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IN THE SUPREME COURT OF THE STATE OF DELAWARE

RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP, Defendants Below, Appellants, v. ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P., Plaintiff Below, Appellee.	)	No. 20, 2026 Court Below: Court of Chancery of the State of Delaware C.A. No. 2025-0607-KSJM **PUBLIC VERSION** **EFILED: April 30, 2026**

APPELLEE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

Plaintiff-Appellee ATP III GP, Ltd. ("ATP") is the general partner of ATP Life Science Ventures, L.P. (the "Fund"), a Cayman Islands exempted limited partnership that holds a portfolio of Delaware biotech and life science companies. Defendants-Appellants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (together, "Rigmora") are limited partners of the Fund and have contributed approximately 98% of the Fund's capital. The portfolio companies at stake in this appeal are developing life-changing therapies addressing childhood blindness, cancer, obesity, and neurodegenerative diseases; several are in active clinical trials and involved in partnerships or negotiations with major pharmaceutical companies. The funding freeze that prompted this litigation risks destroying years of this life-saving research.

This appeal arises from a partial final judgment of the Court of Chancery following a two-day trial. That judgment, which grants ATP's request for specific performance of $97 million in capital contributions, rests on a thorough, well-reasoned post-trial memorandum opinion grounded in the text of the parties' Limited Partnership Agreement ("LPA"), extrinsic evidence of the parties' negotiation history and subsequent performance, and credibility determinations based on live witness testimony. Although Rigmora couches its arguments as legal ones entitled to *de novo* review, it principally asks this Court to reweigh the evidence, secondguess the trial court's credibility findings, and reach the opposite factual conclusions. Those requests cannot succeed under the deferential standard of review applicable here. And to the extent Rigmora does present any legal issues, it identifies no error warranting reversal.

Rigmora's three main arguments fail on every front. *First*, it seeks to artificially reduce its $2.425 billion Subscription in the Fund by double counting approximately $390 million in capital contributions that were merely *shifted* from one investment "pool" to another under an amendment to the LPA. The trial court rightly rejected this argument, which has no support in the contractual text, contradicts the amendment's stated purpose of reallocating existing capital, and defies commercial common sense.

Second, Rigmora argues that it is not obligated to contribute capital to portfolio companies that have missed or been late achieving research milestones. But the LPA contains no such requirement, and the trial court found—based on the parties' thirteen-year course of conduct and other extrinsic evidence—that no implicit requirement exists either. Those findings are entitled to deference, and Rigmora does not meaningfully challenge them.

Third, Rigmora's challenge to ATP's good faith in issuing the capital calls is equally without merit. The trial court applied the correct legal standard and found, after weighing the evidence and assessing witness credibility, that there was "no factual basis to question ATP's good faith." Rigmora's request to overturn that finding is an improper invitation to reweigh the evidence.

This Court should affirm.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly ruled that the $390 million in "deemed contributions" under Amendment 20 to the LPA may not be double counted to reduce Rigmora's $2.425 billion capital Subscription. This is so for three independent reasons.

First, Amendment 20's deemed contributions, transfers, and distributions effected a reallocation of existing capital and portfolio companies from Pool IV to Pools V-3 and Braeburn—no funds were actually transferred, and no new capital was invested. The drafters included no provision for a corresponding "deemed reduction" in Rigmora's Subscription, despite plainly knowing how to draft one: LPA Schedule D states that similar but separate "deemed contributions" "shall reduce Dr. Harrison's unfunded Subscription." Interpreting Amendment 20 to silently achieve the same result would render Schedule D's express language superfluous. Rigmora's counterarguments fail: the trial court properly gave "deemed" its plain meaning; Rigmora's reliance on post-contractual accounting documents is irrelevant under Cayman law and, in any event, those documents show only proper reallocation; and Rigmora's waiver argument lacks any supporting authority.

Second, double counting is inconsistent with Amendment 20's purpose, which Rigmora admitted below was to "*reallocate* an existing [capital] commitment from a different pool"—not to generate new capital contributions or to reduce Rigmora's Subscription. Rigmora cannot disclaim this admission: it constitutes a binding judicial admission, the purported distinction between "commitments" and "contributions" is meaningless in context, and the parties' decision to reallocate capital via deemed contributions and distributions sheds no light on whether double counting was intended.

Third, under Cayman law, courts must also consider commercial common sense and practical consequences. No sophisticated party would silently permit double counting of prior contributions against an agreed Subscription amount, and Rigmora's interpretation is commercially unreasonable because it would reduce Rigmora's unfunded Subscription without any corresponding capital inflow.

Even accepting Rigmora's interpretation, over $58 million of the capital calls remains due. The LPA mandates "Pool-by-Pool" capital accounting, and the deemed contributions affect only Pools V-3 and Braeburn. Rigmora's substantial unfunded commitment to Pools V-1 and V-2 is unaffected, leaving at least $58,778,295.99 in capital calls ($47.8 million plus fees and expenses) due in all events.

2. Denied. The Court of Chancery correctly found that the LPA does not make milestones a condition to ATP's right to call capital. Paragraph 5(a)(ii)(E) permits ATP to call capital "in amounts sufficient to enable the Partnership … to invest in Projects … in accordance with a budget therefor approved," and contains no express milestone-based limitation on that right. The court rejected Rigmora's contention that such limitations are implicit in the word "budget" based on extensive findings that are entitled to deference: the parties never discussed milestones during their budgeting process; Rigmora lacked the scientific expertise to evaluate milestone progress; on the rare occasions the parties intended to condition funding on milestones, they expressly included them in the budget approval document; milestones in investment memoranda were initial projections that became less relevant as drug development progressed or pivoted; and Rigmora never once requested milestone information over the parties' thirteen-year relationship, until this litigation. Rigmora does not attempt to show these findings are unsupported by the record, as would be necessary for reversal.

Rigmora's arguments lack merit in any event. The existence of milestones in investment memoranda within "budget packages" does not establish that the parties agreed to make milestones contractual prerequisites. The trial court credited testimony that milestones were starting-point projections, not binding conditions, and that this flexibility was a "core strategic advantage." Rigmora's convoluted reading of the acceleration clause—that any capital call made before a milestone is met triggers additional requirements—has no textual basis and is inconsistent with the court's findings and with Rigmora's own conduct, as Rigmora never invoked the acceleration clause's protections during thirteen years of capital calls. Moreover, the Replicate Bioscience budget, far from supporting Rigmora, demonstrates that when the parties intended milestones to condition funding, they said so expressly. No comparable language exists for the companies at issue here. And Rigmora's argument that investment memoranda must be incorporated into the "budget" through the LPA's reference to "Projects" ignores that the definition of "Project" does not mention either investment memoranda or milestones.

3. Denied. The Court of Chancery correctly found that there was "no factual basis to question ATP's good faith" in making the capital calls. Although Rigmora purports to challenge the legal standard, its arguments merely challenge the trial court's well-supported factual findings and credibility determinations.

