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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE PRIORITY RESPONSIBLE FUNDING LLC	No. 147,2026 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0651-NAC (consolidated) **PUBLIC VERSION** **Filed on June 15, 2026**

APPELLANTS' OPENING BRIEF

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NATURE OF PROCEEDINGS

This is an appeal from the Chancery Court's Post-Trial Memorandum Opinion issued on March 10, 2026 (Exhibit) A, and the resulting Post-Trial Final Order and Judgment and Stipulation on Selection of Liquidation Trustee dated April 1, 2026 (Exhibit B). This suit seeks to enforce the express terms of an LLC Operating Agreement and the fiduciary obligations owed by LLC members. Per that Agreement, the LLC -- Priority Responsible Funding, LLC ("PRF") -- was formed for the express business purpose of "deploying the Company's capital as investments" in third-party litigation. Under the Agreement [A386], Brett Findler ("Findler") and Casey Gard ("Gard") -- through their respective corporate entities Appellant Priority Pre-Settlement Funding, LLC ("PPSF") and Appellee Gard Family Office, LLC ("GFO") -- are equal owners/members thereof and are entitled to share profits from all fundings financed by third parties on a 50/50 basis. As the trial evidence showed, this litigation-funding business began as the brainchild of Findler and was built on a network of proprietary relationships and confidential information that were developed, owned, and maintained by PRF. But, as Appellants argued below, Gard's maneuvering enabled him to end up with all the profits of the business for himself despite owing a clear fiduciary duty of *full disclosure and loyalty* to act in the best interest of both PRF and PPSF and not to usurp any of PRF's business.

Gard admitted at trial that GFO (through him) owed PRF and his co-member PPSF (through Findler) a fiduciary level of care. Notwithstanding, his own evidence showed that he had an undisclosed agenda from day one to use PRF as his testing ground to establish a track record that would support his eventual creation of a financial vehicle for the business that only he would own and control. The Chancery Court acknowledged Gard's failure to disclose this hidden "incubator" strategy to Findler. [Ex. A at 31.] Moreover, as Gard further admitted at trial, when explaining his hedge-fund concept to Findler, he never disclosed its terms/structure. [A186-187, A214.] In addition, he admitted that he *recommended* to Findler that PRF transition into a much narrower "origination-and-servicing" business, touting it as being financially beneficial to Findler and to PRF [A129; A215.], but did not disclose that this recommended transition would strip PRF of its 50% share of the profits by redirecting the flow of profits solely to himself.

In ruling for Gard/GFO in the attached Post-Trial Memorandum Opinion [cited herein as "Ex. A"], the Chancery Court latched onto Gard's theory of an oral "business transformation" of PRF that stripped out its profit center [*id.* at 27-34] -- even though this substantial change to the business was never put in writing as required by PRF's Operating Agreement [*id.* at 22; A386 at Art. V, § 5.3 (at A397)] and even though diverting all its profits was not in the best interest of PRF or Findler as his co-manager. As its order reflects, the Chancery Court essentially blamed

Findler for not discovering the truth sooner and for not probing what his fiduciary was telling him. [Ex. A at 27-34.] To justify that, the Chancery Court pointed to a series of documents and events that occurred *after* Gard's many admitted nondisclosures to Findler. [*Id.*] Appellants' position below and in this Court is that this type of retroactive justification is repugnant to the concept of fiduciary responsibility and overlooks that any such subsequent conduct was incurably tainted by Gard's admitted nondisclosures. Ultimately, as the trial evidence showed, Gard has taken at least [redacted] in litigation-funding profits (so far)[1] -- with Findler/PPSF receiving *none* from this business that was Findler's "invention[] and idea[]"[2] in the first place and built on his own networking efforts.

The issues presented in this brief focus on a string of well-settled principles of fiduciary duty and contract interpretation that this Court has routinely applied and enforced, but that were disregarded below. This brief also highlights a fundamental error in the Chancery Court's allocation as to the burden of proof at trial -- specifically as it relates to GFO's affirmative defense of acquiescence that was at the core of the Chancery Court's ruling. That was supposed to be GFO's burden, but the Court never shifted the burden to GFO at any point in its ruling. All such errors below are reviewed *de novo* and cannot stand. Reversal is therefore required.

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1 [S*ee* A218-220 and A491, A507, A633 & A637).]

2 [*See* A386 at § 5.2(c)(v) (at A396).]

SUMMARY OF ARGUMENT

1. The Chancery Court erred in disregarding this Court's precedent regarding the stringent nature of fiduciary obligations. It did so despite acknowledging that the fiduciary (GFO/Gard) did not disclose certain material information to PPSF/Findler and ignoring Gard's many other nondisclosures of material fact. It is the duty of a fiduciary to make full and accurate disclosures *on the front end*. It is *not* the duty of the recipient to be suspicious of what a fiduciary tells him and to hunt for the truth. In essence, the Chancery Court improperly treated this as an arm's length relationship, rather than the *fiduciary* relationship that it was. Appellant PPSF is entitled to reversal for entry of judgment in its favor on Count I for breach of fiduciary duty and on Count IV which affords a constructive-trust remedy.

2. The Chancery Court erred in concluding that Gard did not breach his duty of loyalty by usurping PRF's business opportunities even though the evidence showed that he stripped PRF of its entire litigation-funding business and profits, placing them outside of Findler's reach. Such a ruling disregards this Court's well-established principles of fiduciary obligations. Moreover, since this fiduciary personally benefited from an undisclosed agenda, controlling law requires that he bear the burden to prove the propriety of his actions and disclosures. The Chancery Court, however, never shifted the burden of proof to GFO/Gard. Instead, the

Chancery Court just repeatedly ruled that PPSF failed in its burden of proof. For these reasons as well, Appellant PPSF is entitled to reversal for entry of judgment in its favor on Counts I and IV.

3. The Chancery Court erred in ruling that Gard's diversion of PRF's business and profits did not breach PRF's Operating Agreement. That Agreement required 50/50 distribution to GFO *and PPSF* of all profits from their joint litigation-funding business. But that never happened due to Gard's wrongful diversion of the money flow to completely bypass PRF. Notwithstanding, the Chancery Court ruled in his favor -- despite the Operating Agreement expressly requiring all amendments to be *in writing* (which never occurred) and despite the Court acknowledging that Findler expressly *rejected* Gard's belated efforts to amend the Operating Agreement. In so ruling, the Court failed to apply well-settled principles of contract interpretation. Appellant PPSF is entitled to reversal for entry of judgment in its favor on Count II for breach of the Operating Agreement.

