IN THE SUPREME COURT OF THE STATE OF DELAWARE

FLEX LTD. and FLEXTRONICS INTERNATIONAL USA, INC.,

Plaintiffs-Below, Appellants,

v.

NEXTRACKER INC., NEXTRACKER LLC, YUMA ACQUISITION SUB LLC and YUMA SUBSIDIARY, INC.,

Defendants-Below, Appellees

No. 72,2026

Court below: Court of Chancery of the State of Delaware, C.A. No. 2025-0197-KSJM

APPELLANTS' OPENING BRIEF

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NATURE OF PROCEEDINGS

This case is about whether Plaintiffs Flex, Ltd. ("Flex") and Flextronics International USA, Inc. ("Flex USA") (collectively, "Flex" or "Plaintiffs") are entitled to recover, under a "wrong-pockets" provision in the parties' Separation Agreement, a tax distribution from a spun-off passthrough entity, the purpose of which was to reimburse Flex for income taxes paid by Flex based on tax law and the parties' various agreements. Rather than providing the distribution to Flex under the wrong-pockets provision, Defendants Nextracker Inc., Nextracker LLC, Yuma Acquisition Sub LLC, and Yuma Subsidiary (collectively, "Defendants") paid the distribution relating to the Flex tax liability to themselves and refused to reimburse Flex, resulting in a $48.5 million unearned windfall to Defendants.

Adjudicating a motion to dismiss, the Court of Chancery held that, although Flex would have been entitled to the tax distribution under the "wrong-pockets" provision of the Separation Agreement, a subsequent Tax Matters Agreement ("TMA") between the parties supplanted the "wrong-pockets" provision, permitting Defendants to retain the tax distribution. By misconstruing the agreements and choosing a competing contractual interpretation over Flex's reasonably conceivable interpretation, the court dismissed all four of Plaintiffs' claims. That was error. *E.g.*, *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 615 (Del. 2003) ("In deciding a motion to dismiss, the trial court cannot choose between two differing reasonable interpretations of ambiguous provisions. Dismissal, pursuant to Rule 12(b)(6), is proper only if the defendants' interpretation is the only reasonable construction as a matter of law.").

Accordingly, Plaintiffs appeal the Court of Chancery's dismissal of Counts I (Breach of Contract), III (Mistake), and IV (Unjust Enrichment), as set forth in the Court of Chancery's Opinion dated January 21, 2026 (D.I. 31, attached as Exhibit A, hereinafter "Op."), and Order dated February 13, 2026 (D.I. 33, attached as Exhibit B). On de novo review, this Court evaluates whether Flex's interpretation of the Separation Agreement and the TMA is reasonable—not whether Defendants' interpretation is also reasonable. If Flex's reading is reasonably conceivable, reversal is required as to all challenged claims. *Payscale Inc. v. Norman*, -- A.3d --, 2026 WL 774876, at *4 (Del. Mar. 19, 2026) (reversing dismissal based on misapplication of "Delaware's low pleading burden" where it was "reasonably conceivable" that the agreement was enforceable as against defendants).

*   *   *

Because Nextracker LLC is organized as a limited liability company, it is treated as a partnership for income-tax purposes, meaning that taxable income earned by Nextracker LLC is "passed through" to its member owners. Flex, in turn, owned certain member owners—Yuma, Inc. (now Yuma Acquisition Sub LLC) ("Yuma") and Yuma Subsidiary Inc. ("Yuma Sub" and, collectively with Yuma, the

"Yuma Entities")—such that Flex bore ultimate liability for any income taxes owed by the Yuma Entities on the revenue attributable to Nextracker LLC. The Manager of Nextracker LLC, named Nextracker, Inc., was required by the operative LLC Agreement ("LLCA") to make quarterly tax distributions to the LLC's members to provide funds to cover the income tax liabilities stemming from Nextracker LLC's income. (A12-A15 ¶¶34, 36-39; A278 § 5.01(b); Op. 10.) Because Flex USA was ultimately responsible for the tax liabilities of the Yuma Entities, it routinely caused those members to transfer those tax distributions so it could satisfy those tax liabilities. (*See* A6 ¶6, A15 ¶41, A18 ¶50, A36 ¶125; Op. 3-4.)

After the January 2024 spinoff of the Yuma Entities from Flex to Nextracker Inc., Nextracker LLC made tax distributions to its members to cover the income tax liabilities stemming from Nextracker LLC's income for the period October 1 to December 31, 2023 ("Q3 2024" under the Flex fiscal year). With respect to the Yuma Entities, that tax distribution was $48.5 million. The problem at the heart of this case, however, is that *Flex*, not Defendants, retained the liability for those tax payments, and Nextracker Inc. refused to direct the Yuma Entities to remit those funds to Flex so it could satisfy its passthrough tax payment obligations.

That refusal violated the parties' Separation Agreement (A46-A245), which included the "wrong-pockets" provision, under which Nextracker was required to provide to Flex: (1) "all payments and reimbursements," (2) received by a member of the Nextracker Group after the Operative Time (11:59 pm on February 1, 2022), (3) that relate to an Asset or Liability of the Flex Group. (A77 § 2.4(b) (the "Wrong-Pockets Provision"); *see also* A70 § 1.1(128)-(129).)

After Flex commenced an action in the Court of Chancery, Defendants sought dismissal under Rule 12(b)(6). In resolving that motion, the court correctly held that the Q3 Tax Distribution met all requirements of the Wrong-Pockets Provision. (Op. 13 ("The Q3 Tax Distribution is thus a payment that relates to a Liability covered by the Wrong-Pockets Provision.").) Rather than ending the inquiry there, however, the court continued its analysis under the parties' TMA (A726-A755), which addressed the fundamentally different question of apportioning tax *liability* among the parties. (*See* Op. 13-17; A730 at 2.) In attempting to synthesize the TMA and Separation Agreement, the court concluded that, in allocating to Flex the responsibility to *pay* the Q3 taxes and *file* the tax returns—twin obligations that had already been placed on Flex by virtue of the passthrough nature of tax law—the TMA foreclosed any Flex entitlement to the Q3 Tax Distribution, despite the TMA not referencing tax distributions or the Separation Agreement in any of its provisions.

To the contrary, just as in the Separation Agreement, the TMA elected to allocate all "Refunds" to Flex. (A739 § 2.5(b) ("NewCo [Yuma] shall pay to Flex any Refund received by any member of the NewCo Group [Yuma and its subsidiaries] … that is allocable to Flex.").) Rather than the general meaning of tax "refunds," the TMA defines "Refunds" to mean "any refund, *reimbursement*, offset, credit or o*ther similar benefit in respect of Taxes*." (A735 § 1.1(64) (emphasis added).) The Q3 Tax Distribution, which was paid to the Yuma Entities, falls squarely within the definition of "Refunds"—as a "reimbursement … or other similar benefit in respect of Taxes." (*Id*.) By failing to consider the full text and context of both relevant agreements, the Court of Chancery erred in dismissing the complaint. Moreover, by selecting *one* reading of the parties' contracts when other (at least equally) conceivable readings were also presented, the court exceeded the limited authority available to it under Rule 12(b)(6). *See Payscale*, 2026 WL 774876, at *4. Its decision should be reversed.

SUMMARY OF ARGUMENTS

1. The Court of Chancery erred when it dismissed Plaintiffs' breach of contract claim based on its conclusion that the TMA unambiguously foreclosed Flex's otherwise viable claim to the Q3 Tax Distribution under the Wrong-Pockets Provision in the Separation Agreement, notwithstanding the reasonably conceivable contract construction proffered by Flex.

