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Case Number 83,2026

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,	Court Below: Court of Chancery of the State of Delaware
v.	C.A. No. 2025-1305-NAC
NICHOLAS J. PATRICK,	**PUBLIC VERSION FILED: May 8, 2026**
Defendant-Below/ Appellee.	

<u>APPELLEE'S AMENDED ANSWERING BRIEF</u>

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Dated: April 24, 2026

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NATURE OF PROCEEDINGS

The Court of Chancery properly denied a preliminary injunction and dismissed the bulk of Appellants' claims because the restrictive covenants they drafted sweep far beyond any legitimate business interests recognized by Delaware law. Appellants now ask this Court to reverse by reframing the orders as imposing an unprecedented "perfection" standard and by urging blue penciling to salvage provisions they essentially concede are broader than necessary. However, the record below and the LPA's[1] text confirm the opposite.

For their part, Appellants seek to shoehorn this case into the inapplicable "sale-of-business" restrictive covenant paradigm in a bid to salvage their facially overbroad covenants, notwithstanding the fact that the sale they are referring to was a sale of their own business to private equity while Mr. Patrick was simply a mid-level employee. Appellants invite this Court to enter an alternate version of reality which suits themselves but is belied at every step of the way by the robust factual record demonstrating that their characterization of this case is fanciful. The covenants at issue were included in a post-transaction Limited Partnership Agreement governing ongoing relationships and seek to bar competition across entities and "Affiliates," not to protect a discrete, bargained-for transfer from seller

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Appellants' Opening Brief.

to buyer. Accepting Appellants' logic would subject every employee who stands to obtain any benefit from a transaction involving their employer to a more permissive standard for reviewing restrictive covenants, but that is contrary to existing Delaware law.

The Court of Chancery properly applied Delaware's settled holistic reasonableness inquiry for restrictive covenants, identified dispositive overbreadth on the face of the definitions that animate both the non-compete and the non-solicit provisions, and properly declined to re-write the parties' bargain. This Court should affirm.

SUMMARY OF ARGUMENT

1. Denied. First, the Court of Chancery appropriately considered the Covenants holistically for reasonableness and correctly determined that they suffered from fatal flaws which rendered them facially overbroad and compelled denial of Appellant's request for preliminary injunctive relief as well as dismissal of the bulk of their claims. The Court did not apply a "perfection" standard.

Second, the Court below did not "incorrectly" apply a stricter employment standard to the Covenants. It applied the correct standard given the fact that Mr. Patrick indisputably was an employee holding a small amount of equity at the time of the sale of Appellants to private equity, and the LPA was structured to govern ongoing relationships rather than protecting a discrete interest arising from the sale of a business. Appellants' attempt to recast the covenants as "sale-of-business" restraints deserving a relaxed review fails. Moreover, the record reflects the existence of applicable employment-related concerns given that (a) Mr. Patrick rolled over his existing equity rather than being granted any separate, then-quantifiable consideration for the Covenants and (b) experienced unequal bargaining power where counsel selected for management equity holders by the Appellants negotiated the LPA with the buyer's counsel, and Mr. Patrick was presented with a take-it-or-leave it deal he had no meaningful opportunity to negotiate.

Third, the record does not support reversal. The Court appropriately declined to blue-pencil the overbroad Covenants, and the Court expressly determined that the definitions of "Client" and "Affiliate," particularly in light of Appellants' expansive view of their "Business" and essentially global footprint, rendered the restraints unreasonably broad.

2. Denied. The Court of Chancery appropriately relied on ample Delaware precedent on point in declining to blue-pencil the facially overbroad and unreasonable Covenants. Appellants' suggestion that Mr. Patrick had significant bargaining power in connection with the LPA is belied by the record. Blue-penciling of the LPA would necessitate completely rewriting the Covenants to strike a new deal that no one agreed to, which is not consistent with Delaware law.

3. Denied. The forfeiture component of Appellants' contract claim falls with the unenforceable restraints on which it depends. Mr. Patrick moved to dismiss each and every claim in Appellants' Verified Complaint and cannot be said to have failed to challenge forfeiture.

4. Denied. The court properly dismissed the fraud claim for lack of particularity and as non-actionable future intent, as the record did not support the existence of any false statement of present intent by Mr. Patrick. The Court properly dismissed the unjust enrichment claim given the operative contract and Appellants' own theory.

STATEMENT OF FACTS

I. MR. PATRICK'S INDUSTRY EXPERIENCE THAT LEADS TO HIS COMPANY'S 2020 ACQUISITION BY VORTEX

Defendant has spent more than twenty-five years building his career and experience in the trenchless pipe rehabilitation industry. B0001 at 38:8-19. Before joining Vortex, Defendant learned the industry and became an early adopter of robotic and small-diameter cured-in-place pipe ("CIPP") rehabilitation technology, a specialized segment of the trenchless pipe repair industry. A0386 at ¶¶ 1; 4-6.

A. Cure in Place Pipe Liner Industry

Trenchless pipe repair enables the repair and replacing of underground pipelines without extensive excavation. A0386 at ¶ 2. CIPP liner technologies, the primary method for trenchless pipe repair, were first developed in Europe during the 1970's and 1980's and later adopted in the United States because of the aging underground infrastructure of many municipalities. A0386 at ¶ 2. The trenchless pipe rehabilitation industry encompasses two distinct categories: lateral or small-diameter rehabilitation (involving pipes connecting residential homes to main lines) and mainline or large-diameter rehabilitation (involving pipes beneath streets, typically six inches and larger). A0386 at ¶ 3; B0001 at 73:9-12. The earliest uses of CIPP in the United States were the larger diameter mainline applications due to economies of scale and costs. A0386 at ¶ 3. Those early CIPP techniques used felt and polyester liners that used air or water/stream cured resins. A0386 at ¶ 3. Most recently, UV/LED curing methods have proven a better alternative requiring a shift to different liner materials, such a fiberglass, which allow the light to penetrate deeper into the liner material. A0386 at ¶ 3.

