IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE: NEW MEDIA INVESTORS II, LLC	No. 71, 2026 Court Below: Court of Chancery of the State of Delaware Consolidated C.A. Nos. 2024-0413-LWW and 2024-1357-LWW

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Dated: June 25, 2026

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INTRODUCTION

This case presents a straightforward question: may a bad-faith fiduciary who misappropriated company assets, concealed his misconduct, and canceled the company to block accountability, then escape liability by invoking a procedural technicality of his own making? The answer must be no.

The Court of Chancery found Maginn (together with New Media II-C, "Maginn Defendants") liable for parallel wrongdoing at New Media II's sister company, New Media II-B.[1] He breached his duty of loyalty by diverting approximately $80 million in value through the II-C Warrants, an opportunity belonging to New Media II, New Media II-B, and their members. Maginn failed to disclose the warrants, sent investors a misleading final letter omitting any reference to them, and claimed the value for himself.

Having been found liable, Maginn now seeks to ensure these Plaintiffs can never recover. In 2017, while *Deane* was pending, he canceled New Media II to prevent its members from pursuing claims. Defendants argue that because the entity no longer exists, Plaintiffs lack derivative standing, contending that Plaintiffs failed

[1] Undefined capitalized terms have the meanings given in Plaintiffs' opening brief (Dkt. 19, the "Opening Brief" or "OB"). Jenzabar's answering brief (Dkt. 21) is the "Jenzabar Brief" or "JB"; Maginn Defendants' answering brief (Dkt. 22), the "Maginn Brief" or "MB" (together, the "Answering Briefs").

to seek nullification and therefore cannot maintain this action. But the SAC does plead nullification—Count IX expressly seeks New Media II's revival.

Defendants invoke procedural barriers that Delaware law does not support. They also seek to end this case in its infancy while attempting to litigate its ultimate merits based on improperly introduced, ambiguous extrinsic evidence. Defendants argue nullification cannot be sought through a declaratory judgment claim—a position rejected by Delaware's liberal notice pleading standard. They argue Plaintiffs needed to succeed in reviving New Media II before suing derivatively—an argument flatly rejected in the leading case. They argue Plaintiffs cannot bring only derivative claims alongside a nullification claim—a procedural invention as unprincipled as it is inconsistent with the fact that Delaware courts properly preside over cases where only a nullification claim is pled.

Defendants also go far beyond defending the judgment below. The Vice Chancellor dismissed the SAC without prejudice. Defendants did not cross-appeal. But they now advance arguments that could only lead to dismissal with prejudice—a fundamentally harsher disposition. The Court should not consider such arguments, but if it does, the Court should reject them. Defendants argued that New Media II repurchased Plaintiffs' membership interests based on a Release Plaintiffs allege they did not receive, that the *Deane* Court regarded with grave skepticism, and that Maginn argued could not be enforced absent a developed record. Defendants also ask the Court to find Plaintiffs' nullification claim time-barred. But Plaintiffs were entitled to rely on Maginn's good faith, which subsequent events reveal was totally lacking, as Defendants concealed their wrongdoing for almost a decade.

Plaintiffs also state direct claims against Maginn for his misconduct during New Media II's wind-up. When a dissolving entity's manager diverts assets that should have been distributed to members, the harm is individual, not derivative. Alternatively, equitable standing should apply. Delaware law should not permit a fiduciary to weaponize his own cancelation of an entity to stave off accountability. The Court should reverse.

ARGUMENT

I. Plaintiffs Had Standing at the Time of Bringing Suit.

The Memorandum Opinion dismissed the SAC "without prejudice" because Plaintiffs "failed to seek nullification in their pleadings."[2] That central oversight requires reversal: Count IX seeks a declaration that "New Media II has not been cancelled" and that its "attempted cancellation...was not properly filed."[3]

A. Plaintiffs Have Standing to Pursue Derivative Claims "In Conjunction With" a Nullification Claim.

Standing turns on a single, straightforward proposition: Count IX pleads a nullification claim that, if successful, would revive New Media II and restore its capacity to sue and be sued—rendering Plaintiffs' claims redressable[4] and supplying the hallmark of standing.[5] Defendants resist that outcome, but none of their arguments withstand scrutiny.

Maginn Defendants assert Plaintiffs "cannot bring claims on behalf of a[] [nonexistent] entity...of which they are not members" and "must succeed in

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[2] *In re New Media Inv'rs II, LLC*, 2026 WL 208698, at *1, *8 (Del. Ch. Jan. 27, 2026).

[3] A0285, ¶ 220.

[4] *See Matthew v. Laudamiel*, 2012 WL 605589, at *22 n.148 (Del. Ch. Feb. 21, 2012).

[5] *See Dover Hist. Soc. v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1110 (Del. 2003).

nullifying the Cancellation...***before*** they can have [derivative] standing."[6] Delaware law disagrees. Under *Matthew*, "the undistributed claims of a cancelled LLC...may be brought in the name of the LLC...as direct claims of the LLC ***or derivative claims*** of its members after ***or in conjunction with*** a successful action seeking the nullification of the LLC's certificate of cancellation."[7] Maginn Defendants seize on the phrase "in conjunction with a <u>successful action</u> seeking... nullification,"[8] but that language means "the derivative claims would effectively be contingent on the court granting nullification"[9]—not that nullification must precede the derivative suit. *Matthew* explained, "In *Metro*, the [c]ourt found that a litigant need not bring a separate action seeking nullification...before filing a derivative suit."[10] *Metro* rejected the argument that "[the plaintiff] was required to bring a separate action...to nullify [the cancelled LLC's] certificate of cancellation *before* it could bring this action," finding nothing in "the relevant statute that would support such a

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6 MB at 27-28; 29 (emphasis added).

7 *Matthew*, 2012 WL 605589, at *22 (emphasis added). Maginn Defendants assert that, under *Matthew*, a plaintiff has derivative standing only "<u>after</u> reviving the LLC by obtaining revocation of its...cancellation." MB at 42 (quoting *Matthew*, 2012 WL 605589, at *21). That conflicts with *Metro*, and *Matthew* correctly states the law a page later.

8 MB at 29 (quoting *Matthew*, 2012 WL 605589, at *22).

9 *New Media Inv'rs II*, 2026 WL 208698, at *8.