The trial court expressly recognized that ATP may call capital "only for a purpose enumerated in [LPA] Paragraph 5(a)(ii)" and that the court's analysis was governed by Cayman law, which requires ATP to exercise its capital-call power in good faith and in accordance with its fiduciary duties. Rigmora's assertion that the court failed to consider whether ATP acted "solely" for an authorized purpose, or failed to account for fiduciary duties, is not faithful to the opinion. The court framed its inquiry in precisely those terms.

The trial court also correctly applied that legal standard to the evidence presented at trial. Rigmora conceded that ATP's stated purpose for the capital calls was proper under the LPA, budgets had been approved for those calls, and recovery of fees and expenses was also proper. The court found that the capital calls were made to secure funding for six months of operations for the portfolio companies and expressly credited testimony that the calls were based on research plans and partnership expenses.

Rigmora's principal evidence of bad faith was a single email among outside counsel where an attorney commented that the "point of making the calls is to put pressure on" Rigmora. The trial court weighed that email against the full record and properly found it did not undermine the extensive evidence of ATP's sincere concerns about the portfolio companies' financial health. The court likewise considered and rejected Rigmora's remaining arguments—including evidence about the timing and amounts of the calls—concluding that none established bad faith.

COUNTERSTATEMENT OF FACTS

A. The LPA And Rigmora's Initial Capital Commitment

In 2012, Dr. Seth Harrison and Dr. Dmitry Rybolovlev formed a Cayman Islands exempted limited partnership that was later renamed ATP Life Science Ventures, L.P. (the "Fund"). A365. Both Harrison and Rybolovlev are trained physicians who chose to apply their expertise to develop life-saving pharmaceuticals and biotechnology through targeted investing. A365-66, A451-52. Harrison is the managing partner of ATP, which in turn serves as the general partner ("GP") of the Fund. A295 (¶¶13, 15). The two Rigmora entities are the largest limited partners ("LPs") of the Fund and are both owned and controlled by Rybolovlev's family trust. A295-96 (¶¶17-20).

In 2012, the parties entered into the LPA, A706-802, which is governed by Cayman law, A779, to support the Fund's mission of "invest[ing] … in pharmaceutical, medical device and other medically-related projects and related activities," A715. Since the Fund's inception, the LPA has been amended twenty-two times. *See* Op. 5 & n.27.[1]

Upon formation of the Fund, Rigmora made an initial capital commitment, or "Subscription," of $1.425 billion. B201-04, B236-39. That initial Subscription was

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[1] Citations to "Op." are to the post-trial opinion below, attached as Exhibit A to Rigmora's opening brief. Citations to "Br." are to Rigmora's opening brief (Dkt. 8).

set forth in two Subscription Agreements (one for each LP) and was made "[s]ubject to the terms and conditions set forth in … the [LPA]." B185, B220. Rigmora also agreed to "make such other capital contributions and payments to the Partnership as provided for in the [LPA], in the manner and at the times provided in the [LPA]," and to be "bound by the terms of the [LPA]." B185, B220.

B. The Budgeting And Capital Call Process

The LPA, as amended, defines the process by which committed capital is budgeted and subsequently called from the LPs. Paragraph 5(a)(ii) authorizes the GP to call capital in seven circumstances, including to fund partnership expenses, management fees, reserves, and investments in "Projects." A804 (amending LPA ¶5(a)(ii)). "Projects" are defined as "investments in pharmaceutical, medical device and other medically related companies, projects and related activities." A804. The LPs must approve a Project in writing before capital may be called. A804.

Until late 2024, when the events underlying this action began, the budget approval process began with detailed discussions between Harrison and Rybolovlev (and their subordinates) regarding a new investment's commercial and scientific prospects. A367, A371-72, A453. Upon Rybolovlev's informal approval of the investment, ATP would prepare written materials for formal approval and execution, which included a budget approval document specifying the full authorized amount of the investment, an investment memorandum, and a memorandum addressing compliance with certain federal regulations. A1145-46, A371-72, A425-26.

As Harrison testified at trial, this process gave Rigmora substantial authority over how its money was directed, while still providing ATP with the entrepreneurial autonomy necessary to succeed. A366-67. Budgets, therefore, functioned as an "envelope of money" for a specific Project. A366-67; *see, e.g.*, B503-45.

An investment memorandum provided a summary of the investment thesis for a Project, including an analysis of the Project's pharmaceutical and scientific merit as well as information about company management. *See, e.g.*, A929, B107-70. It also included a representative set of funding tranches keyed to research or development "milestones," which were included as an initial forecast of how the Project, or company, could grow, develop, and perform against its initial budget. A397-98; *see, e.g.*, A1073 (Evercrisp IM showing anticipated \$3.5 million of \$75 million budget called during Q3 2021, \$4.5 million during Q2 2022, etc.). Milestones from an investment memorandum were not included in the text of the budget-approval document and were intended merely to guide future research and decision-making by providing "forecasts of a time and point in which [ATP] had credible data." A425. This approach reflects that nascent pharmaceutical companies often pivot their focus when they discover that a new drug may have alternative and superior treatment uses. A425-26.

The trial court credited the testimony of Dr. Spiros Liras, an ATP Venture Partner and experienced drug discovery scientist, who explained the practical realities of biotech investing and the need for flexibility. *See* Op. 63. One compelling example of a successful pivot—which garnered commercial success and led to a major breakthrough in treatment—was Gilead's pivot from Hepatitis C to HIV treatment. A425-26. Similarly, within ATP, Deep Apple, one of the Fund's portfolio companies, was originally focused on "a number of disease areas from psychotherapeutics and neurogeneration to oncology, inflammation, immunology, and genetic obesity," but pivoted to an "all-in" approach to obesity given the success of products like GLP-1. A428-29. This sort of pivot can yield profound success; Deep Apple subsequently secured a partnership with pharmaceutical giant Novo Nordisk worth up to $812 million. A428-29, B599.

The LPA thus permits the parties to use milestones where appropriate, but it contains no milestone precondition for ATP to call capital within approved budgets. Reflecting this structure, Harrison and Rybolovlev never discussed milestones prior to informal budget approval, A372, and Rigmora did not request information about milestone progress until it began to mount a litigation defense, A447. In fact, no Rigmora personnel had the substantive biotech experience to set milestones or measure performance against them. B5, B7-9, B16.

While Rigmora lacked discretion to withhold capital based on milestones, ATP used milestones in some of its Series A funding agreements with portfolio companies to give *the Fund* that discretion. *See, e.g.*, B263-65 (§1.2(a)-(i)). Harrison testified to the existence of this discretion, *see* A372, as did Michael Ehlers, ATP's former Chief Scientific Officer (who Rigmora implies said the opposite, *see* Br. 31), *see* B11 ("[I]f ATP wanted to, they could purchase additional shares and put in additional money at any time."); A428 ("It means the buyer [ATP] can choose to buy stock independent of success of said milestones.").

Where the parties intended to condition funding on milestones, they did so expressly in the budget approval document. A372, A1247. For example, ATP built a milestone into the budget approval for portfolio company Replicate Bioscience ("Replicate")—at the request of Rybolovlev and Rigmora. A372, A1247.

