See* A1002. Not only did Patrick take steps to work with Polinvent on a competing product prior to his departure, but he admitted to assuring Vortex that he would "keep it Vortex" after his departure. A1221 at 333:11–23. He also knew Vortex would not have bought out his equity at fair market value if he had disclosed his competitive plans. *Id.* at 335:15–22, 337:4–23.

D. Patrick Founded and Leads Polinvent USA, a Direct Competitor to Vortex, and Solicited Vortex Customers

Patrick leveraged his knowledge of Vortex's pricing intelligence, proprietary product-testing results, and customer insights and relationships to give Polinvent USA an unfair headstart in the U.S. market. *See, e.g.*, A0226 at 13, 16–20 (and materials cited therein, *e.g.*, A0959; A0814; A0836; A1021; A1013; A1221 at 278:6–279:2, 283:4–286:19; A1330 at 56:1–57:12. He touted to [redacted] that a "huge part of the value" he brought to Polinvent USA was the industry relationships he had significantly deepened at Vortex. A1021; A1013; A1221 at 29:11–30:10, 126:1–4.

Patrick and [redacted] began determining the specifics of their collaboration in May 2025, and Patrick incorporated Polinvent USA in July 2025. Compl. ¶95; Answer ¶95; A1011; A1012; A1014; A1031; A1036; A1221 at 323:1–6. His responsibilities include leading the development of U.S. market relationships and guiding overall strategy and sales. A1030; A1035. [redacted] A1030; A1221 at 149:12–150:4.[8]

[8] While Patrick argues Polinvent USA is not a "Competing Business" to Vortex (A0302 at 53–55), extensive evidence shows otherwise. A0431–A0432 (and materials cited therein, *e.g.*, A1052; A1080; A1026–27; A1221 at 62:16–64:16, 70:19–23, 86:17–19, 153:17–155:13). The court below seemingly agreed with Vortex. A0457 at 49:11–24, 51:12–52:11, 57:6–15 (noting Patrick's competition arguments "go strongly against common sense").

In August 2025, Patrick announced on LinkedIn that he would be bringing the Sewerbot into the U.S. market as President of Polinvent USA. Compl. ¶¶104–05; A1058. In response, Vortex sent Patrick and Polinvent cease-and-desist letters. Compl. ¶¶114–116; A1059. Patrick was unsurprised, having told a friend he was "waiting for the letter" from Vortex. A1055; A1066. Patrick's communications with [redacted] confirm both knew Polinvent USA would compete directly with Vortex. A1056; A1024. Yet Patrick persisted, stating, "I have been in this industry for 30 years providing all levels of services and non-competes don't stand up." A1066; *see also* A1221 at 83:13–84:24.[9]

Patrick also solicited numerous Vortex customers. A0226 at 27–28, 34–36 (and materials cited therein, *e.g.*, A1020; A1221 at 46:8–17, 52:15–17, 229:7–230:23, 233:19–234:10, 241:2–243:5).

Patrick acknowledges it is "too late" for Vortex to remedy the ongoing harm his actions have caused. A1075.

E. Despite the Strong Record, the Court Denied an Injunction and Dismissed Most of Vortex's Claims

On November 12, 2025, Vortex brought five claims in the Court of Chancery: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing;

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[9] Nevertheless, Patrick and [redacted] discussed various potential schemes to circumvent the Covenants. *See* A0226 at 33–34 (and materials cited therein, *e.g.*, A1051; A1064; A1065; A1066).

(3) fraudulent inducement; (4) unjust enrichment; and (5) declaratory judgment. Compl. Vortex simultaneously filed the PI Motion and a motion to expedite. D.I. 7, 9. Patrick filed the MTD on December 11, 2025. A0147. The court below granted expedition. D.I. 48. After five weeks of expedited discovery, followed by briefing, the Court of Chancery held a hearing on both motions on February 4, 2026. *Id*.

On February 6, 2026, the trial court denied the PI Motion, finding the Covenants' "provisions *are* overly broad." Ex. A (emphasis added). The brief order did not specify whether it applied the sale-of-business or employment standard. *Id*. It questioned almost none of Vortex's substantive arguments, making no finding of unreasonableness in the Covenants' geographic or temporal scope, unfairness or lack of consideration in the LPA's formation, a lack of legitimate business interest, overbreadth in the scope of business covered, absence of a violation or irreparable harm, or a balancing of equities favoring Patrick. *Id*.

Instead, the court below deemed the non-compete unenforceable based solely on one part of the definition of "Affiliate," interpreting it to require Patrick to "prevent the family of any current or future business partners from engaging in a competitive business," with no limitations. *Id*. Without addressing Vortex's argument that this was a misreading of the plain contractual language (A0419), the court found the provision "unreasonably broad" and not justified by any legitimate business interest. Ex. A.

The Court also struck the non-solicitation provision on the same "Affiliate" ground and due to the absence of a temporal limit in subpart (c) of the "Client" definition, deeming that subpart "vague and unreasonably broad."[10] *Id*. The parties did not brief either of these specific concerns; both were raised *sua sponte* during oral argument. *See* A0457 at 87:9–89:7; 98:22–99:4. The court below also "decline[d] to blue-pencil" the provisions. *Id*.