10 *Matthew*, 2012 WL 605589, at *22 n.150.

requirement."[11] Requiring a separate nullification action "makes little sense as a matter of efficiency."[12]

The concurrent nullification rule rests on sound footing. Delaware courts may nullify a cancelation upon finding a DLLCA dissolution or wind-up violation.[13] A single-count nullification complaint vests the court with jurisdiction[14] because courts "assume[]...the underlying claim is valid" when ruling on justiciability.[15] A meritorious nullification claim revives the LLC, restoring its capacity to sue and be sued[16] and rendering derivative claims redressable. The court below found Plaintiffs "stretch[] *Matthew* too far"—but only because it incorrectly concluded that Plaintiffs "failed to seek nullification in their pleadings."[17]

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11 *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 140 n.27 (Del. Ch. 2004).

12 *Id*.

13 *See, e.g.*, *In re Reinz Wisconsin Gasket, LLC*, 2023 WL 2568326, at *13 (Del. Ch. Mar. 20, 2023).

14 *See Schwaber v. Margalit*, 2022 WL 2719952, at *2 (Del. Ch. July 13, 2022).

15 *DBMP LLC v. Delaware Claims Processing Facility, LLC*, 349 A.3d 663, 683 (Del. Ch. 2025).

16 *See Matthew*, 2012 WL 605589, at *22 n.148.

17 *New Media Inv'rs II*, 2026 WL 208698, at *8.

Defendants assert *Metro* requires "<u>direct</u> claims <u>against</u> the cancelled entity" for derivative standing.[18] Not so. The *Metro* plaintiff alleged a violation of § 18-804(b)(3) and "sought to have the certificate of cancellation nullified,"[19] thereby "stat[ing] a [nullification] claim...so that [the plaintiff] c[ould] sue [the cancelled LLC] directly ***and*** bring derivative actions."[20] Defendants would need *Metro* to have held that the plaintiff stated a nullification claim *and* a direct claim, *therefore* permitting derivative actions. That was not *Metro*'s holding.

Defendants' derivative-plus-direct argument is unprincipled. A canceled LLC "loses the capacity to sue or be sued,"[21] so absent nullification, a direct claim against it is as inviable as a derivative claim. Defendants' argument hinges on a distinction without a difference. Courts have jurisdiction over a standalone nullification claim[22] because nullification "effectively revives the LLC and allows claims to be brought by and against it."[23] No principle permits nullification claims to sponsor direct and derivative claims together but not derivative claims alone.

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18 MB at 30; *see also* JB at 18-19; *but see infra* Section I(C)(2) (explaining that failure to account for cancelled LLC's claims is not limited to claims "against" cancelled LLC).

19 *Metro*, 854 A.2d at 139.

20 *Id.* at 164 (emphasis added).

21 MB at 27.

22 *See Schwaber*, 2022 WL 2719952, at *2.

23 *Matthew*, 2012 WL 605589, at *22 n.148.

B. The Court Should Not Hear Dismissal-with-Prejudice Arguments.

Because Defendants did not cross-appeal, they may only defend dismissal *without* prejudice in this appeal. But several arguments covertly seek dismissal *with* prejudice.

"A cross-appeal is necessary if the appellee seeks...enlarging the appellees' own rights or lessening the rights of an adversary."[24] The court below "dismissed [the SAC] without prejudice."[25] Arguments that the SAC fails to state a nullification claim, that New Media II repurchased Plaintiffs' interests, or that Count IX is time-barred[26] would, if meritorious, result in dismissal with prejudice,[27] nullifying Plaintiffs' right to "replead[] the precise cause of action"[28] and arming Defendants with "a *res judicata* bar."[29] The court below could not have reached that result: absent jurisdiction, any merits "decision [would have been] a nullity."[30] Nor does

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24 *Haley v. Town of Dewey Beach*, 672 A.2d 55, 58 (Del. 1996).

25 *New Media Inv'rs II*, 2026 WL 208698, at *10.

26 *See* JB at 14-18, 22-25; MB at 25-26, 31-38.

27 *See* Ct. Ch. R. 15(a)(5)(B) & 41(b); *In re EZCORP Inc. Consulting Agreement Derivative Litig.*, 2016 WL 197814, at *1 (Del. Ch. Jan. 15, 2016). Count IX being time-barred would not warrant dismissal of direct claims.

28 *Asbestos Workers Local 42 Pension Fund v. Bammann*, 2015 WL 2455469, at *18 n.148 (Del. Ch. May 21, 2015), *as revised* (May 22, 2015).

29 *Braddock v. Zimmerman*, 906 A.2d 776, 784 (Del. 2006).

30 *Thompson v. Lynch*, 990 A.2d 432, 434 (Del. 2010).

prejudicial dismissal square with the Memorandum Opinion permitting Plaintiffs to "pursue a petition to nullify,"[31] which Defendants do not challenge.

This Court should not consider arguments that would yield a more preclusive result than the Memorandum Opinion reached. Regardless, Defendants' prejudicial-dismissal arguments lack merit.

C. Count IX States a Nullification Claim.

Count IX states a nullification claim. To plead nullification, a complaint must allege a DLLCA dissolution or wind-up violation.[32] Far from "ignoring the fact of the Cancellation,"[33] the SAC alleges such violations and seeks declarations that "New Media II has not been cancelled" and that "[a]ny dissolution...is...nullified."[34]

Defendants challenge form, not substance, contrary to Delaware's "minimal standards governing notice pleading."[35] The SAC "must be read in its entirety" with "*inferences*...in the light most favorable to" Plaintiffs.[36]

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31 *New Media Inv'rs II*, 2026 WL 208698, at *10.

32 *See* OB at 22.

33 MB at 35.

34 A0285, ¶ 220.

35 *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 895 (Del. 2002).

36 *Branson v. Exide Elecs. Corp.*, 645 A.2d 568 (Table), 1994 WL 164084, at *2 (Del. 1994).

Defendants' flagship argument—that nullification cannot be sought through a declaratory judgment[37]—is unsupported. "What counts is whether the complaint's allegations state a claim on which relief can be granted, not whether the complaint properly identified a specific cause of action."[38]

The SAC alleges Maginn dissolved New Media II without the requisite membership vote and "failed to make a reasonable provision for the liability arising from his diversion of the [II-C Warrants]..., in violation of...§ 18-804(b)."[39] It also alleges DLLCA violations for failure to distribute residual assets and making unlawful distributions.[40] This predicate, if proven, entitles Plaintiffs to a declaration that "New Media II has not been cancelled."[41]

Maginn Defendants call Count IX "vague" and remark that "some theories [supporting nullification]...were not specifically identified."[42] While Plaintiffs disagree, "even vague allegations are 'well-pleaded' if they give...notice of the

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[37] *See* JB at 26-27; MB at 35.

