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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE PRIORITY RESPONSIBLE FUNDING, LLC,	No. 147, 2026 Appeal from the Court of Chancery of the State of Delaware in consolidated action C.A. No. 2024-0651-NAC[2] **PUBLIC VERSION Filed July 17, 2026**

APPELLEES' ANSWERING BRIEF

OF COUNSEL:

Stuart P. Slotnick,
BUCHANAN INGERSOLL & ROONEY PC
640 Fifth Avenue, 9th Floor
New York, NY 10019-6102
Tel.: (212) 440-4400
Fax: (212) 440-4401
Email: *stuart.slotnick@bipc.com*

BUCHANAN INGERSOLL & ROONEY PC

Geoffrey G. Grivner (#4711)
Kody M. Sparks (#6464)
500 Delaware Avenue, Suite 720
Wilmington, DE 19801
Tel.: (302) 552-4202
Fax: (302) 552-4295
Email: *geoffrey.grivner@bipc.com*
kody.sparks@bipc.com

Attorneys for Gard Family Office, LLC, PRF Fund I, LP, PRF Fund II, LP, and GFO Asset Management LLC

[2] C.A. No. 2024-0669-NAC was consolidated into C.A. 2024-0651-NAC by the Court of Chancery's October 10, 2024 Order Governing Case Schedule.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Appellees Gard Family Office, LLC ("GFO"), PRF Fund I, LP ("Fund I"), PRF Fund II, LP ("Fund II," and together with Fund I, the "Funds"), and GFO Asset Management LLC ("GFOAM," and together with GFO, Fund I, and Fund II, "Appellees"), by and through undersigned counsel, respectfully submit this Answering Brief in opposition to the Opening Brief ("Opening Brief" or "OB") of Priority Pre-Settlement Funding, LLC ("PPSF") and Brett K. Findler ("Brett," and together with PPSF, "Appellants," and together with the Appellees, the "Parties"):

NATURE OF THE PROCEEDINGS[3]

This is Appellants' last-ditch effort to revive fatally flawed claims. But Appellants merely re-hash the same arguments rejected by the Court of Chancery below, ignoring the findings of fact, and hoping for a different result. No different result is warranted. Nothing in Appellants' Opening Brief supports reversal of the ruling below. And, despite couching their appeal as errors of law, as referenced above, Appellants disregard the factual findings and credibility determinations below, which are afforded deference.

[3] Citations to Appellants' Appendix are referred to as "A__" and citations to Appellees' Appendix are referred to as "B__."

At base, Appellants, after a falling-out with Gard, regret the eyes-wide-open deals that they struck. This does not support claims for breach of contract or breach of fiduciary duty as the Court determined.

As to Appellants' duty of disclosure claim, the Court of Chancery correctly held that there was no lack of disclosure. Appellants contest the factual findings below, which are afforded deference in this Court. But the trial record below amply supports the Court of Chancery's factual findings. Furthermore, the Court of Chancery correctly held that the numerous disclosures eliminate the possibility of any disclosure violation. This Court should affirm the ruling below.

As to Appellants' usurpation of business opportunity claim, the Court of Chancery correctly held that Appellants failed to meet their burden. Appellants failed to address the *Broz v. Cellular Information Systems, Inc.*, 673 A.2d 148, 154 (Del. 1996) factors below and, despite the Court of Chancery's wink to them, failed to do so again here, waiving any such argument. Nonetheless, the *Broz* factors support that no usurpation of business opportunities took place. And the Court of Chancery found, as a factual matter, that Appellants were well-aware of the business opportunities Appellees pursued, and, in fact, voluntarily participated. This is fatal to their usurpation of business opportunities claim. Finally, the Court of Chancery correctly held that Appellees established by a preponderance of the evidence their

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affirmative defense that Appellants acquiesced to PRF's business transition. This Court should affirm the ruling below.

As to Appellants' breach of contract claim, Appellants continue to ignore defined terms, plain contractual text, and the corporate separateness of the relevant entities. First, PRF's stated purpose is broad, allowing PRF "to engage in any lawful business permitted under the [Delaware Limited Liability Company] Act." No written amendment to PRF's Operating Agreement was needed to effectuate PRF's business transition. Second, Appellees did not breach the PRF Operating Agreement's distribution provisions. Those provisions apply only to investments *made by the Company*— PRF. But the litigation fundings complained of were made by *the Funds*, not *the Company*, as Appellants have always been well-aware. This Court should affirm the ruling below.

As to Appellants' constructive trust claim, the Court of Chancery correctly held that because Appellants' substantive claims fail, their request for constructive trust must also fail. Even still, Appellants are not entitled to a constructive trust because they have no substantive claims against the Funds, and can trace no equitable right to the assets at issue. Furthermore, Appellants make no substantive argument as to their constructive trust claim in their Opening Brief, so their arguments are waived. This Court should affirm the ruling below.

SUMMARY OF ARGUMENT

1. APPELLANTS' 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?

APPELLEES' ANSWER: No. The Court of Chancery correctly held that PPSF did not prove by a preponderance of the evidence that GFO breached any fiduciary duties to PPSF.

2. APPELLANTS' 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?

APPELLEES' ANSWER: No. The Court of Chancery correctly held that PPSF did not prove by a preponderance of the evidence that GFO usurped PRF's business opportunities. It correctly found that GFO proved by a preponderance of the evidence that PPSF acquiesced to PRF's business transition.

3. APPELLANTS' 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"?

<u>APPELLEES' ANSWER</u>: No. The Court of Chancery correctly held that no modification of PRF's Operating Agreement was required to effectuate PRF's business transition. The Court of Chancery also correctly concluded that GFO did not breach the distribution provision's of PRF's Operating Agreement because the complained of fundings were inapplicable to PRF based on the relevant corporate structure and definitions and terms of the Agreement.

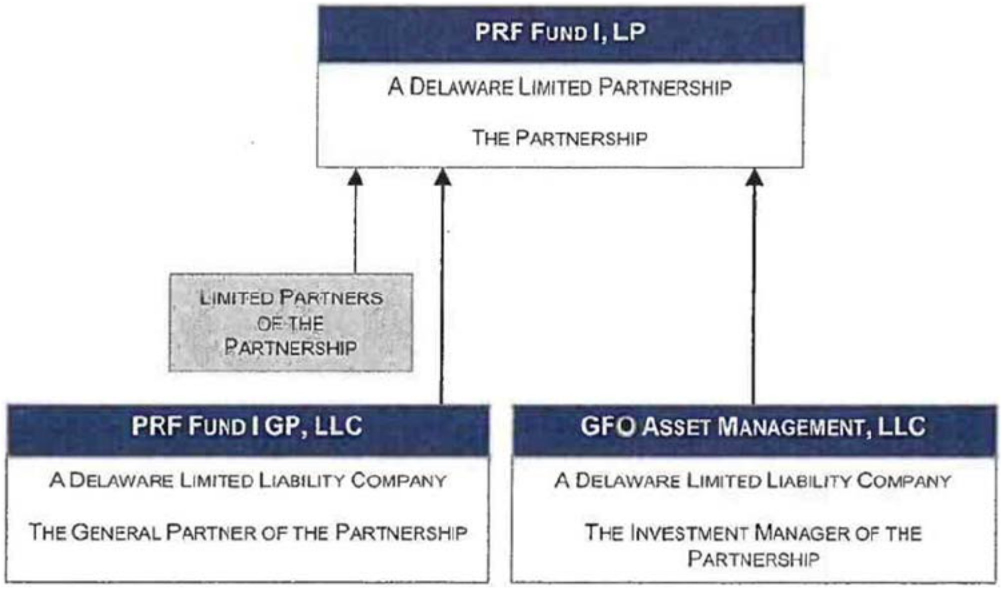
STATEMENT OF FACTS

I. RELEVANT ENTITIES AND CORPORATE STRUCTURE

A. PRF, PPSF, and GFO

Priority Responsible Funding, LLC ("PRF") is a Delaware limited liability company formed in 2019 with two, fifty percent (50%) members—PPSF and GFO. (A386; B406). PPSF is a Florida limited liability company formed in or about 2018 by Brett as a non-recourse litigation funding company. (B13-17; B21-22). Brett is PPSF's sole Member. (B241). Eventually, PPSF's existing litigation fundings were transferred to PRF, and PPSF continued to exist only as a Member of PRF. (*See* A399). GFO is a Delaware limited liability company formed in or about 2014 as a single-family office investment firm. Its Members are Casey Gard ("Gard") and his wife, Melissa.