Five days later, the trial court partially granted the MTD, dismissing outright Vortex's implied covenant and fraudulent inducement claims. Ex. B. It dismissed the latter claim based on its finding that Plaintiffs failed to support "conclusory allegations" on "the alleged statements of future intent" with "particularized facts." *Id*. The court partially dismissed the remaining claims—breach of contract, unjust enrichment, and declaratory judgment—based on the PI Order's holding that the Covenants "were unenforceable." *Id*. The only surviving claims were the portions of Counts I, IV, and V based upon violations of the LPA's confidentiality obligations, which the trial court found the MTD did not address. *Id*.

[10] Although the court noted the non-solicit's broad geographic scope, it made no finding of geographic overbreadth. Ex. A.

Thereafter, the parties stipulated to dismiss the remaining claims without prejudice, and, on February 20, 2026, the Court of Chancery entered a final, appealable Order. Ex. C.

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN FINDING THE RESTRICTIVE COVENANTS OVERBROAD

A. Question Presented

Did the Court of Chancery err in finding otherwise reasonably tailored restrictive covenants facially overbroad and unenforceable based solely on two definitional sub-parts and apparently based on an improper level of scrutiny? Preserved at A0226; A0404; A0457.

B. Scope of Review

This Court reviews legal conclusions, including contract interpretation, *de novo*. *Lawson v. Meconi*, 897 A.2d 740, 743 (Del. 2006). Similarly, orders granting a motion to dismiss are subject to *de novo* review. *Furman v. Del. Dep't of Transp.*, 30 A.3d 771, 773 (Del. 2011). Denial of a preliminary injunction is reviewed for abuse of discretion where it rests on factual, rather purely legal, grounds. *SI Mgmt. L.P. v. Wininger*, 707 A.2d 37, 40 (Del. 1998).

C. Merits of Argument

1. The Orders Contradict Well-Established Delaware Law on Reviewing Restrictive Covenants and Improperly Impose a Standard of Perfection

a. The Court Exceeded the Mandates Before It

The trial court's rulings created an irregular procedural posture that markedly departs from Delaware's restrictive covenant jurisprudence. The PI Order erroneously found the Covenants unenforceable as a matter of law at the preliminary injunction phase, directly contravening this Court's recent ruling in *Sunder Energy, LLC v. Jackson*, 332 A.3d 472 (Del. 2024). There, this Court reversed the Court of Chancery in part for making "final conclusions regarding the merits of the parties' legal positions" at the preliminary injunction stage. *Id*. at 495. The MTD Order compounded this error by dismissing the claims based almost entirely on the PI Order's findings of overbreadth.

Even if the MTD Order had independently found the Covenants unenforceable, that still would be inconsistent with Delaware jurisprudence. Delaware courts rarely invalidate restrictive covenants as facially unenforceable at the pleadings stage. For example, in *Labyrinth, Inc. v. Urich*, the court declined to dismiss a likely overbroad ten-year covenant because the reasonableness analysis required "fact-intensive" review of the parties' bargaining power and negotiations not suitable for preliminary resolution. 2024 WL 295996, at *24 (Del. Ch. Jan. 26, 2024); *see also Payscale Inc. v. Norman*, 2026 WL 774876, at *1 (Del. Mar. 19, 2026) (reversing dismissal of restrictive covenant claims). And in *UtiliSave, LLC v. Miele*, the court declined to invalidate a covenant as temporally unreasonable because that conclusion required "the development of a more complete factual record." 2015 WL 5458960, at *10 (Del. Ch. Sept. 17, 2015).

More broadly, the court was required to accept "all well-pleaded factual allegations" as true, "draw all reasonable inferences" in Plaintiffs' favor, and deny dismissal unless Plaintiffs could not recover under "any reasonably conceivable set of circumstances." *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002). Questions of reasonableness are inherently ill-suited for determination on the pleadings, especially where, as here, the Covenants' interpretation is disputed and equity considerations could warrant blue penciling. *See VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003) (dismissal warranted only if defendant's contract interpretation "is the only reasonable construction as a matter of law"); *UtiliSave*, 2015 WL 5458960, at *10 (covenant's reasonableness required "factually intensive issues incapable of resolution on motion to dismiss"); *Labyrinth*, 2024 WL 295996, at *24 (blue penciling "requires a fact-intensive consideration of the equities that the Court may not be able to resolve at the pleadings stage").

Accordingly, courts dismiss only when covenants have massive structural and irremediable defects, like being plainly overbroad in geographic or business scope. *See Daxco, LLC v. Timm*, 2026 WL 172862, at *8–10 (Del. Ch. Jan. 22, 2026) (Final Report) (striking worldwide covenant protecting unnamed affiliates with undefined scopes of business); *Centurion Serv. Grp., LLC v. Wilensky*, 2023 WL 5624156, at *3–4 (Del. Ch. Aug. 31, 2023) (striking employee non-compete with "limitless" geographic scope untethered to employee's role); *Intertek Testing Servs. NA, Inc. v.*

Eastman, 2023 WL 2544236, at *4 (Del. Ch. Mar. 16, 2023) (striking covenant prohibiting competition "anywhere in the world" when business operated purely domestically).