[38] *Calumet Cap. Partners LLC v. Victory Park Cap. Advisors, LLC*, 353 A.3d 88, 106-07 (Del. Ch. 2026); *see also DBMP*, 349 A.3d at 679 ("When evaluating whether equitable jurisdiction exists in a declaratory judgment action, the question remains whether there is any underlying basis for equity jurisdiction....") (cleaned up).

[39] A0283, ¶ 213; *see also id.* A0284, ¶¶ 217-18.

[40] *See* OB at 27-31.

[41] A0285, ¶ 220.

[42] MB at 35, 36.

claim,"[43] and "a plaintiff need not identify the precise law on which it relies."[44] Nor do Plaintiffs' nullification motions or petition concede that Count IX fails, as Defendants assert.[45] Litigants routinely file motions to "tee[] up" counts,[46] and the court permitted Plaintiffs to "pursue a petition to nullify."[47] Plaintiffs' diligent efforts to revive New Media II by motion and petition have no bearing on the SAC's contents or the merits of its claims.

Defendants' substantive arguments fare no better. The SAC alleges four DLLCA violations independently supporting nullification. Defendants do not challenge the SAC's allegations that Maginn dissolved New Media II without the requisite vote.[48] Jenzabar avers only that "no members other than Maginn [were] entitled to vote"—addressed below.[49] Nor do Defendants address allegations

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43 *Savor*, 812 A.2d at 896-97.

44 *AlixPartners, LLP v. Benichou*, 250 A.3d 775, 784 (Del. Ch. 2019). The Opening Brief mistakenly states that *AlixPartners* quotes Ct. Ch. R. 8(a)(1) for this proposition. *See* OB at 24 n.122.

45 *See* JB at 27; MB at 35.

46 *PXP Producing Co. LLC v. MitEnergy Upstream LLC*, 342 A.3d 402, 406 (Del. Ch. 2025) (stating that "[p]etitioner filed a motion to appoint a receiver, teeing up Count II [seeking receiver appointment] for...consideration").

47 *New Media Inv'rs II*, 2026 WL 208698, at *10.

48 *See* A0284, ¶¶ 217-18.

49 JB at 14; *see infra* Section I(D).

supporting the inference that Maginn unlawfully distributed "roughly $55 million" to himself.[50] Defendants challenge only § 18-804 violations.[51]

1. Failure to Distribute Residual Assets.

The DLLCA obligated Maginn to distribute New Media II's residual assets to members.[52] Jenzabar contends that "New Media II did not hold any assets for distribution."[53] But the law takes a broader view. The II-C Warrants "opportunity" belonged to New Media II;[54] Maginn controlled those warrants and the resulting Jenzabar stock and was obligated to distribute their value. He could have distributed that value by marshalling, monetizing, and distributing the II-C Warrants' proceeds or enabling members to invest in New Media II-C; instead, he usurped "the New Media II-C opportunity"[55] and never presented it to members.

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[50] OB at 30. The value diverted from New Media II is likely higher today. *See* A0227, ¶ 3.

[51] *See* JB at 15-16, 21-22; MB at 37.

[52] *See* 6 *Del. C.* § 18-804(a)(3).

[53] JB at 15.

[54] A0277, ¶ 178; *see Maclary v. Pleasant Hills, Inc.*, 109 A.2d 830, 837 (Del. Ch. 1954) (characterizing diverted opportunity as "fairly belong[ing] to the corporation"); *Glenn v. Hoteltron Sys., Inc.*, 547 N.E.2d 71, 74 (N.Y. 1989) ("The fruits of a diverted corporate opportunity are...a corporate asset.").

[55] A0271, ¶ 135.

The SAC also proves New Media II has assets: viable claims. Jenzabar insists derivative claims are not distributable assets,[56] but Delaware law suggests otherwise: "'Any board negotiating the sale of a corporation should attempt to value and get full consideration for all of the corporation's material assets,' ***including litigation assets***."[57] When a merger deprives a stockholder of derivative standing, the stockholder may "still litigate about those [derivative] claims...as assets to be valued."[58] Maginn failed to monetize and distribute such value; Plaintiffs seek nullification to redeem it.

2. Failure to Make Reasonable Provision for Claims.

Maginn also violated § 18-804(b) by failing to make reasonable provisions for claims known to New Media II. Defendants read that section as limited to claims against the LLC,[59] but only § 18-804(b)(2) addresses claims "***against the limited liability company***";[60] § 18-804(b)(1) covers "all claims and obligations...known to the limited liability company"[61] without qualifying such claims as "against" the

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56 JB at 15-16.

57 *In re Primedia, Inc. Shareholders Litig.*, 67 A.3d 455, 486 (Del. Ch. 2013) (emphasis added and citation omitted).

58 *Harris v. Harris*, 289 A.3d 277, 308 (Del. Ch. 2023) (stating that derivative claims are "assets to be valued" for quasi-appraisal remedy or in appraisal proceeding).

59 *See* JB at 15-16; MB at 37.

60 6 *Del. C.* § 18-804(b)(2) (emphasis added).

61 6 *Del. C.* § 18-804(b)(1).

company. The General Assembly's decision to qualify "claims" in subsection (b)(2) but not (b)(1) must be given effect.[62] Had the legislature intended (b)(1) to apply only to claims against the LLC, it could have said so. New Media II knew of Plaintiffs' claims to unpaid distributions, and its manager failed to provide for them—a basis for nullification.

Jenzabar's reading of *Schwaber* is incorrect. There, the court held that "[t]his court has subject matter jurisdiction over the nullification claim."[63] The question was whether the defendants "should have distributed or made reasonable provision for legal claims belonging to the [canceled entities]."[64] The court did not dismiss on Rule 12(b)(1) grounds. Even though *Schwaber* granted a stay pending arbitration, the case confirms a nullification claim by itself vests the court with subject matter jurisdiction.

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Defendants' argument that Count IX fails to state a claim is inconsistent with Delaware's minimal notice pleading standards. This Court should hold that Count IX pleads nullification.

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62 *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) (observing that omission of terms from one statutory section that appear in another is presumed intentional).

63 *Schwaber*, 2022 WL 2719952, at *1.

64 *Id.* at *3.