Following budget approval, the capital call process under the LPA is relatively straightforward. Paragraph 5(a)(ii) permits capital calls for, among other things, certain fees and expenses, as well as "invest[ments] in Projects approved by the holders of a majority of the Preferred Units [Rigmora] in writing in accordance with a budget approved therefor." A804 (amending ¶5(a)(ii)). Paragraph 5(a)(i) requires LPs to contribute capital when called by the GP as provided by the LPA. A723.

C. The Fund's Pool-By-Pool Accounting Structure

In Amendment 13, the parties provided for "Pool-by-Pool" accounting under the LPA: "capital contributions, distributions, income, gains, losses and expenses shall also be accounted for separately on a Pool-by-Pool basis." A808. Amendment 17 includes the same language and divides the Fund into "three separate pools": "Pools A, B and C," A813, which were later renamed "ATP IV, ATP V-1, and ATP V-2," respectively, A871, A887-88. These pools are referred to here, as they were below, as Pool IV, Pool V-1, and Pool V-2. *See, e.g.*, A373; Op. 14.

Rigmora's initial $1.425 billion Subscription was committed to Pool IV. B201, B236; *see* Op. 16. Rigmora's subsequent $1 billion Subscription was directed to funding Projects in Pools V-1 and V-2. A297, A813; *see* Op. 16 n.92. By June 2021, Rigmora's total Subscription to the Fund was $2.425 billion. A297. The trial court found that "ATP satisfied its obligation to track the Contingent Subscription amount on a Pool-by-Pool basis" pursuant to Amendments 13 and 17. Op. 47 n.269.

D. Amendment 20, Pool V-3, And Pool Braeburn

In June 2021, the pool structure was expanded and modified further by Amendment 20, which created two new pools: "Pool V-3" and "Pool Braeburn." A1026-32. Pool V-3 would house seven existing portfolio companies that had initially struggled but were to be turned around by ATP's new management team. A1029-30. Pool Braeburn would house a single existing portfolio company, Braeburn, Inc., which at the time of Amendment 20 was experiencing approval delays for its flagship product, an opioid addiction medication. A1026-28, A374-75. Because each of these companies was being reallocated from Pool IV to a new pool, so too were its associated securities, assets, and prior capital contributions. To effectuate this reallocation, the parties chose a system of "deemed" contributions, transfers, and distributions under which "no funds w[ould] actually be transferred." A1028, A1031. As to Pool V-3, Amendment 20 provided:

> (i) [T]he Subject Limited Partner [Rigmora] … ***shall be deemed to have made capital contributions*** to the Partnership solely in respect of [Pool] V-3 equal in the aggregate to the value of the Partnership's investment in the [Pool] V-3 Companies (including the Existing [Pool] V-3 Securities) as of the date of Amendment 20 (the "Existing [Pool] V-3 Value") … (ii) [Pool] IV ***shall be deemed to have transferred*** the Existing [Pool] V-3 Securities to [Pool] V-3 on the date of Amendment 20 at a price equal to the Existing [Pool] V-3 Value, and (iv) on the date of Amendment 20, an amount equal to the Existing [Pool] V-3 Value ***shall be deemed to have been distributed*** by the Partnership in respect of [Pool] IV to the Subject Limited Partner [Rigmora], Dr. Harrison and Les Pommes in respect of their Preferred Units, and on a pro rata basis thereto, as a return of capital and, accordingly, no funds will actually be transferred.

A1030-31 (emphasis added). Amendment 20 contained substantially similar language as to Pool Braeburn. A1027-28.

The combined value of the reallocated capital from Pool IV to Pools V-3 and Braeburn was approximately $390 million ($189.5 million to Pool V-3 and $203.6

million in Pool Braeburn). A1027-28, A1030-31; *see* Op. 49-50. It is undisputed that no new cash was contributed and that each of the companies transferred into Pools V-3 and Braeburn had been previously held in Pool IV. Indeed, at trial Rigmora acknowledged that Amendment 20 was intended to "reallocat[e] … an existing commitment from a different pool"—*i.e.*, from Pool IV into the new pools. A623.

E. The Budget Dispute Giving Rise To This Action

1. Rigmora's New Management And Shift In Funding Priorities

In October 2024, Rigmora's CEO unexpectedly left. A431. Rybolovlev promoted Yuri Bogdanov to CIO and co-CEO. A431. Bogdanov, who had been at Rigmora for several years as a special advisor, had no prior involvement in managing Rigmora's Fund investments nor any meaningful experience in biotech. A431, A443. Bogdanov's background was in auditing—training that Rybolovlev acknowledged made him "very, very conservative." A443, B14.

Upon his promotion, Bogdanov moved to aggressively reduce Rigmora's contributions to ATP. This was the culmination of a plan that had been several years in the making. In 2022, Bogdanov had written internal memoranda encouraging Rigmora to revise its investment strategy to address what he characterized as a "liquidity crisis." B406-07, B411. In the memoranda, Bogdanov criticized Rigmora's decision to structure its investments "mainly with venture businesses," which presented the "risks" of "poorly predictable money inflows (divestments) and massive outflows (capital calls), which will grow exponentially if the divestments are delayed." B411. Bogdanov asserted that Rigmora needed to prioritize building a "cash buffer" and recommended doing so by "drastically reduc[ing] ATP payments"—*i.e.*, capital contributions into the Fund. B414. Bogdanov further recommended that Rigmora impose "[t]ight controls" for "review and approval of new projects." B414.

Although Bogdanov was given no "specific instructions" upon his promotion, he began implementing his plans to cut funds to ATP. A449-50.

2. Rigmora's Intentional Delays In Approving Budgets

By late 2024, ATP was in critical need of new budgets for several portfolio companies nearing the end of their initial commitments and budgets. A381-82. Communications between the parties were strained while they litigated a dispute in the Cayman Islands over Rigmora's demand that ATP distribute the assets of Pool Braeburn. A380. The parties settled that litigation by executing Amendment 22 in December 2024. A1219, A381.

Shortly thereafter, Harrison emailed Bogdanov and proposed budgets totaling $54 million for the five companies specified in Amendment 22. B446. Harrison also provided access to data rooms with "supporting materials for the new budgets" and a spreadsheet showing "expected tranching by quarter for 2025." B446.

Historically, ATP had not provided this information when requesting budget approvals. A382-83. It did so in December 2024 to "make certain that the budgets were going to be approved," A384, and to make clear that ATP was "being radically transparent" as the parties re-engaged after Amendment 22, A395.

Bogdanov, now at the helm of Rigmora, responded by imposing the "[t]ight controls" for which he had advocated in 2022. B414. He had his team prepare lengthy "diligence" questions for each company, beginning with Replicate, which Harrison had warned would "run out of the cash by the third week of January." A437.

In early January 2025, Bogdanov sent Harrison a list of 19 questions for Replicate and indicated questions on the other companies were forthcoming. B482-86. The questions were not tied to Replicate's current progress or activities (which was "bizarre," in Harrison's words) and were inconsistent with years of collaboration between ATP and Rigmora regarding the company. A384-85, A395-96. Rigmora ultimately approved a budget for Replicate, but only after representatives from ATP and Replicate traveled to Monaco to meet with Rigmora. A385-86, A437.

