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' REPLY BRIEF

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I. INTRODUCTION.

The issues in this appeal are straightforward: Did the Court of Chancery err in dismissing Flex's contractual and extracontractual claims by improperly selecting one contractual interpretation over another reasonable interpretation and failing to construe all inferences in favor of Flex. Nothing in Nextracker's Corrected Answering Brief ("CAB") demonstrates how the court's opinion did not run afoul of these basic adjudicatory standards governing motions to dismiss. To the contrary, Nextracker uses its own assumptions and interpretations to support the very assumptions and interpretations it proffers, ignores contrary contractual language, and focuses on whether its interpretation is better than Flex's interpretation, all in a continued attempt to retain the $48.5 million Q3 Tax Distribution as a windfall. As demonstrated in Flex's Opening Brief ("OB") and below, reversal is warranted.

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

The Court of Chancery erred in holding that the TMA foreclosed an otherwise viable breach of contract claim under the Wrong-Pockets Provision of the Separation Agreement. Importantly, Nextracker does not contest—at least for purposes of this appeal—the court's conclusion that Flex adequately alleged that the Q3 Tax Distribution is "a payment that relates to a Liability covered by the Wrong-Pockets Provision." (OB, Ex. A ("Op.") 13; *see* CAB 17-18 n.6.) Instead, relying on sparse and inapposite caselaw, and improperly drawing inferences in its own favor, Nextracker posits several reasons why its synthesis of the TMA and the Separation Agreement reflects the better interpretation of those agreements. (CAB 17-29.)

But whether Nextracker has the *better* interpretation is not the proper inquiry. Rather, at the motion-to-dismiss stage, the Court must assess whether Nextracker's reading is the ***only*** reasonable interpretation. Because Flex's Complaint presented a reasonable alternative interpretation—whereby Flex preserved its right to the Q3 Tax Distribution under the Wrong-Pockets Provision—dismissal was improper, and reversal is necessary.

A. The Court of Chancery Erred by Foreclosing Flex's Entitlement to the Q3 Tax Distribution Under the Separation Agreement.

The Court of Chancery's conclusion that the TMA unambiguously supplanted the Separation Agreement on the issue of the Q3 Tax Distribution was error. (OB 21-

31.) The Court's analysis conflated the assignment of the *legal liability* for the payment of a tax obligation with the fundamentally different question of how a network of related business entities would allocate revenue and assets in light of those tax-payment obligations. (*Id*. 22-23.) The TMA explicitly addressed the former but was silent as to the latter. (*Id*.)[1]

1. The Flex Interpretation of the TMA is Reasonable.

Nextracker offers several points in response. (CAB 18-29.) Each is unavailing. And, importantly, none of them establishes—as Nextracker must—that the TMA unambiguously forecloses Flex's right to the Q3 Tax Distribution.

Nextracker first seeks to bolster the Court of Chancery's opinion by observing that the TMA includes an integration provision stating it supersedes all prior agreements "with respect to the subject matter" of the TMA. (CAB 20 (citing A750 § 9.3).)[2] Contrary to Nextracker's argument, however, the "subject matter" of the TMA does not conclusively encompass the Q3 Tax Distribution and its treatment under the Separation Agreement. Instead, Nextracker's argument assumes the correctness of Nextracker's view that the TMA and Wrong-Pockets Provision

[1] Nextracker suggests that Flex's Complaint is deficient because it did not include discussion of the TMA. (CAB 17.) But Flex has never purported to assert a claim under the TMA. In fact, Flex's position has always been (including in drafting its Complaint and on this appeal) that the TMA does not address the same issues as those in the Separation Agreement.

[2] The Court of Chancery did not analyze the integration clause in its opinion. (Op. 11-17.)

address the same subject matter. But that assumption cannot itself determine whether or not they do address the same subject matter. That can only be accomplished by comparing the scope of the two agreements. (*See* OB 25-28.)

Next, Nextracker asserts that Flex "ignore[d]" the language of Section 2.1(a), which states that Flex shall "pay … and be responsible for" applicable Taxes due. (CAB 21.) Not so. Flex quoted the language of Section 2.1(a) in full and explained that the provision means only that Flex was obligated to *pay* taxes to the government and to *file* returns as to periods prior to the spinoff. (OB 23-24.) That scope is consistent with the TMA's own description of its purpose: "[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[.]" (A730 (emphasis added); *see also* OB 23 (citing this language).) Moreover, the TMA also ties the notion of "responsibility" to the tax return, defining "Responsible Party" as "the Party required to prepare and file such Tax return." (A740 § 3.3.)