B. Fund I, Fund I GP, and GFOAM



Fund I is a Delaware limited partnership established in 2019 that operates as a hedge fund. (B2815-2817; B2997). Fund I's initial limited partner was GFO. (B1500). Other than as initial limited partner, GFO has no roles or responsibilities within Fund I. (*See generally* B1086-1139). PRF Fund I GP, LLC ("Fund I GP"), a Delaware limited liability company, is Fund I's general partner and manages Fund I's affairs. (B1089, 1094, 1096-1097); B1501-1504; B2804). Fund I GP is compensated *via* a Performance Allocation. (B1096-1097). GFOAM is Fund I's investment manager. (B1089, 1094, 1096). GFOAM is compensated *via* a quarterly management fee. (B1096).

Brett was a limited partner in Fund I from February 2021 to May 2023. (B141, 142; B2175; B1217; B1323). Brett's brother, Lloyd (PRF's General Counsel), and wife, Brenda, also invested in Fund I. (B143, 477; B2433-2434; B1194; B1249; B1333).

C. Fund II and Fund II GP

Fund II is a Delaware limited partnership established in 2022 that operates as a hedge fund. (B2813-2814). Fund II's corporate structure is similar to Fund I's. Fund II's initial limited partner was Gard. (B1536). PRF Fund II GP, LLC ("Fund II GP," and together with Fund I GP, the "Fund GPs"), a Delaware limited liability company, is Fund II's general partner and manages Fund II's affairs. (B1537-1540). Fund II GP is compensated *via* a Performance Allocation. (B1553). GFOAM is Fund II's investment manager. (B1537). GFOAM is compensated *via* a quarterly management fee. (B1545). GFO has no place in the corporate structure of Fund II.

II. FORMATION OF PRF LLC

In or about 2018, Brett began to pursue a litigation financing business—PPSF— with the financial backing of an individual named Alfredo Vila. (Op. at 3). Brett met Gard—a successful buy/sell hedge fund operator—around that same time and introduced him to PPSF and the litigation funding business. (*Id*. at 3-4). Gard eventually invested in several PPSF fundings. (*Id*. at 5).

Gard and Brett formalized their business venture by forming PRF, and on January 2, 2019, GFO (of which Gard is sole member) and PPSF (of which Brett is sole member) entered into PRF's Operating Agreement (the "OA"). (A386). Originally, PRF utilized Gard's capital to invest in litigation financing opportunities primarily developed by Brett's marketing and solicitation. All of the capital investment and lending was carried out by PRF.

Per the OA, GFO expected to contribute "Operations Capital" for "investment[s] *to be made by the Company*[4][.]" (A391 (§ 3.2) (emphasis added)). That provision notwithstanding, other than initial capital contributions PRF's members were *not* obligated to make any additional capital contributions. (*Id.*) All of PRF's operating capital was provided by Gard, totaling approximately [redacted], with only approximately [redacted] being repaid. (B553).

In light of PRF's original business plan, the OA contemplates distributions through returns on litigation finance loans ***made by PRF***:

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[4] That is, PRF. (A388).

	Funding Type		
	Non-Recourse Fundings*	**Recourse Loans***	**Third-Party Financed Investments**
Distribution Allocation**	75% to Gard 25% to PPSF	85% to Gard 15% to PPSF	50% to Gard 50% to PPSF

*For Non-Recourse Fundings and Recourse Loans, distributions shall initially "be made among the Members in proportion to the percentage of Specific Investment Capital contributed by each Member . . . until the Specific Investment Capital contributed has been returned to the Members." (A392-93 (§ 3.5(b)(ii)(A)-(B)))

****In all cases, the above distribution schedule only applies after "all Operations Capital contributed has previously been returned to the Members via distributions or other returns of capital pursuant to Section 3.5(b)(i)." (A392-93 (§ 3.5(b)(ii)(A)-(C))).**

Appellants' claims relate to their purported entitlement to 50% of distributions under §3.5(b)(ii)(C). (A320). The only reason this provision existed at all was to account for the PPSF investments financed by Alfredo Vila Santander which PPSF contributed to PRF at company formation. (Op. at 38; B518-519).

III. FORMATION OF THE FUNDS AND THE SHIFT IN PRF'S BUSINESS

Soon after PRF's formation, former investors in Gard's prior hedge fund expressed interest in investing in a new fund managed by Gard. (B521, 528). Following these expressions of interest, Gard formed Fund I as a hedge fund for raising and deploying investment capital.

Appellants contend that the decision to pursue this new business was done in a cloak of secrecy and deception. But the Court of Chancery found that the record refutes that narrative. (Op. at 30-31). Rather, Gard fully disclosed his plan to form Fund I and the resulting need and interest to transition PRF to an O&S company for Gard-managed hedge funds. (*Id*.; B529-530; B3201-3202).

This transition made good business sense for both Gard and Brett. (Op. at 33). Outside investors would not invest in PRF. (Op. 9 (citing B527); B720-721). PRF received substantial O&S fees, while at the same time reducing or eliminating its capital risk. (Op. at 33) in a structure that would not require further investment by GFO, which had decided to cease further investment.

The record below established that Appellants and PRF agreed with this shift. (Op at 27-31, 33). Starting in 2019, O&S provisions were inserted into PRF's funding contracts, all of which were executed by Brett. Same with thousands of subsequent funding contracts between the Funds and litigation borrowers, but originated and serviced by PRF under Appellants' supervision and management. (B1455-1498). As clearly permitted under the Operating Agreement, PRF ceased funding new cases, and existing fundings were assigned to the Funds, with Brett signing every assignment contract for PRF. (B1345-1454). In exchange, the Funds "paid the then-current market value of those fundings, which would have been the principal fund plus the accrued income up until the date of the transaction." (Op. at 12, 33; B751-752). Accordingly, the Funds assumed all the risk for unmatured fundings, and, indeed, ultimately realized full losses on some. (B752).

To memorialize the shift of PRF to an O&S entity, Fund I and PRF executed an Administration and Service Agreement on January 4, 2022 (B1534) and Fund II and PRF executed an Administration and Service Agreement on May 13, 2022. (B1566). In both cases, Brett signed on behalf of PRF. (B1534, 1566).

IV. THE PANOPLY OF DISCLOSURES—FAR FROM A PATCHWORK

Appellants argued below that Gard failed to adequately disclose the formation of the Funds and PRF's business transition. (A306). They continue this argument—rejected by the Chancery Court below—in this Court. (*Compare, e.g.,* OB at 2, 10-11, 13-15 *with* Op. at 36). In so arguing, Appellants ignore (i) the clear trial testimony regarding the disclosures, (ii) contractual provisions regarding the disclosures, and (iii) Appellants' and PRF's undisputed course of conduct. Appellants incorrectly assert that the only "disclosure" that would exonerate Appellees would be a signed amendment to the OA. (*See* A320; *see also, e.g.,* OB at 11). And Appellants minimize, or ignore, the multitude of documents that irrefutably demonstrate (i) the shift in PRF's business, (ii) the relevant corporate structure in existence, (iii) PRF's and Appellants' lack of rights to the assets at issue, and (iv) Appellants knowledge (actual or constructive) of all of the above. (*See* B803-807 (citing B1279; B1207; B1086; B1140; B1217; B1194; B1249; A476; A480; A497; B3265; A658; B3209-3264; B1345).