<u>STATEMENT OF FACTS</u>

Appellants are mindful that determinations by the Chancery Court ("Court") with respect to witness credibility and factual determinations on disputed evidence are not a proper subject of this Court's review process. As such, Appellants have crafted this fact statement based largely on the factual determinations made below, the contents of the controlling LLC Operating Agreement, and material admissions that were made by Casey Gard ("Gard") on behalf of his company Appellee Gard Family Office, LLC ("GFO") at trial. As this Honorable Court reviews this fact statement, it must view all of it from the viewpoint of what Gard himself conceded was his corporate entity GFO's *<u>fiduciary duty of loyalty and fairness</u>* to Appellants. [A187-188, A191.] That is an admitted point and drives the entire analysis in this appeal.

A. *<u>The Controlling LLC Operating Agreement</u>*

At the center of this case is the Limited Liability Company Agreement of PRF ("Operating Agreement"). [A386.] It provides in pertinent part as follows:

- *<u>Preamble</u>*: PRF has two "Members" -- Appellant PPSF (which is fully owned by Findler) and Appellee GFO (which is fully owned by Gard). [A388.]

- *<u>Art. I, § 1.3 (Purpose)</u>*: The purpose and business of the LLC was designated as "*<u>deploying the Company's capital as investments</u>* in (i) non-recourse investments, including non-recourse fundings, extended to third parties … and (ii) recourse loans extended to third parties…." (Emphasis added). [A388.]

- *Art. II, § 2.1(a)-(b) (Management)*: GFO and PPSF are the "Managing Members" and "may be removed and replaced only upon the affirmative vote of all the Members." Findler is the President of the LLC. [A389-390.]

- *Art. III 3.1 & Sch. A (The Members)*: Each Member owns 50% of the LLC. [A391, A399.]

- *Art. III, § 3.5(B)(ii) (Distributions)*: The initial sentence requires that all investment capital "shall be separately identified and tracked" in PRF's books and records, so that distributions can be properly allocated. Based on that process, Subsection (A) provides that distributions related to non-recourse funding where the investment capital was provided by a member (*i.e.*, Gard or Findler) shall be allocated 75% to GFO and 25% to PPSF, and Subsection (C) provides that distributions related to investment capital that is sourced from a third party (described as a "Third-Party-Financed Investment") *shall be allocated 50% to GFO and 50% to PPSF*. [A392-393.]

- *Art. V, § 5.2(c) (Confidentiality)*: Each Member "shall not, during and after his or her membership in the Company, divulge, disclose or communicate any Confidential Information, directly or indirectly, to any Person, except to the extent such disclosure is necessary to the business of the Company." "Confidential information" is broadly defined and includes client names and any information relating to them, any investments and related information, all loan/case matters, names and information relating to prospective clients, proprietary information and trade secrets of the Company, business practices and procedures, business plans, ideas that are derived from access to confidential materials, and many other enumerated items. [A396.]

- *Article V, § 5.2(f)*: The restrictions in § 5.2 "are necessary for the protection of the business and goodwill of the Company and are considered by each Member to be reasonable for such purpose." [A396.]

- *Article V, § 5.3 (Amendment)*: "This Agreement *may only be amended by a written instrument signed by all of the Members*." (Emphasis added.) [A397.]

- *Signature Block*: The Operating Agreement was signed by Findler for PPSF and Gard for GFO. [A398.]

As the Court recognized in the Order below, there was never any written amendment to this Operating Agreement [Ex. A at 22], and thus it has remained the controlling document at all times material to this lawsuit.

B. ***Chancery Court's Findings and Undisputed Evidence/Admissions at Trial***

Appellant/Plaintiff Brett Findler is a personal-injury attorney with decades of experience devoted to that specialty. [Ex. A at 3.] Through that practice, he saw a growing need for litigation funding and believed that he could leverage his preexisting relationships to launch a successful company in that market. [*Id.*] So, in mid-2018, Findler founded his own company Appellant PPSF. [*Id.*] PPSF provided non-recourse litigation funding to lawyers for their clients' medical care and other litigation expenses. [*Id.*] If a case resulted in a monetary award or settlement, PPSF profited by collecting the amount funded plus interest. [*Id.*] Around the time Findler founded PPSF, he met Gard who had experience in managing hedge funds. [*Id.* at 3-4.]

Findler and Gard hit it off and began spending time together socially. [*Id.* at 4.] This often included taking long walks on Miami Beach where the pair would discuss their lives and their respective businesses. [*Id.* at 4.] Findler then pitched Gard on a potential investment in PPSF, explaining how additional capital could allow national expansion. [*Id.* at 4.] Although Gard lacked experience with litigation funding, he expressed interest in the opportunity given his personal hedge-fund experience and raising third-party capital. [*Id.* at 4.] So, the pair discussed a joint business plan. [*Id.* at 4-5.] In late 2018, Gard began investing in PPSF's fundings. [*Id.* at 5.]

In early January 2019, Findler and Gard formed PRF -- with each of their respective companies PPSF and GFO being a managing member thereof with a 50% ownership interest. [*Id.*] As part of that formation process, they executed the Operating Agreement described above – which, among other things, *<u>required</u>* all profits from third-party-sourced capital to be *<u>distributed 50/50</u>* to PPSF and GFO.

[*Id.*; A386 at Art. III, § 3.5(B)(ii).] At first, PRF focused on pre-settlement fundings but that soon expanded. Findler handled the marketing and underwriting, while Gard handled the financial side -- with GFO supplying capital on a discretionary basis. [Ex. A at 9.] By the end of 2019, PRF had originated several million dollars in fundings, which led the parties to consider expansion. [*Id.*] Around this time, several investors from Gard's prior hedge-fund days approached him about starting a new fund. [*Id.*] Gard told Findler that he planned to start a new hedge fund to invest in litigation-finance assets and that GFO itself would not make any further investments. [*Id.* at 10.]