D. The Repurchased-Interests Argument Cannot Sustain the Judgment.

Maginn Defendants raise a fact-intensive issue not decided below: whether "Plaintiffs ceased being members of New Media II."[65] They rely on extrinsic material purportedly showing Plaintiffs cashed checks[66] enclosed with Maginn's December 19, 2013 letter (the "Conclusion Letter").[67] By cashing those checks, Gross and Fireman purportedly ceased to be members pursuant to the Release, and Nassberg pursuant to a 2012 letter (the "Nassberg Letter," and with the Release, the "Disputed Releases").[68] The SAC alleges Plaintiffs have no record of any "final check" or Release[69] and that the Release was fraudulent.[70] During the *Deane* Action, Maginn himself expressed skepticism as to the Release's enforceability.[71]

Relying on Rule 12(b)(1),[72] Maginn Defendants invite the Court to ignore the SAC, find facts regarding checks and Schedules K-1 that do not reference the

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65 MB at 25.

66 *See, e.g.*, A0558; A0567; A0580; A0584-593; A0595-604; A0606-614.

67 *See* A0572 (Conclusion Letter).

68 *See* MB at 4-7, 25-26; *see also* A0573 (Release); A0582 (Nassberg Letter). Maginn Defendants aver that Gross and Fireman "sign[ed] the Release," but nothing in the record supports that. MB at 25.

69 A0260-261, ¶¶ 98, 100-101.

70 A0261-262, ¶¶ 102, 107.

71 *See* A0827-829.

72 *See* MB at 5 n.10.

Release, and disable Plaintiffs from challenging the Disputed Releases based on a record not considered below—one at odds with the SAC's well-pled allegations. The Court should reject that attempt.

1. Rule 12(b)(6) Furnishes the Applicable Standard.

Maginn Defendants incorrectly invoke Rule 12(b)(1) to introduce extrinsic material.[73] "[W]here the issue of standing is related to the merits, a motion to dismiss is properly considered under Rule 12(b)(6)."[74] *Appriva* indicated that where standing turns on whether "these particular plaintiffs" may obtain relief—not whether "any plaintiff" may—Rule 12(b)(6) applies.[75] Rule 12(b)(6) routinely governs derivative standing determinations.[76]

The repurchased-interests argument goes to the merits. Like the *Appriva* appellee, Maginn Defendants "argue[] the merits...because [they] rel[y] on...disputed agreements to establish...that plaintiffs have no standing."[77] Rule

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73 MB at 5 n.10.

74 *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1280 (Del. 2007).

75 *Id.* at 1285. In contrast, Maginn Defendants' (misguided) argument that "Plaintiffs cannot bring claims on behalf of an entity that does not exist" sounds in Rule 12(b)(1). MB at 27-28. No plaintiff could obtain relief for a canceled LLC without seeking revival.

76 *See, e.g.*, *Clifford Paper, Inc. v. WPP Inv'rs, LLC*, 2021 WL 2211694, at *5, *12 (Del. Ch. June 1, 2021) (dismissing derivative claims "under Rule 12(b)(6)" because "[plaintiff] lacks standing" and "is no longer a member").

77 *Appriva*, 937 A.2d at 1292.

12(b)(1) applies when the court lacks authority to grant relief to "any plaintiff"[78]—but even on Maginn Defendants' theory, plaintiffs who did not receive the Release could recover.

Holding that Rule 12(b)(6) governs, the Court should remand. If the trial court considers extrinsic material, it should "afford[] the parties a reasonable opportunity to present all factual material" after discovery.[79] Maginn himself argued "[t]he enforceability of the Release...must take into account the actual facts."[80] So too here.

2. Under Rule 12(b)(6), the Repurchased-Interests Argument Fails.

If the Court declines to remand, it should reject the repurchased-interests argument. The SAC alleges facts that make it reasonably conceivable that the Disputed Releases do not bind Plaintiffs.

Under Rule 12(b)(6), "well-pled allegations...are deemed to be true," and incorporation by reference "does not enable a court to weigh evidence."[81] Where documents "support competing inferences, the plaintiffs are entitled...to the

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78 *Id.* at 1285.

79 *Furman v. Delaware Dep't of Transp.*, 30 A.3d 771, 775 (Del. 2011).

80 A0827 (quoting *Deane* Action briefing).

81 *Lebanon Cnty. Employees' Ret. Fund v. Collis*, 287 A.3d 1160, 1181 (Del. Ch. 2022).

[favorable] inference."[82] Faced with allegations of fraudulent inducement, the court errs "to rely on [the disputed agreement] to find [the plaintiff] lack[s] standing."[83]

The SAC alleges Plaintiffs did not receive the Conclusion Letter and have no record of any "final check" or Release.[84] Without notice of the Release's terms, it could not bind them.[85] Maginn Defendants proffer checks and Schedules K-1, but the Court should not consider them. The Answering Briefs do not argue that any "exceptions to the...Rule 12(b)(6) prohibition against considering [extrinsic] documents" apply.[86] Checks Plaintiffs have no record of receiving cannot be integral to the SAC, and the SAC does not reference the Nassberg Letter. Maginn Defendants apparently concede the proffered materials are "outside of the pleadings."[87]

Regardless, Gross's and Fireman's checks do not reference the Release[88] and cannot prove receipt. The Nassberg Letter is addressed to "***Mr.*** Nassberg"; the check

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[82] *Id*.

[83] *Appriva*, 937 A.2d at 1292.

[84] A0260-261, ¶¶ 98, 100-101.

[85] *See, e.g.*, *Payne v. Samsung Elecs. Am., Inc.*, 2024 WL 726907, at *3 (Del. Super. Ct. Feb. 21, 2024) (finding mutual assent requires reasonable notice of contractual terms).

[86] *Vanderbilt Income & Growth Associates, L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996).

[87] MB at 5 n.10.

[88] *See* A0558; A0567.

is made out to “Edward ***Nassberger***.”[89] Schedules K-1 referencing “WIND UP COSTS”[90] in March 2014[91] cannot prove 2013 agreement to the Release. “[I]ncorporating documents that ***might*** not square with a complaint’s...well-pled allegations is a far cry from providing...an undisputed factual predicate.”[92]

The SAC also alleges facts rendering the Disputed Releases unenforceable. Maginn’s “letter did not mention the...II-C [W]arrants,”[93] and his “pattern of fraud...was...the case as to...Members...who...cashed the check.”[94] The *Deane* Court acknowledged “a strong argument” of fraudulent inducement and “the important point that the Release may not have been supported by consideration.”[95] Those concerns reverberate here.[96] Maginn Defendants’ extrinsic material does not “negate the [P]laintiffs’ claim as a matter of law.”[97]

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89 A0580; A0582 (emphases added).

90 A0587; A0598.

91 *See* A0590; A0601.