Bogdanov continued to slow-play approvals for the other portfolio companies named in Amendment 22, instructing his team to generate onerous diligence requests. *See* B487-98. Bogdanov's obstructionist tactics prompted another round of meetings in Monaco in March 2025. A386-87, A400. ATP provided Rigmora with extensive materials regarding the proposed budgets and portfolio companies in advance and arranged for executives from each company to attend. A386-87. The meetings, however, did not result in any approved budgets. A388.

3. ATP's Compromise Reallocation Proposal

By April 2025, it became clear to ATP that Rigmora was unwilling to approve new budgets and Rigmora would only provide the Fund with capital for previously approved budgets. A388. ATP therefore proposed as a compromise that the parties reallocate some of the approved budget amounts from the preclinical companies to clinical companies, to "move some of the clinical projects along." A388. Harrison made this proposal despite believing that the preclinical companies had value. A389.

Rigmora initially seemed receptive to the proposal. A388. After Harrison briefly outlined the proposal, Bogdanov and Rybolovlev indicated that more detail was unnecessary because it was moving in the right direction and the next step was to speak with Rigmora's lawyers. A388.

Harrison spoke with Rigmora's lawyers on May 12, 2025. A388. Harrison characterized the call as an "ambush," during which Rigmora's lawyers distorted the purpose and meaning behind ATP's reallocation proposal to suggest that ATP had conceded that the preclinical companies were "worthless." A388-89. Harrison withdrew the proposal during the call. A440.

4. Rigmora's Unveiling Of Its Exit Scheme

Three days later, on May 15, 2025, Bogdanov sent ATP an email laying out Rigmora's plan to cut funds to ATP. B499. After five months of performative diligence requests and delay tactics, Rigmora finally revealed that it would not consider new budgets until ATP agreed to release Rigmora from its obligations to meet capital calls for already-approved budgets and wind down seven of the Fund's preclinical companies. B499.

In the email, Bogdanov declared that the Fund should cease funding the seven preclinical companies because they supposedly had "no way for a path to commercial success" and "no third party interest." B499. Bogdanov disregarded that Rigmora had already approved budgets for each company and put the onus on ATP to provide a "detailed explanation" for why Rigmora should "contribute further capital." B499.

Bogdanov further declared that Rigmora would not discuss budgets for the clinical-stage companies—which had been pending since late December 2024—until ATP agreed to "wind down or liquidate" the preclinical companies. B499. Bogdanov demanded ATP provide "objective information" to facilitate the discussion of any "new budgets"—ignoring the information that ATP had shared over the past five months. B499. And Bogdanov asserted that Rigmora denied *any* further funding obligations because it supposedly did "not presently have any outstanding capital commitments to ATP Fund." B499.

F. The Capital Calls

On May 30 and June 1, 2025, ATP issued capital calls for the preclinical companies and clinical-stage companies with approved, unfunded budgets, totaling \$87.76 million, and for fees and expenses (collectively, the "Capital Calls"). B546, B549, B553, B556, B559, B562, B565, A1331, B568, B571, B574; *see* Op. 35-36. At the time, Rigmora had contributed \$2.3 billion and—even without considering the Fund's pool-by-pool accounting structure—had at least \$125 million of unfunded commitments remaining. Op. 56; *see* A673, A1470-71. Thus, the Capital Calls were well within Rigmora's remaining capital commitments. Op. 56; *see* A302.

Harrison explained at trial—in testimony the court expressly credited (Op. 60)—that the amount of capital called was keyed to estimates for six months of budgets, with the goal of company survival and "following forward on … research plans." A391. Rybolovlev confirmed at trial that six months of funds permits a company's "normal functioning." A462. Rigmora did not contribute capital in response to any of the Capital Calls until judgment was entered below. *See* A307.

G. The Court Of Chancery Proceedings

On May 30, 2025, ATP filed this action to protect the portfolio companies from financial destruction. A37. The complaint asserted five claims, including

Count II for anticipatory breach of contract based on Rigmora's repudiation of its obligations to fund capital calls for approved budgets. A110-21. The court later granted ATP's motion to amend Count II to include breach of contract based on Rigmora's failure to satisfy the Capital Calls. A306-09.

Following a two-day trial, post-trial briefing and argument, the Court of Chancery issued its decision on December 5, 2025. As relevant here, the court concluded that Rigmora had outstanding capital commitments to the Fund and ordered Rigmora to pay all but one of the Capital Calls, totaling approximately $97 million. Op. 56, 65-67.

Specifically, the trial court found that Rigmora committed $2.425 billion to the Fund (Op. 44-55) and had contributed only $2.3 billion—rejecting Rigmora's attempt to inflate its contributions by double counting "deemed contributions" reallocated through Amendment 20. Op. 55-56.[2] The court ruled that double counting such contributions "is inconsistent with the purpose of Amendment 20," relying on Rigmora's admission that Amendment 20 was intended to "reallocat[e] … an *existing* commitment from a different pool," Op. 55, and the absence of any

[2] In doing so, the court ruled that Rigmora's agreement to make up to $500 million in deemed and new capital contributions to Pool V-3 was not enforceable as an expansion of its commitments under the Subscription Agreements. Op. 51-55.

evidence "that the parties intended to reduce the total amounts committed to the Fund through Amendment 20," Op. 55-56.

The trial court also rejected Rigmora's arguments that the Capital Calls were issued for an improper purpose or otherwise invalid (with one exception). Op. 58-65. *First*, the court concluded that "[n]o evidence supports" Rigmora's assertion that the milestones in investment memoranda were conditions for Rigmora's obligations to fund approved budgets. Op. 62-63. The court relied on the plain text of the approved budgets—which did not include milestones except in two instances—and testimony that Rigmora's rigid stance on milestones was inconsistent with the realities of biotech investing. *Id.* *Second*, the court found that Harrison's testimony regarding the purpose of the Capital Calls was "highly credible" and the evidence adduced by Rigmora—an email where ATP's outside counsel referenced a desire to "put pressure on [Rigmora]," A1921—did not "undermine the extensive evidence demonstrating Harrison's sincere concerns about the financial health of the portfolio companies." Op. 60-61.

Accordingly, the trial court ordered Rigmora to pay ATP approximately $97 million for the Capital Calls. Op. 65-67. Following entry of a final order and partial final judgment, Br. Ex. B, Rigmora elected to satisfy the judgment instead of posting a bond to stay enforcement.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY RULED THAT RIGMORA'S "DEEMED CONTRIBUTIONS" MAY NOT BE DOUBLE COUNTED

A. Question Presented

Whether the amount of Rigmora's "deemed contributions" under Amendment 20 to the LPA should be counted only once in calculating Rigmora's total contributions to the Fund. This issue was preserved below. *See, e.g.*, A672-76.

B. Scope of Review

The Court "consider[s] issues involving the language of [a] contract *de novo*, but to the extent that the [trial court's] interpretation of the contract is based on extrinsic evidence, its findings are entitled to deference unless the findings are not supported by the record or unless the inferences drawn from those findings are not the product of an orderly or logical deductive process." *Textron Inc. v. Acument Glob. Techs., Inc.*, 108 A.3d 1208, 1218-19 (Del. 2015) (quotation omitted).