According to the Court below, it was at that early point in time when the parties had "oral communications" about transforming PRF's business into an "origination-and-servicing" ("O&S") company which would only earn a [redacted] fee and moving PRF's existing and future litigation-funding business into Gard's newly-created hedge fund.[3] [Ex. A at 10, 31.] But it is undisputed that, as part of those

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[3] Extensive evidence at trial confirmed that PRF's litigation-funding business was conducted year after year under a unified PRF-centric umbrella that comingled assets and employees as affiliated entities and that was centrally managed using the same PRF nomenclature, logo, and finance software system. [A85, A106-107, A276, A282-283; *see also* A271-273, A278-279, A282-283, A292; A424 (litigation-funding agreement defining "Lender" as "PRF Fund I, LP/Priority/Priority RF").] This unified PRF structure was confirmed below by its 2022 marketing deck -- which Gard acknowledged was sent to potential investors and must be truthful. [A230-231, A241.] It had PRF's logo/name on *every* page, represented PRF as a "legal funding and investment company," spoke in terms of "Priority Responsible Funding and *affiliated* companies," and commingled the

communications, Gard never disclosed to Findler that he was using PRF as an "incubator" to create a track record for a hedge fund that only he would own, nor did he disclose the terms of his proposed hedge fund. [Ex. A at 31; A186-187, A214.] In addition, Gard testified that he *recommended* this PRF "transition" from a litigation-funding business to just an O&S business because it would be financially beneficial to Findler and PRF. [A129; A215.][4] In so recommending, however, he never disclosed to Findler that he viewed this as limiting PRF's income to the much smaller O&S fees and eliminating its right to any litigation-funding profits. [A82-83, A185, A186-187, A214, A247.] As the Chancery Court recognized, *no amendment to the Operating Agreement was ever executed to reflect any such fundamental change to PRF's business*.[5] [*See* Ex. A at 22.]

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employees. [*See* A88, A230-231; A240-241 (emphasis added); A89-90, A455 & A482 (marketing decks directed to potential investors); A481 & A658 (account statements for PRF Fund I and II) & A511 (due diligence questionnaire).]

[4] These discussions purportedly took place in late 2019, but the record is devoid of any contemporary writing. The O&S agreements that are mentioned in the Order were prepared *years later* in 2022 and make no mention of restructuring PRF or amending the Operating Agreement. [A91; A476 & A480.] Neither those O&S agreements nor any other document presented at trial reflected that O&S fees would replace PRF's entitlement to litigation-funding profits per the 50/50 distribution provision in Article III, § 3.5(B)(ii) of the Operating Agreement. [A392.]

[5] The Chancery Court filled that gap by pointing to various *subsequent* Gard-drafted documents that Findler either signed or knew about. [Ex. A at 11-17, 19.] These are addressed in the Argument section below in connection with a

Once Gard had his own hedge funds in place, those hedge funds ("Funds") deployed capital for new litigation fundings. [Ex. A at 12, 14-15.] Business really took off. By the end of 2022, the business had expanded significantly -- and had added fundings in California and Texas, as well as post-settlement and mass-tort fundings. [*Id.* at 18.] Findler and Gard still maintained their close friendship at that point. [*Id.*] But things began to unravel after that when Findler had yet to receive *any* of the litigation-funding profits.[6] By late 2023, Gard was touting the success of his own hedge funds while blaming Findler and PRF for how they were handling originations and refusing any salary increases to Findler. [*Id.* at 19-20.] Matters only grew worse in early 2024 -- with Findler becoming visibly upset over Gard's continual accusations and how Gard was touting his own personal success in their business. [*Id.* at 20-21.] At that point -- *for the very first time* – Gard, by his own admission, proposed amending the PRF Operating Agreement "to reflect PRF's transition to purely an O&S business for the Funds." [*Id.* at 22.] Findler rejected

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discussion of Delaware law, which treats such subsequent actions as incurably tainted by a fiduciary's prior nondisclosures.

[6] Findler spent more than five years traveling and marketing focused on creating and expanding a national network of trial attorneys, medical providers, and law firms in order to generate litigation, medical, and mass tort fundings for PRF. [A84, A92-93 & A536 (PRF funding reports 2019-2023)]. Findler's efforts led to huge growth in business fueled by introductions to new lawyers and law firms around the country. [*See* A418, A421 & A435.] Gard had no prior experience in litigation funding. [A158-159.]

any such amendment. [*Id.*] Again, as the record reflects, no written amendment to that Operating Agreement was ever executed.

Since their fallout, PRF has essentially become an empty shell -- while Gard continues to collect litigation-funding profits for himself as cases in the pipeline settle.[7] According to Gard at trial, he had already pocketed around $[redacted] in profits from the litigation-funding business and shared none with Findler. [*Id.* at 23; A218, A219; A491, A633 & A637.]

C. ***Gard/GFO's Own Admissions about Failures to Disclose and Recommendations Made to Findler***

As referenced above, the Court acknowledged in its ruling that Gard never disclosed to Findler that he was using PRF as an "incubator fund." [Ex. A at 31.] The circumstances of that acknowledged nondisclosure were well developed at trial and are pivotal to this appeal. Testimony by Gard's own witness at trial showed that, from the outset of Gard's relationship with Findler, Gard viewed PRF merely as a testing ground that he was using as a "proof of concept" for his own hedge-fund purposes. [A270.] To that end, Gard implemented this undisclosed strategy from

[7] Even though there are no new funding transactions being initiated by PRF, there are still [redacted] of dollars invested in numerous open PRF's proprietary fundings, which will continue to generate returns and payoffs into the foreseeable future. [*See* A536 (PRF Funding Report 2019-2023).] The proprietary relationships belonging to PRF have effectively been taken over by Gard's solely owned companies -- after he directed the Funds to terminate the Administration and Servicing Agreements with PRF in mid-2024. [*See* Ex. A631 & A632.]

the beginning as a means to establish a "track record" over time, so that he could later market that track record to outside investors for *his own* hedge fund. [A268-269, A280-281, A286, A287-288.][8] Yet Gard admitted that he said nothing to Findler about this.[9]

Moreover, Gard admitted that when he introduced the concept of a hedge-fund vehicle to Findler: "*I did not tell [Findler] the terms or the term structure of the hedge fund*." [A186-187, A214; emphasis added.] Nor did he tell Findler that, as a result of structuring it this way, he (Gard) would be taking the *entire* profit return for himself. [A185.][10] In fact, Gard directly admitted at trial that: "I believe that by

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[8] Gard had no prior experience whatsoever in litigation funding and had never funded a lawsuit before meeting Findler. [A158-159.]

[9] At trial, when describing what he had actually told Findler, Gard said nothing about any "incubator" or "incubator fund," nothing about using PRF's "track record" for his own personal benefit, and nothing about eventually diverting their business assets to a hedge fund from which only Gard could reap the investment profits. [A183-187.]