B. Mr. Patrick's Pre-Vortex Career and Established Robotics Experience

Defendant's pre-Vortex experience encompassed hands-on installation, training and business ownership spanning approximately two decades. B0001 at 72:24–73:1-6. Defendant began working with CIPP products and liners in Washington State in 2000 for Applied Professional Services, where he managed robotic camera trucks and CIPP small diameter lateral lining crews. A0386 at ¶ 4. In 2005, Defendant became a partner in Northwest Trenchless Services, which was a reseller and technical support provider for Perma-Liner Industries, then the nation's leading manufacturer of small diameter lateral liner and products to support the CIPP industry. A0386 at ¶ 4. In this role as Perma-Liner distribution contact, Defendant attended national trade shows, including WWETT, formally the Pumper Show, the No-Dig Show and attended various Perma-Liner open house events where Defendant would meet and interact with plumbers, contractors, engineers and municipal representatives from all areas of the world. A0386 at ¶ 4. Also, as part of the national distributorship Defendant held open house events and road show exhibits across the Pacific Northwest for industry representatives. A0386 at ¶ 4. In

2009, Defendant became President of Insta-Pipe, a company providing trenchless repair solutions in the Pacific Northwest United States. A0386 at ¶ 4.

In 2011, Defendant founded Trenchless Pipe Repairs LLC ("TPR"), a trenchless pipe rehabilitation services company based in Seattle, Washington, servicing small-diameter pipes throughout the Pacific Northwest. *Id.* ¶5; Answer ¶ 28.[2] At TPR, Defendant was a pioneer in installation processes of small-diameter CIPP applications for inside buildings, which translated into performing the rehabilitation services for King County Housing Authority in Washington State. A0386 at ¶ 5. That relationship and contract would later make him an attractive target for Vortex. A0386 at ¶ 5. While running TPR, Defendant implemented the then developing technology of UV/LED curing technology for small diameter CIPP for use in residential and small commercial applications. A0386 at ¶ 5. During this time Defendant traveled to countries like Germany and Denmark researching the technology and best application practices. A0386 at ¶ 5. He later became one of the first contractors in the Unites States to utilize UV/LED curing for lateral linings. A0386 at ¶ 5. Defendant also adapted and modified existing robotic technologies for robotic cleaning, cutting and rehabilitation into small robotic applications. A0386 at ¶ 5. In those activities, Defendant had one of the first companies to retrofit

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

specialized 40,000 psi water jetting tools onto smaller robotic tools. A0386 at ¶ 5. This adaptation allowed the removal of foreign debris like concrete from city sewer mains without damaging the host pipe, leading to a valuable contract with the City of Seattle for these services, which also contributed to the Vortex acquisition of TPR. A0386 at ¶ 5. Those early adaptations would eventually be incorporated into the Vortex AccuPower High-Pressure Water Jetter. A0386 at ¶ 5. Notably, TPR was a Vortex customer prior to the acquisition, giving Defendant existing familiarity with certain Vortex distributed product lines. B0051 at 16:8-9.

II. MR. PATRICK'S EMPLOYMENT WITH VORTEX

A. The TPR Acquisition and Mr. Patrick's Employment

On January 10, 2020, Vortex acquired substantially all of TPR's assets via an asset purchase agreement. Answer ¶ 29. In exchange for his business and all related assets, Defendant received approximately [redacted] in consideration, consisting of a [redacted] cash payment, the payoff of all outstanding debts and accounts payable of TPR, and the issuance of [redacted] incentive units in Vortex Holdco, LLC, as rollover equity. Answer ¶ 29.

Concurrently with the acquisition, Defendant entered into an employment agreement with Schwalm USA, LLC, an indirect subsidiary of Vortex Companies with a starting salary of [redacted]. Answer ¶32-33. Initially, Defendant continued to operate the services business he had run through TPR in Seattle, now as a Manager under the Vortex umbrella. Answer ¶ 36; B0051 at 73:18-20.

B. Mr. Patrick's Roles and Titles at Vortex

1. Transition to the Products Division

In or around August 2020, Defendant transitioned from the services division to Vortex's products division, specifically the robotics group within Schwalm USA. Answer ¶ 37. This transitioned Defendant away from providing services that TPR had historically offered and redirected his focus to product development. A0386 at ¶ 6. His initial responsibilities as Senior Product Manager or National Product Manager involved development of two product lines: the AccuPower® water blaster robot attachment for which he was intimately familiar and, later, the VeriCure® curing monitoring system. A0386 at ¶ 6; Answer ¶ 38.

AccuPower® is a specialty cleaning tool—an attachment to the Schwalm robotic cutter that utilizes ultra-high-pressure water up to 40,000 psi to clean, cut, and remove debris from inside a pipe before repairs can be made. A0386 at ¶ 7. Notably, Defendant was instrumental in bringing this technology to market: while at TPR, he was among the earliest to adapt technologies used on mainline large pipes for use in small-diameter applications. A0386 at ¶ 5. Vortex purchased TPR in significant part to leapfrog the application of this technology, which it then packaged and sold as the AccuPower® product. A0386 at ¶ 5.

VeriCure® is a cure monitoring system that utilizes distributed temperature sensing technology and fiber optic sensors to allow users to verify the accuracy of cure of CIPP resins and lining during the curing process. A0386 at ¶ 8. This technology is predominately used in mainline pipes from 6 inches to 100 inches. A0386 at ¶ 8. Using his experience and knowledge of small diameter CIPP processes, Defendant started testing and developing this technology for small diameter lateral linings. A0386 at ¶ 8. Companies like NuFlow were interested in this application and invited him to attend the NuFlow summit on behalf of Vortex. A0386 at ¶ 8.

Polinvent USA does not offer any cleaning tool or cure monitoring system that compete with AccuPower or VeriCure. A0386 at ¶¶ 7,8.

2. Mr. Patrick's Narrowed Role After Late 2022

In late 2022, Plaintiffs fired and/or intended to terminate Defendant leading to discussion of separation. Answer ¶ 24. Following intervention by a senior Vortex leader, Defendant was reinstated and transferred to a different role as Technologies Technical Manager, reporting to different senior leadership. Answer ¶ 51; B0001 at 258:17-263:3. After this transfer, Defendant's responsibilities narrowed considerably and he was no longer invited to the meetings of the Regional Vice Presidents that he had previously attended. Answer ¶ 47. His role after late 2022 was limited primarily to technical support for the AccuPower® and VeriCure® products. Answer ¶ 72; B0001 at 263:1-3.