2. The Court of Chancery based its argument on an erroneous reading of the TMA, which by its plain terms does not explicitly address the Q3 Tax Distribution. Instead, the court relied on language in the TMA regarding the allocation of tax liability to Flex—*i.e.*, which party files the tax return and pays the government—and inferred from that language that the parties conclusively intended to extinguish Flex's right to the Q3 Tax Distribution. That inference was error, however, because it conflated two separate and distinct ideas—tax liability, on the one hand, and the reimbursement of funds to cover that liability, on the other hand.

3. The Court of Chancery's analysis also misapplies or violates various cannons of contract construction, fails to account for Plaintiffs' reasonably conceivable reading of the contracts, and improperly creates the absurd result of a $48.5 million unearned "gotcha" windfall for Nextracker that no reasonable party would have accepted at the time of contracting and which lessened, as it did, the renumeration Flex received in connection with the spinoff.

4. The Court of Chancery further erred in rejecting Flex's reasonable alternative synthesis of the Separation Agreement and the TMA, whereby Flex's entitlement to the Q3 Tax Distribution was to be preserved as a "reimbursement … or other similar benefit in respect of Taxes." The ruling below contravenes this Court's consistent direction that the Court of Chancery cannot choose between two reasonably conceivable interpretations of an ambiguous suite of agreements in resolving a motion to dismiss.

5. The Court of Chancery erroneously concluded there are no particularized allegations in Plaintiffs' Complaint reflecting that the parties' contractual arrangement, as espoused by Defendants, was a product of mistake. Yet the Complaint contains sufficiently particularized allegations to meet Delaware's reasonable conceivability pleading standard for both unilateral and mutual mistake. The court erred when it dismissed Plaintiffs' alternative reformation claim based on a theory of unilateral or mutual mistake.

6. The Court of Chancery also erred when it determined that the TMA gave Defendants a clear justification for retaining the Q3 Tax Distribution because that conclusion was based on the court's erroneous interpretation of the scope and effect of the TMA on the issue of tax distributions. The TMA does not unambiguously declare the parties' rights with respect to the Q3 Tax Distribution. Because the court correctly found that Plaintiffs sufficiently alleged an enrichment,

an impoverishment, and a relationship between the two, the court erred in dismissing Plaintiffs' alternative claim for unjust enrichment.

STATEMENT OF FACTS

A. The Parties.

Flex USA, a wholly-owned subsidiary of Flex, is the parent company of all Flex subsidiaries in the United States. (A6 ¶6, A8 ¶12.) As such, it is responsible for filing consolidated tax returns on behalf of the entire group of U.S. companies. (*Id.* ¶12.) In 2015, Flex acquired Nextracker Inc. ("Nextracker") and, over the next eight years, helped grow Nextracker so that Nextracker could be spun off into an independent company. (A10 ¶22.) Prior to the spinoff, Flex USA wholly owned Yuma, which, in turn, wholly owned Yuma Sub, which were both members of Nextracker LLC. (A6 ¶4, A11 ¶29.)

Through a series of transactions completed by January 2, 2024, Flex spun off its ownership interest in Nextracker LLC. (A12 ¶31.) After the spinoff, Nextracker Inc., a public company, owned the Yuma Entities and was also itself a member of Nextracker LLC. (*Id.*)

As a result of this ownership structure and the spinoff agreements, Flex USA was responsible for the income tax obligations of the Yuma Entities for income arising from Nextracker LLC, including during Q3 2024. (A6 ¶6; A15 ¶41; Op. 3.)

B. The Core Contracts And Pertinent Terms.

Flex's primary contention is simple: Separation Agreement Section 2.4(b) independently requires any Nextracker entity that receives a payment that relates to a Liability of a Flex entity to hold that payment in trust and remit it to Flex. (A77

§ 2.4(b).) The Q3 Tax Distribution paid under the LLCA relates to Flex's Q3 tax liability. The Separation Agreement's routing obligation is therefore triggered with respect to the Q3 Tax Distribution.

1. The LLCA.

At the time of the spinoff, Nextracker LLC was governed by the LLCA (A247-A309; A12 ¶34.) At all times relevant, the LLC's Manager was Nextracker Inc. (A13 ¶35.) As is typical of many LLC agreements, the LLCA requires the Manager to make quarterly "tax distributions" to its members to provide funds to pay the income tax liabilities stemming from income of Nextracker LLC. (A12-A15 ¶¶34, 36-39; A278 § 5.01(b); Op. 10.) Specifically, the LLCA states as follows:

> <u>Tax Distributions.</u> To the extent (i) the Manager [Nextracker Inc.] reasonably determines that the Company [Nextracker LLC] has Available Cash, and (ii) such distributions are permitted by any credit or financing agreements to which the Company or any of its Subsidiaries is a party, *the Manager [Nextracker Inc.] shall cause the Company [Nextracker LLC] to make distributions for each Tax Year (or portion thereof) among the Common Members with respect to their Common Units pro rata (based on the Common Unit Sharing Percentages of such Common Members) such that each Common Member receives an amount at least equal to the excess of (A) the product of (x) the aggregate net taxable income for such Tax Year allocated by the Company [Nextracker LLC] to such Common Member (disregarding any basis adjustments pursuant to Section 743(b) of the Code), and (y) the Assumed Tax Rate for such Tax Year, over (B) all prior distributions made to such Common Member in such Tax Year with respect to its Common Units (to the extent not previously taken into account under this Section 5.01(b)).* Any distribution made pursuant to this Section 5.01(b) shall be treated as an advance against future distributions payable to such Member pursuant to Section 5.01(a) or Article XIII and shall reduce such distributions on a dollar-for-dollar

> basis. *The Manager [Nextracker Inc.] shall cause the Company [Nextracker LLC] to make distributions pursuant to this Section 5.01(b) in quarterly installments on an estimated basis on or before the 10th day of April, July, October and January of such Tax Year.*

(A13 ¶37; A278 § 5.01(b) (emphasis added).) In short, Nextracker LLC was required to distribute to each member sufficient cash to cover the tax liability stemming from income allocated to that member—based on each member's pro rata share of total income and the Assumed Tax Rate. (*See* A278 § 5.01(b).)

2. The Separation Agreement.

The Separation Agreement, dated February 8, 2023, governed the spinoff. (A19 ¶56.) Section 2.4(b) of the Separation Agreement is the Wrong-Pockets Provision that requires each party and its respective members/subsidiaries to return any misdirected payments after the spinoff. (A22-A21 ¶¶68-71; Op. 3.) Such provisions are often used in corporate transaction documents to ensure that assets, rights, and liabilities find their way to the correct entity after the transaction closes. *See* Lexis Practical Guidance, Drafting Notes, Wrong Pockets Clauses; *see also, e.g.*, 1 Warren's Forms of Agreements – Fern's Desk Edition § 2.1 (2026) (including wrong-pockets provision).