V. Brett and Gard's Relationship Sours

In less than four years, Brett had his compensation increased from [redacted], to [redacted], to [redacted], and finally to [redacted] per year — far more money than he had ever made before. (Op. at 18; B335, 643).

But, as funded cases began to mature in 2023, the results were "terribly disappointing and concerning." (B656). Investments sustained a [redacted] principal loss and achieved a mere [redacted] compounded annual return over a 5.17-year period, far below industry standard, and over one order of magnitude less than the expected [redacted] return. (*Id*.; B1651; Op. at 19).

Gard investigated and discovered severe, systemic underwriting failures by Brett: cases were overvalued, assessments missed critical documentation, and funding requests were approved so quickly that any due diligence was impossible. (Op. at 20; B1083). All of this was consistent with a strategy of rubber-stamping funding approvals, without regard for quality or return on investment. (B69).

Gard further discovered that Brett wastefully spent the operations capital that GFO contributed to PRF. (Op. at 20 (citing B708-710; B1341; B1567)). This waste, combined with Brett's compensation and other operating costs, resulted in GFO's operating capital account reaching a deficit of [redacted]. (B553).

Gard attempted to work with Brett to develop a path towards profitability. Gard, with Paul Szep, developed an operating budget for 2024. (B549-550). Gard also began hosting company-wide underwriting meetings, during which Brett engaged in disruptive behaviors. (B551; B1935-1941). Brett was unwilling or unable to provide requested information necessary to evaluate funding approvals. (B551-552).

Despite poor underwriting performance, concerning expenditures, and overall lack of profitability, Brett demanded a further compensation increase from $[redacted] to $[redacted] per year. (Op. at 21). When Gard declined, Brett claimed the two had reached an "impasse," (B2569-2570; B1334; B1339; B347; Op. at 21), and repeatedly threatened to limit his work or withdraw from PRF entirely. (B2563-2564, 2568-2570; B345-352, 355).

VI. THE ACTION BELOW

On June 14, 2024, GFO filed a petition in the Court of Chancery seeking statutory dissolution of PRF, its winding-up, and appointment of a liquidation trustee, asserting that PRF's co-managing members are insurmountably deadlocked. (*See* A1 (Dkt. 1); *see also* B1572). Brett and PPSF countersued, alleging that (1)

GFO breached the OA; (2) GFO breached fiduciary duties; (3) GFO and GFOAM tortiously interfered with Brett's business relationships; and that (4) a constructive trust should be imposed. (*See generally*, A30-A54).

On October 10, 2024, the Court consolidated the cases under C.A. No. 2024-0651-NAC and bifurcated the liability and damages phases. (A4 (Dkt. 15)).

On March 4-6, 2025, the Court held trial on the liability phase. (*See* A20-21 (Ch. Ct. Dkts. 87-89); *see also, generally,* Tr. Trans.). In June 2025, the Court heard post-trial oral argument. (*See* A22 (Ch. Ct. Dkts. 98-99); *see also* B883-1067).

The Court issued its Post-Trial Memorandum Opinion (the "Opinion" or "Op.")[5] on March 10, 2026, finding that:

> 1. "PPSF has not shown by a preponderance of the post-trial evidence that GFO breached fiduciary duties, violated PRF's operating agreement, or tortiously interfered with Brett's business.1 Instead, the evidence shows PRF's operating agreement permitted the challenged actions, which were the product of repeated, informed consent between the parties[,]"; and
>
> 2. "PRF is deadlocked, essentially non-operative due to its managing members' dysfunctional relationship, and unable to carry out its business purpose [and] should be wound-up and dissolved."

(Op. at 2).

On April 7, 2026, the Parties filed a (i) Stipulation and [Proposed] Order Appointing Liquidating Trustee (A23 (Dkt. 105)) and (ii) Post-Trial Final Order and

[5] Attached to Appellants' Opening Brief as Exhibit A.

Judgment and [Proposed] Stipulation on Selection of Liquidating Trustee (*Id*. (Dkt. 106)), implementing the Court's Opinion. The Court granted those orders on April 8, 2026. (A23-24 (Dkts. 107-108); OB, Ex. B; B1068).

On April 9, 2026, Appellants filed their Notice of Appeal from the Opinion and the April 8, 2026 Final Order and Judgment and [Proposed] Stipulation on Selection of Liquidating Trustee. (Dkt. 1). Appellants noticed appeal of the Court of Chancery's rulings on their claims for Breach of Fiduciary Duty, Breach of the OA, Interference with Business Relationships, and Constructive Trust. (*Id*.). Appellants did not appeal the Court's decision granting GFO's petition for statutory dissolution of PRF. (*Id*.). In their Opening Brief, Appellants abandoned their appeal of the Court of Chancery's ruling on their Interference with Business Relationships claim. (OB at 16 n.12). And Appellants advance no substantive argument in their Opening Brief as to their appeal of their Constructive Trust count. (*See, infra*).

ARGUMENT

I. THE COURT OF CHANCERY DID NOT ERR IN CONCLUDING THAT GFO DID NOT BREACH ITS FIDUCIARY DUTIES.

A. Appellants' 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?

B. Scope of Review

This Court reviews issues of law *de novo*. *Brehm v. Eisner*, 746 A.2d 244, 253 (Del. 2000).

This Court's review of the Court of Chancery's post-trial factual findings is deferential. *Int'l Telecharge, Inc. v. Bomarko, Inc.*, 766 A.2d 437, 438 (Del. 2000). Questions of fact are reviewed for abuse of discretion. *Reserves Dev. LLC v. Crystal Properties, LLC*, 986 A.2d 362, 367 (Del. 2009). This Court accepts the trial judge's factual findings unless they are clearly wrong. *Id*. (citation omitted). The clear-error standard is highly deferential and applies broadly to "findings of historical fact that are based on physical or documentary evidence or inferences from other facts." *CDX Holdings, Inc. v. Fox*, 141 A.3d 1037, 1041 (Del. 2016). This Court "defer[s] to the determination of the trial judge if the findings are supported by the record and the conclusions are the product of an orderly and logical deductive process." *Int'l*

Telecharge, Inc. v. Bomarko, Inc., 766 A.2d at 438 (citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972). If so, this Court "affirm[s] those findings whether or not [it] would have come to the same conclusions." *Id*. When there are "two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *CDX Holdings, Inc.*, 141 A.3d at 1041. The deference due to the Court of Chancery's findings is "enhanced" when those "factual findings are based on determinations regarding the credibility of witnesses." *Id*. "When [a trial court's] determination of facts turns on a question of credibility and the acceptance or rejection of 'live' testimony by the trial judge, those factual findings must be given great deference by an appellate court." *New Castle County v. DiSabatino*, 781 A.2d 687, 690 (Del. 2001).

"A trial court's application of equitable defenses presents a mixed question of law and fact." *BlackRock Credit Allocation Income Tr. v. Saba Capital Master Fund, Ltd.*, 224 A.3d 964, 981 (Del. 2020) (quoting *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043 (Del. 2014)) (internal quotation marks omitted). The "proper standard of review" for mixed questions of law and fact "requires this Court to reverse the findings of the lower court only if the findings below are 'clearly wrong and the doing of justice requires their overturn.'" *Frantz Mfg. Co. v. EAC Indus.*, 501 A.2d 401, 407 (Del. 1985) (quoting *Levitt v. Bouvier,* 287 A.2d 671, 673 (Del.