Vortex has wrongly characterized this time period as one where Defendant gained tremendous knowledge. The deposition testimony, however, does not support this conclusion. Instead, Defendant was originally pursued by Vortex because of his existing experience in these areas. A0386 at ¶ 5. The only Vortex-specific knowledge Defendant acquired while working for Vortex is related to the AccuPower® and VeriCure® product lines. B0001 at 31:1-19; *see id* at 28:8-29:3 (Defendant testifying that there is no knowledge or experience that he gained at Vortex and later used at Polinvent).

C. Mr. Patrick's Limited Involvement with LED Curing Systems

Plaintiffs have placed great emphasis on Defendant's alleged extensive involvement in "head-to-head" testing LED curing systems. *See* A0226 at 13. The factual record reveals a different picture, since it is impossible to conduct testing without the machine. In his deposition, Defendant was asked:

> Q: You did some testing of the MIRCOcure to support that effort; correct?
> A: Well, I didn't do any testing because we didn't have the system. So how can I test if?..."

B0001 at 274:4-7. Instead, in January 2022, Defendant traveled to Europe along with Quin Breland, Vortex Companies' manager of its international division, and Andrew Gonnella, President of Vortex Companies' product division for only a demonstration. Answer ¶ 57. During this trip, the team visited both Polinvent in Budapest, Hungary, and IMS Robotics Group ("IMS") in Germany. Answer ¶ 58.

At the Polinvent facility, the Vortex team observed a demonstration of Polinvent's TyvLight LED system (later rebranded as the Sewerbot). Answer ¶ 58. At the IMS facility, the team observed demonstrations and reviewed IMS's LED offering, the MICROcure, but Defendant was more impressed with the Sewerbot technology than with the IMS system. B0001 at 272:12-273:6.

Critically, Defendant may have been involved in acquiring a Sewerbot machine, but he never conducted head-to-head testing against the MICROcure system. B0001 at 274:13-19; 350:20-351:1. When asked about testing, Defendant testified: "I did not do any direct testing on the MICROcure." B0001 at 274:13-14. He further confirmed that he did not supervise others in testing the MICROcure; rather, he merely observed some demonstrations and provided guidance based on his years of experience. B0001 at 274:16-23; A0386 at ¶ 10. Another employee, Charles Woods, a former TPR employee, conducted the limited testing work on LED systems at Vortex. B0001 at 221:12-13.

Defendant does not hide the fact that he personally favored the Sewerbot product line over the MICROcure. B0001 at 272:12-273:6. Vortex ultimately selected the MICROcure system to distribute over the Sewerbot and declined to partner with Polinvent. Answer ¶ 64. Defendant believes, but was never told, that the decision by Vortex management to select MICROcure was made for strategic business alliance factors and not for product performance. A0386 at ¶ 11.

D. The 2023 Private Equity Transaction and the LP Agreement

1. The Private Equity Transaction

In 2023, Vortex underwent a restructuring in connection with an acquisition by a private equity sponsor. A0944. As part of this transaction, holders of existing equity units in Vortex Holdco were presented with the option to roll over their equity into units of the newly formed Partnership. A0944. On September 1, 2023, Defendant became a Management Limited Partner in the Partnership by executing a Joinder to the LPA. Answer ¶ 76. The LPA was presented as a standardized document to all management equity holders as part of this private-equity-driven transaction. Compl. ¶ 77.

Defendant was not meaningfully involved in negotiations concerning the Joinder or the Covenants. A0386 at ¶ 23. While the management equity holders were represented by counsel during the transaction, this was collective counsel (Baker Donelson) representing all rolling equity holders, not individual representation devoted to negotiating the specific terms of the Covenants on Defendant's behalf. A0386 at ¶ 23; B0051 at 20:12-2. Defendant did not have any say in the selection of collective counsel, nor did he know who ultimately retained counsel on behalf of the collective group of management equity holders. A0386 at

¶ 23. There was virtually no communication between Defendant and collective counsel, and never did collective counsel provide Defendant with advice, much less discussion, on the Covenants. A0386 at ¶ 23.

Defendant elected to receive a cash distribution of approximately [redacted] for a portion of the incentive units he had received in connection with the sale of TPR and rolled over the remaining units into units of the newly formed Partnership. Answer ¶ 78. Defendant viewed the rollover as a "good investment opportunity," not as consideration for restrictive covenants. B0001 at 329:6-8.

2. The LPA's Restrictive Covenants

The LPA contains several expansive Covenants set forth in Section 12.10 including provisions governing confidentiality, non-solicitation, and non-competition. Section 12.10(b) of the LPA contains two non-solicitation provisions applicable during the "Restricted Period." Relevant here, Section 12.10(b)(ii) provides:

> (ii) Each Management Limited Partner shall not, and shall cause its Affiliates not to, and shall not direct any spouse, parent, sibling or child or lineal descendant of such Management Limited Partner 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 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.

Appellants' corporate representative testified that Mr. Patrick would "absolutely" violate this provision merely by posting on LinkedIn that he has a job at Polinvent. B0051 at 19:2-8.

As for the non-competition restriction, Section 12.10(d) of the LPA provides:

> Each Management Limited Partner shall not, and shall cause its Affiliates not to, and shall direct any spouse, parent, sibling or child or lineal descendant of such Management Limited Partner not to, during the Restricted Period, directly or indirectly (through their Affiliates or otherwise, including as a proprietor, principal, agent, partner, officer, director, equityholder or employee) (i) 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 in 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) or (ii) acquire (through merger, stock purchase or the purchase of all or substantially all of the assets or otherwise) the ownership of, or any equity interest in, any Person if the annual revenues of such Person from any Competing Business are more than five percent (5%) of such Person's total consolidated annual net sales (based on the most recent full fiscal year revenues of such Person). Ownership as a passive investment, of less than two percent (2%) of

> the outstanding shares of capital stock of any corporation whose stock is listed on a national (or comparable international) securities exchange will not constitute a breach of this Section 12.10(d). A Management Limited Partner's participation in charitable or public service activities and service on the board of directors of corporations will not constitute a breach of this Section 12.10(d) to the extent that such activities do not conflict with the business and affairs of the Partnership, Vortex Holdco or any of their respective Subsidiaries or interfere with such Management Limited Partner's obligations to the Partnership, Vortex Holdco or any of their respective Subsidiaries.

The LP Agreement defines "Client" to include any "Person" who "purchases the goods or services" of Vortex in the 24-month period preceding "the challenged activity," any Person controlled by any such Person, or a "potential customer, client, agent, dealer or distributor" with whom Vortex has substantive discussions about becoming a customer. A0074 at B-4.