Relevant here, the Wrong-Pockets Provision required Defendants to promptly forward to Plaintiffs (1) "all payments and reimbursements" (2) received by Defendants after the spinoff (3) that relate to an Asset or Liability of Plaintiffs. (A24 ¶71; Op. 8.) In full, the provision states:

> As between the Parties (and the members of their respective Group) all payments and reimbursements received after the Operative Time by one Party (or member of its Group) that relate to a Business, Asset or Liability of the other Party (or member of its Group), shall be held by such Party for the use and benefit of the Party entitled thereto (at the expense of the Party entitled thereto) and, promptly upon receipt by such Party of any such payment or reimbursement, such Party shall pay or shall cause the applicable member of its Group to pay over to the Party entitled thereto the amount of such payment or reimbursement without right of set-off.

(A77 § 2.4(b).)

3. The TMA.

The TMA, dated January 2, 2024, was intended to "(a) provide for the payment of Tax liabilities and entitlement to refunds thereof, allocate responsibility for, and cooperation in, the filing of Tax Returns, and provide for certain other matters relating to Taxes and (b) set forth certain covenants and indemnities relating to the preservation of the Tax-Free Status of the Distributions and the Mergers." (A730 at 2.) For pre-spinoff periods, it provides that "Flex shall pay and be responsible for any and all Taxes due with respect to or required to be reported on any Joint Return (including any increase in such Tax as a result of a Final Determination) for all Pre-Distribution Tax Periods." (A738 § 2.1(a).) The TMA separated tax obligations for the post-spinoff period as between Flex and Nextracker. (*Id.* § 2.1(b)-(c).) While the TMA was explicit in allocating the pre-spinoff tax and filing obligation for any joint return to Flex, this was not a new arrangement, as Flex had incurred the tax liability for the Yuma Entities prior to the spinoff. (*See* A6 ¶6, A17-A18 ¶¶48-50, A21 ¶65, and A36 ¶125.) Indeed, Flex was allocated income and tax distributions for each of Q4 2023, Q1 2024, and Q2 2024. (A17-A18 ¶¶48-50.)

The TMA was explicit in what it superseded:

> Section 2.6 Prior Agreements. Except as set forth in this Agreement and in consideration of the mutual indemnities and other obligations of this Agreement, *any and all prior Tax sharing or allocation agreements or practices* between any member of the Flex Group and any member of the NewCo Group shall be terminated with respect to each such Group as of the Distribution Date. No member of either the Flex Group or the NewCo Group shall have any continuing rights or obligations under any such agreement.

(A739 § 2.6 (emphasis added).)[1]

In other words, the TMA superseded prior agreements relating specifically to "*Tax sharing or allocation*"—i.e., which entity is responsible for the payment and filing of taxes. It said nothing at all concerning whether or how the parties might

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[1] Taxes is defined to mean:

> [A]ll taxes, charges, fees, duties, levies, imposts, rates or other assessments or governmental charges of any kind in the nature of a tax imposed by any federal, state, local or non-United States Taxing Authority ... , (b) liability for the payment of any amount of the type described in clause (a) above arising as a result of being (or having been) a member of any group or being (or having been) included or required to be included in any Tax Return related thereto, and (c) liability for the payment of any amount of the type described in clauses (a) or (b) above as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

(A736 § 1.1(75).)

agree to allocate funds among themselves to cover the costs of paying those taxes, nor does it purport to supersede any such arrangements.

To the extent any provision of the TMA was relevant, it was Section 2.5, which states that "Flex shall be entitled to all Refunds related to Taxes the liability for which is allocated to Flex pursuant to this Agreement" and that "NewCo [i.e., Yuma] shall pay to Flex any Refund received by any member of the NewCo Group [Yuma and its subsidiaries], PubCo [Nextracker Inc.] or any Subsidiary of PubCo that is allocable to Flex pursuant to this Section 2.5 no later than five Business Days after the receipt of such Refund." (A738-A739 § 2.5(a)-(b).) As used in that definition, the term "Refunds" means "*any* refund, *reimbursement*, offset, credit, *or other similar benefit in respect of Taxes* (including any overpayment of Taxes that can be refunded or, alternatively, applied against other Taxes payable)." (A735 § 1.1(64) (emphasis added).)

C. The Parties' Conduct In Preparation For The Separation Of The Nextracker Business.

In 2021, Flex pursued strategic opportunities for Nextracker and announced a proposed separation though an IPO, sale, spinoff, or other transaction. (A10 ¶23.) To that end, Flex and Nextracker commenced the process of separating Nextracker from Flex (the "spinoff") by entering into an initial Separation Agreement in February 2022. (*Id.* ¶24, Separation Agreement, A52-A53 (Recitals).) As part of that agreement, Nextracker LLC was formed as the operating entity, and Nextracker Inc. became a Flex subsidiary intended to serve as the public company. (A10 ¶24.)

Flex and Nextracker entered into additional agreements in furtherance of the separation in February 2023, including the operative Separation Agreement. (A11 ¶26; A46-A245.)

1. 2023-2024 Nextracker Tax Distributions.

Both Nextracker and Flex operate with a fiscal year ending in March, which means that their Q3 runs from October 1 through December 31. (A17 ¶46; Op. 4, n.5.) The income allocated to the Yuma Entities was included in Flex USA's consolidated income tax return for each quarter during which Flex had an ownership interest in Nextracker LLC, as Flex USA incurred the associated tax liability. (A17 ¶47.) For Q4 2023, Q1 2024, and Q2 2024, Nextracker LLC made tax distributions to the Yuma Entities, and Flex USA caused the Yuma Entities to transfer the funds to Flex USA, the entity responsible for U.S. tax payments. (A18 ¶50, A36 ¶125; Op. 4.) Specifically, on November 30, 2023, Nextracker emailed Flex, stating that "Fiscal Year 2023, 1st and 2nd Quarters of Fiscal Year 2024 tax distributions from Nextracker LLC will be remitted to you on December 7, 2023" and attached six corresponding distribution letters for the Yuma Entities. (A17 ¶48; A310-A319 (Email and Tax Distribution Letters).) These letters tie the tax distribution directly to the members' tax liability. (A18 ¶49.)

In addition, Nextracker's public filings recognized the link between the tax liability and the associated tax distribution. (*See* A16 ¶45(a) (Nextracker's Form S-4: Nextracker LLC generally is "required from time to time to make … tax distributions, to the holders of LLC Common Units to help each of the holders of Nextracker LLC Common Units to pay taxes on such holder's allocable share of taxable income of Nextracker LLC."); *id.* ¶45(b) (Nextracker November 2023 Form 10-Q: Nextracker LLC is required to made "tax distributions … to the holders of LLC common units to help each of the holders of the LLC common units to pay taxes on such holder's allocable share of taxable income of the LLC.").)

2. 2024 Final Spinoff Transaction.

On January 2, 2024, Flex spun off Nextracker in a two-step transaction where (1) Yuma Inc. merged with a wholly owned subsidiary of Nextracker, and Yuma Inc. survived; and (2) the surviving Yuma Inc. merged into a surviving LLC, Yuma Acquisition Sub, wholly owned by Nextracker. (A12 ¶31; Op. 4.)

D. The Q3 2024 Tax Distribution And Resulting Contractual Dispute.

1. Nextracker's Delayed Payment Of The Q3 Tax Distribution.

The Yuma Entities remained indirect subsidiaries of Flex until January 2, 2024; thus, Flex owned both subsidiaries for the entirety of Q3 2024. (A18 ¶51.) LLCA Section 5.01(b) provides that the Q3 Tax Distribution was due on or before January 10, 2024. (*Id.* ¶52; A278 § 5.01(b); Op. 4.) Nextracker LLC did not make any tax distributions to Flex or any of its subsidiaries before January 10, 2024. (A20

¶59.) Contrary to the terms of the LLCA, Nextracker delayed payment of the Q3 Tax Distribution until February 6, 2024, when it distributed $48.5 million to the Yuma Entities. (A18 ¶53; Op. 4-5.) The Yuma Entities did not, however, forward the Q3 Tax Distribution to Flex USA—notwithstanding that Flex USA bore the tax liability that the Q3 Tax Distribution was intended to reimburse. (A19 ¶54; Op. 5.)