92 *In re Clovis Oncology, Inc. Derivative Litig.*, 2019 WL 4850188, at *14 n.216 (Del. Ch. Oct. 1, 2019) (emphasis added).

93 A0259, ¶ 96.

94 A0261, ¶ 102; *see also* A0262, ¶ 107.

95 *Deane v. Maginn*, 2024 WL 369614, at *4 n.34 (Del. Ch. Jan. 31, 2024).

96 *See Deane v. Maginn*, 2022 WL 16557974, at *6 (Del. Ch. Nov. 1, 2022) (finding Maginn sent Conclusion Letter to New Media II and New Media II-B members).

97 *Krasner v. Moffett*, 826 A.2d 277, 285 (Del. 2003).

E. The Time-Barred Argument Cannot Sustain the Judgment.

Defendants assert that "Plaintiffs are time-barred from challenging the 2017 Cancellation" under an analogous statute of limitations.[98] The court below did not rule on this argument, and this Court should remand or reject it. The SAC supports tolling, and Plaintiffs timely sought nullification.

A statute of limitations is an affirmative defense[99] "not ordinarily well-suited for treatment on...a [Rule 12(b)(6)] motion."[100] "Unless it is clear...that an affirmative defense exists and that the plaintiff can[not]...avoid it, dismissal...is inappropriate."[101] A three-year analogous limitations period applies.[102] The "harmful act"[103] came in December 2017, when Maginn unlawfully canceled New

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98 MB at 31.

99 *See* Ct. Ch. R. 8(c)(1).

100 *Reid v. Spazio*, 970 A.2d 176, 183 (Del. 2009).

101 *Id.* at 183-84.

102 *See PXP Producing*, 342 A.3d at 411 n.45; *see also* 10 *Del. C.* § 1806.

103 *In re Am. Int'l Grp., Inc.*, 965 A.2d 763, 812 (Del. Ch. 2009), *aff'd sub nom. Teachers' Ret. Sys. of Louisiana v. PricewaterhouseCoopers LLP*, 11 A.3d 228 (Del. 2011).

Media II.[104] Gross filed on April 22, 2024.[105] Plaintiffs rely on tolling.[106]

Plaintiffs' nullification claim centers on Maginn's diversion of the II-C Warrants,[107] through which he deprived members of distributions, effectively distributed millions to himself, and "failed to make a reasonable provision for the liability arising from his diversion."[108] He did not disclose his wrongdoing.[109] Defendants must demonstrate Plaintiffs were or should have been "objectively aware...of facts giving rise to the wrong"[110] before April 22, 2021.[111] They cannot.

1. The SAC Supports Tolling.

The SAC clearly "plead[s] facts supporting an inference that tolling applies."[112] Courts "must draw the same plaintiff-friendly inferences required in a

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104 *See* A0283, ¶ 215; *see also PXP Producing*, 342 A.3d at 411 n.45. Maginn Defendants incorrectly argue the claim accrued as early as 2013 (*see* MB at 32), but the limitations period would have run in 2016, before New Media II's cancelation.

105 *See* A0046.

106 *See* A0838-A0840; A0846-A0854; A0909-A0912.

107 *See* A0282-283, ¶¶ 209-11, 213.

108 A0283, ¶ 213; *see also* OB at 27-33.

109 *See* A0260, ¶ 99.

110 *Collis*, 287 A.3d at 1212 (citation omitted).

111 *See* A0046 (Complaint filing date).

112 *Collis*, 287 A.3d at 1193 n.7.

12(b)(6) analysis," except Rule 9(b) applies when a plaintiff relies on fraudulent concealment.[113]

The SAC pleads "equitable tolling,"[114] under which the limitations period is tolled while a plaintiff has reasonably relied on a fiduciary's competence and good faith.[115] The doctrine "ensure[s] that fiduciaries cannot use their own success at concealing their misconduct as a method of immunizing themselves."[116] "No evidence of actual concealment is necessary."[117]

Plaintiffs owned interests in New Media II.[118] Maginn was "sole Managing Member" until December 2017[119] and owed fiduciary duties.[120] As *Deane* found, members "were entitled to rely on 'the competence and good faith' of Maginn."[121]

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113 *Id.* at 1193 (citation omitted); *see also id.* at 1215.

114 A0269, ¶ 124.

115 *Am. Int'l Grp.*, 965 A.2d at 812.

116 *Id.* at 813.

117 *Deane*, 2022 WL 16557974, at *9.

118 A0227, ¶ 1.

119 A0234, ¶ 32.

120 *See* A0250, ¶ 74; A0251, ¶ 76; A0261, ¶ 103; A0273-275, ¶¶ 149-162; *see also Mehra v. Teller*, 2021 WL 300352, at *28 (Del. Ch. Jan. 29, 2021).

121 *Deane*, 2022 WL 16557974, at *10 (citation omitted); *see also Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton*, 294 A.3d 65, 71 (Del. Ch. 2023) ("Equitable tolling applies because the defendants are fiduciaries....").

The SAC alleges reliance facts: Maginn is a Harvard Business School graduate,[122] served as Jenzabar's CEO,[123] and advertised "auspicious connections" to Mitt Romney and Bain Capital.[124] Yet he did not disclose the II-C Warrants.[125] "An attentive and diligent investor may rely...upon the good faith of fiduciaries,"[126] and Maginn disregarded his "duty to deal with [his members] honestly."[127]

Fraudulent concealment and the discovery rule independently support tolling. Fraudulent concealment applies where a defendant's actual artifice prevents a plaintiff from discovering the underlying facts.[128] Here, Maginn revised the Conclusion Letter to omit reference to the II-C Warrants, sent investors misleading correspondence suggesting an innocent wind-up, and—as *Deane* found—concealed from members that a new warrant had been issued to an entity he controlled.[129] New

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[122] A0254, ¶ 85.

[123] A0228, ¶ 5.

[124] A0240, ¶ 47.

[125] A0259, ¶ 96; *see also Deane*, 2022 WL 16557974, at *10 (applying equitable tolling where "Maginn failed to disclose...that [the II-C Warrants]...had been issued to New Media II-C").

[126] *Weiss v. Swanson*, 948 A.2d 433, 451 (Del. Ch. 2008).

[127] *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998).

[128] *See Weiss*, 948 A.2d at 451.

[129] *Deane*, 2022 WL 16557974, at *10; *see de Adler v. Upper New York Inv. Co. LLC*, 2013 WL 5874645, at *14-15 (Del. Ch. Oct. 31, 2013) (tolling sufficiently pled where defendants deliberately omitted required notices and made misrepresentations).