C. Merits of Argument

1. The LPA's Text Does Not Permit Double Counting The Deemed Contributions

As the Court of Chancery correctly found, "[t]here is no evidence, either in Amendment 20 or elsewhere, that the parties intended to reduce [Rigmora's $2.425 billion] total amount[] committed to the Fund through Amendment 20." Op. 55-56. Nowhere does Amendment 20 state that the $390 million in "deemed contributions" provided for by Paragraphs 21(b) (Pool Braeburn) and 22(b) (Pool V-3) should be counted as "new" capital contributions—effectively double counted—to reduce Rigmora's total commitment to the Fund. Instead, the paragraphs effect a *reallocation*, or transfer, of capital and related portfolio companies from the old Pool IV to the new Pools V-3 and Braeburn, whereby "no funds w[ould] actually be transferred." A1027-28 (¶21(b)), A1030-31 (¶22(b)).

Specifically, and as relevant here, Paragraphs 21(b) and 22(b) contain three elements: (i) "deemed … capital contribution[s]" into Pools V-3 and Braeburn; (ii) "deemed … transfer[s]" of certain securities and other property from Pool IV to Pools V-3 and Braeburn; and (iii) "deemed … distribut[ions]" from Pool IV equal to the deemed capital contributions. A1027-28 (¶21(b)), A1030-31 (¶22(b)). Although the drafters plainly could have added a fourth element providing for a "deemed reduction" in the LPs' unfunded capital Subscription, they did not do so.

The drafters' silence speaks volumes when compared to Schedule D to the LPA, which expressly provides that other deemed contributions (not at issue here) would reduce then-unfunded Subscription amounts:

> With respect to the portion of any capital call to Dr. Harrison … 20% shall be made in cash and the balance shall be deemed to have been contributed by Dr. Harrison. ***All such deemed contributions shall reduce Dr. Harrison's unfunded Subscription*** and shall otherwise be treated as a capital contribution, except that such amounts shall not increase Dr. Harrison's Capital Account balance.

A798 (emphasis added). Thus, in the case of "deemed contributions" made by Harrison in lieu of receiving Management Fees, the LPA expressly states that those deemed contributions "shall reduce Dr. Harrison's unfunded Subscription." A798. This language shows that when the drafters intended a deemed contribution to reduce a partner's capital commitment, they said so. In the case of Amendment 20, where the drafters did *not* state that Rigmora's deemed contributions would reduce its $2.425 billion capital Subscription, no such reduction was intended. To interpret the LPA any other way would render superfluous the words "shall reduce Dr. Harrison's unfunded Subscription." A798.

Rigmora's arguments to the contrary are unavailing. *First*, Rigmora wrongly asserts (Br. 25) that the trial court's interpretation cannot be "reconciled" with the dictionary definition of "deemed," which it says is "[t]o treat (something) as if … it were really something else." The court gave the word "deemed" its plain meaning by finding, as Amendment 20 provides, that although "no funds w[ere] actually [to] be transferred," a reallocation of capital into the new pools nonetheless occurred via the deemed contributions, transfers, and distributions described above. Op. 55-56. Whether these "deemed" actions also should have caused a $390 million reduction in Rigmora's unfunded Subscription amount is a separate question that the trial court properly answered in the negative.

Second, Rigmora incorrectly asserts (Br. 29) that because the "GP has counted the $393.21 million deemed distributions … under Amendment 20" in certain partnership accounting documents, it "cannot justify" failing to count them here. As Rigmora concedes (Br. 23), however, "the parties' subsequent [post-contractual] conduct" is "irrelevant" under Cayman law (citing A1675-78 (¶58), A351-52). And even if ATP's internal accounting were relevant, it merely shows that ATP properly reallocated the deemed contributions to the new Pools V-3 and Braeburn, not that it double counted them by reducing either party's capital commitment. A1024-25 (Cells F8, F9, K37), A1790 (Cells E9, L9), A1792 (Cells E9, L9).[3]

Third, Rigmora wrongly asserts (Br. 24) that ATP waived its double-counting arguments. Rigmora does not cite any authority for the proposition that post-trial opening briefs must address every argument raised in the opposing party's *pre*-trial brief. Such a requirement would be nonsensical, especially where, as here, Rigmora adduced "no evidence" at trial "that the parties intended to reduce the total [$2.425 billion Subscription amount] through Amendment 20." Op. 55-56. When Rigmora continued pursuing its flawed, unsupported argument in its post-trial answering brief,

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[3] Rigmora also wrongly argues (Br. 28-29) that Annex A to Amendment 20 shows that the deemed contributions "were to be treated as … new capital contributions"—*i.e.*, double counted. But Annex A, like the other accounting documents on which Rigmora relies, shows only that the deemed contributions were *reallocated* to Pools V-3 and Braeburn—without any corresponding reduction in Rigmora's capital Subscription. *See* A982-83 (Cells F33, L39).

ATP properly addressed the argument in its reply. A668-74; *see, e.g.*, *Acme Mkts., Inc. v. Oekos Kirkwood, LLC*, 2025 WL 2172302, *4 (Del. Super. Ct. July 31, 2025) ("[T]h[e] general rule [against reserving arguments for reply] does not prevent a movant from responding to arguments made in an answering brief. That is the whole purpose of a reply."). The trial court rightly reached the merits despite Rigmora's identical waiver argument below, *see* A626, and this Court should too.

2. The LPA's Purpose Confirms That The Deemed Contributions May Not Be Double Counted

The Court of Chancery also correctly found (Op. 55) that "[d]ouble counting [the] 'deemed contributions' of Amendment 20 is inconsistent with [its] purpose," an important consideration under Cayman law, *see* A1679 (Rigmora expert). The purpose of Paragraphs 21(b) and 22(b)—as Rigmora itself previously explained—was to "*reallocat[e]* ... an *existing* [capital] commitment from a different pool." A623 (emphasis added). The deemed contributions represented the value of existing capital from the old Pool IV that was being moved into the new Pools V-3 and Braeburn. *See* A1027-28 (¶21(b)), A1030-31 (¶22(b)). Indeed, it is undisputed that no new investments were made, and Rigmora does not challenge the trial court's finding that the deemed contributions comprised amounts that already had been paid to fund specific companies. *See* Op. 55. Double counting that capital directly contradicts the purpose of reallocating existing investments that had already been accounted for. Rigmora's contrary arguments are unavailing.

First, with the purpose of Amendment 20 so strongly favoring the trial court's interpretation, Rigmora resorts to arguing (Br. 23) that only the plain text matters. As explained above, the LPA's plain text supports ATP. *See supra*, Part I.C.1. But, as Rigmora's expert opined, that is not the only relevant consideration under Cayman contract law; rather, in addition to considering the "natural and ordinary meaning" of the LPA's text, courts must consider "the overall purpose of the clause and the contract," as well as "commercial common sense." A1679-80; *see* A1681 ("Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation" (quoting *Wood v. Capita Ins. Servs. Ltd.*, [2017] UKSC 24, [13])).[4] The purpose of Amendment 20 is thus relevant in determining its meaning.