[10] At trial, contemporaneous statements by Gard were introduced showing that, at the time of the transactions, he represented that the hedge-fund vehicle was intended for and as part of PRF's litigation-funding business with no mention of any business "transformation" at PRF. [*See* A401 ("I also purchased 50% of a litigation finance business and that is the business that is the reason for the call as we are thinking of creating a fund vehicle in order to accept external capital for the litigation finance business"), A404 (11/2019 term sheet to first investor in Fund I), A412 (Term Sheet signed by initial third-party investors shows PRF as the "Funder"), A432 (email with PRF marketing deck describing its litigation-finance business "which we recently created a hedge fund for"), A434 (loan-related communications with Lender), A446 (letter to PRF law firm client stating that hedge fund will be used to attract outsiders to invest money with "our Company"), A448 (Gard email

saying [to Findler] my investment management business is starting a hedge fund, that would *infer* that the investment management business will own the hedge fund." *Id*. (emphasis added). But again, Findler is a personal-injury lawyer with no hedge-fund experience at all. That was Gard's specialty. Ultimately, Gard never told Findler that restructuring PRF's business would mean that all profits from PRF's proprietary fundings would bypass PRF altogether in the money flow and belong solely to Gard. [A86-87, A94-97, A98, A99-100, A101, A104-105, A184-185, A218-220, A253-255.] Yet Gard admitted at trial that he *recommended* this restructuring to Findler as being financially beneficial to PRF and Findler.[11] [A129, A215.]

D. *Chancery Court's Conclusions*

Despite all such admissions by Gard himself which highlight his extensive nondisclosures of material fact, the Chancery Court ultimately rewarded him by ruling in his favor on Counts I and II for breach of fiduciary duty and for breach of

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representing that "we should continue taking in third-party investors and add a credit facility to utilize some leverage"), A482 (2022 marketing deck describing PRF as a litigation finance investment company); *see also* A437 & A455.]

[11] From 2019-2021, Gard also initiated and recommended that over $[redacted] in PRF existing proprietary fundings be transferred to PRF Fund I and II [*see* A639, A641, A643, A646, A649, A652, A655] -- all under the guise of being under the PRF umbrella of affiliated companies.

contract, as follows:[12]

1. *Count I*

The Court concluded that the parties had "oral communications" about transforming PRF's business into a mere O&S company and thus rejected that GFO "wrongfully used its position of trust and confidence to further Gard's private interest to PRF's detriment." [Ex. A at 31, 33.] The Court explained that "Gard disclosed his alleged plan to incorporate a hedge fund in PRF's business," that PPSF (through Findler) "knew or had access to the material information" that was allegedly withheld, and that "PRF was actively engaged in the process of undertaking the very actions it now challenges." [Ex. A at 31, 33.] The Court thereby rejected PPSF's claim for breach of fiduciary duty. Despite blaming PPSF for essentially causing its own misfortune, the Court actually acknowledged that GFO had failed to disclose certain key information about the hedge funds that Gard was creating. [Ex. A at 31.] Notwithstanding such nondisclosure, the Court blamed PPSF for failing to discover the undisclosed information and for failing in its burden to prove that Gard had usurped its business opportunities through a material nondisclosure. [*Id.* at 33-34.]

[12] The Court also rejected Count III (tortious interference) [Ex. A at 46-47], but that is not at issue in this appeal. As for Count IV (constructive trust), the Court concluded it was merely a remedy for the substantive counts. [*Id.* at 48.] *See generally* Compl. at A30.

2. *Count II*

On the contract count, the ruling was twofold. First, the Court ruled that the 50/50 distribution provision of the Operating Agreement was never triggered -- essentially because all of the litigation-funding profits had flowed into Gard's own hedge funds, so there was no PRF money to distribute. [Ex. A 36-37.] Second, the Court ruled that because the Operating Agreement generally allowed PRF "to engage in any lawful business permitted under the Act," the parties' alleged oral transformation of the business to an O&S company (rather than a litigation-funding business) was not actually precluded by the Operating Agreement and that such a business transformation was supported by other documentation allegedly showing that PPSF/Findler had acquiesced to this transformation in the business. [*Id.* at 39-42.] Accordingly, the Court did not reach Appellants' contention that such a fundamental change in the business purpose of the LLC needed to be memorialized through an amendment to the Operating Agreement. [*Id.* at 35.]

Two aspects of that contract ruling are particularly noteworthy. First, the Court ruled that PPSF failed in *its* burden of proof [Ex. A at 35] -- even though the decision explicitly turned on GFO's affirmative defense of acquiescence for which GFO had the burden of proof. Second, the Court acknowledged in its fact recitation that Findler *rejected* Gard's proposed changes to the Operating Agreement to reflect the purported business transformation [Ex. A at 22], but the Court never mentioned that rejection in its legal analysis and completely avoided the issue.

ARGUMENT

I. The Chancery Court Erred by Refusing to Apply Well-Settled Fiduciary Standards to Admitted Nondisclosures by Appellee GFO as a Corporate Fiduciary and Exonerating GFO of Liability for Such Material Nondisclosures.

A. Question Presented

Did the Chancery Court err by failing to apply recognized fiduciary standards to GFO's admitted nondisclosures to its co-member PPSF and ruling against Appellant PPSF on Count I? [A301-310; A343-349; A355-362; Ex. A at 25, 31]

B. Standard and Scope of Review

This issue addresses errors of law and an improper legal standard, which are reviewed *de novo*. *See Parks v. Carver*, No. 291, 2025, 2026 WL 395926, at *3 (Del. Feb. 11, 2026); *accord In re Zantac (Ranitidine) Litig.*, 342 A.3d 1131, 1143 (Del. 2025).

C. Merits of Argument

Count I asserted a claim against GFO for breach of fiduciary duty in its role as Appellant PPSF's co-member of PRF. At trial, Gard openly admitted that he (through GFO) had a fiduciary level of responsibility here. As the above fact statement reflects, however, there was a string of material nondisclosures by

Gard/GFO that fall into essentially four buckets.[13] *First*, as the Order acknowledges, Gard never disclosed that he was using PRF as an "incubator fund." As the evidence showed, Gard took that step to create a track record for a new hedge fund that he would create for the litigation-funding business. That was an essential step for Gard to eventually grab PRF's entire business and profits for himself and bypass PRF altogether. *Second*, as Gard admitted at trial, when he pitched the idea of a hedge fund to Findler, he did not actually disclose the terms thereof -- most notably, the fact that only he (Gard) would control and ultimately own it. *Third*, Gard never disclosed to Findler that all profits from PRF's loan/case matters would be paid only to himself -- and not shared with Findler in accordance with the 50/50 distribution provision in the Operating Agreement. *Fourth*, Gard testified that he affirmatively recommended to Findler that transitioning PRF's business to a narrow O&S business would be financially beneficial to PRF and to Findler and in their best interest. But he never disclosed or explained to Findler that this would relegate PRF's income only to much smaller O&S fees and would eliminate its right to any litigation-funding profits.

[13] At all times material, Gard was acting on behalf of his company GFO, and Findler was acting on behalf of this company PPSF. In keeping with the party references in the order on appeal, this issue speaks in terms of the actions of "Gard" and "Findler" while acting on behalf of their respective companies.