2. The Parties' Pre-Litigation Dispute.

On January 9, 2024, Nextracker's Senior Vice President of Finance emailed Flex's Vice President of Tax, stating that Nextracker's attorneys had been "looking at the LLC agreement and the tax distribution is based on the ownership of the LLC 10 days after quarter end close." (A19 ¶58.) Nextracker's email further stated: "As of Jan 10 Flex did not own any unit of the LLC, so theoretically the distribution will happen to the Yumas, TPG [another member] and the [Nextracker] Inc, but the Yumas are now owned by Nextracker Inc." (*Id.*)

On February 1, 2024, Flex sent a demand letter to Nextracker Inc., asserting that the Yuma Entities were wholly-owned subsidiaries of Flex Ltd. during Q3 2024, which entitled Flex and its subsidiaries to the Q3 Tax Distribution under the Separation Agreement's Wrong-Pockets and Retained Assets provisions. (A20 ¶60.) Flex also demanded an accounting of the Q3 Tax Distribution made to the Yuma Entities and immediate payment of the tax distribution to Flex. (*Id.* ¶61.) Nextracker responded on February 14, 2024, stating that "[n]one of [Flex's] arguments … alters our conclusion that Flex is not entitled to any Q3 [Tax] Distribution." (A17 ¶63.)

E. The Court of Chancery's Opinion.

On February 21, 2025, Flex filed its Verified Complaint, asserting four claims for relief: (1) breach of contract under the Separation Agreement; (2) breach of the implied covenant of good faith and fair dealing in the Separation Agreement; (3) unilateral and mutual mistake; and (4) unjust enrichment. (A5.) On March 25, 2025, Defendants moved to dismiss (A320), and that motion was fully briefed (A371, A790, A857). The Court of Chancery held oral argument on October 20, 2025 (A944-A962) and issued its opinion on January 21, 2026 (D.I. 31, attached hereto as Exhibit A).

The Court of Chancery started its analysis by determining that the Wrong-Pockets Provision in the Separation Agreement applied to the Q3 Tax Distribution, meaning that Flex was entitled to the $48.5 million provided under the LLCA to the Yuma Entities for Q3 2024. (Op. 13.) The court then turned to the TMA, concluding that the TMA "control[s] the parties' dispute." (*Id.* at 16.) First, the court held that, because the TMA specifically allocated responsibility for "any and all Taxes," and the Wrong-Pockets Provision "speaks in general transaction terms," the "tax-specific language of the [TMA] controls." (*Id.*) Without analysis or citation, the court concluded that "Flex cannot claim a right to payment for a liability it expressly allocated to itself under the Tax Agreement." (*Id.*)

The Court of Chancery reasoned that TMA Section 2.6 supported its construction, explaining that the section terminated the "practice" of Flex causing the Yuma Entities to pay quarterly tax distributions to Flex USA. (Op. 16.) And, finally, the court rejected Plaintiffs' interpretation of TMA Section 2.5(a), narrowly construing the capitalized term "Refunds" as limited to the government-initiated variety, while overlooking the contract definition that expands the term to include "reimbursements … or other similar benefit in respect of Taxes." (*Id.* 17.)

Based on its construction, the Court of Chancery dismissed Plaintiffs' breach of contract claim, as well as Plaintiffs' claims for breach of the implied covenant and unjust enrichment. For the implied covenant claim, the court held that, because the TMA addressed the issue of the Q3 Tax Distribution, there was "no implied obligation" and "no gap … for the covenant to fill." (Op. 19.) Similarly, for unjust enrichment, the court reasoned that, because the TMA allocated "tax liabilities," Defendants were justified in retaining the Q3 Tax Distribution. (*Id.* at 21.) Finally, the court determined that Plaintiffs failed to identify a mutual mistake with particularity, yet did not address Plaintiffs' unilateral mistake claim at all. (*Id.* at 20.)[2]

[2] Because the Court of Chancery held that the Separation Agreement unambiguously applied to the Q3 Tax Distribution (Op. 13), Flex is not appealing the court's ruling on Flex's gap-filling implied covenant claim (A32-A34 ¶¶107-19).

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN DISMISSING PLAINTIFFS' BREACH OF CONTRACT CLAIM.

A. Question Presented.

Whether the Court of Chancery erred by holding that the TMA unambiguously foreclosed Flex's breach of contract claim under the Wrong-Pockets Provision of the Separation Agreement. This issue was raised below (A830-A831, A934-A939) and considered by the Court of Chancery (Op. 6-18).

B. Scope Of Review.

The Court reviews *de novo* the Court of Chancery's interpretation of written agreements and its ruling on a motion to dismiss. *See Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011); *Payscale*, 2026 WL 774876, at *3.

C. Merits Of The Argument.

The Court of Chancery erred in holding that the TMA unambiguously foreclosed an otherwise viable breach of contract claim, as the court below declared, under the Wrong-Pockets Provision of the Separation Agreement.

In analyzing Flex's claim, the Court of Chancery correctly concluded that the Q3 Tax Distribution is "a payment that relates to a Liability covered by the Wrong-Pockets Provision." (Op. 13.) It explained further that, if "the analysis ended here, the court would deny the motion to dismiss." (*Id.*) The court erred, however, in concluding that, when read together, the TMA unambiguously supplanted the Separation Agreement, such that Flex's breach of contract claim under the Wrong-Pockets Provision was unambiguously foreclosed. (*Id.* 13-17.) These conclusions rested on an interpretation of the TMA that was not faithful to its text or its purpose. Further, the court's conclusion improperly rejected Flex's reasonable interpretation of these two agreements, and therefore violated the cardinal rule that, "[e]ven if the court considers one party's interpretation of a contract to be more reasonable, it is error for the court, on a Rule 12(b)(6) motion, to select the more reasonable interpretation as legally controlling." *See, e.g.*, *LGM Hldgs., LLC v. Schurder*, 340 A.3d 1134, 1144 (Del. 2025) (cleaned up).

1. The Court of Chancery Erred in Interpreting the TMA as Unambiguously Preempting the Separation Agreement on the Issue of the Q3 Tax Distribution.

Flex does not dispute that, to evaluate its claim that Nextracker breached certain obligations under the Separation Agreement, it is necessary to read together the full suite of agreements effectuating the spinoff, including the TMA. Indeed, integrated suites of agreements, as here, should be "read in full" and "in the commercial context between the parties." *Chi. Bridge & Iron Co. N.V. v. Westinghouse Elec. Co.*, 166 A.3d 912, 926-27 (Del. 2017) (*citing* Restatement (Second) of Contracts § 202 (1981) ("A writing is interpreted as a whole, and all writings that are part of the same transaction are interpreted together.")). "The basic business relationship between parties must be understood to give sensible life to any contract." *Id.* at 927.