1972)); *see also, e.g.*, *Delmarsh, LLC v. Envtl. Appeals Bd.*, 277 A.3d 281, 290 (Del. 2022).

C. <u>Merits of Argument</u>

The Court of Chancery correctly held that PPSF did not prove that GFO breached any fiduciary duties to PPSF. This Court should affirm the Court of Chancery's holding below on Appellants' Count I.

1. GFO Did Not Breach Any of Its Fiduciary Duties and the Ruling Below as to Count I Should Be Affirmed

The Court of Chancery provided fulsome, sound, and specific analysis, grounded in the trial record in support of its holding that PPSF failed to prove Count I alleging breach of fiduciary duty by a preponderance of the evidence. Despite this, Appellants challenge the ruling below as "errors of law and an improper legal standard." (OB at 19). However, Appellants' qualms are primarily factual assertions and characterizations rebutted by trial evidence and testimony. In some cases, the Court of Chancery made opposite factual findings. The factual findings below are entitled deference in this Court, unless clearly erroneous. The Court of Chancery made its port-trial holdings consistent with the weight of the evidence—whether in the form of irrefutable documents signed by Appellants, or credible trial testimony—which is accurately reflected throughout the Memorandum Opinion.

As to legal arguments, Appellants recycle the same cases cited in their pre- and post-trial briefing. They ignore the Opinion's detailed distinguishing of this precedent, as Appellees argued in their post-trial briefing. (Op. at 30; B834-840). Appellants make conclusory arguments, citing to what they characterize as a "string of material nondisclosures" to support a finding of breach of fiduciary duty. (OB at 20). The factual findings below show different— Appellants were on notice and had access to information and Gard did not hide anything. (Op. at 30-31). Appellants ignore these salient factual findings.

i. The Court of Chancery's Post-Trial Factual Findings Rebut and Contradict Appellants' Factual "Buckets"

Appellants divide their factual challenges into four "buckets." First, Appellants argue that GFO breached its fiduciary duty of disclosure by failing to disclose that he intended to use PRF as an "incubator fund." (OB at 20). The Court of Chancery directly addressed this argument in the Opinion and disagreed. (Op. at 29-31). The Court of Chancery held that "the trial testimony showed that Brett and Gard discussed the possibility of eventually using a hedge fund to fuel the enterprise's expansion from the outset," and "Gard disclosed his alleged plan to incorporate a hedge fund in PRF's business." (Op at 31 (citing B37-39, 42-43, 530; B1081)). The Court of Chancery reasoned because Brett knew or had access to this material information they allege was withheld "defeats PPSF's information-based claim." (*Id*.).

The Court of Chancery explained how this argument was misplaced because it "relies almost exclusively on the testimony of Paul Szep, who was not involved in the enterprise until 2021, after the supposed incubation period ended[,]" and that "it is not clear that Szep has firsthand knowledge of Gard's initial intentions concerning PRF." (Op. at 31, n.196). The Court of Chancery was clear that "the weight of trial evidence does not show that GFO made any material non-disclosure concerning this point." (*Id*.).

Second, Appellants claim that "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." (OB at 20). This generalized factual allegation lacks any record citation. (*Id*.). Furthermore, it ignores extensive trial testimony from both Brett and Gard as to their discussions regarding PRF's business transition. (Op. at 28, n.187 (citing B34-35, 37-39, 42-43, 318; B1081)). The Court of Chancery held that "the weight of trial evidence shows Brett participated in PRF's O&S business for years without complaint after Gard informed him of the key terms of PRF's business transformation in conversations and numerous documents that Brett read and signed." (Op. at 29-30, n.195).

Third, Appellants argue that Gard failed to disclose that "all profits from PRF's loan/case matters would be paid only [Gard]" and not shared with Brett of PRF. (OB at 20). First, the characterization that Gard received "profits" is incorrect. Appellants continue to improperly conflate the Performance Allocations and Management Fees with "profits" or distributions under the OA. The Court of Chancery specifically identified—and rejected— this false equivalency. (Op. at 36).

Appellants further ask this Court to find a breach of fiduciary duty from Gard's testimony that he recommended transitioning PRF's to O&S because it would be financially beneficial to PRF and Brett. (OB at 20). But the Court of Chancery directly dispelled the notion that Gard did not act to benefit PRF or Brett. (Op. at 33 ("[T]he weight of trial evidence shows PRF's business transformation was not a one-sided transaction to Gard's advantage. Rather, PRF benefited…")).

As to their fourth "bucket," Appellants suggest that the Court of Chancery "completely disregard[ed] and/or avoid[ed] all of the fiduciary-duty case law that Appellants had cited in their briefs." (OB at 21). Quite the contrary, the Opinion draws significant legal and factual distinction between Appellants' cited precedent and the instant circumstances. (Op. at 29-30, n.193). Indeed, the Court of Chancery provided a careful, detailed analysis of Appellants' cited precedent. (Op. at 29-30, n.193). What Appellants cite as disregard and ignorance is, in actuality, thoughtful and sound analysis by the Court of Chancery supported by the weight of the evidence. Appellees raised this very distinction in their post-trial briefing. (B834-840).

ii. The Panoply of Disclosures Foreclose a Finding That Appellees Failed to Disclose

Appellants' argument against the multitude of disclosure documents and testimony in evidence is unavailing and belied by the well-developed trial record. The Court of Chancery found that the weight of the evidence showed that Appellants knew or should have known of PRF's business transition, the relevant corporate structure in existence, their rights (or lack thereof) to assets, and fee structuring. (Op. at 27-29, n.185-187; B1086; B1140; B1194; B1207; B1249; A476; A480; B1278, B1279, A497; B1345; A658; B3209-3264; B3265). Based on this weight of evidence, the Court of Chancery held: "That Brett contemplated the challenged business transformation, signed numerous documents detailing PRF's shift to an O&S company, and helped facilitate restructuring the enterprise, severely undercuts PPSF's usurpation of opportunities claim." (Op. at 29). The Court of Chancery further acknowledged that PPSF's corporate usurpation claim, which was undercut by the documentary evidence, "largely mirrors PPSF's purported duty of disclosure claim" and was similarly undercut by the documents that Brett himself signed. (*See* Op. at 12, 27-28). The Court of Chancery was clear in the Opinion that "[t]he weight of trial evidence shows Brett repeatedly acknowledged and assented in writing to PRF's transformation into an O&S company." (Op. at 27).

2. The Court of Chancery's Rejection of Appellants' Count IV "Claim"[6] for Constructive Trust Should Be Affirmed

Furthermore, this Court should affirm the Court of Chancery's rejection of Appellants' Count IV for Constructive Trust. First, Appellants waived their appeal of Count IV by failing to include any substantive argument in their Opening Brief.

a. Appellants Waived Their Appeal of Count IV for Constructive Trust by Failing to Include Any Substantive Argument in Their Opening Brief

Appellants only reference their claim for Constructive Trust three (3) times in their Opening Brief:

- On page 4, Appellants conclude that they are entitled to reversal as to Count IV, without any substantive argument. (OB at 4).
- On page 16, in note 12, Appellants merely refer to the Court of Chancery's ruling below as to Count IV. (*Id*. at 16 n.12).
- On page 26, Appellants again conclude, without any substantive argument, that they are entitled to reversal as to Count IV. (*Id*. at 26).

"The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal." Del. Supr.

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[6] Appellees use quotes because Constructive Trust is not a claim. Rather, it is a remedy that must be tied to a substantive claim. *See*, *VGS, Inc. v. Castiel*, 2003 WL 723285, at *6 (Del. Ch. Feb. 28, 2003).