Second, Rigmora seeks (Br. 26) to avoid its admission that Amendment 20 effectuated a reallocation of existing capital because Rigmora's statement supposedly reflected only its "subjective … intent[]" and was "a view … attributed to [only] one party." But a concession made in legal proceedings years after the LPA was executed is not evidence of contemporaneous subjective intent. Rather, it is a judicial admission of Amendment 20's purpose that the trial court properly

[4] Under UK and Cayman law, an agreement's purpose and commercial context are relevant even without any "strict linguistic ambiguity." *Palladian Partners LP v. Republic of Arg.*, [2023] EWHC 711, [137] (Comm.).

considered in determining the LPA's meaning. *See Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 766 (Del. 2022) ("[J]udicial admissions are conclusive and binding" and include "predicate facts that support a legal conclusion.") (quotation omitted). Moreover, the view that Amendment 20 was intended to reallocate rather than double count capital was not the view of just "one party" (Br. 26)—it was shared by ATP and the trial court and is reflected in the LPA's text and structure. *See supra*, Part I.C.1.

Third, Rigmora's attempt (Br. 26-27) to distinguish its admission as concerning capital "commitments" rather than "contributions" is unavailing. Paragraph 21(b) does not even contain the word "commitment," A1027-28, and Paragraph 22(b) uses the word only as to a $500 million Subscription that Rigmora denies it agreed to make, A1030-31. In any event, Rigmora's purported distinction between a "commitment" and a "contribution" is meaningless: either way, existing capital was reallocated between pools—rather than double counted—just as Rigmora admitted. A623.

Fourth, Rigmora incorrectly asserts (Br. 27-28) that Amendment 20's purpose could not have been to reallocate capital because, if it was, the drafters could have simply "move[d] assets directly from one pool to another without any [deemed] distributions or contributions." But by the same token, Amendment 20 could have reduced Rigmora's unfunded Subscription "directly" by explicitly so providing. The parties' method for reallocating capital sheds little light on their intentions.

3. The LPA's Commercial Context Further Confirms That The Deemed Contributions May Not Be Double Counted

The Court of Chancery also correctly concluded that only ATP's interpretation, which avoids double counting, accords with the LPA's "commercial context" and avoids unreasonable "practical consequences"—additional relevant considerations under Cayman law, *Wood*, [2017] UKSC 24, [39]. *See* Op. 55-56. Rigmora addresses neither.

As to commercial context, the trial court correctly found that there was "no evidence … that the parties intended to reduce the total amounts [Rigmora] committed"—*i.e.*, $2.425 billion—through the deemed contributions. Op. 55-56. Rigmora would have the Court conclude instead that these highly sophisticated parties intended to silently allow for double-counting of prior capital contributions against the agreed-upon Subscription. Rigmora's attempt to secure this judicial windfall is anathema to "business common sense." *Wood*, [2017] UKSC 24, [11].

Rigmora's interpretation, moreover, would produce the commercially unreasonable result of reducing its unfunded Subscription without any corresponding capital inflow, thereby distorting the parties' agreed capital structure and undermining the bargain reflected in the LPA. That is precisely the type of unreasonable practical consequences that Cayman law rejects.

4. Even If The Deemed Contributions Could Be Double Counted, Over $58 Million Of The Capital Calls Would Still Be Due

Even if the Court were to accept Rigmora's interpretation, over $58 million of the Capital Calls would still be due pursuant to the LPA's pool-specific accounting structure because Rigmora's "deemed" contributions affect only Pools V-3 and Braeburn, not Pools V-1 and V-2. *See* A1026 (Am. 20 providing for "deemed contribution[s]" "solely in respect of Pool Braeburn" and "solely in respect of [Pool] V-3"). The Court of Chancery did not reach this issue because it rejected Rigmora's interpretation of Amendment 20, but it recognized that "the LPA seems to mandate a pool-by-pool approach" and found that "ATP satisfied its obligation to track the Contingent Subscription amount on a Pool-by-Pool basis." Op. 47 n.269.

Under the "Pool-by-Pool" structure for the LPs' capital Subscriptions, *see* A808; *supra*, at p.14, the parties do not dispute that as of the Capital Calls, Rigmora had over $450 million remaining of its $1 billion commitment to Pools V-1 and V-2. *See* B623 (Tab "Pool V-1 Total" Cell E54; Tab "Pool V-2 Total" Cell E100). Of that unfunded Subscription, $178 million had already been budgeted and approved. B618 (remaining approved budgets dated May 30 and June 1). Thus, even accepting Rigmora's interpretation of Amendment 20, there would be at least $178 million in budgeted and approved capital Subscription remaining for companies in Pools V-1 and V-2.

Accordingly, the deemed contributions do not affect the share of the Capital Calls corresponding to companies in Pools V-1 and V-2, which is $58,778,295.99—the amount of the Capital Calls for those companies ($47,800,000)[5] plus fees and expenses ($10,978,295.99). A658-59. This portion of the judgment should be affirmed even if Rigmora's interpretation of Amendment 20 were accepted.

[5] This figure conservatively subtracts the $4 million capital call attributable to Replicate in accordance with the trial court's ruling. Op. 64-65.

II. THE COURT OF CHANCERY CORRECTLY RULED THAT RIGMORA'S FUNDING OBLIGATIONS ARE NOT CONDITIONED ON PORTFOLIO COMPANY MILESTONES

A. Question Presented

Whether Rigmora was obligated under the LPA to meet the Capital Calls regardless of milestone achievements. This issue was preserved below. *See* A555-59, A682-86.

B. Scope of Review

The Court "consider[s] issues involving the language of [a] contract *de novo,* but to the extent that the [trial court's] interpretation of the contract is based on extrinsic evidence, its findings are entitled to deference unless the findings are not supported by the record or unless the inferences drawn from those findings are not the product of an orderly or logical deductive process." *Textron*, 108 A.3d at 1218-19 (quotation omitted).

C. Merits of Argument

Rigmora's milestone argument relies on the wrong standard of review because it ignores that the Court of Chancery's interpretation of the LPA was based on extrinsic evidence. Under Paragraph 5(a)(ii)(E), ATP may call capital "in amounts sufficient to enable the Partnership … to … invest in Projects … in accordance with a budget therefor approved." A804. Paragraph 5(a)(ii) includes no express limitations on ATP's right to call capital based on milestones, and Rigmora has identified no language elsewhere in the LPA making milestones an explicit condition to funding. Nonetheless, Rigmora argues here (Br. 30-34), as it did below, that such limitations are implicit in the word "budget."

The trial court correctly rejected Rigmora's argument based on the commercial context in which the parties entered the LPA and the factual matrix underlying it, which included that: (1) Harrison and Rybolovlev never discussed or negotiated milestones during their budgeting process; (2) Rigmora lacked the substantive expertise to evaluate milestone progress; (3) when the parties intended milestones to act as conditions to further funding, they explicitly included them in the budget for approval; (4) only two budgets included milestones that were express conditions on funding, and they were corporate strategy metrics (not clinical milestones) that appeared on the face of the budget approval request; (5) five companies' Series A agreements originally contained milestone conditions, which applied to the *Fund's* obligation to fund the companies, not Rigmora's obligation to meet capital calls; (6) treating milestones in dated investment memoranda as fixed conditions to future funding would be misaligned with commercial reality, including that biotech companies must be able to pivot during the course of drug research and development; and (7) Rigmora never requested information about milestones over the parties' thirteen-year relationship until ATP decided to sue. Op. 62-63.