Even assuming Nextracker's interpretation is reasonable, it is by no means the *only* reasonable interpretation of Section 2.1(a). As Flex explained in its Opening Brief, the TMA plainly addresses tax liability but is silent as to the Q3 Tax Distribution or other payments allocated to fund that obligation, nor do those distribution directives fall within the scope of the TMA, according to its own terms. (OB 23-24, 27.) A simple analogy illustrates the point here: While an employee may bear ultimate "responsibility for" paying an expense charged to a personal credit card, that responsibility does not affect whether the employee can seek reimbursement from the employer under an employment agreement to cover certain expenses.

Nextracker next asserts that Flex "ignore[s]" the TMA's indemnification provision, which Nextracker contends is "irreconcilable with Plaintiffs' effort to compel Nextracker to turn over the Q3 Distribution" because it supposedly "made clear that Nextracker itself would *never* bear any responsibility for any pre-spin-off tax liability." (CAB 22 (citing A745 § 5.1(a)).) This argument is equally unavailing.

The technical question of which party is legally liable for taxes incurred on income earned during a particular period and, therefore, responsible for *paying taxes to the government* on such income, fails to answer the question of inter-entity remittances to defray that liability. In the scenario where Flex failed to file and pay taxes on that income, and the government then sought payment for such taxes from *Nextracker*, Nextracker could properly invoke the indemnification provision. But that outcome is consistent *only* with Flex's assumption of the responsibility to file and to pay taxes *to the government* and does not reflect any agreement by Flex to forgo any right it otherwise had under the Separation Agreement to the Q3 Tax Distribution.

This distinction is consistent with the TMA. *First*, the definition of "Taxes" includes only the *liability* for government exactions, not intercompany remittances to defray that liability. (A736 § 1.1(75).) Because the TMA's indemnification provision extends only to Taxes, not to the Q3 Tax Distribution, it does not support, let alone establish, Nextracker's interpretation. Indeed, Nextracker does not, and cannot, dispute that there is no text in the TMA that addresses the existence, size, or process for remitting payments intended to cover various entities' tax liability. (*See* OB 27.)

Second, the remainder of the indemnification provisions demonstrate that the indemnification obligation related to tax liability assessed by the government. Section 5.2(a) specifies that "the Indemnitee shall notify the Indemnifying Party, in writing, of its obligation to *pay such Tax*" if the Indemnitee is "*required to pay to a Taxing Authority a Tax, or to another Person a payment in respect of a Tax*" and the Indemnifying Party shall pay the Indemnitee "no later than the later of (i) five Business Days prior to the date on which such *payment is due to the Taxing Authority* or (ii) 15 Business Days after the receipt of notice from the other Party." (A746 § 5.2(a) (emphasis added).) Section 5.3(a) requires that indemnification payments be made "by Flex directly to [Yuma]" and does not contemplate an offset of other distributions. (*Id.* § 5.3(a).) Section 5.3(b) provides that, if any such indemnification payments are to be made, the Indemnitee shall provide "a copy of any official government receipt received with respect to the payment of such Taxes to the applicable Taxing Authority." (*Id.* § 5.3(b).)

Finally, Nextracker argues that Flex's interpretation of the TMA cannot be correct because, if it were, the TMA would merely reflect obligations consistent with tax law, rendering that Section "unnecessary," (*see* CAB 22), or "superfluous in light of the tax law," (*id*. 25). That argument ignores the context in which the TMA arose: The ongoing transfer of a complex business enterprise to a new ownership structure. Against that backdrop, it is no wonder that the parties would wish to specify, in clear and simple terms, who remains responsible for ensuring that tax obligations continue to be satisfied during that transition period. (Nor, on a motion to dismiss, can Nextracker ask this Court to infer otherwise.)

2. The Court of Chancery Misapplied Canons of Contract Construction.

Nextracker's attempt to sweep aside the canons of construction discussed in Flex's Opening Brief fares no better. To start, Nextracker's argument concerning the specific-over-the-general canon is circular, presuming that the Nextracker interpretation of the TMA's "subject matter" is correct. (CAB 23.) That position is incorrect, for the reasons already discussed. *Supra* at 3-4; (*see also* OB 25-28.). Regardless, Nextracker cannot rebut the use of a textual canon by invoking the *ipse dixit* assertion that the text means something other than what the canon suggests it means.