Ct. R. 14(b)(vi)(A)(3). Because Appellants failed to raise any substantive argument regarding their Count IV "claim" for constructive trust in their Opening Brief, any such arguments are waived on appeal. *See Id*.

b. Appellants Are Not Entitled to a Constructive Trust

Even if their appeal is not waived, reversal of the Court of Chancery's ruling below denying a constructive trust is not warranted.

First, as held below and argued herein, Appellants' underlying claims fail. Without a successful underlying cause of action, Appellants' request for a constructive trust, likewise, must fail. *Seiden v. Kaneko*, 2015 WL 7289338, at *14 n.166 (Del. Ch. Nov. 3, 2015) (holding that constructive trust is a "request[] for specific remedial relief" whose "viability depends upon the success of Plaintiff's [equitable claims][.]").

Second, Appellants' did not assert any underlying causes of action against the Funds. Because Appellants asserted only a remedy against the Funds, dismissal of Count IV as to the Funds was appropriate. *See, e.g.*, *Teachers' Ret. Sys. of Louisiana v. Aidnoff*, 900 A.2d 654, 670 (Del. Ch. 2006) ("[T]his court cannot impose the remedy of a constructive trust against a party unless that party is properly subject to an order of relief under a recognized cause of action.")

Third, a constructive trust may be imposed "only upon specific property, identifiable proceeds of specific property, and even money so long as it resides in an identifiable fund to which the plaintiff can trace equitable ownership." *Teachers' Ret. Sys. of Louisiana v. Aidnoff*, 900 A.2d 654, 672-73 (Del. Ch. 2006). Plaintiffs can trace no such equitable ownership here. The Funds purchased the litigation fundings from PRF for full market value. (Op. at 12 (citing A637; B628-629, 751-752)). And neither PRF nor PPSF can trace equitable ownership to the Performance Allocations or Management Fees. The Management Fees are paid by the relevant Fund (*not* by PRF) to GFOAM (*not* to GFO) as compensation for GFOAM's service as Investment Manager. (B1096). And the Performance Allocations are paid by the relevant Fund (*not* by PRF) to the Relevant GP entity (*not* to GFO) as compensation for its service as general partner. (B1096-1097). PRF, PPSF, and Brett have no place in this structure and no equitable ownership of the Performance Allocations or Management Fees.

Finally, a constructive trust will be imposed only "[w]hen one party, by virtue of fraudulent, unfair or unconscionable conduct, is enriched at the expense of another to whom he or she owes some duty." *Hogg v. Walker,* 622 A.2d 648, 652 (Del. 1993). To impose a constructive trust, "[s]ome fraudulent or unfair and unconscionable conduct is essential." *Id.* But here, the Court of Chancery found no such fraudulent, unfair, or unconscionable conduct. Rather, the Court held that the actions of which Appellants complain were "the product of repeated, informed consent between the parties[,]" (Op. at 2) and that "the evidence shows GFO did not withhold information concerning Gard's desire to start a hedge fund, PRF's post-transition business, and the enterprise's structure and fees." (Op. at 30-31).

Appellants request for constructive trust fails, and this Court should affirm the ruling below.

II. THE COURT OF CHANCERY DID NOT ERR IN FINDING FOR GFO ON APPELLANTS' USURPATION OF BUSINESS OPPORTUNITY DUTY OF LOYALTY CLAIM OR IN FINDING THAT PPSF ACQUIESCED TO THE CHANGE IN PRF'S BUSINESS

A. Appellants' 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?

B. Scope of Review

See Section I.B., *supra*.

C. Merits of Argument

The Court of Chancery did not err in finding that GFO did not breach its duty of loyalty or in finding that PPSF acquiesced to PRF's business transition. This Court should affirm the ruling below.

1. The Court of Chancery Did Not Err in Finding For GFO on Appellants' Usurpation of Business Opportunity Claim

Appellants "challenge[] the Chancery Court's rejection of the breach-of-fiduciary-duty claim in Count I . . . that . . . GFO (through Gard) usurped corporate opportunities to the detriment of PRF." (OB at 28). But Appellants' challenge fails. The Court of Chancery correctly held that "[a] preponderance of the evidence does not support PPSF's usurpation of opportunities claim." (Op. at 27).

"The corporate opportunity doctrine recognizes that a 'fiduciary agrees to place the interests of the [entity] before his or her own in appropriate circumstances.'" (*Id*. at 26 (citing *Broz v. Cellular Information Systems, Inc.*, 673 A.2d 148, 154 (Del. 1996))). "Under the doctrine, directors and officers 'must avoid advantaging themselves at the corporation's expense [and] cannot compete with the corporation or divert corporate opportunities from it *without its consent*." (*Id*. (citing *Enhabit, Inc. v. Nautic Partners IX, L.P.*, 2024 WL 4929729, at *1 (Del. Ch. Dec. 2, 2024)) (emphasis in original)).

In its Opinion, the Court of Chancery faulted Appellants for failing to address the *Broz* factors[7] in their post-trial briefing. (*Id*. at 27). Notably, Appellants again fail to address the *Broz* factors in this Court, waiving any such argument. *See* Del. Supr. Ct. R. 14(b)(vi)(A)(3). Nonetheless, the *Broz* factors support the finding below that Appellants failed to establish their usurpation of business opportunity claim. First, throughout its existence, nearly all of PRF's operations capital was provided by GFO. (B553). GFO no longer wished to fund PRF, and had no obligation to do so as explicitly agreed to in the Operating Agreement. (B533-534, 553; A391 (§

[7] The *Broz* factors are: "(1) the corporation is financially able to exploit the opportunity; (2) the opportunity is within the corporation's line of business; (3) the corporation has an interest or expectancy in the opportunity; and (4) by taking the opportunity . . . the corporate fiduciary will [] be placed in a position inimitable to his duties to the corporation." *Broz*, 673 A.2d at 155.

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3.2)). Without GFO's capital, PRF is insolvent and not financially able to exploit the litigation fundings that the Funds deployed. Second, PRF had no interest or expectancy in the opportunity. Third, in pursuing the opportunity, GFO was not "placed in a position inimitable to his duties to the corporation."

Furthermore, "[d]isclosure to and informed approval by the [entity] may insulate a director from liability where the corporate opportunity doctrine otherwise applies." *Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 442 n.7 (Del. 1996); *see Grove v. Brown*, 2013 WL 4041495, at *8 & n.83 (Del. Ch. Aug. 8, 2013). As the Court of Chancery correctly found as a factual matter—not to be disturbed by this Court unless clearly erroneous—Appellants "repeatedly acknowledged and assented in writing to PRF's transformation into an O&S company." (Op. at 27). Brett signed—for PRF— the agreements under which PRF voluntarily assigned its existing fundings to the Funds. (*See, e.g.*, B1345; A639; A641; A643; A646; A649; A652; A655). Brett signed the O&S Agreements on PRF's behalf. (A476; B1566). Brett shared confidential information as necessary to promote the Funds and serve as an originator and servicer to the funds. (*See, e.g.*, B64-68, 423-424; B925-926). Brett acknowledged the business transition and his lack of interest in the Funds in the Pledge Agreement. (*See* A499 (§ 2(i))). Brett received extensive disclosures concerning the Funds' management and fee structure in connection with his investment in Fund I (B1086; B1217; B1325; B379-380) and, as a Fund I limited partner, Brett received regular updates disclosing fees and performance allocations (A658; B3209-3264), but, nevertheless, never contested the business arrangement between 2019 and the commencement of this litigation in mid-2024. Brett helped prepare materials for prospective investors in the Funds that detailed PRF's revised structure. (*See, e.g.*, B1297; B113-114, 123-136). In sum, Appellants and PRF voluntarily participated in PRF's business transition, which is fatal to Appellants' claims. *See Enhabit* 2024 WL 4929729, at *1 (holding a fiduciary "cannot compete with the corporation or divert corporate opportunities from it *without its consent*.") (emphasis added).