Here, however, the Court of Chancery erred by conflating two separate ideas, each of which was governed by distinct provisions in the suite of agreements: (1) which entity shouldered the responsibility to *pay* particular tax obligations (which was governed by tax law pre-spinoff and the TMA post-spinoff); and (2) the entitlement to the Q3 Tax Distribution (which was governed by the Separation Agreement). The court held that the TMA provisions extinguished Flex's right to the distribution. (*See* Op. 16 (wrongly concluding that "Flex cannot claim a right to payment for a liability it expressly allocated to itself under the Tax Agreement.").)

That holding was error. The Court of Chancery's conclusion finds no support in the text of the TMA. Further, the court's interpretation unreasonably foists upon Flex the absurd result whereby Flex supposedly agreed it would pay taxes and forgo the corresponding tax distribution it would have otherwise received in the ordinary course—ensuring Nextracker an unearned windfall of $48.5 million—all without explicitly addressing the tax distribution anywhere in the TMA. That outcome is inconsistent with the parties' prior practice and Nextracker's treatment of other owners with respect to the very Q3 Tax Distribution at issue in this case.

Starting with first principles, there is a fundamental distinction between assignment of the *legal liability* for the payment of a tax obligation and the *functional* question of how the party holding that liability will satisfy it. Indeed, the text of the relevant agreements reflects this distinction, with the TMA addressing the question of formal, legal liability and the LLCA and the Separation Agreement (including its Wrong-Pockets Provision) addressing the pragmatic question of how the parties' funds should be distributed in light of that formal assignment of liability.

The TMA's own description of its purpose and objective reflects this separation: "[T]o (a) provide for the payment of Tax liabilities and entitlement to refunds thereof, allocate responsibility for, and cooperation in, the filing of Tax Returns, and provide for certain other matters relating to Taxes and (b) set forth certain covenants and indemnities relating to the preservation of the Tax-Free Status of the Distributions and the Mergers." (A730 at 2 (emphasis added); *see also* Op. 14-15 (citing this language).)

The substantive provisions of the TMA are consistent with this limited scope, including, in particular, Sections 2.1 and 2.6. Section 2.1 deals directly with the question of tax liability. It provides:

> Section 2.1 <u>Tax Relating to Joint Returns</u>.
>
> (a) *Flex shall pay and be responsible for any and all Taxes due with respect to or required to be reported on any Joint Return (including any increase in such Tax as a result of a Final Determination) for all Pre-Distribution Tax Periods.*
>
> (b) Flex shall pay and be responsible for any and all Taxes due with respect to or required to be reported on any Joint Return (including any increase in such Tax as a result of a Final Determination) for all Post-

> Distribution Tax Periods, other than those Taxes described in Section 2.1(c).
>
> (c) NewCo shall pay and be responsible for any and all Taxes due with respect to or required to be reported on any Joint Return (including any increase in such Tax as a result of a Final Determination) which Taxes are attributable to the Nextracker Business for all Post-Distribution Tax Periods.

(A738 § 2.1.) As this text makes plain, the substantive scope of the TMA focuses on the formal question of which entity is legally liable for particular taxes incurred on income earned during a particular period. (*See id.)* Here, the TMA confirmed the tax principles that had allocated liability to Flex for paying and filing taxes accrued prior to the spinoff. But TMA Section 2.1 does not even purport to address inter-entity remittances to defray that liability—much less the Q3 Tax Distribution, or any other tax distribution for that matter.

Section 2.6 addresses the TMA's preemptive scope, which is expressly limited to "prior Tax sharing or allocation agreements or practices." In other words, unless an agreement or practice addresses the "sharing" or "allocation" of "Taxes"—a defined term that includes only the *liability* for government exactions, not inter-company remittances to address the defrayal of that liability—it is not superseded by the TMA. (TMA, § 1.1(75).) The preemption provision provides, in full:

> Section 2.6 Prior Agreements. Except as set forth in this Agreement and in consideration of the mutual indemnities and other obligations of this Agreement, *any and all prior Tax sharing or allocation agreements or practices* between any member of the Flex Group and any member of the NewCo Group *shall be terminated with respect to each such Group*

> *as of the Distribution Date.* No member of either the Flex Group or the NewCo Group shall have any continuing rights or obligations under any such agreement.

(A739 § 2.6 (emphases added).)[3]

The Court of Chancery's contrary conclusion rested on three fundamental errors in its interpretation of the contracts' text.

First, the Court of Chancery erred in concluding that "Flex cannot claim a right to payment for a liability it expressly allocated to itself under the Tax Agreement." (Op. 16.) As discussed above, there is a foundational distinction between the allocation of a liability and the allocation of the means to satisfy it—and the TMA speaks only to the former, not the latter. The court's decision erased that distinction.

Second, the Court of Chancery's interpretation misapplies or violates various canons of contract construction, including the specific-over-the-general canon, the canon against surplusage, and the unreasonable-results canon.

To start, the court's opinion misapplies the rule that specific provisions on a given topic trump general provisions on that same topic. (*Id.* (holding that Section 2.1's use of "tax-specific language" supersedes the "general transaction terms" of the Wrong-Pockets Provision and thus "controls"); *see also Thompson St. Cap. Partners IV, L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151,

[3] The TMA's definition of "Tax" is reproduced, in pertinent part, in footnote 1, *supra*.

1166 (Del. 2025) ("This principle can be thought of as reading the specific as an exception to the general, which allows a harmonizing of otherwise conflicting provisions.") (cleaned up).)

To be sure, the TMA deals with only a single subject matter (liability for taxes), whereas the Wrong-Pockets Provision covers payments regardless of purpose or subject matter. But the mere fact that one provision is, in some abstract sense, "broad" and the other is "narrow" does not trigger the canon of supersession. Instead, the specific-controls-general canon applies only when two provisions *address the same subject and conflict with one another*. *Kaye as Tr. of Bruce Kaye Revocable Tr. v. Fantasea Resorts Grp., Inc.*, 2025 WL 1157217, at *7 (Del. Ch. Apr. 17, 2025) ("But the maxim applies only when provisions stand in conflict."); *ITG Brands, LLC v. Reynolds Am., Inc.*, 2017 WL 5903355, at *9 (Del. Ch. Nov. 30, 2017) ("The rule of contractual interpretation that a 'specific provision ordinarily qualifies the meaning of [a] general one' logically applies where 'specific and general provisions conflict.' But there is no necessary conflict here.").

Here, because the two agreements do not address the exact same topic, they do not conflict. In implicitly concluding that the two agreements regulated the same type of payment, the Court of Chancery read the TMA too broadly. The TMA governs who owes taxes to the government—it allocates legal liability for Taxes, defined as government-imposed charges. (A730 at 2; A738 § 2.1(a)-(c).) In contrast, Separation Agreement Section 2.4(b) governs where "wrong-pockets" payments must go. (A77 § 2.4(b).) These are not the same question. A provision providing that Flex bears the Q3 tax obligation to the IRS does not answer whether a payment designed to fund that obligation must be remitted to Flex when received in the wrong pocket in the first instance. Indeed, there is no text in the TMA that addresses the existence, size, or process for remitting payments intended to cover various entities' tax liability. (A738 § 2.1(a)-(c); A739 § 2.6.) Absent an actual conflict between provisions addressing the same subject matter, the canon has no work to do.