Again, it is undisputed that Gard and Findler through their respective corporate entities were equal co-members of PRF that was explicitly set up for the express purpose of deploying capital as investments and distributing profits on all third-party-sourced investments on a 50/50 basis. [A386 at §§ 1.3 & 3.5(B)(ii).] As such, there is no question that the above information that Gard failed to disclose to Findler was material to their joint business endeavor and to Findler's decision-making process going forward. But by failing to disclose material information about his personal hedge-fund strategy, Gard was able to manipulate Findler's subsequent actions and ensure that all profits of their joint litigation-funding business would end up going only to him via his hedge funds. As a further breach of loyalty, Gard took advantage of his role in handling the financial end of the business by allocating essentially all affiliated companies' operational expenses to PRF, while booking the lion's share of the profits only to his solely-owned affiliated entities. [A274-275, A284-285, A289-290.]

The Chancery Court concluded, however, that Gard's nondisclosures were essentially meaningless. As footnote 193 of the order reflects, the Court reached that conclusion by completely disregarding and/or avoiding all of the fiduciary-duty case law that Appellants had cited in their briefs. In the Court's view, none of that case law mattered because a fiduciary duty "arises situationally, such that its scope and requirements depend on context." Certainly, the *precise* information that must be disclosed depends on the specific context. But the case law that Appellants relied upon articulates well-established principles of fiduciary responsibility that apply across the board to all fiduciary relationships and that this Court routinely relies upon regardless of the specific context. The Chancery Court's wholesale rejection of that body of law and the fiduciary standards set forth therein constitutes reversible error. Moreover, its analysis on pages 27-34 went awry by focusing solely on *after-the-fact* documents that Finder either signed or knew about which allegedly reflected a "business transformation" and essentially concluding that all such subsequent events retroactively cured Gard's nondisclosures. That backwards-looking approach turns the controlling legal framework governing fiduciary duties upside down. Under Delaware law, it is the fiduciary's obligation to make a full disclosure up front. It is *not* the burden of the recipient to question what the fiduciary tells him, to infer other facts from what he is told, or to look elsewhere to verify it. Yet that is what the Court below required of Findler -- as if this were just an arm's length relationship. Nothing about the Court's ruling comports with the law of fiduciary obligations and the unwavering duty of loyalty.

This Court's decision in *In re Mindbody, Inc.*, No. 484, 2023, 2024 WL 4926910 (Del. Dec. 2, 2024), is particularly instructive as to what is expected of a fiduciary. As this Court held, the duty of disclosure is integral to the duties of "care, good faith, and loyalty" owed by all fiduciaries, and fiduciaries *must* "disclose fully and fairly all material information within their control." *Id.* at *28 (footnote and internal quotations omitted). As such, "corporate fiduciaries can breach their duty of disclosure under Delaware law" in essentially three ways: (1) "by making a materially false statement"; (2) "by omitting a material fact"; or (3) "by making a partial disclosure that is materially misleading." *Id.* Omitted information is deemed to be material if its disclosure would likely have been <u>*viewed by the recipient*</u> as having "significantly altered the total mix of information available," *id.*, and such an omission constitutes a fiduciary breach *regardless of* whether its disclosure would have caused the recipient to "act differently." *See Cygnus Opportunity Fund, LLC v. Washington Prime Group, LLC*, 302 A.3d 430, 451 (Del. Ch. 2023); *see also City of Sarasota Firefighters' Pension Fund v. Inovalon Holdings, Inc.*, 319 A.3d 271, 292 (Del. 2024) (materiality is analyzed from viewpoint of recipient, <u>*not*</u> from subjective belief of fiduciary).

Furthermore, once a fiduciary "travel[s] down the road of partial disclosure," he must provide an "accurate, full, and fair characterization" of all relevant information. *See Mindbody, supra*, at *29; *see also Largo Legacy Group, LLC v. Charles*, No. CV 2020-0105, 2021 WL 2692426, at *13 (Del. Ch. June 30, 2021) (in LLC context "<u>*manager is not permitted to use their position of trust and confidence to further their private interests*</u>" nor "act with a purpose other than that of advancing the best interests of the corporation"; "a fiduciary may not play hardball with those to whom he owes fiduciary duties") (emphasis added).[14]

The crucial point here is that the law imposes a stringent burden on any fiduciary to act with utmost honesty, candor, and completeness at all times when dealing with those to whom such a duty is owed. Partial disclosure does not cut it. As the trial evidence established, however, Gard did not even come close to fulfilling such responsibilities in his dealings with Findler. Quite to the contrary, from the very beginning of his relationship, Gard concealed key facts that should have been, in this Court's words, "in the total mix of information" available to Findler as he chose to move forward with Gard. Under controlling law, this fiduciary was required to disclose to Findler *all* facts about his hedge-fund strategy/structuring and his recommendation to transform the business -- information that would have shined a

[14] In *Largo,* the plaintiff claimed that the defendants (the LLC's Manager and principals) pursued a parallel venture on the adjacent land through a newly-formed entity that they separately owned and controlled. *Largo, supra*, at *1. The plaintiff claimed that the defendants misappropriated LLC assets by moving them into their newly-formed entity and then, by withholding material information, they ultimately benefitted themselves to plaintiff's detriment. *Id.* at *1, *19. The *Largo* court concluded that this would be a breach of fiduciary duty because the defendants had "depriv[ed] Plaintiff of information and fair value," had engaged in "an orchestrated series of self-interested actions … taken to the detriment of the Company and Plaintiff," would "receive financial gain from the Project, paid for by the Company and its Members," failed to "allot[] to Plaintiff its rightful share from the Company's returns," and had taken "two sources of Company assets in which Plaintiff had a stake" and "moved them over to a new entity that [the Manager] owned and controlled." *Id.* at *13-*15.

light on how Gard would eventually bypass PRF altogether and divert the profits of their joint business to himself. Instead, this fiduciary chose to dispense half-truths and remain silent as to the opportunities he was stripping from PRF and Findler.

Once those nondisclosures occurred, the breach and harm occurred -- for the simple reason that Findler was necessarily moving forward *without full knowledge* of Gard's hidden agenda and maneuvers. The Chancery Court's very approach in placing the entire blame on Findler cannot be reconciled with controlling law. To recap:

- Gard's breach cannot be excused by any subsequent actions by Findler because those are necessarily poisoned by his nondisclosures. From the very beginning and throughout their relationship, Findler was entitled to be told everything that Gard knew and intended with respect to their joint business venture, including the financial aspects of their business that he was in charge of handling.