2. The Court of Chancery Did Not Err in Finding That PPSF Acquiesced to PRF's Business Transition

Appellants argue that the Court of Chancery erred in finding that PPSF acquiesced to PRF's business transition. (OB at 28-31). It did not.

a. The Court of Chancery Correctly Relied Upon Appellees' Panoply of Disclosures to Appellants in Finding that Appellants Acquiesced to PRF's Business Transition

Appellants argue that the Court of Chancery erred in relying upon numerous disclosure documents and events "years <u>*after*</u> Gard's conduct and admitted non-disclosures." (OB at 29 (emphasis in original)). Appellants misunderstand acquiescence. Acquiescence is "[a] person's tacit or passive acceptance; implied consent to an act." ACQUIESCENCE, Black's Law Dictionary (12th ed. 2024). "The doctrine of acquiescence effectively works an estoppel: where a plaintiff has remained silent with knowledge of her rights, and the defendant has knowledge of the plaintiff's silence and relies on that silence to the defendant's detriment, the plaintiff will be estopped from seeking protection of those rights." *Lehman Bros. Holdings Inc. v. Spanish Broad. Sys., Inc.*, 2014 WL 718430, at *9 (Del. Ch. Feb. 25, 2014), *aff'd*, 105 A.3d 989 (Del. 2014). It is, in essence, "estoppel by silence." *Id*. at *9 n.56. One cannot acquiesce to an act before it takes place. Rather, an act must take place, and then subsequent actions or inactions create the acquiescence. This renders Appellants' argument non-sensical. The Court of Chancery correctly relied upon Appellees' numerous disclosures to Appellants in finding that Appellants acquiesced to PRF's business transition. This Court must give deference to the factual findings below regarding the disclosures made and reverse only if "clearly wrong." *Frantz Mfg. Co.*, 501 A.2d at 407; *see also, e.g.*, *Delmarsh, LLC*, 277 A.3d at 290. The Court of Chancery was not "clearly wrong" below.

b. The Panoply of Disclosures Show that Appellants Acquiesced to PRF's Business Transition

The Court of Chancery held below that "Brett and Gard, who wholly own and control PPSF and GFO respectively, voluntarily agreed to shift PRF's business as part of an eyes-wide-open transaction supported by a sound business rationale." (Op. at 40). In so holding, the Court of Chancery found that:

- "Brett repeatedly acknowledged and assented in writing to PRF's transformation into an O&S company." (Op. at 27).
- "Brett actively helped facilitate the transition to a shared-services model in which PRF would originate and service cases for the Funds." (*Id*. at 42).
- "PPSF's sole member Brett signed the assignment contracts and O&S Agreements on PRF's behalf." (*Id.*; *see also Id.* at 28).
- "[Brett] create[ed] written materials to attract Fund investors[.]" (*Id*. at 42; *see also Id*. at 29).
- "[Brett] participat[ed] in weekly meetings to discuss fundings[.]" (*Id*.).
- "[Brett] help[ed] originate fundings for the Funds over the course of years." (*Id*.).
- "Brett also acknowledged the business transition and his lack of interest in the Funds in the Pledge Agreement." (*Id*. at 28 n.185 (citing A499 (§ 2(i))).
- "Brett received extensive disclosures concerning the Funds' management and fee structure in connection with his investment in Fund I." (*Id*. (citing B1086; B1217; B1325; and B379-380)).
- "[A]s a Fund I limited partner, Brett received regular updates disclosing fees and performance allocations. (*Id.* (citing A658; B3209-3264)).
- "The O&S Agreements specify that the Funds, not PRF, 'is in the business of providing Non-Recourse and Recourse Fundings[.]'" (*Id*. at 28 n.186 (citing A476; B1566)).
- "Brett testified that he and Gard discussed the possibility of using a hedge fund to raise third-party capital to fund expansion from the

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beginning of their business relationship." (*Id*. at 28 n.187 (citing B37-39, 42-43).

- "[T]here is no evidence Gard did anything to obfuscate Brett's understanding of the myriad documents he read, signed, and helped create." (*Id*. at 32).
- "As a signatory to the PRF LLC Agreement, PPSF had knowledge of its rights under Section 2.1(a)[,] . . [y]et neither PPSF nor Brett raised the alleged breach of Section 2.1(a) at the time." (*Id*. at 42).

These factual findings are afforded deference in this Court. *Frantz Mfg. Co.*, 501 A.2d at 407; *see also, e.g., Delmarsh, LLC*, 277 A.3d at 290.

Appellants assert again that Gard failed to properly disclose PRF's business transition to them. (OB at 31). The problem with Appellants' assertion is that all of this information allegedly withheld was, in fact, disclosed, as the Court of Chancery correctly found as a factual matter. Appellants *were* informed that, as part of the business transition, PRF would receive O&S fees. (Op. at 10 (citing B530, 532-533, 613-615); *Id*. at 13 (citing B1086; B1140); A476; B1566). Appellants *were* informed that, as part of the business transition to an O&S model, GFOAM (and *not* PRF) would receive Management Fees. (Op. at 13 (citing B1086, B1140; A658; B3209-3264; B478-4795, 488-491)). Appellants *were* informed that, as part of the business transition to an O&S model, the Fund GPs (and not PRF) would receive Performance Allocations. (A658; B3209-3264). Appellants knew that neither they, nor PRF, had any ownership interest in the Funds. (A499 (§ 2(i)); *See* B1086; B1217; B1325;

B379-380). Appellants' attempt to play the "rube" did not pass muster below,[8] and it should not here either. *See CDX Holdings, Inc.*, 141 A.3d at 1041; *see also DiSabatino*, 781 A.2d at 690.

Appellees did not conceal any information from Appellants. Appellants had actual notice or constructive notice of all relevant and material facts. (B1086; B1140; B1217; A476; A480; B1279; A497, B1499; B1529; A658; B3209-3264).

c. The Court of Chancery Applied the Correct Burden of Proof in Concluding that Appellants Acquiesced to PRF's Business Transition

Appellants further assert that the Court of Chancery erred "in failing to place the burden of proof on GFO to prove PPSF's alleged agreement/acquiescence to a substantially limited role for PRF." (OB at 27). The Court of Chancery did no such thing. It correctly applied the burden of proof and concluded that Appellants acquiesced to PRF's business transition.

"The party asserting an affirmative defense of waiver or estoppel by acquiescence bears the burden of proving the defense by a preponderance of the evidence." *VH5 Capital, LLC v. Rabe*, 2023 WL 4305827, at *20 (Del. Ch. June 30, 2023), *judgment entered,* (Del. Ch. 2023) (citation omitted)). "The side on which the greater weight of the evidence is found is the side on which the preponderance

[8] *See* Op. at 32.

of the evidence exists." *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967). The Court of Chancery held below that "[t]he weight of trial evidence shows Brett repeatedly acknowledged and assented in writing to PRF's transformation into an O&S company." (Op. at 27). In so concluding, it necessarily found that Appellees met their burden of proving acquiescence by the preponderance of the evidence. The Court of Chancery also noted in its Opinion that "[u]nless otherwise noted, the parties stipulated to the following facts or proved them by a preponderance of the evidence at trial." (Op. at 3 n.2). Thereafter, it made the following factual findings supporting that Appellants acquiesced to PRF's business transition:

- "Gard mentioned how he could use his previous experience and connections to potentially create a new hedge fund in the future to raise third-party capital." (Op. at 4).

- "Gard, in turn, told Brett that he had been approached by his former investors and that he planned to start a new hedge fund to invest in litigation finance assets. Therefore, Gard explained that he did not intend for GFO to make any further discretionary investments in PRF's fundings." (*Id*. at 10).