"Competing Business" is defined as "any Person, business, or subdivision of a business of the type and character engaged in any business or operation that is competitive to the Business, or any such Person which is actively planning to engage in any business or operation that is competitive to the Business. A0074 at B-5.

"Business" is defined as "the business engaged in by Vortex Holdco and its Subsidiaries as of the date of the challenged activity and during the eighteen month period preceding the challenged activity, being generally described as follows: (a) provider of water and wastewater infrastructure rehabilitation services, solutions and products, and (b) any other business conducted by Vortex Holdco or any of its Subsidiaries during the term of the direct or indirect ownership of any beneficial or equity interest in Vortex Holdco by a Management Limited Partner. A0074 at B-3.

"Subsidiaries" is defined as:

> with respect to any Person, (i) any corporation more than fifty percent (50%) of the stock of any class or classes of which having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is owned by such Person directly or indirectly through one or more subsidiaries of such Person and (ii) any partnership, association, joint venture, limited liability company or other entity in which such Person, directly or indirectly, through one or more subsidiaries of such Person, has more than a fifty percent (50%) equity interest.

A0074 at B-9.

The LPA defined "Restricted Period" as the period of "Continuous Service" plus twenty-four (24) months following termination. A0074 at B-8. Notably, the Covenants extend to Affiliates, which are defined as:

> [W]ith respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of

> voting securities, by contract or otherwise and provided, further, 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 Person described in clauses (i) or (ii) above, and (iv) any trust for the benefit of any Person described in clauses (i) through (iii) above or for any spouse, issue or lineal descendant of any Person described in clauses (i) through (iii) above.

A0074 at B-3.

III. MR. PATRICK'S DEPARTURE FROM VORTEX

In late 2024, Defendant informed his supervisor, Peter Dannenberg, of his intention to leave Vortex. B0001 at 330:23-331:11. Defendant originally planned to terminate his employment in January 2025, but he ultimately extended his final day to April 4, 2025. Answer ¶ 91.

Prior to his departure, Defendant met with several Vortex executives to discuss the terms of his departure. Answer ¶ 90. During these meetings, Defendant discussed his desire to "take some time off" to weigh his options and indicated that he would potentially return to the small-diameter pipe repair industry and/or offer consulting services. Answer ¶ 90; B0001 at 333:11-23. During a departure discussion, Vortex CEO, Mike Vellano, told Defendant that whatever he did to "keep it Vortex"—meaning that whatever he did, Vortex would still benefit through leads, purchases, or other forms of cooperation. *Id*. at 12:4-11; 12:22-13:1-3; 82:24-

83:1-9; 84:11-16. Defendant has honored that request and has been working under the belief that what he has done aligns with "keep it Vortex." *Id*.

Defendant hid nothing from Vortex—he gave proper notice of his departure, voluntarily agreed to stay on to train his replacement, provided leads to Vortex, and assisted Vortex employees even after his employment ended. B0001 at 84:11-16. He testified that the goal was never to compete with Vortex, but rather to "keep it Vortex and work together." *Id*. at 84:11-12; *see id* at 356:20-357:3 (Defendant testifying that he provided no information to Vortex that he knew at the time to be false in order to induce the purchase of his Units).

In connection with Defendant's departure, the Partnership exercised its discretionary right to repurchase his equity interest for [redacted]. Answer ¶ 93-94.

IV. MR. PATRICK'S RELATIONSHIP WITH POLINVENT AND POLINVENT USA

Polinvent is a Hungarian company that manufactures various products for the trenchless pipeline and sewer rehabilitation industry, including resins, liners, and LED curing equipment such as the Sewerbot. Answer ¶ 59. Polinvent has maintained an existing business relationship with Vortex since at least 2019, supplying Vortex with various resins and manufacturing certain Vortex products. Answer ¶ 58; A1171 at No. 4.

The industry structure in which Vortex and Polinvent operate is best characterized by interconnected customer-competitor relationships. A0386 at ¶ 13. As Defendant testifies: "[I]n this industry, there is not a sole competitor in a customer. Vortex makes products that they sell to customers and buys products from their competitors to sell to those customers." B0001 at 71:9-13. "As a manufacturer, you sell to customers and they brand them their stuff. So, therefore, those customers are competitors, but their also customers." B0001 at 71:17-20. The majority of the industry is that way and Vortex itself is a customer of Polinvent. B0001 at 71:21-72:1.

On July 24, 2025, Defendant filed to incorporate Polinvent USA in Wyoming. Answer ¶ 95. Polinvent USA was established to support Polinvent's existing U.S. customer base, such as Vortex, and to expand product relationships through distributors. Answer ¶ 95. When Defendant joined Polinvent USA, there were already approximately six or seven existing Polinvent customers in the United States, including [redacted]. B0001 at 251:16-252:10.

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[3] The same company for which Defendant was a territory representative of its products in the USA when he worked at Northwest Trenchless Services. This is another example of a company in the industry that is both a supplier and customer.

V. THE NATURE OF POLINVENT USA'S BUSINESS

Polinvent, as a product manufacturer sells its products through distributors—it does not sell directly to end users. A0386 at ¶ 14; B0001 at 54:1-6. Likewise, Polinvent USA intends to only support the Polinvent product offering through distributorships. *Id.* Polinvent USA's primary product offering is the Sewerbot LED curing system, which is an entry-level product that competes in a different market segment than the MICROcure formerly distributed by Vortex. B0001 at 64:17-24.

With respect to resins and liners, the evolution of technology makes it an ever-changing landscape. Traditional CIPP liners were made of felt or polyester materials, which worked well with "air cure" or "water/stream cure" systems. A0386 at ¶ 3. As UV and LED curing technology emerged, felt and polyester liners proved unsuitable because light could not penetrate and cure beyond approximately 5mm. *Id.* Accordingly, fiberglass liners were developed for UV/LED applications. *Id.* Polinvent was an early manufacturer of UV resins, not liners, and has historically provided those products through distributors, including Vortex. A0386 at ¶ 16.