In assigning an overbroad reading to the TMA, the Court of Chancery relied, incorrectly, on Section 2.6's reference to "Tax sharing or allocation agreements or practices," concluding that Flex's prior instruction to the Yuma Members to pay quarterly tax distributions to Flex USA "[wa]s a 'practice' that Section 2.6 terminated." (Op. 16.) The court's analysis on this point was too superficial—and, as a result, incorrect. To be sure, a consistent pattern of instructions to pay certain funds to a certain entity could be a "practice." But that is not sufficient to fall within Section 2.6. The at-issue "practice" must concern "Tax sharing or allocation." Again, nothing about routing funds to *cover* a tax liability constitutes a "sharing" of liability for that tax, nor an "allocation" of it.

Were there any doubt about that conclusion here, the specific definition of "Tax" removes it, because it defines "Tax" as having essentially two distinct meanings: (1) "all taxes, charges, fees, duties, levies, imposts, rates or other assessments or governmental charges of any kind in the nature of a tax imposed by any federal, state, local or non-United States Taxing Authority, including [numerous examples];" and (2) "liability for the payment of any amount of the type described [above]." (A736 § 1.1(75).)

Simply put, Flex's regular "instruction to the Yuma Members to pay quarterly tax distributions to Flex USA" was not a "practice" concerning the "sharing" or "allocation" of "liability for the payment of [income taxes]." (Op. 16; A739 § 2.6.) It was not within the scope of the TMA as a result, and the Court of Chancery erred in concluding otherwise.

Moreover, the Court of Chancery's interpretation of the TMA would render the Wrong-Pockets Provision of the Separation Agreement superfluous as to Flex Liabilities—a contractual construction to be avoided—without express intent to supersede the prior agreement. *See, e.g.*, *Thompson St. Cap.*, 340 A.3d at 1167 ("[C]ontracts will be interpreted to give each provision and term effect and not render any terms meaningless or illusory.") (cleaned up). Taken to its logical conclusion, the court's view is that, if Flex expressly allocates a "liability" to itself, it must forgo any right to any "payments" or "reimbursements" that Nextracker obtains after the spinoff which relate to that expressly allocated liability. This interpretation would swallow whole the rights allocated to Flex under the Wrong-

Pockets Provision, because necessarily any Flex "Liability" would have to be a liability allocated to Flex. Such a construction should not stand, rendering meaningless, as it does, the Wrong-Pockets Provision in context.

Indeed, wrong-pockets provisions are included in agreements "to provide a mechanism by which the parties ensure that all assets, rights, and liabilities involved in a transaction which are found to be in the 'wrong pockets' are ultimately placed in the 'correct pockets.'" Lexis Practical Guidance, Drafting Notes, Wrong Pockets Clauses. To render such a clause superfluous and illusory without express language would deprive entities and corporate practitioners of a valid manner by which to ensure assets end up in the correct hands following a sale transaction. *See* 4 Purchaser's Formbook of Cont & Agrmts § 32:6, Asset Purchase Agreement—Ascent Industries Co. (2025), sec. 5.17 (including a "wrong pocket" provision); *id.* § 32:2, Asset Purchase Agreement between IGI Laboratories, Inc. and AstraZeneca Pharmaceuticals LP [New York], art. 4(4.8) (same); 4 Corp Couns Gd to Acq & Divest Appendix A-1, Equity and Asset Purchase Agreement—Martin Marietta Materials Inc. (2023) (updated Mar. 2026), art. V, sec. 5.23 (same).

The Court of Chancery's conclusion also violates the longstanding tenet that, "[i]n placing a construction on a written instrument, reasonable rather than unreasonable interpretations are favored by law," where an "unreasonable interpretation" is one that "produces an absurd result or one that no reasonable person would have accepted when entering the contract." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1160 (Del. 2010) (internal quotations and references omitted). Under the court's reading of the agreements, Flex would have deliberately allocated to itself substantial tax liability while forgoing the corresponding tax distribution for the final quarter before the spinoff, resulting in a $48.5 million windfall for Nextracker—and a corresponding $48.5 million reduction in the effective purchase price. Yet contracting parties, like lawmakers, do not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). If the parties had intended to make a significant adjustment to the transaction price, they could—and would—have done so in a much more straightforward manner than the convoluted tax arrangement envisioned by the court's opinion. *Axis Reinsurance Co. v. HLTH Corp.*, 993 A.2d 1057, 1063 (Del. 2010) ("[A] court will not adopt the interpretation that leads to unreasonable results, but instead will adopt the construction that is reasonable and that harmonizes the affected contract provisions.").

Third, even if all this were not clear from the face of the various agreements, the Court of Chancery erred in holding that its chosen reading of the Separation Agreement and TMA was the *only* reasonably conceivable way to reconcile those two agreements. As shown above, it was not. It was far more (or at least equally) plausible that the parties' agreements were intended to carry forward through final settlement of the Q3 tax obligation the pre-separation status quo of Flex retaining ultimate liability for the Q3 tax liability, with the Q3 Tax Distribution to be paid to Flex USA to cover its cost.

It was error for the Court of Chancery to grant a motion to dismiss when confronted with competing, plausible interpretations of the agreements. *See LGM Hldgs.*, 340 A.3d at 1144 ("Even if the court considers one party's interpretation of a contract to be more reasonable, it is error for the court, on a Rule 12(b)(6) motion, to select the more reasonable interpretation as legally controlling.") (cleaned up); *BitGo Hldgs., Inc. v. Galaxy Digital Hldgs., Ltd.*, 319 A.3d 310, 323 (Del. 2024) ("[D]ismissal is proper only if the defendants' interpretation is the only reasonable construction as a matter of law."); *Terrell v. Kiromic Biopharma, Inc.*, 338 A.3d 1272, 1278 (Del. 2025) ("Having concluded that [defendant's] interpretation is not the sole reasonable construction of the Waiver, we hold that [plaintiff's] complaint adequately states a claim for relief.").

For these reasons, the Court of Chancery erred in holding that the TMA superseded and supplanted the Wrong-Pockets Provision such that it unambiguously established that Flex was not entitled to the Q3 Tax Distribution.

2. The Court of Chancery Erred in Rejecting the Reasonably Conceivable Alternative Interpretation of the Separation Agreement and TMA Offered by Flex.

Even if the Court of Chancery were correct that the TMA addresses the disposition of the Q3 Tax Distribution, however, TMA Section 2.5 is consistent with the Separation Agreement and reinforces that the Q3 Tax Distribution should still funnel to Flex as a "Refund." Because this synthesis of the two agreements is reasonable, dismissal was inappropriate. *VLIW Tech.*, 840 A.2d at 615 ("In deciding a motion to dismiss, the trial court cannot choose between two differing reasonable interpretations of ambiguous provisions.").

Specifically, Section 2.5(a) provides that "Flex shall be entitled to all Refunds related to Taxes the liability for which is allocated to Flex pursuant to this Agreement." Section 2.5(b) provides that "NewCo shall pay to Flex any Refund received by any member of the NewCo Group … that is allocable to Flex pursuant to this Section 2.5 no later than five Business Days after the receipt of such Refund." (A739 § 2.5(b).)