Media II's cancelation further impeded discovery.[130] Likewise, the discovery rule applies when a plaintiff's injury is inherently unknowable and the plaintiff is blamelessly ignorant of the wrong.[131] Plaintiffs owned an interest in a company managed exclusively by Maginn, had no independent access to information about the II-C Warrants, and had no reason to suspect their fiduciary diverted company assets. Plaintiffs were blamelessly ignorant of the injury Maginn concealed.

2. Inquiry-Notice Questions Require Discovery.

The SAC thus pleads tolling; whether the limitations period was tolled is "fact-intensive" and "not amenable to a motion to dismiss."[132] The second issue is when Plaintiffs were "on inquiry notice, [when] tolling stops."[133] "[A] plaintiff is put on inquiry notice when he gains possession of facts...that ought to make him suspicious."[134]

The SAC alleges Plaintiffs were on notice no earlier (and conceivably later) than November 2022—when the *Deane* Court held that Maginn breached his duty of loyalty.[135] The SAC alleges Plaintiffs "recently learned of this Court's decision"

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130 *See* A0282, ¶ 210.

131 *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004).

132 *Riskin v. Burns*, 2020 WL 7973803, at *16 (Del. Ch. Dec. 31, 2020) (discussing equitable tolling).

133 *Collis*, 287 A.3d at 1178.

134 *Walton*, 294 A.3d at 96 (citation omitted).

135 *See Deane*, 2022 WL 16557974, at *19.

in *Deane*,[136] where they discovered that New Media II "had an expectation" in the II-C Warrants and that Maginn's diversion may have caused "an absence of distributions."[137] From this, suspicion that Maginn canceled New Media II "to prevent...Members from pursuing...claims" would arise.[138] If on notice in November 2022, Plaintiffs needed to file by November 2025. Gross filed over a year earlier.[139]

To defeat that inference, Defendants rely on plaintiff-unfriendly inferences and extrinsic material, though "inquiry notice is factually-intensive and case-specific."[140] Maginn Defendants argue Plaintiffs were on notice from "the December 2013 letter."[141] The SAC alleges Plaintiffs did "not receive[] the letter."[142] Because their cashed checks and Schedules K-1 "were neither attached to, nor incorporated...into, the complaint," the Court need not consider them.[143] Regardless, neither checks, tax returns, nor the 2017 cancelation certificate would have raised suspicions. Plaintiffs were entitled to rely "in complete propriety" on

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136 A0226.

137 *Deane*, 2022 WL 16557974, at *29, *12.

138 A0282, ¶ 210.

139 *See* A0046.

140 *Walton*, 294 A.3d at 96 (cleaned up).

141 MB at 33.

142 A0261, ¶ 101.

143 *Wal-Mart*, 860 A.2d at 320.

Maginn's good faith.[144] Paperwork falsely presenting innocent wind-up—nowhere referencing the II-C Warrants—could not signal that Maginn had "loot[ed]" the company.[145] Defendants do not explain how paperwork from 2013-14[146] could put members on notice of an unlawful 2017 cancelation, nor how Plaintiffs could have discovered New Media II's undistributed assets from such paperwork. Maginn's cancelation also impeded Plaintiffs' ability "to commence an investigation and discover the facts necessary to plead the [nullification] claim."[147]

Jenzabar argues New Media II-B's revival by a certificate of correction in March 2021 should have raised suspicions.[148] That fails. "[I]t would be unreasonable to expect stockholders to monitor the Secretary of State's filing system."[149] Jenzabar offers neither authority nor reasoning to suggest that *New*

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144 *Weiss*, 948 A.2d at 451.

145 A0283, ¶ 211.

146 *See* MB at 33.

147 *In re Primedia, Inc. Shareholders Litig.*, 2013 WL 6797114, at *12 (Del. Ch. Dec. 20, 2013).

148 JB at 24-25.

149 *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 646 (Del. Ch. 2013), *abrogated on other grounds by El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248, 1264 (Del. 2016).

Media II-B's certificate "contain[s] information sufficient to...[give] notice"[150] that Maginn unlawfully canceled *New Media II*, "a separate legal entity."[151]

The SAC thus supports tolling and timeliness.

* * *

The issue on appeal is narrow: did the SAC's nullification claim vest Plaintiffs with derivative standing? It did. Count IX seeks nullification, and a successful nullification claim revives New Media II and sustains the claims that depend on its existence. The Court should reverse and remand.

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[150] *Id.*

[151] 6 *Del. C.* § 18-201(b).

II. Counts I, III, and V State Direct Claims.

Counts I, III, and V state direct claims against Maginn, whose diversion of the II-C Warrants and misleading Conclusion Letter deprived members of "individual investment decisions and...distributions" duly owed during wind-up.[152] Defendants argue waiver, but Plaintiffs consistently maintained below that Maginn's wind-up stamped their claims with a direct character.[153] In *Deane*, Maginn unsuccessfully argued that the II-C Warrants claim "should be treated as a direct claim" under *Cencom*.[154] He now reverses course—where the facts support that position.

A. Plaintiffs Argued the Wind-Up Theory Below.

The Court should not find waiver because the Opening Brief offers "merely an additional reason in support of a proposition urged below."[155] "A question is fairly presented when the trial court 'understands it is an argument that must be considered and decided.'"[156] "[T]he mere raising of the issue is sufficient to preserve it."[157]

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152 *Deane*, 2022 WL 16557974, at *12.

153 *See* A0270-285; A0821-823; A0894-896; A0946-947; A1206-209, 57:8-60:2.

154 *Deane*, 2022 WL 16557974, at *11; *see also In re Cencom Cable Income Partners, L.P.*, 2000 WL 130629 (Del. Ch. Jan. 27, 2000).

155 *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1145 n.52 (Del. 2025) (citation omitted).

156 *Suber v. State*, 2026 WL 184867, at *4 (Del. Jan. 15, 2026) (citation omitted).

157 *Watkins v. Beatrice Companies, Inc.*, 560 A.2d 1016, 1020 (Del. 1989).

Plaintiffs presented direct-claims arguments below, and the Vice Chancellor ruled on the issue.[158] The SAC characterizes all claims as "Direct and Derivative."[159] Gross and Nassberg argued that because New Media II "supposedly does not exist," "this case would align...with *Cencom* where the partnership's liquidation was complete."[160] *Cencom* held that because "the partnership's business is complete,... imposing derivative requirements...would only set up a legal artifice."[161] Counsel argued that "if the entity was terminated..., then...the concept of individual ratable returns is best served by direct claims."[162] These arguments presented the wind-up theory's essence. The cases Jenzabar on which relies, where a litigant could only "point[] to a single reference...at oral argument," are inapposite.[163]

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158 *See New Media Inv'rs II*, 2026 WL 208698, at *4-6.