Vortex is relatively new to small diameter resin and liner manufacturing, starting when Vortex acquired Applied Felts, later renamed United Felts, and MaxLiner. *Id;* B0001 at 75:21-76:17. It is only with the acquisition of these affiliated entities that Vortex moved from distributor only to manufacturer for certain product lines. A0386 at ¶ 16. However, those companies' product lines were primarily felt and polyester and not well-suited for UV light-curing like that used by the IMS and Polinvent systems. *Id.* To the knowledge of Defendant, Vortex and/or United Felts is in the process of developing its own UV/LED tolerant liners but at the present time is acquiring and reselling UV liners from third parties such as Impreg Americas, a competitor and also a manufacturer, in order to keep Vortex customers from buying directly from other manufacturers. *Id.*

Notably, many of the entities identified by Vortex as "potential clients" that Polinvent USA approached as potential distribution partners, including [redacted], were pre-existing Polinvent customers before Defendant joined Polinvent USA, just like Vortex. B0001 at 251:16-252:10.

VI. MR. PATRICK HAS NOT USED VORTEX CONFIDENTIAL INFORMATION

Defendant has not used any confidential Vortex information in connection with his work for Polinvent USA, nor would he have reason to do so. B0001 at 354:16-355:18. Defendant has not contacted any Vortex customer and asked them to buy from Polinvent. *Id*. at 42:14-23. When asked whether he has "helped [Polinvent USA] to create or improve any of their products using any technical information that [he] learned from [his] time at Vortex," Defendant testified: "No." *Id*. at 354:16-22. With respect to pricing, Defendant testified that he has not used any of Vortex's confidential pricing information to inform any contribution to

Polinvent's pricing decisions. *Id*. at 28:21; 355:6-11. He has not referred back to or used any information from Vortex's sales playbooks or PowerPoint presentations as part of his role at Polinvent. *Id*. at 355:12-18.

When asked about his knowledge of LED curing systems, Defendant testified that he "knew the advantages and differences of these systems before Vortex." B0001 at 104:12-105:4. He denied gaining additional knowledge or technical expertise regarding LED curing systems while at Vortex. *Id.* at 105:9-17. Defendant did not take any information or copy any documents when he departed Vortex. *Id. at* 19:3-21:24. At most, there may be old text message still on his phone that he was unaware may contain Vortex information, which he has not accessed and would willingly delete when free of a discovery hold. *Id.* at 22:8-23:15.

Polinvent and Vortex are not competitors. B0001 at 108:10-15. Instead, Polinvent as a product manufacturer views Vortex as its customer to distribute its product. *Id*. Polinvent did not want to anger Vortex in any way and wanted to work with Vortex and still does to this day. *Id.* at 183:1-9; 193:13-18.

VII. MR. PATRICK'S CONTINUING EFFORTS TO "KEEP IT VORTEX"

Even after this litigation began, Defendant testified that he has sent business leads to Vortex, including a lead to a district called [redacted]. B0001 at 59:2-13. When asked whether he still desires to "keep it Vortex" as he understood his conversation with Mike Vellano when he departed, Defendant confirmed: "Yes." *Id.* at 357:4-7.

The effect of the Restrictive Covenants as Plaintiffs seek to enforce them would be to bar Defendant from working in any capacity in the industry. When asked what would be left from him to do in the industry if Vortex took the position that he could not work for a company that sells through distributors to end users, Defendant testified: "Nothing." B0001 at 354:8-14.

ARGUMENT

I. THE COURT OF CHANCERY COMMITTED NO ERROR IN FINDING THE RESTRICTIVE COVENANTS OVERBROAD AND UNENFORCEABLE

A. Question Presented

Did the Court of Chancery err in finding restrictive covenants facially overbroad and unenforceable where they suffered from defects pervading core defined terms and reached far beyond Appellants' legitimate business interests? This issue was preserved below at A0147; A0302.

B. Scope of Review

"This Court generally reviews the denial of a motion for a preliminary injunction under the abuse of discretion standard. However, the Court of Chancery's legal conclusions are subject to *de novo* review." *Lawson v. Meconi*, 897 A.2d 740, 743 (Del. 2006). This Court will review the "grant of a motion to dismiss under a *de novo* standard of review and apply the same standard as the trial court." *Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022).

This Court "will not overturn the Court of Chancery's factual findings unless they are clearly erroneous," *i.e.*, "unless they are clearly wrong and the doing of justice requires their overturn." *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 94 (Del. 2021) (internal quotations omitted). "Factual findings are not clearly erroneous if they are sufficiently supported by the record and are the product of an orderly and logical deductive process." *Id.* at 94–95 (internal quotations omitted).

"Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 849 (Del. 2015).

C. Merits of Argument

1. The Orders Reflect the Court of Chancery's Well-Reasoned and Factually Supported Determination That the Covenants Are Facially Overbroad and Unenforceable

Contrary to the protestations of the Appellants, the Court of Chancery did not create an "irregular procedural posture." Instead, the Appellants did so by insisting that the parties engage in full discovery concerning their request for a preliminary injunction before allowing the court to address the threshold question of the Covenants' facial overbreadth and unenforceability raised by Mr. Patrick's Motion to Dismiss. Ultimately, the court had the benefit of a well-developed factual record in determining the enforceability of the Covenants, and Appellants' complaints of "pleading stage" injustice ring hollow. That their litigation strategy backfired on them is not a basis for reversing the Court of Chancery.

Moreover, nothing the court did here "directly contravene[d] this Court's recent ruling in *Sunder Energy, LLC v. Jackson (Sunder II)*, 332 A.3d 472 (Del. 2024)." In that case, while the Court of Chancery was reversed in part, it was because the court exceeded the scope of the motion for preliminary injunction and declared an entire LLC agreement unenforceable based upon a fiduciary duty defense raised by the defendant. 332 A.3d at 493-495. Here, by contrast, the PI Order and MTD Order addressed only the issues properly before the court in circumstances where Appellants demanded consideration of their PI Motion in tandem with Mr. Patrick's MTD, and the court had the benefit of a fully developed factual record. This case does not present the same risk of "unfair surprise and potential unintended consequences" (*see id.* at 495) that the Court was concerned with in *Sunder II*.

The cases Appellants cite for the proposition that enforceability of restrictive covenants should not be determined on a motion to dismiss are inapposite, in some measure at least because the court had the benefit of a fully developed factual record when it considered the PI Motion and MTD in tandem here at Appellants' insistence.