Nor does Nextracker's argument that it does not "make sense" to include the definition of "Tax" in interpreting Section 2.6 rebut Flex's arguments. (CAB 24 n.8.) Giving meaning to the TMA's defined terms is the best and only way to interpret the TMA, and Nextracker cites no authority to the contrary. That the narrowly defined "Tax" term complicates Nextracker's preferred reading of the TMA has no bearing on whether Flex's interpretation is reasonable.

Nextracker's argument regarding the canon against surplusage misconstrues Flex's argument. (CAB 24.) Flex does not argue that application of the TMA to the Q3 Tax Distribution alone renders the Wrong-Pockets Provision superfluous. Rather, Flex argues that, under the Court of Chancery's reading, the Liabilities portion of the Wrong-Pockets Provision would be rendered superfluous. If the court's reading were correct, for any liability that Flex "allocates to itself"—which Flex must do for *any* liability as part of the separation—Flex must also forgo any right to payment or reimbursement under the Wrong-Pockets Provision. (OB 28-29.)

Nextracker's response to Flex's invocation of the unreasonable-results canon is more of the same. Nextracker simply declares that the "reality" is that Flex "did" allocate to itself substantial tax liability while forgoing the corresponding tax distribution. (CAB 25.) This, too, simply assumes that Nextracker's view is correct and asks this Court to proceed from that assumption. But that, of course, this Court may not do. *See Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs.*, 27 A.3d

531, 536 (Del. 2011) ("When considering a defendant's motion to dismiss, a trial court should … draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.").

Nextracker does not dispute, for purposes of this appeal, that the Separation Agreement's Wrong-Pockets Provision provided Flex with an entitlement to the Q3 Tax Distribution. (CAB 17-18 n.6.) That Flex controlled the drafting and could have chosen other language in allocating the Q3 Tax Distribution does not mean that the absurd outcome favored by Nextracker is reflexively reasonable—and certainly not the *only* reasonable result here. (*See* OB 22, 28-31.) Indeed, Flex's control over the drafting process makes it even *less* plausible that Flex would have silently forfeited its entitlement to a $48.5 million distribution. The opposite inference—that, after the spinoff, Nextracker sought to take advantage of ambiguous contract language and deviate from past practice to wrongly withhold the Q3 Tax Distribution from Flex—is comparably far more reasonable than Nextracker's preferred inference that Flex intentionally deprived itself of $48.5 million for no articulable reason. [3]

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[3] Nextracker's invocation of the *contra proferentem* doctrine implicitly concedes the ambiguity inherent in the synthesis of the TMA and the Separation Agreement, as that doctrine is only applicable in interpreting ambiguous contract language. *SI Mgmt. L.P. v. Wininger*, 707 A.2d 37, 42 (Del. 1998). Moreover, as this Court has made clear, "the rule of *contra proferentum* is one of last resort, such that a court will not apply it if a problem in construction can be resolved by applying more

At bottom, the Court of Chancery erred in favoring Nextracker's broad reading of the TMA over Flex's narrower, but reasonable, TMA reading. (OB 26); *see 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.") (cleaned up).

Nextracker's only authority cited in favor of affirmance is easily distinguishable—and, in fact, supports reversal. In *Manti Hldgs. v. Authentix Acquisition Co.,* this Court, in a divided opinion, affirmed the Court of Chancery's dismissal of a petition for appraisal under Section 262 of the Delaware General Corporation Law, reasoning that petitioner stockholders "had agreed to a clear provision requiring that they 'refrain' from exercising their appraisal rights." 261 A.3d 1199, 1203 (Del. 2021). The Court found the term "refrain" to reflect a clear waiver of petitioner's appraisal rights. *Id*. at 1212.

Here, unlike in *Manti*, there simply is no "clear provision" in the TMA requiring Flex to relinquish its rights to the Q3 Tax Distribution. Although Nextracker points to multiple provisions in the TMA in support of its preferred

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favored rules of construction," such as the canons Flex identifies. *E.I. du Pont de Nemours & Co. v. Shell Oil Co.*, 498 A.2d 1108, 1114 (Del. 1985).

interpretation, none of these provisions squarely addresses whether Flex is entitled to the Q3 Tax Distribution. Instead, Nextracker argues that this Court should—as the Court of Chancery did—infer from those unrelated or ambiguous provisions that the parties intended to extinguish Flex's right to the Q3 Tax Distribution. While that argument may (or may not) eventually be found persuasive by a factfinder, it is categorically improper on a motion to dismiss, where Plaintiffs are entitled to all reasonable inferences. *Cent. Mortg.*, 27 A.3d at 536.