Dismissal here represents a sharp departure from those cases. Here, the Covenants include reasonable temporal and geographic limits, and a business scope that matches the breadth of Patrick's work. *See supra* at 12–13. They also were supported by substantial consideration during an equity sale negotiated by counsel on all sides. *See supra* at 11. Plaintiffs' Complaint appropriately pled these facts. *See generally* Compl. The court's basis for finding overbreadth was not obvious or structural, but rather a narrow, disputed interpretive issue regarding two definitional sub-parts. Neither the parties nor the trial court identified any Delaware cases refusing to enforce restrictive covenants on this basis at the preliminary injunction stage, let alone dismissing them as unreasonable on the pleadings.[11]

b. The Court Substituted a Standard of Perfection for Delaware's Holistic Reasonableness Framework

More fundamentally, the court below disregarded Delaware's established framework for assessing restrictive covenants. This framework requires evaluating whether covenants are geographically and temporally reasonable, advance

[11] Even in *Sunder Energy*, where the covenants were far broader, this Court cautioned against definitive legal rulings on a limited discovery record. 332 A.3d at 494–95. Doing so without any factual record is even less appropriate.

legitimate economic interests, and survive a balancing of the equities. *Sunder Energy*, 332 A.3d at 485. Rather than examining provisions in isolation, courts must read the contract "as a whole, in the context of the employment relationship," and consider "all of the dimensions of the restrictive covenant and [] how it operates with other restrictions." *Hub Grp., Inc. v. Knoll*, 2024 WL 3453863, at *8 (Del. Ch. July 18, 2024). Restrictive covenants require "holistic[], careful[], and nonmechanical[]" review, "with an eye towards reasonableness, equity, and the advancement of legitimate business interests," *Kodiak Bldg. Partners, LLC v. Adams*, 2022 WL 5240507, at *6 (Del. Ch. Oct. 6, 2022), rather than a mere "tick[ing] through individual features of a restriction in isolation[.]" *Cleveland Integrity Servs., LLC v. Byers*, 2025 WL 658369, at *8 (Del. Ch. Feb. 28, 2025).

The Orders exhibit none of that analysis. There is no assessment—much less adverse findings on—the reasonableness of the Covenants' duration, geographic scope in relation to Vortex's business, or Vortex's legitimate economic interest. Nor did the Orders balance the equities. Instead of the required analysis, the Orders rely on *sua sponte*-identified partial language in two definitions to hold the Covenants unreasonably overbroad on tangential and hypothetical grounds.

In doing so, the trial court imposed a standard that no Delaware court has ever applied: a requirement that restrictive covenants be drafted to perfection, such that no clause, definition, or ancillary term could, under any hypothetical set of facts, operate more broadly than strictly necessary. *See* A0457 at 119:4–16 (court seeking "admittedly silly" hypotheticals to test for overbreadth, while acknowledging that absent such examples the provisions may well be "enforceable"). Delaware law demands reasonableness, not perfection. *See, e.g.*, *Kan-Di-Ki, LLC v. Suer*, 2015 WL 4503210, at *20 (Del. Ch. July 22, 2015) (geographic scope of covenant not required to "map perfectly" onto plaintiffs' business). Courts also must avoid absurd results and favor logical interpretations of the parties' objective intentions. *Labyrinth*, 2024 WL 295996, at *21; *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 275–76 (Del. 2022).

Neither the parties nor the court below have identified Delaware precedent invalidating a restrictive covenant *solely* based on definitional provisions unconnected to the claims at issue without independently finding its geographic, temporal, or business scope unreasonable. *See Sunder Energy*, 332 A.3d at 489–90 (upholding overbreadth based on interaction of multiple definitions, including "affiliate," with other covenant terms and formation circumstances); *Hub Grp.*, 2024 WL 3453863, at *9–13 (declining to consider non-compete's "General Clause" in isolation, conducting holistic review of all provisions and defined terms before finding overbreadth).

2. Without Clarifying the Standard, the Court Seemingly and Incorrectly Applied the More Searching Inquiry for Employment Contracts

Review of restrictive covenants travels one of two paths. If covenants arise in a business sale, then a "less searching" inquiry applies; in purely employment contexts, the inquiry is more exacting. The applicable standard is "a matter of framing" to be resolved at the outset. *See Derge v. D&H United Fueling Solutions, Inc.*, 2025 WL 3511065, at *5 (Del. Ch. Dec. 8, 2025).

This distinction reflects Delaware's commitment to holding sophisticated parties to their bargains when consideration is substantial and bargaining power is relatively equal. *See Sunder Energy*, 332 A.3d at 486; *Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 688–89 (Del. 2024). By contrast, employment contexts raise equity concerns because such contracts with lower-level employees often involve lack of bargaining power, significant business concerns, and adequate consideration beyond continued employment. *See, e.g.*, *Hub Grp.*, 2024 WL 3453863, at *7–12 (no option to negotiate covenants "imposed as a condition of future employment"); *Elite Cleaning Co. v. Capel*, 2006 WL 1565161, at *4–5 (Del. Ch. June 2, 2006) (non-compete in employee handbook of low-wage janitor with no specialized skills or access to sensitive information).

The Covenants here are of the business-sale variety. As discussed above in Facts Section B, Patrick voluntarily signed the LPA—including the Covenants—in exchange for the "good investment opportunity" the rollover provided. He was represented by counsel who negotiated the LPA's terms, was not coerced, and had negotiated similar covenants with Vortex previously. None of the concerns justifying heightened scrutiny in employment cases, such as unequal bargaining power, inadequate consideration, or lack of choice, were present.