- "Instead, Gard and Brett explored integrating PRF's existing business into the anticipated new hedge fund, with PRF then serving in an origination and servicing [] role. They discussed a business model in which PRF would originate cases for Gard's new hedge fund to bankroll, and service those cases for O&S fees. The pair agreed that transitioning PRF to an O&S business could (1) drive profitability; (2) eliminate capital risk; (3) avoid conflicts of interest; and (4) increase scale." (*Id*.).

- "Starting in October 2019, PRF assigned all its existing fundings to Fund I. Brett signed the assignment contracts on PRF's behalf, while

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Gard signed for Fund I. Fund I paid PRF the then-current market value of the fundings. After the assignments, Fund I (and later PRF Fund II, LP []) deployed all new fundings, not PRF." (*Id*. at 12).

- "While transitioning the business, Brett and his brother Lloyd invested [redacted] and [redacted], respectively, in Fund I and became Fund I limited partners. In connection with their investment, Brett and Lloyd each received a Fund I private placement memorandum and other investment documents, including a prospective investor questionnaire. Brett and Lloyd—each an attorney—reviewed the documents and discussed their contents before finalizing their investments. The investment documents described Fund I's organizational structure, including Gard's control over Fund I GP and GFOAM, which directed Fund I's operations. The documents also detailed GFOAM's [redacted] annual management fee, Fund I GP's [redacted] performance allocation, and PRF's O&S fees. As Fund I limited partners, the Findlers each received monthly statements, which contained line items for all performance allocations and management fees." (*Id*. at 12-13).

- "Brett, Gard, Lloyd, and other employees attended weekly meetings to discuss Mighty reports concerning borrower payoffs." (*Id*. at 14).

- "In January 2022, with the enterprise functioning as described, Fund I and PRF executed an Administration and Service Agreement to memorialize PRF's entitlement to O&S fees []." (*Id*. at 14-15).

- The O&S Agreement "states Fund I: 'provid[es] Non-Recourse and Recourse Funding to various [] [] entities [and] . . . desires [PRF] to perform all the administrative responsibilities associated with these fundings, including but not limited to tracking and vetting of funded investment, accounting of returns, etc.' In exchange for those services, Fund I would "pay [PRF] an Origination Fee equal to [redacted] . . . [and] a Servicing Fee equal to [redacted] . . . of the 'Fundings[.]'" (*Id*. at 15).

- "PRF and the Findlers also provided input concerning the materials disseminated to actual and prospective Fund investors." (*Id*. at 17).

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- "Brett and Casey both met with prospective investors to discuss the enterprise's structure and operations. Notably, one prospective investor's notes from meetings in early 2023 describe Brett as receiving a salary and being a Fund I investor, but do not mention Brett receiving any portion of management fees or performance allocations." (*Id*.).
- Brett and Gard entered into a January 30, 2023 Pledge Agreement under which PPSF grated GFO a pledge of a portion of its Membership Interests in PRF to induce Gard to provide Brett with a [redacted] bridge loan. In the Pledge Agreement, Brett acknowledged that he has no interest in "any current or future fund management related entities established or operated by [GFO], Casey Gard or any of their respective affiliates, and . . . has [no] objection with respect to same." (*Id.* at 19).

Again, the Court held that all of these facts were proved by a preponderance of the evidence. And the Court relied on them in finding acquiescence.

Appellants burden of proof argument is simply a procedural "gotcha" because the Court below did not explicitly state that the burden of proof on the affirmative defense of acquiescence rested with Appellees. Such a procedural defect is no reason for reversal or remand. The whole of the Opinion makes clear that the Court of Chancery correctly applied the burden of proof and found acquiescence by a preponderance of the evidence.

III. THE COURT OF CHANCERY DID NOT ERR IN ITS INTERPRETATION OF PRF'S OPERATING AGREEMENT

A. Appellants' 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"?

B. Scope of Review

See Section I.B., *supra*. "Contract interpretation is a question of law subject to *de novo* review by this Court." *Daniel v. Hawkins*, 289 A.3d 631, 645 (Del. 2023).

C. Merits of Argument

Appellants' Count II asserted a claim for "Breach of Operating Agreement" against GFO. (A48-50 (¶¶ 55-63)). In essence, Appellants asserted that GFO breached the OA's distribution provisions (A325) and that PRF's business transition required a written amendment to the OA. (A325-26). The Court of Chancery held below that (i) GFO did not breach the OA by not making distributions to Appellants (Op. at 35) and (ii) PRF's business transition did not breach the OA because no written amendment was required. (Op. at 39).

Appellants now assert that the Court of Chancery erred. (*See* OB at 5, 35-40).[9] Appellants' arguments are nothing more than a rehash of their arguments below hoping for a different result. No different result is warranted. The Court of Chancery properly interpreted the OA in ruling that no distributions were due to Appellants and that no written amendment to the OA was needed for PRF's business transition. This Court should affirm the ruling below.

1. No Written Amendment of the PRF Operating Agreement Was Needed for PRF's Business Transition

In their post-trial Opening Brief below, Appellants (incorrectly) assumed that Appellees would argue that the parties orally modified the OA. (A325-331). Appellees made no such argument. Rather, Appellees asserted that no modification of the PRF Operating Agreement was required to effectuate PRF's business transition. (B826-827). The Court of Chancery clearly—and correctly— agreed with Appellees.[10] (Op. at 39-40).

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[9] Apart from selectively reciting the OA's confidentiality provision in their Statement of Facts (OB at 7-8), Appellants make no argument regarding their confidentiality provision claim. Appeal of this claim is, therefore, waived. *See* Del. Supr. Ct. R. 14(b)(vi)(A)(3).

[10] Appellants misconstrue the Opinion. Appellants assert that "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[,]" and that "[i]t was error for the Chancery Court to rule that it 'need not address' the issue." (OB at 36-37). That is not what happened. The Court *did* decide the issue of *whether an amendment to the OA was needed* for PRF's business

Appellants attempt to mislead this Court by selectively quoting from OA §1.3. (OB at 6-7). Appellants omit the portion of OA §1.3 that is fatal to their argument. §1.3 actually reads, in full:

> *The purpose and business of the Company is (i) to engage in any lawful business permitted under the Act, and (ii) to exercise all other powers necessary or reasonably connected or incidental to such purpose and business and permitted that may may be legally exercised by the Company under the Act. By way of example, and not by way of limitation of the foregoing statement of the purpose and business of the Company, the initial business plan of the Company involves* deploying the Company's capital as investments in (i) non-recourse investments, including non-recourse fundings, extended to third parties [] and (ii) recourse loans extended to third parties [].

(A388 (§1.3) (emphasis added)).[11] Contrary to Appellants' recitation, PRF's "purpose and business", as stated in the OA, is exceedingly broad. (*Id*.)

This type of broad purpose clause is typical in LLC agreements. "[A]n important reason for parties to include a broad purpose clause in an entity's governing instrument is to ensure that the entity has flexibility to adapt in the face

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transformation. (Op. at 39-43). It held that no amendment to the OA was needed. (Op. at 39). And because no amendment to the OA was needed, it "need not address the parties' arguments concerning *whether there was a valid amendment* to the operating agreement[,]" and "need not reach oral modification to resolve [Appellants'] breach of contract claim." (Op. at 35 and n.214 (emphasis added)). This distinction, which Appellants misrepresent, is crucial.

[11] The italicized portion represents the part that Appellants conveniently omitted.

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of changing circumstances." *In re Arrow Inv. Advisors, LLC*, 2009 WL 1101682, at *4 (Del. Ch. Apr. 23, 2009). That is exactly what happened here – circumstances changed. Trial testimony and evidence established that PRF's business changed over time from a litigation funder to an originator and servicer– all with Appellants' knowledge and approval. Because of the broad "Purpose" clause, however, this transition did not require any modification to the OA. PRF's business transition merely rendered certain provisions therein inapplicable.