In *Labyrinth, Inc. v. Urich*, 2024 WL 295996 (Del. Ch. Jan. 26, 2024), the court declined to dismiss a likely overbroad ten-year noncompete, but it did so in circumstances where the bargaining power and negotiations of the parties required a fact-intensive analysis. 2024 WL 295996, at *24. In *Labyrinth*, the court was presented with "a bargain struck between equals," and the court acknowledged that it was "[u]nique circumstances" that precluded dismissal. *Id.* at *22-24. There, "Stephen agreed to the restrictive covenants in the context of selling his business, and Buyer has alleged sufficient facts indicating Stephen held the cards. Buyer shows that three times it suggested SPA edits, and three times Stephen rejected

Buyer's proposals," and he "'hotly and at length negotiated' the restrictive covenants." *Id*. at *24.

Here, in stark contrast, the Covenants do not arise from Mr. Patrick selling his business to Appellants. Moreover, Mr. Patrick was not meaningfully involved in negotiations concerning the Joinder to the LPA or the Covenants. A0386 at ¶ 23. Mr. Patrick had no say in the selection of collective counsel for the management equity holders, nor did he know who ultimately retained counsel on behalf of the collective group of management equity holders. *Id*. There was virtually no communication between Mr. Patrick and collective counsel, and never did collective counsel provide Mr. Patrick with advice, much less discussion, on the Covenants. *Id*. Moreover, Mr. Patrick rolled over existing equity as part of the private equity transaction and thereby assumed the risk associated with that investment, but he received no separate consideration for executing the LPA containing the Covenants.

This Court's recent decision in *Payscale Inc. v. Norman*, 2026 WL 774876 (Del. Mar. 19, 2026), is also inapposite here. In *Payscale*, the Court of Chancery dismissed an employer's restrictive covenant claims upon a motion to dismiss after denying the employer a temporary restraining order and granting a motion to expedite. 2026 WL 774876 at *2. This Court noted: "Our holding is limited to whether the employer stated a reasonably conceivable claim for relief; we express no view on whether any covenant ultimately will be enforced, reformed, or held unenforceable on a more developed record." *Id*. at *1. In contrast to *Payscale* where there was essentially no factual record, the parties in this case conducted several depositions, produced and exchanged tens of thousands of documents, including via a subpoena to Polinvent, and presented the Court of Chancery with voluminous exhibits in connection with the hearing on Appellants' PI Motion, including a substantial demonstrative slide deck prepared by the Appellants that incorporated the testimony and documentary evidence Appellants apparently deemed most compelling.

The court below had the benefit of precisely the sort of more developed record this Court referred to in *Payscale*. While the court could have treated Mr. Patrick's MTD as a motion for summary judgment given the voluminous record created by the parties, the court acted efficiently by denying the PI Motion and granting the MTD. Appellants cannot credibly suggest that the court resolved inferences against them at the "pleading stage" or failed to credit "conceivable" claims for relief when the court rendered its decisions on the PI Motion and MTD only after the parties generated a substantial factual record during expedited but exhaustive discovery.

UtiliSave, LLC v. Miele, 2015 WL 5458960 (Del. Ch. Sept. 17, 2015) also involved resolution of a motion to dismiss under circumstances where a factual record had not yet been created. It is not necessary to address each of the other cases Appellants cite in support of the notion that the Court of Chancery erred by granting the MTD, as Appellants' entire argument on that issue relies upon willfully ignoring the existence of the robust factual record that was created in this case and the voluminous exhibits presented to the court (see, for example, footnote 11 of Appellants' Opening Brief, in which they suggest that the court ruled "without any factual record"). Due to the procedural posture created below by Appellants' litigation strategy decision-making, the Court of Chancery was not presented with a typical motion to dismiss situation where it had to remain concerned only with whether Appellants adequately pleaded facts to support their allegations. Rather, the court was well-positioned to determine the merits of Appellants' claims, and it did so correctly. This Court should not accept Appellants' characterization of this case as one in which the Court of Chancery ruled prematurely or without Appellants having an opportunity to make their case.

2. The Court Appropriately Considered the Reasonableness of the Covenants and Did Not Demand "Perfection"

In this case, the Court of Chancery, ruling with the benefit of a robust factual record, determined that the Covenants were overbroad and unenforceable "as to whom they covered, when they applied, and where they operated geographically" (*Sunder II*, 332 A.3d at 485). In the PI Order, the court expressly found (i) that the definitions of "Affiliate" and "Client" incorporated into the Covenants applied to persons far beyond the reasonable reach of any legitimate business interest of Appellants, (ii) that the complete lack of any temporal limitation at all in a relevant section of the Covenants rendered that restriction vague and unreasonably broad, (iii) and that the lack of a temporal limitation was "further exacerbated by the scope of Plaintiffs' business, which extends across three continents and 16 countries" (a geographic scope which Appellants contended was binding on Mr. Patrick for two years after leaving their employ). *See* the PI Order; B0051 at 26:9-24 (Appellants' corporate representative testifying that the geographic scope of their business includes "the entirety of the US and in various international countries" and listing Canada, Europe, Asia, Australia, and South America).

When restrictive covenants are overbroad, Delaware courts resist "blue-penciling" and exercise discretion to strike the provision rather than rewrite it. *See e.g., Sunder Energy, LLC v. Jackson (Sunder I)*, 305 A.3d 723, 753 (Del. Ch. 2023) *aff'd* 332 A.3d 472 (Del. 2024); *Intertek Testing Services NA, Inc., v. Eastman*, 2023 WL 2544236, at *5 (Del. Ch. Mar. 16, 2023); *Kodiak Building Partners, LLC v. Adams*, 2022 WL 5240507, at *4 (Del. Ch. Oct. 6, 2022); *Del. Elevator, Inc. v. Williams*, 2011 WL 1005181, at *10 (Del. Ch. Mar. 16, 2011); *HKA Global, LLC v. Beirise*, 2025 WL 3639811, at *6 (Del. Ch. Dec. 16, 2025); *Hub Group, Inc. v. Knoll*, 2024 WL 3453863, at *12 (Del. Ch. July 18, 2024). "When a restrictive covenant is unreasonable, the court should strike the provision in its entirety." *Del. Elevator, Inc.*, 2011 WL 1005181, at *11.

"[A] Delaware court will resist blue-penciling the provision to make it reasonable" because doing so "creates a no-lose situation for employers, because the business can draft the covenants as broadly as possible, confident that the scope of the restriction will chill some individuals from departing." *Sunder I*, 305 A.3d at 753. In *Sunder II*, this Court found that the relief the employer sought would have required the Court of Chancery to "craft an entirely new covenant to which neither side agreed." 332 A.3d at 490. "That is, the Court of Chancery could not simply constrain the Covenants' temporal or geographic scope. The court also would have had to rewrite the persons to whom the Covenants applied and the type of conduct they restricted, which would extend well beyond what Delaware precedent has historically allowed." *Id*. That is precisely the situation here.