Further, *Manti* supports Flex's argument that contracts should not be interpreted to reach commercially unreasonable results: "Delaware courts read contracts as a whole, and interpretations that are commercially unreasonable or that produce absurd results must be rejected." 261 A.3d at 1211.

In short, because the key contractual language at issue here is not unambiguously clear but instead is subject to multiple reasonable interpretations, dismissal at the motion to dismiss stage is improper. *LGM Hldgs. v. Schurder*, 340 A.3d 1134, 1144 (Del. 2025) ("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. v. Galaxy Digit. Hldgs.*, 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."); *Payscale Inc. v. Norman*, -- A.3d --, 2026 WL 774876, at *1, *5, *7 (Del. Mar. 19, 2026) (reversing dismissal where it was "reasonably conceivable" that the agreement was enforceable as against defendants).

B. The Tax Agreement's Refund Provision Further Supports Flex's Synthesis of the TMA and the Separation Agreement.

Contrary to Nextracker's assertion, Flex does not seek recovery under Section 2.5 of the TMA. (CAB 27.) Instead, Flex's position is that the language of Section 2.5 comports with the parties' intent that Flex retain its rights, under the Separation Agreement, to the Q3 Tax Distribution. (OB 32-35.) As Flex previously explained, the TMA's use of the terms "reimbursement" and "other similar benefit" make clear that the defined term "Refund" extends far beyond merely "payment[s] to a federal, state, local, or any other government agency." (*Id*. 34.)

Nextracker's only response is to invent from whole cloth an atextual limitation on the applicability of Section 2.5, whereby the "Refund" must supposedly be "received by any member of the Nextracker Group *from an external source*." (CAB 28-29.) But this limitation is not found anywhere in the text of Section 2.5. (CAB 29.) Of course, had the parties desired such a limitation, they could have contracted for one. But by its plain terms, Section 2.5 applies to any Refund "received by any member of the [Nextracker] Group" from *any* source, which includes intra-company transfers such as the Q3 Tax Distribution. (OB 32-33; A738-39 § 2.5.) Section 2.5 is fully consistent with Flex's synthesis of the TMA and the Separation Agreement—and further demonstrates the reasonableness of Flex's interpretation, necessitating reversal.

Nextracker's technical argument that the Yuma Entities could not have received any "benefit" as a result of their receipt of the Q3 Tax Distribution strains credulity. (CAB 28.) The Yuma Entities received a direct cash payment of $48.5 million for tax liability they did not incur, a payment to which the Wrong-Pockets Provision makes clear they were not entitled. One could hardly imagine a greater "benefit" than a $48.5 million windfall received as a result of conjured, interpretive contractual "gotcha."

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All of Nextracker's arguments rest on the assertion that the TMA clearly and unambiguously controls how Flex, Nextracker, and Yuma allocated funds among themselves following Flex's payment of taxes for income allocated from Nextracker LLC. And that argument, in turn, depends almost exclusively on what the TMA means when it says that Flex shall "pay and be responsible for" the filing and payment of those taxes. In theory, that could (as Nextracker argues) mean that Flex has forsworn any reimbursement or receipt of funds that is related to payment of those taxes. Or, as Flex has maintained, it could have the far simpler meaning that

Flex is responsible for filing tax returns and remitting tax payments to the government—and that everything else falls outside the TMA's purview. At bottom, the parties' dueling canons and competing cross-references serve only to confirm that the Court of Chancery erred by choosing what it thought was the *better* interpretation, rather than simply deciding whether Flex's reading was *reasonable*. Because it was, the order of dismissal should be reversed.