The fact that PRF included its "initial business plan" as an "example" does not change the calculus. The Court of Chancery in *In re Arrow Inv. Advisors, LLC*, addressed just such an argument. 2009 WL 1101682, at *1 (Del. Ch. Apr. 23, 2009). Arrow Investment Advisors LLC was formed "for the purpose of acting as an investment adviser to certain investment funds and for such other lawful business as the Management Committee chooses to pursue." *Id*. The petitioner asserted that the Court should read the purpose clause narrowly, as authorizing the LLC to engage in strictly investment advisory services. *Id*. at *3. The Court declined, noting that it would require "the court to ignore the entire clause of the Arrow LLC Agreement that authorizes Arrow to engage in 'such other lawful business as the Management Committee chooses to pursue.'" *Id*. Doing so would have run afoul of basic contract interpretation maxims, requiring that contracts be read as a whole, giving effect to all provisions, and interpreted to not render language superfluous. *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 265–66 (Del. 2026).

The same result is required here. Appellants' request that this Court narrowly construe PRF's purpose due to the inclusion of one non-limiting simply cannot be squared with the broad purpose language included therein.

PRF's stated purpose is "to engage in any lawful business permitted under the Act." (A388 (§ 1.3)). No written amendment to the OA was required for PRF's business transition. Therefore, this Court should affirm the ruling below.

2. GFO Did Not Breach the PRF Operating Agreement's Distribution Provisions

In arguing that the Court of Chancery erred in interpreting the OA's distribution provisions, Appellants assert that "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." (OB at 35). Appellants continue to ignore defined terms and clear corporate structure and separateness. The OA's distribution provisions and the relevant entities' corporate structure make clear that Appellants are not entitled to any distributions. The ruling below for GFO on Count II should be affirmed.

LLCs are creatures of contract, and adherence to those contractual terms is fundamental to Delaware law. *See R & R Cap., LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318, at *6 (Del. Ch. Aug. 19, 2008)

OA §3.5 governs distributions to PRF's Members. (A392-393). Appellants are not entitled to distributions under §3.5.

a. The Managing Members Never Determined to Make Distributions Under the OA

First, distributions can only be made under the OA "at such time as the Managing Members may determine." (A392). The Managing Members—i.e. GFO and PPSF—never agreed to any distributions. (Op. at 38). Therefore, Appellants are not due any distributions.

Appellants complain that "[Appellants] 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. (OB at 38 n.26). As they did below, Appellants conflate the Management Fees and Performance Allocations owed to Fund GPs and GFOAM with "distributions" of profits under the OA. (Op. at 36). The Management Fees and Performance Allocations *are not* distributions by PRF under the OA. (*Id.*; Statement of Facts Sections I.A. and I.B., *supra*). The Management Fees are paid by the Funds to GFOAM as compensation for GFOAM's service as Investment Manager. (B1096).

The Performance Allocations are paid by the Funds to the Fund GPs as compensation for service as general partner. (B1096-1097). Neither PRF nor Appellants have any legal right to these assets. (B256-261, 483-504). Rather, Appellants want this Court to ignore the corporate separateness of the relevant entities. Doing so would defy black letter law. *See, e.g., In re Aearo Technologies LLC*, 346 A.3d 584, 596, *10 n.77 (Del. 2025) ("Delaware [] [] respect[s] the distinction of separate legal entities."); *Am. Bottling Co. v. BA Sports Nutrition, LLC*, 2021 WL 6068705, at *12 (Del. Super. Dec. 15, 2021) (same); *Barbey v. Cerego, Inc.*, 2023 WL 6366055, at *9 (Del. Ch. Sept. 29, 2023) (same).

b. [redacted] Distributions Are Due to GFO Before PPSF Can Receive Anything

Even if the Managing Members determined to make distributions under the OA, such distributions must go entirely to GFO. OA §3.5(b)(i) requires that Operations Capital contributed by any Member be repaid before other distributions are made. (A392). GFO provided all of PRF's Operations Capital—totaling approximately [redacted]—over the lifespan of the Company. (B553). PRF only repaid approximately [redacted] to GFO. (*Id.*). Therefore, approximately [redacted] in distributions must go entirely to GFO before Appellants could receive a cent. (A392).

c. Appellants Ignore Crucial Definitions in the PRF Operating Agreement's Distribution Provisions

Appellants argued below that GFO breached the OA by failing to distribute to Brett despite Gard profiting "somewhere north of [redacted] . . . in direct violation of the express 50/50 distribution provision in the PRF Operating Agreement." (A325). Appellants ignored the defined terms in the OA and improperly conflated Performance Allocations and Management Fees with "distributions" under the OA. (Mem. Op. at 36, 38-39). Appellants continue this trend here. Appellants assert: "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." (OB at 35). This is *not* what the OA provides. (Op. at 35-39; B811-812, 823-826).

OA §3.5 governs distributions, which involve the transfer of "cash or property *from [PRF] to the Members*[.]" (A392; Mem. Op. at 36). The OA provides four (4) scenarios for distributions: §§3.5(b)(ii)(A), 3.5(b)(ii)(B), 3.5(b)(ii)(C), and 3.5(c). (A392-393).

Appellants have waived any claims or arguments under §§3.5(b)(ii)(A) or (b)(ii)(B). (*See* Op. at 36-37 (citing B902-903); *see also* Del. Supr. Ct. R. 8; *Brodie v. State*, 16 A.3d 937 (Del. 2011)).

That leaves §§3.5(b)(ii)(C) and 3.5(c) as possible bases for Appellants' claim that GFO breached the OA's distribution provisions. §3.5(b)(ii)(C) governs "Investments" sourced from third parties. (A393). And §3.5(c) is a catchall. (A393). §3.2 defines "Investment" as "each Non-Recourse Funding, Recourse Loan, or other investment *to be made by the Company*[.]" (A391 (emphasis added)). And the "Company" is PRF. (A388). Therefore, §§3.5(b)(ii)(C) and 3.5(c) only apply to fundings *made by PRF*. But PRF made no litigation fundings during the relevant period. Rather, the Funds, were the source of all fundings. (B473-474, 726; *see also* B906-908). PRF was merely an originator and servicer and was compensated accordingly.

Therefore, OA §§3.5(b)(ii)(C) and 3.5(c) are inapplicable, Appellants' distribution claim fails, and this Court should affirm the ruling below.

3. The Court of Chancery Correctly Held that Appellants Acquiesced to PRF's Business Transition

For the reasons stated in Section II.C.2., *supra*, the Court of Chancery correctly found by a preponderance of the evidence that Appellants acquiesced to PRF's business transition.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that this Court affirm the Court of Chancery's Opinion and the stipulated Final Order.[12]

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BUCHANAN INGERSOLL & ROONEY PC

/s/ *Geoffrey G. Grivner*
Geoffrey G. Grivner (#4711)
Kody M. Sparks (#6464)
500 Delaware Avenue, Suite 720
Wilmington, DE 19801
Tel.: (302) 552-4202
Fax: (302) 552-4295
Email: *geoffrey.grivner@bipc.com*
kody.sparks@bipc.com

Attorneys for Gard Family Office, LLC, PRF Fund I, LP, PRF Fund II, LP, and GFO Asset Management LLC

OF COUNSEL:

Stuart P. Slotnick,
BUCHANAN INGERSOLL & ROONEY PC
640 Fifth Avenue, 9th Floor
New York, NY 10019-6102
Tel.: (212) 440-4400
Fax: (212) 440-4401
Email: *stuart.slotnick@bipc.com*

WORDS: 9,998/10,000

[12] The stipulated Final Order is attached to Appellants' Opening Brief as Exhibit B.