Appellants seek judicial surgery to cure defects pervading the core defined terms that drive both the non-compete and the non-solicitation provisions at issue. To salvage the Covenants in this case, the Court of Chancery would have had to rewrite provisions concerning to whom the Covenants apply and the type of conduct they restrict to prevent "policing of progeny and kin" and avoid punishing Mr. Patrick for unknowingly soliciting anyone with whom Appellants may have had any "substantive discussions" without his knowledge, even if those discussions occurred after Mr. Patrick ceased his employment with Appellants. The "limiting principle" of applying the non-solicit only to interference with Appellants' expansively defined

"Business" would not save Mr. Patrick from conceivably competing and soliciting in violation of the Covenants without any knowledge or intent to do so. The meanings of "Affiliate" and "Client" Appellants now offer on appeal are still overbroad, and they are unreasonably vague if, as Appellants contend, even the Court of Chancery is unable to divine their meaning and the scope of their applicability.

The court declined to blue-pencil the Covenants after identifying multiple independent overbreadth problems. This is not a case of merely shortening a restricted time period or narrowing a global geographic scope to only the United States. To satisfy Appellants, the court would need to substantively modify key portions of the Covenants, rewriting operative language and supplying limits (temporal and otherwise) nowhere present, which is neither appropriate here nor what has been historically allowed in Delaware. The Court of Chancery correctly and in its reasonable discretion declined to blue-pencil Appellants' dramatically overreaching Covenants, and the court did not thereby create any "absurd results." The Court of Chancery did not abuse its discretion in declining to rewrite the agreement that Appellants drafted to make it reasonable. *See Sunder II*, 332 A.3d at 483 ("We review the Court of Chancery's exercise of its equitable powers, its decision to permit parties to amend pleadings or to consider an affirmative defense, and the grant or denial of a preliminary injunction for abuse of discretion").

3. Any More Lax "Business-Sale" Standard is Inapplicable Here

Appellants argue that a sale-of-business standard for the review of restrictive covenants applies here, but that notion relies entirely on embracing an alternate reality where Mr. Patrick was a sophisticated party with relatively equal bargaining power who obtained substantial consideration in a deal between Appellants and a private equity acquiror where Mr. Patrick had no input, had no meaningful opportunity to negotiate anything, and realized no consideration aside from rolling over existing equity in exchange for any investment opportunity – the sort of opportunity which necessarily involves risk and is not separate, veritable consideration for agreeing to restrictive covenants. Additionally, the Joinder to the LPA was an investment vehicle, not a sale document.

Derge is inapposite. In that case, a C-suite executive, the COO, one of the company's "top executives," executed a written consent in connection with the merger of his employer, receiving "substantial consideration" "in a merger that was conditioned on his agreement to the Non-Compete." *Derge v. D&H United Fueling Sols., Inc.*, 2025 WL 3511065, at *6 (Del. Ch. Dec. 8, 2025). Here, the record amply reflects that Mr. Patrick was a mid-level employee, responsible for the technical aspects (not sales) of a single product line, who was nominally represented in the transaction incorporating the LPA by counsel he never selected or spoke with. The transaction was also not conditioned upon Mr. Patrick's agreement to anything – he was either in or out. The deal was driven by Appellants, not by Mr. Patrick as a separately represented and sophisticated party with any real power like in *Labyrinth*.

Instead, as noted above, management equity holders were collectively provided with counsel selected for them and were provided with no meaningful advice. Despite Appellants' efforts to sidestep reality, nothing anywhere in the record suggests that Mr. Patrick ever had "equal bargaining power" or that "valuable consideration was exchanged." Mr. Patrick had essentially zero bargaining power, and anything he received was either something to which he was already entitled or resulted from assuming an investment risk rather than being transferred to him as consideration for agreeing to the Covenants. The exact concerns justifying heightened scrutiny of restrictive covenants that Appellants identify on page 27 of their Opening Brief are present here – namely, unequal bargaining power, inadequate consideration, and lack of choice. Mr. Patrick plainly had unequal bargaining power (essentially none at all), received no separate consideration but instead merely took advantage of an investment opportunity that appears wise in hindsight despite never having any guarantee to yield a return, and had the choice only to take or leave the LPA Joinder with which he was presented.

4. The Court of Chancery Properly Exercised Its Discretion in Declining to Blue-Pencil the Covenants

In a bid to save their unenforceable covenants, Appellants seek to apply a different, public policy-focused *de novo* standard of review to blue penciling, which is generally reviewed for abuse of discretion. For reasons already explained in greater detail above, there was no "equality of bargaining power" in this case to militate in favor of blue penciling. At page 39 of their Opening Brief, Appellants assert that Mr. Patrick "negotiated restrictions while 'banking on this Court striking the restrictions entirely.'" However, the record quite clearly reflects that Mr. Patrick, who was also not a "sophisticated executive," did not negotiate any restrictions and was merely presented with an agreement to sign. This case bears no resemblance at all to *Ainslie*, where the defendants were partners and top executives in a global financial services company. *Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 681-82 (Del. 2024). To review blue penciling on a *de novo* basis here based on public policy would effectively toss out the abuse of discretion standard that has historically applied if the Court accepts Appellants' assertion that enforcing restrictive covenants in a "bad contract" is the fundamental public policy of this state.

II. THE COURT OF CHANCERY PROPERLY DISMISSED THE FORFEITURE-BASED ASPECT OF APPELLANTS' BREACH OF CONTRACT CLAIM

A. Question Presented

Did the Court of Chancery err in dismissing a breach of contract claim that necessarily relied upon violation of covenants the court deemed unenforceable? This issue was preserved below at A0147; A0302.

B. Scope of Review

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

C. Merits of Argument

While Appellants mentioned forfeiture in their prayer for relief, it is not mentioned at all in their breach of contract claim itself. *See Compl*. ¶¶ 121-132. They also did not address it in the combined briefing on their PI Motion and the MTD (wherein Mr. Patrick moved to dismiss the entire Complaint), when they had the opportunity to raise the purported legal distinction they now seek to raise on appeal. Accordingly, it is not clear that Appellants fairly presented this issue to the trial court, and they have not made an effort to explain why the interests of justice exception to Rule 8 should apply.