Rather, these circumstances resemble those Delaware courts have repeatedly found warrant a less searching inquiry. In *Derge*, the court applied the business-sale standard despite the officer's minimal 0.73% ownership, lack of participation in negotiations, and inability to block merger, because nothing suggested unequal bargaining power or a contract of adhesion and the officer received substantial consideration via a $150,000 rollover. 2025 WL 3511065, at *6. The court emphasized the officer voluntarily accepted the non-compete to obtain the "significant benefits" of a merger conditioned on his agreement to the covenant. *Id*. Similarly, in *Tristate Courier & Carriage, Inc. v. Berryman*, the court applied the less-searching inquiry "because the Covenant [was] part of a contract for the sale of stock," rather than "an employment contract." 2004 WL 835886, at *10 (Del. Ch. Apr. 15, 2004).

That Patrick was only an indirect seller, by virtue of his partial ownership of the entity sold, is inconsequential. *See Derge*, 2025 WL 3511065, at *6. The cases show that the key considerations are contextual factors reflecting the parties' bargaining power, such as whether the provisions were negotiated or valuable consideration was exchanged. *See Sunder Energy*, 332 A.3d at 486. These factors are often neither "black and white" nor binary. *See Derge*, 2025 WL 3511065, at *5 n.7 (citing examples). Despite this settled framework, the Orders failed to identify which standard governed and employed a "maximally searching" analysis, going beyond even the heightened employment inquiry.

Nothing in this case justifies imposing a standard that interferes with the parties' bargain. Neither Patrick nor the Orders identified "a public policy interest even stronger than freedom of contract" that would permit a court to "interfere" with sophisticated parties who "ordered their affairs voluntarily." *See Ainslie*, 312 A.3d at 689. At minimum, Vortex pled facts establishing a reasonable conceivability of enforceability sufficient to survive dismissal. *See Payscale*, 2026 WL 774876, at *4; *Labyrinth*, 2024 WL 295996, at *24–25. The trial court's failure to apply the correct standard was reversible error.

3. The Record Overwhelmingly Supports Denying the Motion to Dismiss and Granting a Preliminary Injunction

a. The Covenants Are Reasonable, and Vortex Met the Preliminary Injunction Elements

To obtain a preliminary injunction, Vortex had to show a reasonable likelihood of success on the merits, irreparable harm, and that the equities favor an injunction. *Sunder Energy*, 332 A.3d at 494. The first element depends on the reasonableness analysis outlined above and a finding that Patrick breached the Covenants. *Kodiak*, 2022 WL 5240507, at *4.

The Covenants' geographic scope and two-year duration are reasonably well-tailored. The two-year period runs from termination (*see supra* at 12) and Delaware courts routinely uphold restrictions of two years or more. *See, e.g.*, *Derge*, 2025 WL 3511065, at *7 (five years); *Kan-Di-Ki*, 2015 WL 4503210, at *19 (five years); *O'Leary v. Telecom Res. Serv., LLC*, 2011 WL 379300, at *5 (Del. Super. Ct. Jan. 14, 2011) (four years). The geographic scope is fixed at termination to prevent unilateral expansion. *See supra* at 12. At termination, Vortex sold in all 50 states and several countries, and Patrick admitted his responsibilities covered "the entire world" for two product lines and "wherever Vortex sold" for others. *See supra* at 1, 9. A scope matching Vortex's distribution range and Patrick's responsibilities "appropriately covers the market where [Vortex] has economic interests" and Patrick managed customer relationships. *Derge*, 2025 WL 3511065, at *7; *see also Tristate Courier*, 2004 WL 835886, at *13 (enforcing non-compete limited to where company conducted business and competition using company's customer contacts).

The Covenants also are reasonably tailored in business scope. The non-compete bars Patrick only from engaging in a "Competing Business"—meaning, a business actually competing, or actively planning to compete, with Vortex. *See supra* at 12. This scope matches Patrick's role, as there was "virtually no part of

Vortex's products business he did not touch." Answer ¶73. It also aligns with Delaware precedent upholding non-competes that restrict executives from activity "competitive with" the company, so long as it is "limited to protecting" the employer's interest in the executive's acquired expertise. *See Simplexity, LLC v. Zeinfeld*, 2013 WL 1457726, at *9–10 (Del. Ch. Apr. 5, 2013).

And the Covenants differ from those extending to activities unrelated to the individual's role or confidential knowledge. *See, e.g.*, *Hub Grp.*, 2024 WL 3453863, at *11–12 (covenant covering affiliates for which defendant had no responsibility or confidential information); *Kodiak*, 2022 WL 5240507, at *10–11 (covenant including business lines for which defendant had no involvement or confidential information). Here, as explained, the restriction covers only Vortex entities in the same business for which Patrick made sales and obtained confidential information.

Likewise, the non-solicitation provision is tied to business relationships, not geography, and applies only to "Clients"—meaning, Vortex's customers in the past twenty-four months, or potential customers with whom Vortex had substantive discussions. *See supra* at 12–13. In *Cleveland Integrity*, the court recognized covering subsidiaries is reasonable where the related entities operate under one umbrella, cross-sell, and share information, and where the restricted individual accessed confidential data across subsidiaries. 2025 WL 658369, at *13. That is precisely the situation here.

The Covenants also protect legitimate business interests, including confidential information and customer goodwill. It is well established that companies have a legitimate interest in preventing executives from misusing confidential data and customer relationships built at the employer's expense. *See, e.g., Cleveland Integrity*, 2025 WL 658369, at *13; *Derge*, 2025 WL 3511065, at *6. Over five years, Patrick led Vortex's R&D, managed confidential strategies, and had the second-highest access to sensitive data—information he admitted was valuable to competitors. *See supra* at 10. He became the trusted contact for hundreds of Vortex customers and admits his industry relationships were a major asset to Polinvent USA. *See supra* at 14–15. Simply put, Patrick could not have launched a direct competitor without relying on Vortex information and relationships.