To succeed on appeal, Rigmora must show that these findings are unsupported by the record or that the trial court departed from "an orderly or logical deductive process" by inferring based on these facts that the parties did not intend for milestones to be a prerequisite to funding. *Textron*, 108 A.3d at 1218-19. Rigmora does not even try, instead just repeating factual arguments it made below and the trial court rejected. Those arguments are insufficient to support reversal under the governing deferential standard of review, and they lack merit in all events.

First, Rigmora wrongly argues (Br. 31) that milestones must be part of the "budget" because they were included in investment memoranda that were "part of the budget package that was sent to the LPs for approval" and because of testimony emphasizing the importance of milestones. Neither consideration establishes that the parties agreed to make milestones contractual prerequisites to capital calls. On the contrary, the trial court credited Harrison's testimony that the milestones in investment memoranda were a useful starting point for projecting a portfolio company's performance but became less important during later stages of an investment, when the realities of new drug development often necessitated strategic pivots from the initial plan. Op. 8 (citing A397). Treating milestones as prerequisites to capital calls ignores that critical commercial context and fails to give the court's credibility determination the deference it is due. *See, e.g.*, *Blake v. State*, 954 A.2d 315, 318 (Del. 2008) ("[T]he trial judge's acceptance of the [witness's] reasoning is a credibility determination entitled to deference.").

Nor does the importance of milestones to investors more generally show that the parties intended for them to be prerequisites to capital calls. Rigmora selectively cites the deposition testimony of former ATP Chief Scientific Officer Michael Ehlers, but when asked whether ATP could call more capital from Rigmora for a portfolio company that had not met its milestones, Dr. Ehlers responded, "I think my assumption was that they could." A466. In fact, Dr. Ehlers saw that flexibility with respect to clinical progress and goals as a "core strategic advantage of ATP." A466. And although Rigmora expert Ilonna Rimm testified about how milestones might function in the industry generally, she admittedly did not review the LPA or rely on the testimony of anyone within Rigmora to determine the role of milestones in Rigmora and ATP's relationship. A476.

Second, Rigmora repeats a convoluted argument (Br. 31-32) based on the acceleration clause in Paragraph 5(a)(ii), which imposes additional requirements on capital calls made "on a basis accelerated from that set forth in an approved Project budget," A804. According to Rigmora (Br. 32), "approved Project budget" must refer to the investment memoranda and the milestones therein because they were the only documents in the budget approval process that included "a timeline and conditions for funding."

Rigmora's interpretation of the acceleration clause makes no sense. That clause does not mention milestones. Rigmora conflates the release of capital with the satisfaction of milestones, but in the context of the "acceleration" clause they are distinct: the acceleration clause applies when capital is called earlier than anticipated by the *timelines* in the investment memoranda, regardless of whether milestones have been achieved.

The evidence supports that interpretation. For instance, the trial court found that Rigmora had not requested information about milestones during the parties' nearly thirteen-year relationship before this dispute. Op. 63. If the acceleration clause applied any time a capital call was made without satisfying the next milestone, Rigmora could have insisted that ATP represent in writing its "good faith belief that the Project" would be completed within budget and provide preferred unitholders with a "detailed, diligenced presentation supporting such representation," as the LPA provides. A804 (LPA ¶5(a)(ii)). Rigmora points to no evidence that it ever did so. The trial court also found that Rigmora was struggling to meet its cash needs and had no employees with the scientific expertise necessary to assess milestone achievement. Op. 25-27, 62. It makes perfect sense that Rigmora, given its cash flow concerns, would want to ensure that capital was called at a predictable rate and that, if it was not, the project itself would remain within budget. But there is no reason that the parties would have made milestones a precondition to funding through the backdoor of the acceleration clause when Rigmora had no way to assess milestone achievement.

Third, contrary to Rigmora's suggestion (Br. 32), the trial court rightly concluded that the inclusion of milestones as an express condition to funding in only the Replicate budget showed the parties did not intend to make milestones a condition of funding for other companies. The Replicate budget demonstrates that the parties knew how to make milestones mandatory when they wanted to: The "[i]ntended [u]se of [p]roceeds" in the Replicate budget provides that half the budgeted funding "may only be called commencing upon the closing of the LATAM deal for rabies." A1247. No comparable language exists in other budgets.

For the first time on appeal, Rigmora presses (Br. 32) an alternative inference based on the Replicate budget, suggesting it shows the parties understood that milestones from the investment memoranda were binding by default and only needed to be restated in the approval document when it departed from them, as it did for Replicate. That makes no sense. The trial court found that Deep Apple and Apertor, like Replicate, both saw successful pivots that led to increased value. Op. 63. If Rigmora's argument were correct, those pivots would have been accompanied by budget amendments setting forth alternative, binding milestones. Yet there is no evidence of any such budget amendments. And even if Rigmora's alternative inference were permissible, the trial court's decision to draw a different inference from the evidence is not clear error. *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 849 (Del. 2015) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

Finally, Rigmora wrongly argues (Br. 33) that when Paragraph 5(a)(ii)(E) states that ATP may call capital to enable the Fund to invest in "Projects," it must incorporate the investment memorandum and its milestones because only the investment memorandum describes the project in detail. Rigmora ignores the LPA's definition of "Project" as "investments … in pharmaceutical, medical device and other medically-related projects and related activities." A715. That definition does not mention investment memoranda or milestones, but it does confine the industry to pharmaceuticals and medicine. Thus, contrary to Rigmora's suggestion (Br. 33), the trial court's interpretation of the LPA would not enable a portfolio company to "pivot[] to some other industry entirely."

III. THE COURT OF CHANCERY CORRECTLY RULED THAT THE CAPITAL CALLS WERE MADE IN GOOD FAITH AND FOR A PROPER PURPOSE UNDER THE LPA

A. Question Presented

Whether the Capital Calls were made in good faith and for a proper purpose under LPA Paragraph 5(a)(ii). This issue was preserved below. *See* A533-36, A687-90.

B. Scope of Review

To the extent Rigmora's "claims attack legal rulings of the Court of Chancery," this Court reviews them *de novo*. *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006). "To the extent they attack the Court's factual findings, those findings will be upheld where they are based on the Chancellor's assessment of live testimony." *Id.*; *see New Castle Cnty. v. Disabatino*, 781 A.2d 687, 690-91 (Del. 2001) (affirming credibility findings). This Court "afford[s] the trial court's factual findings a high level of deference and will not disturb them so long as they are sufficiently supported by the record, are the product of an orderly and logical reasoning process, and are not clearly erroneous." *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324, 353 (Del. 2025) (quotation omitted).

C. Merits of Argument

In its final challenge, Rigmora argues (Br. 35-38) that the trial court erred in ordering specific performance of the Capital Calls because they were not made in good faith and for a proper purpose under the LPA. Although framed as a challenge to the "legal standard" the court applied, Rigmora's argument is really an unfounded attack on well-grounded factual findings and credibility determinations. The court correctly applied the plain terms of the LPA to conclude, based on the evidence presented at trial, that there was "no factual basis to question ATP's good faith." Op. 59. Rigmora identifies no error in that ruling.