- Gard's breach cannot be excused by blaming Findler for failing to "infer" the truth because that is not required. *See O'Malley v. Boris*, 742 A.2d 845, 851 (Del. 1999) ("full disclosure requires more than strong inferences").

- Gard's breach cannot be excused by blaming Findler for not rummaging through the universe of available documents to verify what Gard was telling him because that too is not required. Indeed, the proper analysis as to whether a fiduciary has fulfilled his duty examines the acts of the fiduciary -- *not* the acts of the party he is charged with protecting. *See McNeil v. Bennett*, 792 A.2d 190, 211-212 (Del. Ch. 2001) (rejecting fiduciaries' defense that beneficiary "should have been able to discern" material information on his own because fiduciaries had "affirmative obligation" to accurately inform beneficiary of such information), *rev'd in part on other grounds*, 798 A.2d 503 (Del. 2002).

Accordingly, the judgment on Count I (breach of fiduciary duty) and Count IV (constructive trust)[15] must be reversed for entry of judgment in favor of Appellant PPSF.

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[15] *See* note 12, *supra*.

II. The Chancery Court Erred by (a) Concluding that Appellee GFO Did Not Usurp PRF's Business Opportunities for Gard's Own Personal Benefit and (b) Failing to Place the Burden of Proof on GFO for an Affirmative Defense that Underpinned the Court's Ruling.

A. Question Presented

Did the Chancery Court err in rejecting Appellant PPSF's claim that GFO breached the duty of loyalty by usurping PRF's business opportunities and in failing to place the burden of proof on GFO to prove PPSF's alleged agreement/acquiescence to a substantially limited role for PRF? [A310-317; A320-325; A352-357; A359-360; A364-367; Ex. A at 26.]

B. Standard and Scope of Review

This issue addresses errors of law and allocation of burdens of proof, which are reviewed *de novo*. *See In re Zantac, supra,* at 1143. It also addresses mixed questions of law and fact, which are reviewed *de novo*. *See Miller v. PennyMac Corp.*, 77 A.3d 272 (Del. 2013).

C. Merits of Argument

This second issue is essentially an extension of the first and likewise challenges the Chancery Court's rejection of the breach-of-fiduciary-duty claim in Count I. This issue focuses specifically on the Court's ruling below that Appellant

PPSF failed to prove that its LLC co-manager Appellee GFO (through Gard) usurped corporate opportunities to the detriment of PRF.[16]

At the outset, the lower court imposed the burden of proof here on the wrong party. As the case law teaches, while the plaintiff bears the burden to prove a material deficiency in a fiduciary's disclosures (which Appellants did, *see* Point I, *supra*), the burden then shifts to the fiduciary where he or she is relying on that recipient's subsequent conduct to justify a transaction that personally benefitted the fiduciary. *See, e.g., In re Volcano Corp. Stockholder Litig.*, 143 A.3d 727, 748 (Del. Ch. 2016) ("[a]lthough a plaintiff generally bears the burden of proving a material deficiency when asserting a duty of disclosure claim, a defendant bears the burden of demonstrating that the stockholders were fully informed when relying on stockholder approval to cleanse a challenged transaction") (citations omitted); *Schock v. Nash*, 732 A.2d 217, 226 (Del. 1999) ("[i]f the transaction is challenged, the burden of persuasion to justify upholding the transaction is on the fiduciary"). This shifting of the burden of proof makes sense because, in such a context, the fiduciary is essentially attempting to justify its own actions through the recipient's alleged acquiescence by conduct, which is an affirmative defense for which a defendant necessarily has the burden of proof. *See, e.g.*, *Basho Techs. Holdco B, LLC v. Georgetown Basho Inv'rs, LLC*, No. CV 11802-VCL, 2018 WL 3326693, at

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16 *See* note 13, *supra*.

*2 (Del. Ch. July 6, 2018) ("[f]or the breach of fiduciary duty claim … [t]he defendants bore the burden of proof on their affirmative defense of acquiescence"), *aff'd,* 221 A.3d 100 (Del. 2019).

That error taints the ruling below and is itself fatal to the Court's resolution of the issue. But the problems run deeper. According to the Chancery Court, Gard was entitled to keep 100% of the litigation-funding profits because Findler had signed assignments of certain existing litigation fundings to the Funds that Gard set up, signed O&S agreements under which PRF earned a [redacted] O&S fee [A476 & A480], signed a pledge agreement in an unrelated matter that did not involve any LLC business,[17] and had access to the documents creating the hedge funds. According to the Court, these events substantiated Findler's oral agreement to PRF's "business transformation."

The basic flaw in that analysis is that everything the Court relied upon to reject a breach of loyalty claim and to show Findler's acquiescence to a "business transformation" occurred years *after* Gard's conduct and admitted nondisclosures. Under Delaware law, a fiduciary is barred from personally profiting from any transaction without making full disclosure to the affected parties *in the first instance*

[17] As for the 2023 pledge agreement, the recital relied upon expressly carved out "the pledgor's interest in the subject entity [PRF]." [A497] Thus, it has no bearing on Findler's interests in PRF which were all preserved (including his interests in PRF assets, proprietary fundings, confidential information, etc.). The Court did not reconcile that express exception in its analysis.

-- which did not occur here.[18] *See Largo, supra,* at *13 ("[i]n the limited liability context … [a] _manager is not permitted to use their position of trust and confidence to further their private interests_" and "a fiduciary may not play "hardball" with those to whom he owes fiduciary duties") (emphasis added); *see also Mills Acquisition Co. v. Macmillan, Inc.*, 559 A.2d 1261, 1280, 1283-84 (Del. 1989) ("duty of candor owed by corporate fiduciaries to disclose all material information relevant to corporate decisions from which they may derive a personal benefit" and this is "based on the unyielding principle that corporate fiduciaries shall abjure every temptation for personal profit at the expense of those they serve").[19] What that means is that where (as here) a fiduciary has failed to disclose material information in the first place, such nondisclosure incurably taints subsequent conduct by the recipient who acted without being fully informed and thus precludes the fiduciary from relying on any purported acquiescence thereafter to derive a personal benefit or excuse wrongdoing. *See Mills, supra*, at 1280, 1283-84; *Lennox Indus., Inc. v.*

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[18] *See Clements v. Rogers*, 790 A.2d 1222, 1226 (Del. Ch. 2001) ("a plaintiff is not barred by the doctrine of acquiescence unless she knew _all, and not merely some, of the material facts_ regarding the merger at the time she accepted the merger consideration") (emphasis added).

[19] *See also Enhabit, Inc. v. Nautic Partners IX, L.P.*, No. 2022-0837, 2024 WL 4929729, at *32–33 (Del. Ch. Dec. 2, 2024) (emphasis added) (equitable relief is available "to redress a wrong where one party is unfairly enriched at the expense of another to whom a duty is owed" and to "extinguish all possibility of profit and equity flowing from the fiduciary's breach").