Patrick has clearly breached the Covenants, and his continued employment at Polinvent USA will lead to further violations. The record confirms (and the trial court seemingly agreed) that Polinvent USA is a Competing Business, and Patrick does not seriously dispute that he solicited Vortex customers immediately after his departure. *See supra* at 15–16 & n.8; A0457 at 49:11–24, 51:12–52:11, 57:6–15.

These breaches cause irreparable harm, warranting injunctive relief. Courts "consistently [find] a threat of irreparable injury in circumstances when a [noncompete] is breached," with "injunctive relief as the principal [remedy.]"

Concord Steel, Inc. v. Wilm. Steel Processing Co., 2008 WL 902406, at *10 (Del. Ch. Apr. 3, 2008). The "danger of losing valuable revenue-generating relationships is a harm that may not be compensable in any manner other than injunctive relief," and threatened disclosure of confidential information is irreversible. *ZRii, LLC v. Wellness Acquisition Grp., Inc.*, 2009 WL 2998169, at *13 (Del. Ch. Sep. 21, 2009). Additionally, Patrick specifically agreed in the LPA that breach of the Covenants would cause Vortex "irreparable and continuing harm and money damages would be an inadequate remedy." LPA §12.10(g). That provision independently establishes irreparable harm. *See U.S. Legal Support, Inc., v. Lucido*, 2021 WL 4940823, at *11 (Del. Ch. Oct. 22, 2021).

The magnitude of harm here is substantial. Patrick deploys five years of Vortex-funded customer relationships, proprietary product knowledge, and competitive intelligence against the very business that paid for them. *See supra* at 6–10. He knows which Vortex customers are most valuable, what they pay, and what it would take to move them, and his years in R&D and product testing, including fielding customer complaints, give him precisely the ammunition to do so. *See id*.

Finally, the balance of equities supports enforcement. Patrick admittedly received [redacted] in exchange for two years of restricted competition and negotiated that "significant benefit" with the assistance of counsel. *See supra* at

11. But when it came time to honor this bargain, Patrick manipulated Vortex into making the equity buyout, used it to fund Polinvent USA, and immediately competed with Vortex and solicited its customers (while hiding his conduct from Vortex). *See supra* at 13–14. That warrants an injunction, not a free pass. *See Tristate Courier*, 2004 WL 835886, at *13–14 (entering injunction under similar circumstances).

There is no cognizable hardship in holding Patrick to his bargain. Delaware's "fundamental public policy" of freedom of contract is "undercut if citizens cannot rely on the law to enforce their voluntarily-undertaken mutual obligations." *Ainslie*, 312 A.3d at 688–89. In addition to the buyout compensation, Patrick can work in other segments of the industry and was even offered a consulting role with Vortex. A1004; A1330 at 75:14–76:11. Yet Patrick knowingly violated the Covenants banking on a court not enforcing them. *Supra* at 15–16. Vortex upheld its end of the bargain, and Patrick should be required to do the same.

b. The Trial Court's Interpretation of the Definitional Provisions Was Error

The "Affiliate" definition's clauses (i)–(iv) apply only to corporate covenantors, not natural persons.[12] Notwithstanding their plain language, the trial

[12] "'**<u>Affiliate</u>**' shall mean, with respect to *any Person*, any other Person directly or indirectly controlling, controlled by, or under common control with, *such Person*; . . . <u>provided,</u> <u>further</u>, that an Affiliate of *any Person* shall also include (i) any Person that directly or indirectly owns more than five percent (5%) of any class of capital stock or other equity interest of *such Person*, (ii) any officer, director, trustee or beneficiary of *such Person*, (iii) any spouse, parent, sibling or descendant of any

court incorrectly applied the clauses to the *covenantor's affiliates*, not the covenantor, finding they require Patrick to "'cause' the 'spouse, parent, sibling or descendant' of any 'officer, director, trustee or beneficiary,' or more than five-percent stockholder of any entity Patrick controls not to compete." Ex. A. This finding rests on a fundamental structural error.

The correct definitional anchor for these clauses is the primary "Person"—the covenantor—identified immediately preceding the clauses, not the affiliates of the covenantor. The definition's second half states, "an Affiliate of any Person shall also include," indicating that the following clauses relate to a new type of affiliate of the covenantor. *Id*. Each of clauses (i)-(iv) presupposes the covenantor is a legal entity with stockholders, officers, directors, or trustees, which would apply if an employee held Partnership equity through a legal entity. Because a natural person like Patrick has none of these, there is no anchor for these clauses, and they do not apply to him.

Surrounding context further supports Vortex's reading. First, the two key clauses have a parallel structure, with both indicating that an "Affiliate" of "any Person" (the covenantor) shall include Persons with certain relationships to "such Person" (again, the covenantor). Second, this reading reflects the parties' intent to

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person described in <u>clauses (i)</u> or <u>(ii)</u> above, and (iv) any trust . . . ." LPA at A0128 (italics added). The italicized "Persons" all refer to the covenantor.

prevent major stockholders, officers, directors, trustees, or beneficiaries of corporate covenantors from circumventing restrictions through family members. *Cf. Sunder Energy, LLC v. Jackson*, 305 A.3d 723, 755–56 (Del. Ch. 2023) ("affiliate" provisions may appropriately serve "the limited purpose of preventing" a covenantor from violating the restriction "by using a family member as an agent"). This intent is far more logical than any supposed intent to cover family members of affiliates of a natural person covenantor.