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

A. Flex Met Court of Chancery Rule 9(b)'s "Particularized" Pleading Requirement on Its Mistake Claim.

Nextracker's first argument is that Flex has "attempt[ed] to lower [its] pleading burden by arguing [it] need only show that [its] mistake claim is reasonably conceivable." (CAB 31). Flex has done no such thing. To the contrary, it is *Nextracker's* argument that seeks to muddy the relevant dismissal standards. To start, there are *two* distinct requirements at issue: (1) Rule 9(b) requires that certain facts be described in greater detail than typically is required, and (2) Rule 12(b)(6) asks whether, in light of those (adequately pleaded) facts, there is "any reasonably conceivable set of circumstances" that would entitle the plaintiff to relief. *Kingfishers L.P. v. Finesse US, Inc.*, 2024 WL 4625650, at *4 (Del. Ch. Oct. 30, 2024); *JPMorgan Chase Bank, N.A. v. Ballard*, 213 A.3d 1211, 1222 (Del. Ch. 2019) (explaining both 9(b) and 12(b)(6) standards).

Nextracker's cited cases, (AB 31), are inapposite as they were not decided under a motion to dismiss standard. *See Newport Disc., Inc. v. Newport Elecs., Inc.*, 2013 WL 5797350, at *6 (Del. Ch. Oct. 7, 2013) (summary judgment with a clear and convincing standard derived from New York law); *Interactive Corp. v. Vivendi Universal, S.A.*, 2004 WL 1572932, at *15-17 (Del. Ch. June 30, 2004) (evaluating whether there is no material fact in dispute and the moving party is entitled to judgment as a matter of law); *Hartfield, Titus & Donnelly, LLC v. MarketAxess Hldgs.*, 2025 WL 2057976, at *1 (Del. Ch. July 23, 2025) (post-trial opinion).

Flex's Opening Brief properly distinguishes the two concepts. (*See* OB 36 ("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.'" (quoting *Cent. Mortg.*, 27 A.3d at 535)); *id*. 36, 37 ("Mistake must be alleged with particularity." (citing Court of Chancery Rule 9(b)); *id*. 38 ("The Complaint contains sufficient allegations to state a mistake claim with particularity."); *id*. 41 (similar).) Said otherwise, Flex's briefing has not attempted to lessen its pleading burden; rather, it has shown how that burden was met. (*See* OB 36-41); *infra* at 16-20.

Moreover, if the pleading-with-particularity requirement of Rule 9(b) displaced Rule 12(b) in the way Nextracker argues, that would likewise preclude courts from drawing all reasonable inferences in the plaintiff's favor in any case governed by Rule 9(b). Which, of course, is not (and never has been) the law of this State. *E.g.*, *Earth Pride Organics, LLC v. Corona-Orange Foods Intermediate Hldgs.*, 2024 WL 5199391, at *6 (Del. Super. Ct. Dec. 20, 2024) ("At the motion to dismiss stage, a plaintiff need only point to factual allegations making it reasonably conceivable that the defendants charged with fraud knew the statement was false."); *Chumash Cap. Invs., LLC v. Grand Mesa Partners, LLC*, 2024 WL 1554184, at *14

(Del. Super. Ct. Apr. 10, 2024) (holding complaint "satisfie[d] Rule 9(b)" and survived dismissal because it "is enough to put Defendants on notice of a reasonably conceivable claim of fraud").

B. The Court of Chancery's Interpretation of the Wrong-Pockets Provision Does Not Preclude Plaintiffs' Alternative Mistake Claim.

Nextracker next argues that, because the Court of Chancery agreed that the Wrong-Pockets Provision applies to the Q3 Tax Distribution, Flex is now precluded from asserting a mistake claim in the alternative. (CAB 32.) But the court's opinion resolved only a motion to dismiss, meaning the claim has not been fully adjudicated. While Flex contends that the court's analysis of the Separation Agreement is correct as a matter of law, Nextracker expressly disputes the court's determination:

> Nextracker argued below that the Q3 Distribution was not covered by the Wrong-Pockets Provision…*and respectfully disagrees with the Chancellor's pleading-stage determination to the contrary*. . . . [S]olely for purposes of this appeal, Nextracker assumes that the Wrong-Pockets Provision *could* be deemed applicable to the Q3 Distribution.

(CAB 17-18 n.6 (emphasis added).) Nextracker cannot have it both ways—it cannot argue to dismiss the mistake claim based on a contractual claim it expressly disputes and which has not been fully adjudicated. *Compare Great-West Invs. LP v. Thomas H. Lee Partners, L.P.*, 2011 WL 284992, at *9, *11 (Del. Ch. Jan. 14, 2011) (allowing plaintiff's breach of contract and alternative mistake claims to survive motion to dismiss because contract interpretation issue remained) *with Great-West Invs. LP v. Thomas H. Lee Partners, L.P.*, 2012 WL 19469 (Del. Ch. Jan. 4, 2012) (at summary judgment, the court determined that the contract governed the parties' dispute, thereby foreclosing the alternative mistake claim as a matter of law).