All. Compressors LLC, No. N19C-03-045-AML (CCLD), 2021 WL 4958254, at *8 (Del. Super. Ct. Oct. 25, 2021) (acquiescence can only occur where the plaintiff acted with "*full knowledge* of his rights and the material facts") (emphasis added), *aff'd,* 282 A.3d 1053 (Del. 2022).

By Gard's own admission, he *recommended* to Findler that PRF be transitioned to an O&S role and that it was in their best interest. But that recommendation (at least the way Gard ended up implementing it) came with a monumental downside that he never mentioned -- namely, the elimination of litigation-funding profits to PRF and that the 50/50 distribution provision in the Operating Agreement would be avoided by Gard's use of the hedge funds to directly finance the PRF clients' loans. Again, Gard never told Findler that he was structuring the Funds so that all profits from the litigation-funding business would belong only to him (and excluded from PRF/Findler's co-ownership rights), and there was no evidence that Gard ever told Findler that the [redacted] O&S fees that Findler later agreed to would replace the gigantic profits generated from their joint litigation-funding business. [A75-76] [20] Such a drastic, profit-gutting change to PRF was certainly ***not*** in the best interests of PRF, PSSF or Findler -- which Gard was supposed to be protecting. After all, these litigation fundings constituted the most

[20] The [redacted] O&S fees are tiny compared to the nearly [redacted] returns the litigation fundings were generating.

valuable assets of PRF and its primary revenue source.[21] It was a blatant fiduciary breach for Gard to have even recommended this, much less weaponize it against his co-manager by exploiting that recommended structure in such a way as to bypass PRF in the money flow and keep all profits for himself. *See Largo, supra*, at *14 (in LLC context, a fiduciary is liable for actions taken "out of material self-interest that diverged from the interests of the Company or its members"); *see also In re Columbia Pipeline Group, Inc. Merger Litigation*, 299 A.3d 393, 452–56 (Del. Ch. 2023) ("[a] corporate fiduciary acts in bad faith when the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation"); *In re Mobilactive Media, LLC*, No. 5725–VCP, 2013 WL 297950, at *33 (Del. Ch. Jan. 25, 2013) (LLC member breached fiduciary duty to LLC by usurping corporate opportunities and "contribut[ing] materially to [the LLC's] inability to fulfill its business purpose," and thus should not be permitted to "hinder [the plaintiff] from recovering the damages he is due"). Furthermore, Gard accomplished his goal and benefited himself through the misuse of PRF's proprietary information and resources

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21 [*See* A599*:* interest report of $18,237,307 from 2019-2023 as reflected in the calculations prepared by Mr. Szep; A630: PRF payoff report reflecting principal and interest received of $[redacted] for 2019-2024 (partial year); *see also* note 3, *supra* (detailing trial evidence showing that Gard's funds operated as affiliates under the PRF umbrella and centralized management).] At trial, the corporate representative for Gard's Funds referenced the "PRF umbrella" and acknowledged that, while employed by PRF, his core responsibilities were to the Fund manager. [A271-273, A278-279, A282-283, A292.]

-- including, but not limited to PRF's identity/branding, PRF's litigation-funding concept, PRF's logo, PRF's software system, PRF's employees, PRF's business practices, PRF's clients, PRF's business strategies, etc. -- which itself is a breach of fiduciary duty.[22] *See, e.g., Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 842, 858 (Del. Ch. 2022).

The only sustainable conclusion to be reached on the trial evidence is that Gard took advantage of his close friendship with Findler,[23] withheld material information, and dispensed half-truths so that he could personally profit from the litigation-funding business at the expense of PRF and Findler/PPSF. He had an undisclosed agenda from the get-go to set up a structure through which he could bypass the 50/50 distribution provision in the Operating Agreement. Instead of having his Funds provide the investment capital to PRF for the fundings, Gard had his Funds monetize the fundings directly and circumvented PRF's accounts. Gard's conduct in seizing a profit-making opportunity for himself at the expense of his

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22 [*See, e.g.* A88, A102-103, A230-231; A455 & A482 (marketing decks directed to potential investors), A481 & A658 (account statements for PRF Fund I and PRF Fund II), A511 (due diligence questionnaire); *see also* A472 (Gard email representing that the relationships with law firms are "proprietary relationships") & A477 (Gard email acknowledging that "legal funding relationships are a form of IP in this business."]

23 Gard acknowledged that he fostered a close bond with Findler. [A175-176.] Findler believed and relied on that bond and trusted Gard's financial acumen and representations. [A77-79, A80-81; A422, A450 & A536 (PRF Funding Reports 2019-2023).]

equal owner and in acting adversely to the best interest of PRF (for which he owed the utmost duty of loyalty) constitutes classic self-dealing. Principles of equity and loyalty do not permit him to engage in such misconduct and then walk away as the sole benefactor of PRF's profits.

For these reasons, reversal is required for entry of judgment in Appellant PPSF's favor on Counts I and IV.

III. The Chancery Court Erred in its Interpretation and Application of the LLC Operating Agreement.

A. Question Presented

Did the Chancery Court err in failing to construe and enforce the mandatory written-amendment provision of PRF's Operating Agreement where the Court found that PRF had undergone a "business transformation" by way of "oral communications"? [A316-325; A325-330; A355-357; A362-367; Ex. A at 34-36, 39-40, 43]

B. Standard and Scope of Review

This issue addresses errors in contract interpretation, which are reviewed *de novo*. *See F.A.M.E. LLC v. EmTurn LLC*, No. 230, 2025, 2026 WL 1065704, at *3 (Del. Apr. 20, 2026); *Holifield v. XRI Inv. Holdings LLC*, 304 A.3d 896, 921 (Del. 2023). This issue also involves mixed questions of law and fact, which are reviewed *de novo*. *See, e.g.*, *Miller, supra*, at 272.

C. Merits of Argument

From the very beginning, Gard/GFO and Findler/PPSF agreed that all profits from their litigation-funding business that used capital sourced from third parties would be distributed to them on a 50/50 basis. Indeed, the Operating Agreement was explicit about that, and the Operating Agreement was never amended. [A386 at Art. III, § 3.5(B)(ii) (at A392).] As it turned out, however, Gard essentially walked away with everything. This is a breach of contract -- plain and simple.