Even under the trial court's incorrect reading of "Affiliate," the Covenants are not facially overbroad. For one, the "Business" definition restricts covered conduct to Vortex's narrow, specialized industry; otherwise, affected persons may work in any other field. LPA at A0128. This is materially unlike *Sunder Energy*, where the broad "Business" definition (any sales to a homeowner) could bar an "Affiliate" (e.g., defendant's daughter) from selling Girl Scout cookies. 332 A.3d at 489–90. Moreover, the non-compete's geographic and competitive scope is fixed at termination and cannot later expand, unlike in *Sunder Energy*, where the scope could grow indefinitely. *See id*.

The trial court's interpretation of "Client"[13] likewise did not justify finding the entire non-solicit unreasonably broad. The court below found subclause (c)

[13] "[A]n [sic] Person who (a) during the twenty-four (24)-month period preceding the challenged activity, purchased the goods or services of Vortex Holdco or any of

overbroad because it lacked a "temporal restriction" on when "'substantive' discussions" with potential Vortex Clients "may have occurred." Ex. A. But that cramped reading ignores that the non-solicit applies only in competition with the "Business." *See supra* at 12-13. The non-solicit bars only soliciting or inducing clients "to purchase from a Competing Business goods or services pertaining to the Business in competition with" Vortex; interfering with Vortex's client relationships "in connection with the Business"; or persuading clients not to hire Vortex "or to hire another company in each case in connection with the Business." *Id*. Thus, to be in violation, each sub-provision requires Patrick to compete with Vortex's actual business.

This limiting principle eliminates the trial court's concern that Patrick could unknowingly violate the provision. For example, Patrick cannot solicit a client "to purchase from a Competing Business" without first violating the non-compete. *Id*. It also accords with numerous decisions upholding non-solicitation clauses where qualifiers limited the clauses' scope. *See, e.g.*, *Kan-Di-Ki*, 2015 WL 4503210, at *5; *Lyons Ins. Agency, Inc. v. Wilson*, 2018 WL 4677606, at *5–6 (Del. Ch. Sept.

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its Subsidiaries, including any agent, dealer or distributor, (b) is controlled by or has the same executive officers as any Person covered by the preceding clause (a), or (c) who is a potential customer, client, agent, dealer or distributor with which Vortex Holdco or any of its Subsidiaries, directly or indirectly, has had substantive discussions about becoming a customer, client or dealer of Vortex Holdco or any Subsidiary of Vortex Holdco." LPA at A0129.

28, 2018). The "Client" definition's breadth thus is immaterial to the non-solicit's operative scope. *See Payscale*, 2026 WL 774876, at *7 & n.54 (finding enforceability "reasonably conceivable" notwithstanding a similarly temporally indefinite definition of "Client" without comment on or scrutiny of that definition).

Invalidating the Covenants based on hypothetical over-applications of isolated definitional subparts was contrary to Delaware law, especially on an incomplete record. *See id*. at *7 (rejecting drawing inferences based on hypotheticals regarding provisions' "practical effect" at pleadings stage). This Court should reverse and remand with instructions to deny the MTD and grant a preliminary injunction. *See Omni Care, Inc. v. NCS Healthcare, Inc.*, 2002 WL 31767892, at *3 (Del. 2002) ("These proceedings are REMANDED to the Court of Chancery for the entry of a preliminary injunction consistent with this Order.").

II. TO THE EXTENT THE PROVISIONS ARE OVERBROAD, THE COURT OF CHANCERY ERRED IN DECLINING TO BLUE PENCIL OR SEVER ANY OVERBROAD COMPONENTS

A. Question Presented

Did the Court of Chancery err in finding blue penciling unwarranted where the parties had more equal bargaining power than in typical employment cases, Patrick knew he was breaching but relied on non-enforcement, and any blue penciling would be minimal? Preserved at A0428–A0430.

B. Scope of Review

This Court typically reviews for abuse of discretion orders declining to blue pencil restrictive covenants. *Sunder Energy*, 332 A.3d at 484. But where, as here, the question presented implicates issues of public policy, the Court reviews the decision *de novo*. *Ainslie*, 312 A.3d at 685.

C. Merits of Argument

1. Core Delaware Policy Supports Limited Blue Penciling Here

Under *Sunder Energy*, blue penciling is appropriate here because the circumstances of adoption present no concerns and any overbreadth is minor and incidental. 332 A.3d at 486.

Blue penciling remains an appropriate remedy, notwithstanding recent skepticism regarding when it should be deployed. *Id*. at 490. Blue penciling depends on "the covenants themselves," not the employee's conduct, and is appropriate when "the circumstances surrounding [the covenants'] adoption" indicate an "equality of bargaining power." *Id*. at 487, 490. Indicators include specifically negotiated covenants, exchange of valuable consideration, or a business sale. *Id*. This policy balances incentivizing companies to craft fair and well-tailored covenants with encouraging restricted parties to honor their bargains rather than seek linguistic escape hatches. *See id*. at 490.