The capitalized term "Refunds" is, in turn, defined broadly—much more broadly than the government-limited meaning of the term "refund" ascribed by the Court of Chancery—as "any refund, *reimbursement*, offset, credit or *other similar benefit in respect of Taxes*." (A735 § 1.1(64) (emphasis added).) The Q3 Tax

Distribution falls squarely within that definition's ambit as a "reimbursement … or other similar benefit in respect of Taxes." (*Id.*)

In addition, such a construction is entirely consistent with the Wrong-Pockets Provision—which the Court of Chancery held requires Nextracker to pay over to Flex any payments *or reimbursements* relating to a Flex Liability. (Op. 13; A77 § 2.4(b).) TMA Section 2.5(a) entitles Flex to all "Refunds related to Taxes" for which Flex was allocated liability and defines Refund to include "any … *reimbursement* … or *other similar benefit in respect of Taxes*." (A735 § 1.1(64) (emphasis added).) Neither the Separation Agreement nor the TMA define the term "reimbursement." In general, the definition of reimburse includes "[t]o replenish the funds of a person after payments made by him" or "[t]o place in a treasury, as an equivalent for what has been taken, lost, or expended." (Ballentine's Law Dictionary, (3d ed. 2010); *see also* West's Tax Law Dictionary § R1080 ("To repay or pay back that which was expended."); Black's Law Dictionary (12th ed. 2024) ("The act or an instance of paying back a sum of money.") (cited at Op. 9).)

Here, because the Q3 Tax Distribution was intended to provide funds to reimburse the Nextracker LLC members for their pass-through tax liability for a given quarter, it would be reasonable at this stage of the proceedings to allow for the likelihood—and very real possibility—that the Q3 Tax Distribution is a "reimbursement" under both the TMA and the Wrong-Pockets Provision.

Nevertheless, the Court of Chancery concluded that Section 2.5(a) did not support the Flex interpretation, holding that "Refund" is limited to a governmental entity's repayment of "a payment to a federal, state, local, or any other government agency." (Op. 17.) But this narrow conclusion is unsupported by the textual definition of Refund in the TMA, which plainly extends beyond "payment[s] to a federal, state, local, or any other government agency." For example, "Refund" includes any "reimbursement, offset, credit, or other similar benefit"—language not commonly associated with governmental tax rebates or refunds but that does describe the type of payment the Q3 Tax Distribution represents.

Under the court's reading, the terms "reimbursement" and "other similar benefit" would be rendered superfluous and illusory, which is contrary to standard, mandated contract interpretation rules. *Osborn*, 991 A.2d at 1159 ("We will not read a contract to render a provision or term 'meaningless or illusory.'"); *Payscale*, 2026 WL 774876, at *7 (holding as error the Court of Chancery's decision to "elide[a] provision's express terms").

Finally, even if the Court of Chancery's reading of Section 2.5(a) were reasonable—and it was not—the Flex interpretation, which gives meaning to every contract term, is also reasonable, and rejecting that reasonable interpretation was error at the motion to dismiss stage. *E.g.*, *Vill. Practice Mgmt. Co., v. West*, 342 A.3d 295, 313 (Del. 2025) ("[A]t the pleadings stage of a contract dispute, the Court cannot choose between two differing reasonable interpretations of ambiguous contract language.") (citation omitted); *VLIW Tech*, 840 A.2d at 615 (same).

II. THE COURT OF CHANCERY ERRED IN DISMISSING PLAINTIFFS' REFORMATION CLAIM BASED ON A THEORY OF MISTAKE.

A. Question Presented.

Whether the Court of Chancery erred in ruling on Plaintiffs' alternative mistake claim by concluding that there are no particularized allegations in the Complaint reflecting that the parties' contractual arrangement was a product of mistake. This issue was raised below (A842-A848, A945-A948) and considered by the Court of Chancery, in part (mutual mistake) but not in whole (Op. 19-20).

B. Scope Of Review.

The Court of Chancery's ruling on a motion to dismiss for lack of particularized allegations is subject to de novo review. *See KnighTek, LLC v. Jive Commc'ns, Inc.*, 225 A.3d 343, 350 (Del. 2020).

C. Merits Of The Argument.

The Court of Chancery erroneously concluded that there are no particularized allegations suggesting that the parties' contractual arrangement was the product of mistake. It is well-settled that the Supreme Court will "not affirm a dismissal unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances." *Cent. Mortg. Co.*, 27 A.3d at 535 (*citing Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002) (citation omitted)). The facts alleged by Plaintiffs support a reasonable inference of both unilateral and mutual mistake, and it was error for the court not to credit, or even acknowledge, Plaintiffs' allegations at this stage.

Under Delaware law, "[b]oth mutual mistake and unilateral mistake allow for reformation." *Kingfishers L.P. v. Finesse US, Inc.*, 2024 WL 4625650, at *5 (Del. Ch. Oct. 30, 2024) (*citing Cerebrus Int'l, Ltd. v. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1151 (Del. 2002)). Mistake must be alleged with particularity. *See id.* (citing Court of Chancery Rule 9(b)).

Unilateral mistake is a valid basis for reformation "where a party can 'show that it was mistaken and that the other party knew of the mistake but remained silent.'" *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Est. Fund*, 68 A.3d 665, 679-80 (Del. 2013) (*quoting Cerebrus*, 794 A.2d at 1151); *see also Collins v. Burke*, 418 A.2d 999, 1002 (Del. 1980). A case is "appropriate for reformation based on unilateral mistake" if the plaintiff can show that, "despite the existing written agreement one party maintains is accurate, th[e] existing writing erroneously expresses the parties' true agreement." *Scion Breckenridge*, 68 A.3d at 680 (clarifying a unilateral mistake case need not be "exceptional") (cited at Op. 20).

Separately, "a mutual mistake occurs where both parties have a misconception regarding a material term in the contract." *James River-Pennington, Inc. v. CRSS Cap., Inc.*, 1995 WL 106554, at *9 (Del. Ch. Mar. 6, 1995). While an alleged misunderstanding about a material term in a written contract executed by sophisticated parties "may suggest difficulty in proving mistake in the crucible of trial," such allegations "must be considered true for the purposes of a motion to dismiss." *Id.*; *see also Cent. Mortg. Co.*, 27 A.3d at 536.

The Complaint contains sufficient allegations to state a mistake claim with particularity. *First*, the complaint includes numerous facts demonstrating the historical course of performance between the parties, all supporting Plaintiffs' allegation that the parties always operated under the understanding that tax distributions were intended to benefit the party with the tax liability. Nextracker LLC's taxable income passed through to the Yuma Entities; and Flex USA, as parent of the consolidated group, was ultimately liable for the associated tax liability for Q3 2024 through its ownership of the Yuma Entities that quarter. (A17 ¶¶46-47; *see also* Op. 3, 13.) Pursuant to this understanding, Nextracker LLC made tax distributions to the Yuma Entities for Q4 2023, Q1 2024, and Q2 2024, with a cover letter tying the tax distribution to the tax liability, and Flex caused the funds to transfer to Flex USA. (A17 ¶48, A19 ¶49; (A311-A317); *see also* Op. 4.)

In addition, during Q3 2024 (October 1 to December 31, 2023), Nextracker Inc. recognized the link between the tax liability and the associated tax distribution in its public filings. (*See* A16 ¶45(a) (Nextracker's October 25, 2023 Form S-4: Nextracker LLC generally is required from time to time to make … tax distributions, to the holders of LLC Common Units to help each of the holders of Nextracker LLC Common Units to pay taxes on such holder's allocable share of taxable income of

Nextracker LLC."); *id.* ¶45(b) (Nextracker's November 2023 Form 10-Q: Nextracker LLC is required to made "tax distributions … to the holders of LLC common units to help each of the holders of the LLC common units to pay taxes on such holder's allocable share of taxable income of the LLC.").)[4]

Second, as the Court of Chancery held, the Wrong-Pockets Provision unambiguously applied to the Q3 Tax Distribution: (1) the Q3 Tax Distribution was a "payment or reimbursement," (2) received by a member of the Nextracker Group after the Operative Time, (3) that relates to an Asset or Liability of the Flex Group. (*See* A77 § 2.4(b); Op. 13 ("The Q3 Tax Distribution is thus a payment that relates to a Liability covered by the Wrong-Pockets Provision.").)