Moreover, Appellants' reliance on *Ainslie* here is misguided. In that case, the Conditioned Payment Device at issue comprised two disjunctive conditions – the "No Breach Condition" and the "Competitive Activity Condition." 312 A.3d 685-86. This Court noted:

> As to the No Breach Condition, the Court of Chancery held that, *because the Restrictive Covenants were unenforceable, the plaintiffs could not have breached them so as to trigger the No Breach Condition*. This left Cantor Fitzgerald with the Competitive Activity Condition as a basis for eliminating its duty to pay the Conditioned Amounts.

Id. at 686 (emphasis added). The Court further noted that "the Court of Chancery recognized that the Competitive Activity Condition, which does not limit a partner's ability to compete or otherwise obtain employment, stands on different footing than underlies non-competition covenants such as the Restrictive Covenants underpinning the No Breach Condition." *Id*. at 689

Here, the forfeiture provision contained in § 9.7(a) of the LPA *expressly relies* upon breach of the Covenants that the Court of Chancery held were unenforceable. *See* Compl. ¶ 88 ("The LP Agreement further includes a provision allowing the Partnership and Vortex HoldCo to claw back the value of any repurchased units in the event of a breach of the restrictive covenants"). There is no analogue in this case to the Competitive Activity Condition that was present in *Ainslie*. Thus, Appellants' assertion that their forfeiture claim "stands on independent contractual footing" (Opening Brief at 43) lacks merit. This Court should affirm the dismissal of Count I of the Complaint, including any request for forfeiture.

III. THE COURT OF CHANCERY PROPERLY DISMISSED APPELLANTS' NON-CONTRACT CLAIMS

A. Question Presented

Did the Court of Chancery err in dismissing (i) a fraudulent inducement claim based entirely on a conclusory allegation about Mr. Patrick's future plans and (ii) the portions of an unjust enrichment claim that relied on unenforceable covenants and a repackaged fraud claim? This issue was preserved below at A0147; A0302

B. Scope of Review

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

C. Merits of Argument

1. The Court of Chancery Properly Dismissed Appellants' Fraudulent Inducement Claim

Appellants' fraudulent inducement claim was not pled with particularity and relied on non-actionable statements of future intent. They alleged that Mr. Patrick said he intended to "take some time off" and perhaps later "get involved" in non-competitive work. Compl. ¶¶ 90-94, 142. They did not allege facts to suggest that Mr. Patrick intended to compete with Appellants at the time of the March 2025 meeting referred to in paragraph 90 of the Complaint.

Mr. Patrick's statements were forward-looking expressions of intent and aspiration – not misstatements of present fact. Under Delaware law, predictions or statements of future intent are not actionable absent particularized allegations that, when made, the speaker had a then-present intent not to perform and knew the statements were false. *MicroStrategy Inc. v. Acacia Research Corp.*, 2010 WL 5550455, at *15 (Del. Ch. Dec. 30, 2010); *Grunstein v. Silva*, 2009 WL 4698541, at *13 (Del. Ch. Dec. 8, 2009). Appellants offered none of the particularized facts Ct. Ch. R. 9(b) requires to evidence a contemporaneous contrary intent, and they described no specific reliance beyond a generalized "repurchase" decision they claim they would have made differently "had [they] known" Mr. Patrick's alleged "true intent." Compl. ¶¶ 144-149. The only support for the fraudulent inducement claim is an entirely conclusory allegation that Mr. Patrick never intended to take time off or find non-competitive work, and Appellants' claim has by this time been belied by the robust factual record established through discovery in any event. This Court should affirm the dismissal of Count III.

2. The Court of Chancery Properly Dismissed Most of Appellants' Unjust Enrichment Claim

Appellants alleged in their Complaint that Mr. Patrick was unjustly enriched because he received a salary from Polinvent USA allegedly in violation of the Covenants. Compl. ¶ 151. The Court of Chancery, recognizing that an unjust enrichment claim may be pled in the alternative, nonetheless properly dismissed most of Count IV because the Covenants were deemed unenforceable and Appellants "alleged no other basis that the enrichment was without justification." *See* the MTD Order. The court also properly determined that Appellants could not salvage a failed fraudulent inducement claim through a claim for unjust enrichment.

Id. The court left open the possibility for Appellants to prevail on Count IV to the extent it could be based upon a violation of Mr. Patrick's confidentiality obligations. *Id*.

"It is fundamental in Delaware law that where a contract already comprehensively governs the relevant relationship between the parties, the contract alone must provide the measure of the plaintiff's rights and any claim of unjust enrichment will be denied." *WIA Holdings LLC v. Scot. Am. Cap. LLC*, 2026 WL 147457, at *18 (Del. Ch. Jan. 20, 2026) (cleaned up). "An unjust enrichment claim pled in the context of a contract may survive a motion to dismiss where the factual basis for the unjust enrichment claim is independent of the allegations supporting the breach of contract claim." *Id.* (internal quotation omitted). In *WIA Holdings*, the unjust enrichment claim failed because it was "expressly premised" on the defendant's failure to fulfill its obligations under a written agreement. *Id*. So too here.

In this case, Appellants' unjust enrichment claim was expressly and entirely premised on Mr. Patrick's alleged breaches of the Covenants contained in the LPA, and Appellants have never taken the position that the LPA was procured by fraud or is otherwise invalid. While it is true that in some circumstances a common nucleus of facts can support alternative breach of contract and unjust enrichment claims at the pleading stage, "[w]hen the complaint alleges an express, enforceable contract that controls the parties' relationship ... a claim for unjust enrichment will be dismissed." *Pfeiffer v. Leedle*, 2013 WL 5988416, at *10 (Del. Ch. Nov. 8, 2013) (quoting *Bakerman v. Sidney Frank Importing Co.*, 2006 WL 3927242, at * 18 (Del. Ch. Oct. 10, 2006); notably this is the very next sentence after the one quoted at page 46 of Appellants' Opening Brief). Appellants' argument for maintaining their unjust enrichment claim in the face of what they claim is an enforceable agreement is premised upon conflating this situation with cases where the plaintiff alleges a contract of dubious enforceability. Moreover, as the court below noted, there is nothing unjust about any enrichment to Mr. Patrick if the Covenants are not enforceable.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the judgments of the Court of Chancery.

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