This case does not involve an employer deliberately drafting unreasonable restrictions but instead "the opposite side of the blue penciling coin." *See Labyrinth*, 2024 WL 295996, at *24–25. That is, Patrick negotiated restrictions while "banking on this Court striking the restrictions entirely." *See id*.; *supra* at 15–16. This context "conceivably present[s] a rare instance where equity and public policy *might require* blue penciling." *Labyrinth*, 2024 WL 295996, at *24 (emphasis added). While this Court recognized the flipped-incentive paradigm in *Sunder Energy* (332 A.3d at 488 & n.126), it did not have the opportunity to address blue penciling due to the limited scope of the questions present on appeal. *Id*. at 487–88. It should do so here.

Below, Patrick presented no evidence that Vortex drafted or enforced the Covenants to be overly expansive. Still, the trial court found the Covenants overbroad—not due to structural errors relating to temporal, geographic, or business scope—but due only to hypothetical extrapolation of two minor sub-provisions. *See* Ex. A.[14]

Even assuming that the trial court correctly interpreted those sub-provisions, they represent minor, technical overreach or imprecise drafting easily corrected to reflect the parties' expressed intent to prevent squarely competitive conduct, whether pursued directly or through others. *Compare, e.g.*, *Dravo Bay LLC v. Whalen*, 2026 WL 681754, at *11 (Del. Ch. Mar. 10, 2026) (rejecting argument that one sentence, read in isolation, "render[ed] the larger non-solicit indefinite" and recognizing that "[a]t worst, it [was] an add-on that may be segregated from the enforceable scope") *with HKA Global, LLC v. Beirise*, 2025 WL 3639811, at *5–6 (Del. Ch. Dec. 16, 2025) (drawing distinction between structural versus clerical blue penciling).

Moreover, it was Patrick, not Vortex, who sought to take advantage of a "no-lose" scenario. *See Sunder Energy*, 332 A.3d at 488. He gained the benefits of the bargain while "banking on this Court striking the restrictions entirely." *Labyrinth*, 2024 WL 295996, at *22–24. He knowingly violated the Covenants, "wait[ed] for the letter" from Vortex, and took refuge in his belief, based on industry experience, that restrictive covenants "don't stand up." *See supra* at 15–16. Declining to blue

[14] The trial court's approach turns facial review on its head: searching for a "silly" hypothetical that could be used to invalidate a negotiated agreement in which the parties also agreed to a severance/savings provision to address such situations. A0457 at 119:4–16; LPA §§12.10(f), 12.12.

pencil here would undermine the very incentives courts seek to protect by allowing sophisticated executives to avoid negotiating reasonable restrictions, confident that they can reap the benefits without being bound. *Labyrinth*, 2024 WL 295996, at *22–24.

At minimum, the trial court should have deferred deciding on blue penciling until it had a complete record "after a trial or on undisputed facts." *Labyrinth*, 2024 WL 295996, at *25 (quotation omitted). By ruling on a limited record, it wrongly concluded that no "reasonably conceivable set of circumstances" could justify blue penciling, even if Patrick never intended to comply with the Covenants. *Savor*, 812 A.2d at 896–97; *Labyrinth*, 2024 WL 295996, at *24.

2. Declining to Blue Pencil Here Effectively Eradicates Blue Penciling and Runs Afoul of Delaware's Pro-Contractarian Policy

Courts understandably are reluctant to blue pencil when it means "craft[ing] an entirely new covenant to which neither side agreed." *Sunder Energy*, 332 A.3d at 490. Here, though, the court's limited findings of overbreadth show any blue penciling would be minimal. *See* Ex. A. Both sides agreed to blue penciling and severability in the contract. LPA §§12.10(f), 12.12. The Court need only strike the two problematic provisions as agreed, preserving an enforceable contract and the bargained-for exchange.

For decades, parties have relied on Delaware's strong pro-contractarian approach when choosing Delaware law and incorporation. *See Abry Partners V, LP v. F&W Acquisition LLC*, 891 A.2d 1032, 1059–62 (Del. Ch. 2006). This includes the certainty that courts will enforce Delaware's "fundamental public policy" of upholding "the voluntary agreements of sophisticated parties." *Ainslie*, 312 A.3d at 688–89; Br. of U.S. Chamber of Commerce, et al. as *Amici Curiae* at 6-11, *Cantor Fitzgerald LP v. Ainslie*, 312 A.3d 674 (Del. 2024) (No. 162,2023), D.I. 81 (highlighting business benefits of being able to rely on reasonable non-competes).

Refusing blue penciling here would create a new category of legal contracts Delaware courts will not enforce, regardless of the parties' intent, if even one minor aspect—neither briefed nor materially at issue in the proceedings—is later deemed unreasonable in the abstract. This represents a radical departure from precedent and is unsupported by legislation or clear Court pronouncement. "Parties have a right to enter into good and bad contracts, the law enforces both." *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010). So it should be here.

III. THE COURT OF CHANCERY ERRED IN DISMISSING THE FORFEITURE-BASED PART OF VORTEX'S BREACH OF CONTRACT CLAIM

A. Question Presented

Did the Court of Chancery err in dismissing the breach of contract claim based on forfeiture, when this Court has established that enforcement of such provisions is not subject to a reasonableness analysis? Preserved at A0147; Compl. ¶¶87–88, 92; Ex. B.

B. Scope of Review

The Scope of Review is as stated in Argument I(B).