Third, based on essentially the same analysis as the Court of Chancery applied, Flex pleaded that it believed the Separation Agreement addressed the Q3 Tax Distribution and, had it known otherwise, "it would not have effectuated the spin-off prior to January 10, 2024." (A35 ¶¶121-122; A843.) Flex also alleged that, in effectuating the spinoff, Flex did not intend to forfeit its right to the Q3 Tax Distribution or assume the risk of the mistake. (*Id.* ¶124, A36 ¶128.) *See Matter of Jeremy Paradise Dynasty Tr.*, 2021 WL 5564086, at *5 (Del. Ch. Nov. 29, 2021)

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[4] A party may use parol evidence to establish mistake. *James-River Pennington*, 1995 WL 106554, at *8 (*citing* 13 *Williston on Contracts* § 1552, at 210-11).

(allegation that petitioner believed he would have authority and "would never have agreed to deprive himself of such authority" supported claim for mistake).

Finally, Plaintiffs allege that it was not until after the spinoff that Nextracker first raised the issue in an attempt to seize a windfall. (A36 ¶126.) In a January 9, 2024 email, Nextracker stated that its attorneys had been "looking at the LLC agreement and the tax distribution is based on the ownership of the LLC 10 days after quarter end close. As of Jan 10 Flex did not own any unit of the LLC, so theoretically the distribution will happen to the Yumas, TPG [another member] and [Nextracker] Inc, but the Yumas are now owned by Nextracker Inc." (A19 ¶58.)

If the parties understood and intended that the TMA allocated all tax distributions for Q3 2024 to Nextracker, that Flex disclaimed its entitlement to the Q3 Tax Distribution, or that the Wrong-Pockets Provision did not apply to transfer the Q3 Tax Distribution to Flex, there would have been no need for Nextracker to send the January 9, 2024 email at all. Thus, two reasonable conclusions or inferences emanate from Nextracker's January 9 email: either (1) Nextracker knew that the Wrong-Pockets Provision did not apply and remained silent on the topic until after the spinoff was complete (i.e., unilateral mistake); or (2) Nextracker was also mistaken at the time it entered into the Separation Agreement that Nextracker LLC tax distributions would inure to the entity that incurred the corresponding liability—in keeping with prior quarterly distributions made for Flex USA's benefit—and did not realize the mistake until January 2024 (i.e., mutual mistake). (A35-A36 ¶¶124-126, 129; A843, A846-A848.) *Kingfishers*, 2024 WL 4625650, at *1 ("Plaintiffs have pled here that [Defendant] agreed to a 70% discount and a valuation cap at no more than $13 million. Assuming the truth of that averment, I may infer that either Defendant made a mistake in drafting the [final agreement] in a way erroneously representing the agreement, or that Defendant, knowing that Plaintiffs would anticipate a [final agreement] which embodied their agreement, stood silent as Plaintiffs entered the non-compliant [agreement]."). Either way, "the mistake was based on a specific prior agreement that materially differed from the Separation Agreement." (A848.)

The Court of Chancery failed to account for these allegations, let alone the reasonable inferences they support, in holding that Plaintiffs did not plead mistake with particularity. This was error. *See, e.g.*, *Cent. Mortg. Co.*, 27 A.3d at 536; *Cerebrus*, 794 A.2d at 1155; *James River-Pennington*, 1995 WL 106554, at *9 (finding specific pleading of four inconsistencies between the parties' written agreement and prior oral agreement sufficiently supported allegation that "both parties [had] a misconception regarding a material term in the contract") (cited at Op. 20). Nor did the court address unilateral mistake in any way, both committing and compounding an error.

III. THE COURT OF CHANCERY ERRED IN DISMISSING PLAINTIFFS' UNJUST ENRICHMENT CLAIM.

A. Question Presented.

Whether the Court of Chancery erred in concluding that the TMA gave Defendants a clear justification to retain the Q3 Tax Distribution and, consequently, dismissing the alternative unjust enrichment claim. This issue was raised below (A848-A855; A948-A950) and considered by the Court of Chancery (Op. 20-21.).

B. Scope Of Review.

The Court reviews *de novo* the Court of Chancery's ruling on a motion to dismiss. *See Payscale*, 2026 WL 774876, at *3.

C. Merits Of The Argument.

The Court of Chancery's dismissal of the unjust enrichment claim was error. To state a claim for unjust enrichment, Plaintiffs were required to allege: (1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, and (4) the absence of justification. *Garfield ex rel. ODP Corp. v. Allen*, 277 A.3d 296, 341-51 (Del. Ch. 2022).

The Court of Chancery held that Plaintiffs met the first three elements: (1) the Q3 Tax Distribution enriched Defendants, (2) Plaintiffs were impoverished by not receiving the Distribution, and (3) the Distribution "relates to the associated tax liability Plaintiffs incurred due to their ownership of Nextracker during Q3 2024." (Op. 21.) But the court ruled that Plaintiffs failed to meet the fourth element, "absence of justification," because Nextracker made the Q3 Tax Distribution to the Yuma Entities pursuant to the LLCA, and the TMA "allocated tax liabilities thereafter." (*Id.*)

This was error. As explained in detail above, Plaintiffs have maintained, in the Court of Chancery and on this appeal, that the TMA does not unambiguously supersede the Separation Agreement or the application of the Wrong-Pockets Provision to the Q3 Tax Distribution. *See supra* Section I.C.1. And Plaintiffs specifically alleged that, in the event the Separation Agreement is found not to govern the parties' rights to the Q3 Tax Distribution, "its existence does not preclude Plaintiffs' unjust enrichment claim." (A851.)

Unjust enrichment arises in a contractual context "when a valuable performance has been rendered under a contract that is invalid, or subject to avoidance, or otherwise ineffective to regulate the parties' obligations." Restatement (Third) of Restitution and Unjust Enrichment § 2 (2011). An alternative claim for unjust enrichment survives a motion to dismiss if the plaintiff "pleads sufficient facts for the [c]ourt plausibly to infer" that the parties' contracts do "not comprehensively govern the relationship between the parties with respect to" the contractual right in dispute. *Narrowstep, Inc. v. Onstream Media Corp.*, 2010 WL 5422405, at *17 (Del. Ch. Dec. 22, 2010) (denying motion to dismiss because unjust enrichment "represent[ed] a viable, alternative remedial theory" when it was unclear whether parties' contracts governed the parties' relationship).

Here, Plaintiffs alleged facts sufficient to show a reasonably conceivable set of circumstances under which Defendants were unjustly enriched because it is unclear whether the parties' contracts effectively govern their obligations with respect to the Q3 Tax Distribution. *See Savor*, 812 A.2d at 897 ("[D]ismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.") (citation omitted). Because the Court of Chancery erred in concluding that the TMA gave Defendants a clear justification to retain the Q3 Tax Distribution, it erred in dismissing Plaintiffs' alternative unjust enrichment claim.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully ask the Court to reverse the Court of Chancery's dismissal of Plaintiffs' claims for breach of contract, unilateral and mutual mistake, and unjust enrichment.

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