The Chancery Court's ruling is legally unsustainable for many reasons, not the least of which is that it is internally inconsistent. In this regard, the Order determines (i) that PRF's LLC Agreement provides under § 5.3 [A397] that "[t]his Agreement may only be amended by a written instrument signed by all of the Members," (ii) that the Agreement was never amended, and (iii) that shortly into the performance of the Agreement PRF had a complete "business transformation" which stripped down its business and divested it of all profits. Respectfully, it is illogical to find that a drastic transformation in PRF's business took place, but at the same time conclude that no amendment to the Agreement was needed. Indeed, the Chancery Court refused to even address the arguments pertaining to whether such a business transformation could be valid without a written amendment to the Operating Agreement.

Viewing the two operative provisions of the Agreement [A388] § 1.3 (business purpose) and [A397] § 5.3 (written amendments only)] *in tandem* -- as the Court must do[24] -- the only sustainable conclusion is that such a fundamental "business transformation" as found by the Chancery Court ***must*** be put in writing as an amendment to the Operating Agreement. But it was not. It was error for the

[24] The Chancery Court acknowledged that a court "reads a contract as a whole and gives each provision and term effect, so as not to render any party of the contract mere surplusage." [Ex. A at 34.]

Chancery Court to rule that it "need not address" the issue. Indeed, it is the pivotal issue on the contract claim, and Appellants should have prevailed based on the mandatory writing requirement in § 5.3. [A397.]

Even if an oral modification to the Agreement were permitted (which it was not), that would not support the Court's ruling because any such amendment must be proven through *clear and convincing* evidence -- a standard that the Chancery Court never even mentioned in its Order. *See Continental Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1232-1233 (Del. Ch. 2000) (Delaware has an "aversion to oral modifications of written agreements" and thus requires that such modifications be proven through *clear and convincing* proof establishing modified terms "with *specificity* and *directness*," that leaves no doubt regarding the parties' intention). This "clear and convincing" standard could not possibly be met on this record where the Court specifically acknowledged that Findler had explicitly *rejected* changes to the Operating Agreement that Gard had proposed for the first time in 2024 "to reflect PRF's transition to purely an O&S business for the Funds." [Ex. A at 22; *see also* A159-160 (Gard admits there was no written amendment to the Operating Agreement ever signed).][25] The bottom line is that the Court's ruling on the contract claim is legally deficient at every step.

[25] A draft amendment was prepared by Gard's own attorney in March 2024, and Gard proposed his own red-lined changes that included the elimination of all distribution formulas. [A199-200, A261, A261-262, A262-263; A600.]

Although that alone requires reversal on Count II, there is more. In rejecting Appellants' argument that the 50/50 distribution provision of the Operating Agreement was violated, the Court ruled that the provision was never triggered because PRF had no litigation-funding profits in its possession and thus no money to distribute.[26] But the very reason that PRF had no such money in its account is because, according to the Court, PRF had a fundamental "business transformation" that eliminated its rights to profits. That, however, only leads right back to Gard's breach of fiduciary duty as discussed in Points I and II above. In other words, Gard cannot claim the 50/50 distribution provision in the Operating Agreement was not triggered when that circumstance resulted from Gard's self-serving conduct that avoided PRF's bank account when the fundings were being monetized. As the PRF fundings were accomplished with capital sourced from third parties, it was a breach of contract for Gard to maneuver around his contractual agreement and fail to honor the 50/50 distribution provision.

Since the Chancery Court focused so heavily on a "business transformation," it should be noted that Gard's conduct in purportedly "transitioning" the business was insidious and systematic. It did not happen overnight, but rather Gard's conduct occurred over several years and through a series of transactions that were not

[26] Findler did not receive distributions of profits during the six-year life of the litigation-funding business, yet as noted, Gard withdrew "somewhere north of [redacted] [dollars]" related to PRF's fundings. [A218.]

documented or represented as amendments to the Operating Agreement. While Findler was consumed with traveling around the country developing PRF's proprietary client list and fundings, Gard was setting up his own new businesses as part of his undisclosed agenda, unilaterally allocating profits and expenses, integrating his new companies into PRF at all levels, and manipulating the money flow to ensure that he would end up with everything. To be clear, just because he owned/controlled PRF Fund I and II did not mean that Gard had any legal right to make full-scale changes to the profit model and hijack PRF's assets, property, and profits in a manner contrary to the established distribution formulas of the PRF Operating Agreement.[27]

As for the Court's ruling that the supposed business transformation to a mere O&S company could be justified under the *general* provision in § 1.3 [A388] that permits PRF to "engage in any lawful business permitted under the Act," that too is misguided. By focusing on that general provision to the exclusion of the *specific* stated business purpose of "deploying the Company's capital as investments," the Court violated a basic rule of contract construction that *specific* provisions control over general provisions. *See DCV Holdings, Inc. v. ConAgra, Inc.*, 889 A.2d 954,

[27] No evidence was presented that PRF properly transferred or relinquished ownership rights to its proprietary fundings, [A75-76, A160-161 & A386 at § 2.1(a) (requiring action by unanimous vote by both LLC members) at (A389).]

961 (Del. 2005) ("[w]ell-settled rules of contract construction require that a contract be construed as a whole, giving effect to the parties' intentions … [and] [s]pecific language in a contract controls over general language"). Furthermore, the Chancery Court's focus on that general provision essentially rendered the specific business purpose as recited in the Operating Agreement meaningless -- yet another approach that is barred by Delaware law. *See Thompson St. Capital Partners IV, L.P. v. Sonova U.S. Hearing Instruments, LLC*, 340 A.3d 1151, 1167 (Del. 2025) ("[c]ontracts will be interpreted to give each provision and term effect and not render any terms meaningless or illusory"). For these reasons as well, reversal is required.

Moreover, the Chancery Court's analysis of Count II repeatedly speaks in terms of PPSF having "acquiesced" to a business transformation and its "acquiescence" thereto. [Ex. A at 39-42.] As noted, however, acquiescence is an affirmative defense for which a ***defendant*** has the burden of proof,[28] yet the Court never placed any burden of proof on GFO in its ruling. [*See, e.g.*, Ex. A at 35 ("PPSF has not carried its burden of proving GFO breached the PRF LLC Agreement"), 42, 46.]

Accordingly, the Order below must be reversed for entry of judgment in Appellant PPSF's favor on Count II.

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[28] *See also Sorrento Therapeutics, Inc. v. Mack*, No. 2021-0210-PAF, 2023 WL 5670689, at *33 (Del. Ch. Sept. 1, 2023) ("Defendants must prove acquiescence by a preponderance of the evidence") (citation omitted).

CONCLUSION

Based on the foregoing, Appellants request that this Court reverse the judgment entered below and remand with instructions to enter judgment in favor of Appellant PPSF on Counts I, II and IV.

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Respectfully submitted,

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