159 *See* A0270-282.

160 A0823 (referencing *Cencom*, 2000 WL 130629).

161 *Cencom*, 2000 WL 130629, at *4; *see also* A0946-947 (referencing same).

162 A1207, 58:13-18.

163 *Klauder v. Echo/RT Holdings, LLC*, 152 A.3d 581 (Del. 2016) (Table); *see also Roofers, Inc. v. Delaware Dep't of Labor*, 2014 WL 7010733, at *1 (Del. Nov. 24, 2014) (Table); JB at 28 n.112; 29 n.115 (citing same).

B. Delaware Law Supports the Wind-Up Theory.

Under *Tooley*, a direct claim must arise from harm suffered by individual members, who must be entitled to recovery.[164] Maginn's failure to distribute New Media II's assets directly harmed Plaintiffs, who are individually entitled to recover.

An entity "in dissolution...is simply an artifice" and "no longer relevant as a distinct legal creature."[165] A dissolving entity's assets are "held in trust for...its creditors *and* its [members],"[166] and the manager must distribute residual assets.[167] Failure directly harms members through "an absence of distributions."[168] Vice Chancellor Glasscock's opinion that "a conversion of assets in connection with...liquidation and distribution...states a direct claim" follows logically.[169]

Avoiding this logic, Defendants minimize Vice Chancellor Glasscock's *dictum*, but in uncharted waters, a faint star is better than none.[170] Maginn

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164 *See Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004).

165 *Cencom*, 2000 WL 130629, at *6.

166 *Kidde Indus., Inc. v. Weaver Corp.*, 593 A.2d 563, 564 (Del. Ch. 1991).

167 *See Comerica Bank v. Glob. Payments Direct, Inc.*, 2014 WL 3779025, at *14 (Del. Ch. Aug. 1, 2014); *see also* 6 *Del. C.* § 18-804(a).

168 *New Media Inv'rs II*, 2026 WL 208698, at *5 n.60 (quoting *Deane*, 2022 WL 16557974, at *12).

169 *Joseph Penar Family Tr. v. Adams*, 2016 WL 1730765, at *6 n.56 (Del. Ch. Apr. 28, 2016). Of their misappropriation claim, Plaintiffs argued below that "[c]onversion is essentially what the SAC pleads." A0865.

170 *See* JB at 32; MB at 19-20.

Defendants call Plaintiffs' injuries "indirect" and "shared collectively,"[171] but Maginn's wind-up distribution duty ran to members.[172] *Tooley* "expressly disapprove[d]...the concept that a claim is necessarily derivative if it affects all stockholders equally."[173]

Maginn Defendants fail to distinguish *Cencom*.[174] *Cencom* found that "the general partner improperly terminat[ing]...priority cash distributions" stated a direct contract claim.[175] Maginn's duty was fiduciary, not contractual, but still ran to members. Maginn Defendants gloss over *Cencom*'s key holding: it addressed a "breach of duty of loyalty" claim "appear[ing] derivative in nature."[176] Because "the partnership's business [was] complete" and "the only two [partnership]

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171 MB at 19.

172 *See Tooley*, 845 A.2d at 1039 ("The [member] must demonstrate that the duty breached was owed to the [member]."); *see also Deane*, 2022 WL 16557974, at *13 ("Maginn owed fiduciary duties to New Media II-B and its members."); *Comerica Bank*, 2014 WL 3779025, at *14 (opining that LLC manager's duties "continue to encompass...an obligation to distribute the assets...promptly consistent with maximizing their value").

173 *Tooley*, 845 A.2d at 1039.

174 *See* MB at 20-21. *Cencom* did "involve[]...a limited partnership, not an LLC." *Id.* at 21-22 n.77. But *Cencom* explained that its "flexib[le]" approach arose from an "alternative businesses entit[y]" being in the case, not a partnership per se. *Cencom*, 2000 WL 130629, at *2. The LLC is an alternative business entity that offers "partnership-type flexibility." *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 290 (Del. 1999).

175 *Cencom*, 2000 WL 130629, at *3.

176 *Id.* at *4.

parties....[were] adversaries," treating the claim as derivative would "make no sense."[177] *Cencom* declined to "exalt[]...form over...substance" and held that "the claim[] for breach of fiduciary duty...[is], in substance, [a] direct claim[]."[178] That reasoning is more compelling here, where Maginn liquidated New Media II to stave off accountability.[179]

That *Cencom* "is limited to its own unique set of facts"[180] does not help Defendants. *Cencom* shares its most salient fact with this case—it "involved a dissolving [entity]."[181] In *Deane*, Maginn "argue[d] that...the II-C Claim should be treated as a direct claim, consistent with...*Cencom*."[182] The court rejected that because New Media II-B "has not been dissolved."[183] The court contemplated "direct harm" would come "when making individual investment decisions and from an absence of distributions."[184] Here, "Maginn dissolved New Media II," visiting such harms on its members.[185]

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177 *Id*.

178 *Id.* at *6.

179 *See* A0282, ¶ 210.

180 *Agostino v. Hicks*, 845 A.2d 1110, 1125 (Del. Ch. 2004).

181 *Id*.

182 2022 WL 16557974, at *11.

183 *Id.* at *12.

184 *Id*.

185 *Id.* at *7.

C. The SAC Alleges Facts Informing the Wind-Up Theory.

Defendants argue that "no allegations...establishing any distribution-based harm" appear in the SAC.[186] They do.

Per the SAC, the "[II-C Warrants] opportunity belong[ed] to New Media II."[187] Maginn "misappropriated [that] corporate opportunity" by "us[ing] New Media II-C...to take value and assets properly belonging to New Media II."[188] He drafted the Conclusion Letter in May 2013 "to inform [members] about...participating in New Media II-C."[189] A month later, he exercised the II-C Warrants.[190] In December 2013, he sent investors the revised letter, omitting "mention [of] the...II-C [W]arrants" and enclosing "final distribution checks."[191] After dissolving, he "failed to wind up" but canceled the company in 2017 "to prevent...Members from pursuing...claims."[192] New Media II-C likely "still holds th[e] [Jenzabar] stock...wrongfully taken."[193] Despite controlling New Media II-

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186 MB at 16; *see also* JB at 31.