C. Plaintiffs' Allegations of a Specific Prior Understanding Meet the "Particularity" Requirement Under Court of Chancery Rule 9(b).

Turning to Nextracker's final argument, Flex does not dispute that a mistake claim requires particularized allegations of a specific prior understanding, including what the agreement was and who entered into it. (CAB 35 n.10.) That is precisely what Flex has alleged in the Complaint and none of Nextracker's arguments undermine those particularized allegations.

First, contrary to Nextracker's argument, (CAB 33), Flex's allegations regarding the parties' prior course of performance, (*see* OB 15-16, 38-39; A843-845; A35-A36 ¶¶122-129), are relevant to allegations of a prior understanding. *See Kingfishers*, 2024 WL 4625650, at *5-6 (holding plaintiffs' allegations of defendant's prior course of dealing with other investors established consistent pattern and transaction context supporting inference of parties' prior understanding that materially differed from the executed agreement); *see also Great-West*, 2011 WL 284992, at *11-14 (on a motion to dismiss, ruling allegations of specific prior communications reflected parties' shared understanding and intent).[4]

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[4] The case on which Nextracker relies is readily distinguishable. *See BAE Sys. N. Am. Inc. v. Lockheed Martin Corp.*, 2004 WL 1739522, at *6 (Del. Ch. Aug. 3, 2004) (dismissing mistake counterclaim where defendant's "shallow pleading" alleged

Second, Nextracker's assertion—without any citation—that Flex has not alleged an agreement with *Nextracker* is simply incorrect. (CAB 33.) Flex specifically alleged that both it and *Nextracker* understood and expected the Q3 Tax Distribution to be provided to the party incurring the associated tax liability pursuant to the terms of the LLCA, (A14 ¶39, A16 ¶44, A35 ¶¶122, 124, A37 ¶132), that Nextracker consistently recognized that the tax distributions inured to the benefit of the party incurring the tax liability, (*id.* A17-A18 ¶¶48-49, A37 ¶132), and that it was not until *Nextracker's* attorneys created a theory to capture a windfall that Nextracker asserted a different position, (*id.* A19-A20 ¶58, A36 ¶126).

Third, Flex does not contend that its unilateral expectation alone establishes a prior understanding. Rather, as explained above, Flex asserts that its understanding, coupled with the parties' past conduct and intent surrounding the tax distributions as articulated in the LLCA, (A14 ¶39, A16 ¶44, A17-A18 ¶44, A35 ¶¶122, 124, A37 ¶132), and inferences from Nextracker's January 9 email, (*id.* A19-A20 ¶58, A36 ¶126), are sufficient to establish a prior agreement. *See Great-West*, 2011 WL 284992, at *11-14 (particular allegations of communications reflecting a shared intent, defendants' knowledge of this understanding, and the absence of any indication that plaintiff should have known of a different meaning established prior

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nothing more than an invitation to read the agreement "as not in conformity with a prior 'mutual understanding'").

agreement sufficient to survive a motion to dismiss on both unilateral and mutual mistake).[5]

Finally, Nextracker's arguments based on predictions regarding possible facts are plainly improper on a motion to dismiss. (*See* CAB 34 (that Flex "may have" caused the Yuma Entities to forward prior distributions to Flex "does not evidence a prior understanding with Nextracker about what would happen if a distribution were paid after Flex effected the spin-off[.]"); *id.* 36-37 (arguing a "plausible third option" is that Nextracker's January 9, 2024 email "reflects the parties' disagreement over the interpretation of contractual language[.]").) At the pleading stage, Flex need only allege particularized facts showing circumstances from which it is reasonably conceivable that it would be able to establish mistake. *Duff v. Innovative Discovery LLC*, 2012 WL 6096586, at *10 (Del. Ch. Dec. 7, 2012).[6]

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[5] Nextracker's cases, (CAB 35), are inapposite because they address situations where plaintiffs wholly failed to allege a prior agreement. *See Murphy v. Spinoso*, 2026 WL 775310, at *11 (Del. Ch. Mar. 19, 2026) (dismissing mistake claim where plaintiff "only stat[ed], in conclusory fashion, that the [relevant] agreement was 'intended to be' what she says it is"); *Frontline Techs. Parent, LLC v. Murphy*, 2023 WL 5424802, at *5 (Del. Ch. Aug. 23, 2023) (dismissing claim for equitable recission based on mutual mistake because plaintiffs did not contend a mistake of fact existed when they entered into the relevant agreements).