1. The Court Of Chancery Applied The Correct Legal Standard

Rigmora first argues (Br. 36) that the trial court applied the wrong legal standard by "fail[ing] to consider whether [ATP] had acted 'solely' for a purpose authorized by the LPA rather than an improper collateral purpose." But Rigmora ignores the court's extensive discussion of Paragraph 5(a)(ii) at the outset of its legal analysis. Op. 44-45. Indeed, the court expressly recognized that at least a portion of the dispute "centers on" whether the capital calls were made "for a purpose stated in the LPA." Op. 44. The court then described each of the permissible purposes for calling capital under that paragraph, including that ATP may "call capital in amounts sufficient to 'invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units.'" Op. 57 (quoting LPA ¶5(a)(ii)(E)).

The trial court therefore correctly concluded that the LPA's plain terms permit ATP "to call capital *only* for a purpose enumerated in Paragraph 5(a)(ii)," Op. 58

(emphasis added), such that it had to determine whether the Capital Calls were for one of these "contractually specified purposes," Op. 45. The court likewise recognized that its "contract analysis" was "governed by Cayman law," *id.*, which requires ATP to "exercise its power to call capital in good faith in accordance with its fiduciary duties," Op. 59.

Rigmora ignores this analysis entirely in asserting (Br. 36) that the court "failed to consider whether [ATP] had acted 'solely' for a purpose authorized by the LPA." And Rigmora's repeated assertion (*e.g.*, Br. 37) that the court failed to properly consider the "sole purpose" of calling capital is thus not faithful to the trial court's opinion. The court framed its inquiry as whether capital was called "only for" an enumerated purpose, Op. 58—the very standard Rigmora accuses it of overlooking.

Rigmora similarly contends (Br. 36-37, 40) that the trial court failed to consider ATP's "fiduciary duties" under Cayman law, but here too it ignores that the court expressly recognized and applied Cayman law on this issue, Op. 45, 59. This claimed legal error is thus illusory as well.

2. The Court Of Chancery's Ruling Rests On A Careful Weighing Of Evidence And Unassailable Credibility Determinations

Having identified the relevant legal standard and governing contractual language, the trial court correctly applied that language to the evidence presented at trial. As the court observed, "Rigmora concede[d] that the stated purpose of the Capital Calls is proper under the LPA." Op. 58. It was undisputed (aside from Replicate) that Rigmora "approved budgets for the calls at issue [and] that the calls were within the approved budgets." *Id*. Nor did Rigmora "dispute that partnership expenses and ATLS Fees are proper purposes for capital calls or [assert] that those expenses were improperly calculated." *Id.* Rather, Rigmora's argument was that the Capital Calls violated Paragraph 5(a)(ii) because ATP "acted in bad faith." *Id*.

Here, the trial court rejected Rigmora's bad-faith argument on the facts, concluding from the evidence and live witness testimony that there was "no factual basis to question ATP's good faith." Op. 59. This conclusion was well supported.[6]

The trial court found that the Capital Calls were made in good faith and for a proper purpose under the LPA—namely, "the purpose of funding six months of operations" for the portfolio companies. Op. 60. In so finding, the court credited Harrison's testimony that he "based the size of the Capital Calls on the portfolio companies' research plans and the partnership's expenses," even "exclud[ing] his own Management Fee from the Capital Calls, so none of the money would be directed to him." *Id.* The court also noted that, when Harrison "realized that ATP

[6] This Court has "use[d] the terms 'bad faith' and 'failure to act in good faith' interchangeably," often "draw[ing] no distinction between the terms." *Lyondell Chem. Co. v. Ryan*, 970 A.2d 235, 240 n.8 (Del. 2009).

overcalled capital for Replicate based on the approved budget," he "corrected that Capital Call." *Id.* The court found Harrison's testimony "highly credible." *Id.*

Against this record, Rigmora rested primarily on a single email among ATP's outside counsel stating the "point of making the calls is to put pressure on [Rigmora]." *Id.*; *see* A1921. But the trial court weighed that email against the full factual record and found that one statement "among outside counsel does not undermine the extensive evidence demonstrating Harrison's sincere concerns about the financial health of the portfolio companies." Op. 60-61. The court likewise considered Rigmora's "grab-bag" of remaining arguments and concluded, as a factual matter, that "the evidence does not point to th[e] conclusion" that ATP acted in bad faith. Op. 61.

Rigmora asks this Court to set aside these credibility determinations and conduct its own weighing of the evidence. Indeed, the evidence Rigmora cites is overwhelmingly evidence the trial court expressly rejected. *See* Op. 61. Rigmora points (Br. 39) to the same May 2025 correspondence among outside counsel that the court found did "not undermine the extensive evidence demonstrating Harrison's sincere concerns." Op. 60-61; *see* A1921. It points (Br. 39) to evidence that ATP "intended to delay the capital calls until after filing suit"—which the court addressed in discussing evidence that ATP allegedly "delayed capital calls to maximize its litigation position," Op. 61. It suggests (Br. 39) ATP "never actually intended to distribute the capital calls to the portfolio companies"—which the court also considered and addressed, *see* Op. 61. And it relies (Br. 38) on evidence that the "amounts" of the capital calls evolved before the lawsuit without acknowledging the trial court's contrary conclusion that "[t]he evidence reflects that ATP ran scenarios and considered calling capital sufficient to fund ongoing work at the portfolio companies for periods of weeks, three months, six months, and the end of calendar year 2025-2026," Op. 61.

Rigmora describes (Br. 40) this as a "mountain of evidence," but the trial court examined that very evidence and concluded that it does not "support[] a finding that ATP acted in bad faith," Op. 61. Rigmora is thus effectively asking this Court "to re-weigh the evidence … and to reach the opposite conclusion." *In re Tesla Motors, Inc. S'holder Litig.*, 298 A.3d 667, 702 (Del. 2023). Rigmora's bid cannot succeed. Where, as here, the trial judge "made findings of fact" based on "the documentary evidence and the testimony and credibility of 'live' witnesses at trial[,] … those factual findings must be given great deference." *Disabatino*, 781 A.2d at 690-91.

The only evidence Rigmora cites (Br. 37-38) that the trial court did not *expressly* address in its opinion concerns an entirely unrelated "demand" by Harrison to have more "discretion to reallocate budgets" of the LPs, and a quintessential question of credibility regarding whether Harrison was "secretive" about the capital calls. Even if this evidence were relevant to the issues at trial, a court does not commit clear error by not explicitly addressing every piece of evidence in its opinion. *See, e.g.*, *Johnson & Johnson v. Fortis Advisors LLC*, 2026 WL 89452, *30 (Del. Jan. 12, 2026) (affirming scienter findings where appellant "failed to identify any evidence that renders it implausible or demonstrates clear error"). Rigmora thus provides no basis to disturb the trial court's findings.

CONCLUSION

The judgment of the Court of Chancery should be affirmed.

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