C. Merits of Argument

Vortex's claim for forfeiture and claw-back of funds—expressly sought in their Prayer for Relief—stands on independent contractual footing. LPA §9.7(a)). This relief is directly tied to the LPA's forfeiture provision (*id.*), which Vortex specifically pleaded. Compl. ¶¶87–88, 92. That provision requires a terminated party who breaches the Covenants to "promptly refund" the amount paid. *Id.*

Crucially, Patrick never challenged the forfeiture claim in the MTD, nor was it relevant to the preliminary injunction proceedings. *See generally* A0147; A0302. Vortex therefore had no reason (or meaningful opportunity) to brief the issue. Nevertheless, the MTD Order dismissed all contract claims (except those based on the confidentiality provision), including the forfeiture claim without analysis or justification. The trial court's "failure" to "give reasons for the court's disposition constitutes a *per se* abuse of discretion," and was clear error under Delaware law. *See Ball v. Div. of Child Support Enf't*, 780 A.2d 1101, 1105 (Del. 2001).

Additionally, reasonableness review does not apply to forfeiture-for-competition provisions. *See Ainslie*, 312 A.3d at 686-88. Instead, courts treat such provisions as conditions precedent to payment, not liquidated damages (*see id.*), and Delaware law expressly authorizes them. *See* 6 *Del. C.* §17-101 *et seq.* This Court recently confirmed in *LKQ Corp. v. Rutledge* that employee-choice doctrine, not restrictive-covenant reasonableness review, governs these provisions, as public policy concerns are "diminished—if not vanish[ed]" where only economic forfeiture is at issue. 337 A.3d 1215, 1215, 1222 (Del. 2024).

Here, the LPA's forfeiture provision operates as Delaware law envisions, imposing an economic consequence for "Prohibited Activity" during the restricted period. Compl. ¶¶87–88. The forfeiture claim's dismissal based on the unrelated finding on the Covenants' reasonableness was contrary to settled law.[15] This Court should reverse and remand for further proceedings.

[15] Quixotically, the trial court preserved Vortex's confidentiality contract claim, because neither party had briefed it. The forfeiture-based claim, likewise, is based

IV. THE COURT OF CHANCERY ERRED IN DISMISSING VORTEX'S NON-CONTRACT CLAIMS

A. Question Presented

Did the Court of Chancery err in dismissing the fraud claim for lack of particularity as to Patrick's state of mind despite allegations of false statements of present intent, and by dismissing the unjust enrichment claim based on absence of a valid contract? Preserved at A0295–A0300; A0457 at 40:19-41:17.

B. Scope of Review

The Scope of Review is as stated in Argument I(B).

C. Merits of Argument

1. The Court Dismissed Vortex's Fraud Claim Under the Incorrect Standard

While Delaware Court of Chancery Rule 9(b) requires certain elements of fraud to be pled with particularity, a defendant's state of mind may be averred generally. *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1208 (Del. 1993). This applies even to false statements of present intent. *MicroStrategy Inc. v. Acacia Res. Corp.*, 2010 WL 5550455, at *15–16 (Del. Ch. Dec. 30, 2010).

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on independently pled contract language and seeks a distinct remedy. Compl. ¶¶87–88, 92.

Here, Vortex alleged Patrick made false statements of present intent, not "promises of future conduct or statements of future intent" requiring heightened pleading. *Id*. at *16; Compl. ¶142 (alleging Patrick "specifically represent[ed] that he intended to take time off and pursue independent contracting work which would not compete with Vortex and would benefit Vortex after his separation."). The alleged fraud was *not* Patrick's *promise* to honor the Covenants, implying promissory fraud, but rather Patrick's false statement of his *present intent* not to compete with Vortex that Patrick used to get his buyout. Compl. ¶¶90, 142. Vortex easily met the general pleading standard for Patrick's present state of mind, and this Court should reverse the dismissal.

2. The Court Erred in Requiring a Valid Contract for Vortex's Unjust Enrichment Claim

Unjust enrichment is a quasi-contract remedy available in the absence of a valid contract. *ID Biomedical Corp. v. TM Techs., Inc.*, 1995 WL 130743, at *15 (Del. Ch. Mar. 16, 1995). Thus, "claims of unjust enrichment may survive a motion to dismiss when the validity of the contract is in doubt or uncertain." *Bakerman v. Sidney Frank Importing Co.*, 2006 WL 3927242, at *18 (Del. Ch. Oct. 10, 2006). The same operative facts can support both breach of contract and unjust enrichment claims, especially at the pleadings stage. *Garfield ex rel. ODP Corp. v. Allen*, 277 A.3d 296, 361–62 (Del. Ch. 2022).

Vortex alleged Patrick was unjustly enriched by accepting benefits from a contract he believed would not be enforced. Compl. ¶¶150–155. Once the court doubted the Covenants' validity, it should have permitted the unjust enrichment claim to proceed, ensuring a remedy for the party performing under an ultimately unenforceable contract. *See Cavi v. Evolving Sys. NC, Inc.*, 2018 WL 2298353, at *7 (D. Del. May 21, 2018) ("At trial, Plaintiff may win on his fraudulent inducement claim, rendering the employment agreements unenforceable, and then pursue relief under the quasi-contractual theories."); *cf. Graham v. State Farm Mut. Auto. Ins. Co.*, 565 A.2d 908, 913 (Del. 1989) ("A party to a contract cannot silently accept its benefits and then object to its perceived disadvantages."). Thus, even if Vortex cannot recover Patrick's ill-gotten buyout through contract, they are nonetheless entitled to pursue an unjust enrichment claim.

CONCLUSION

For the foregoing reasons, this Court should reinstate the claims dismissed with prejudice, and remand with instructions to enter preliminary injunctive relief enforcing the Covenants pending final adjudication.

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