187 A0277, ¶ 178; *see also supra* note 54.

188 A0277, ¶ 178; A0233, ¶ 29.

189 A0258, ¶ 92.

190 *Id.*, ¶ 94; *see also Deane*, 2022 WL 16557974, at *6.

191 A0259, ¶ 96.

192 A0282, ¶¶ 207-210.

193 A0262, ¶ 105.

C,[194] Maginn never distributed the value of that stock to members, nor did he ever intend to offer members "'individual decisions' about whether to invest."[195] Counts I, III, and V allege harm to New Media II *and* its members, including "for the portion of the New Media II-C opportunity that Maginn usurped."[196]

Looking at the SAC in its entirety, Plaintiffs' grievance is clear: Maginn had a duty to distribute New Media II's assets to his investors[197] and, despite having those assets under his control, did not. He deprived them of an opportunity to invest in New Media II-C, and no "final distribution check[]"[198] reflected New Media II's full value. Plaintiffs are not "refram[ing] classically derivative harm as direct";[199] here, "[t]he recovery could, as a practical matter, only flow to...[P]laintiffs" and other New Media II members.[200] Jenzabar counters that "there were no Warrants to distribute during...wind up."[201] But the II-C Warrants existed under Maginn's

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194 *See* A0253, ¶ 83.

195 *Deane*, 2022 WL 16557974, at *3.

196 A0271, ¶ 135; *see also* A0275, ¶ 162; A0278, ¶ 179; A0273, ¶ 148 (incorporating "all of the foregoing allegations"); A0277, ¶ 174 (same).

197 *See supra* notes 167 & 172.

198 A0258, ¶ 94.

199 MB at 17-18.

200 *Deane*, 2022 WL 16557974, at *11 (analyzing *Cencom*).

201 JB at 31.

control. He only needed to distribute their value. He failed. Alternatively, he could have offered the New Media II-C opportunity. He failed there too.[202]

The Court should find Counts I, III, and V state direct claims and reverse. "[I]mposing derivative requirements...would only set up a legal artifice that has no justification."[203]

202 *Deane*, 2022 WL 16557974, at *6, *7 (finding "[t]he II-C Warrant was not mentioned" in the Conclusion Letter and "none of the members of New Media II...became investors in New Media II-C").

203 *Cencom*, 2000 WL 130629, at *4.

III. The Court Should Extend Equitable Standing.

If the Court finds Plaintiffs did not seek nullification or state direct claims, this case invites equitable intervention. Delaware law should not permit a bad-faith fiduciary[204] to misappropriate assets, conceal wrongdoing, force investors through a procedural hedge maze he cultivated by canceling the company, and escape with his spoils. If Plaintiffs faltered, the Court should help them stand "to prevent a complete failure of justice."[205]

Defendants argue equity should not intervene because "Plaintiffs simply chose to delay"[206] "[w]ithout...explanation."[207] That glosses over Defendants' "own success at concealing their misconduct."[208] "[W]orrie[d] about...discovery," they engaged in a "pattern of secretive misconduct."[209] Maginn canceled New Media II during *Deane*'s pendency "to prevent...Members from pursuing...claims."[210]

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204 *See Deane*, 2022 WL 16557974, at *19.

205 *Schoon v. Smith*, 953 A.2d 196, 208 (Del. 2008).

206 MB at 41.

207 *Id.* at 43.

208 *Am. Int'l Grp.*, 965 A.2d at 813.

209 A0250, ¶ 74; A0269, ¶ 124.

210 A0282, ¶¶ 209-10.

Plaintiffs discovered the wrongdoing in 2024,[211] filed suit that year, and sought nullification.[212] They teed up their claim in two motions.[213]

Jenzabar faults Plaintiffs for "bringing this claim over six years after the alleged wrong."[214] But Jenzabar's board member Mills "claimed to have been recently surprised" by Maginn's "'New Media' ruse" in his 2021 deposition.[215] Chai also claims to have been surprised.[216] Jenzabar cannot explain how Plaintiffs could acquire knowledge sooner than insiders. Maginn Defendants claim "nothing prevented Plaintiffs from filing a certificate of correction before filing...suit,"[217] but below Jenzabar argued filing authority "was vested solely with...Maginn."[218]

Defendants assume Count IX does not exist. "Appellants did not seek to revive NMII until months after initiating this litigation," Jenzabar avers.[219] But on filing day, Gross sought a declaration that "[t]he cancellation...is...nullified."[220]

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211 A0227, ¶ 2.

212 A0100-101, ¶¶ 193-205; A0122-124, ¶¶ 79-89; A0211-214, ¶¶ 202-218; A0282-285, ¶¶ 204-220.

213 *See* A0129-142; A0289-302.

214 JB at 34.

215 A0264, ¶ 112.

216 *Id.*, ¶ 113.

217 MB at 41.

218 A0662, ¶ 26.

219 JB at 34.

220 A0101, ¶ 205.

Jenzabar notes[221] that the court found Plaintiffs "neglected to exercise diligence" by not searching for New Media II's certificate of cancelation.[222] If Plaintiffs had not exercised such diligence, the SAC could not allege that "[i]n 2017, Maginn canceled New Media II's registration."[223] Nor would Plaintiffs have prayed for a declaration that "New Media II has not been cancelled."[224]

This case presents "new exigency warranting...equitable standing," and no "other avenue[] for relief exist[s]" if Plaintiffs somehow failed to seek nullification.[225] Because a member may seek appointment of a receiver "at any time,"[226] Defendants' theory would make equitable standing categorically unavailable whenever an LLC is unlawfully canceled—regardless of the manager's wrongdoing or the members' diligence. The General Assembly cannot have intended that result.[227] A statutory procedure is not a meaningful avenue for relief where the plaintiff timely seeks nullification, falters, and the defendant's own concealment creates timeliness issues. If Maginn can immunize himself for millions

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221 *See* JB at 33-34.

222 *New Media Inv'rs II*, 2026 WL 208698, at *9.

223 A0282, ¶ 207.

224 A0285, ¶ 220.

225 *SDF Funding LLC v. Fry*, 2022 WL 1511594, at *9 (Del. Ch. May 13, 2022).

226 6 *Del. C.* § 18-805.

227 *See* 6 *Del. C.* § 18-1104.

in diverted assets by concealing his misconduct, no New Media II member will obtain redress—the wrongdoer will have weaponized his misconduct to extinguish every claim. That is the complete failure of justice equity abhors.

CONCLUSION

The Court of Chancery's judgment should be reversed.

Date: June 25, 2026

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