[6] Nextracker's cases, (CAB 36), demonstrate only that a complete failure to identify the prior agreement or understanding is insufficient to state a mistake claim. *Hartfield*, 2025 WL 2057976, at *13 (concluding, post-trial, that there was no evidence of a prior understanding); *Fortis Advisors LLC v. Johnson & Johnson*, 2021 WL 5893997, at *19 (Del. Ch. Dec. 13, 2021) (dismissing when the complaint

Based on Flex's particularized allegations, it is reasonably conceivable that the parties understood that the tax distribution would inure to the party that incurred the liability and that Nextracker either (1) knew the Wrong-Pockets Provision did not apply and remained silent, or (2) was also mistaken at the time it entered into the Separation Agreement that tax distributions would inure to the entity that incurred the corresponding liability. (*See* OB 38-41; A35-A36 ¶¶124-126, 129; A843, A846-A848.) Thus, the Court of Chancery erred in dismissing the alternative mistake claim.

"contain[ed] no factual allegations indicating that the parties had" another understanding). That is not the case here.

IV. THE COURT OF CHANCERY ERRED IN DISMISSING THE UNJUST ENRICHMENT CLAIM.

Nextracker contends that dismissal of the unjust enrichment claim was proper because "Plaintiffs concede that the parties contractual scheme governs their right to the Q3 Distribution." (CAB 39.) Nextracker then cites various allegations *by Flex* in support of its primary breach-of-contract claim in which it alleges that it is entitled to the Q3 Tax Distribution under the Separation Agreement. (*Id.*) But that is exactly the point of a claim made in the alternative—if the Court concludes Flex is not entitled to relief under its contract claim, Flex has stated an alternative right to recovery. *See Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLP*, 2014 WL 6703980, at *27 (Del. Ch. Nov. 26, 2014) (for alternative unjust enrichment claim, plaintiff may plead a right to recovery "not controlled by contract[.]") (cleaned up); *Narrowstep, Inc. v. Onstream Media Corp.*, 2010 WL 5422405, at *16 (Del. Ch. Dec. 22, 2010) (plaintiff's allegations raising issues of fact as to the parties' contractual rights sufficient to plead alternative unjust enrichment claim).

Moreover, once again, Nextracker's argument improperly presupposes that Flex's claim under the Separation Agreement has been conclusively decided when Nextracker expressly disputes that the Separation Agreement covers the Q3 Tax Distribution. *See supra*, § III(B); *Parma VTA LLC v. Parma GE 7400, LLC*, 2022 WL 17817312, at *8-9 (Del. Ch. Dec. 16, 2022) (alternative unjust enrichment claim survived dismissal because it was not clear that the issue was covered by an express, enforceable agreement); *Great Hill Equity*, 2014 WL 6703980, at *28 (existence of contract did not preclude alternative unjust enrichment claim because parties' intent and meaning of relevant contractual provisions could not be determined on the pleadings).[7]

Finally, contrary to Nextracker's assertion, (CAB 40 n.12), Flex has alleged a factual basis for its unjust enrichment claim separate and apart from its contractual rights under the Separation Agreement. The LLCA is clear that the mandatory tax distributions are specifically related to the incurrence of tax liability for the relevant period and are calculated based on the allocated taxable income for the relevant period. (*See* A13-A19 ¶¶34-54).) Because Flex incurred the taxable income for the entirety of Q3 2024 and the only reason Flex did not receive the benefit of the Q3 Tax Distribution was because there was a grace period for payment, there is no justification for Nextracker to retain the $48.5 million windfall that is contrary to the expectations and course of performance between the parties. (*Id.* A13-A19 ¶¶34-54, A38 ¶¶138-39.) Nextracker contends that it had a clear justification to retain the Q3 Tax Distribution because the TMA forecloses any contractual right Flex may have

[7] Contrary to Nextracker's argument, (CAB 39-41), and similar to the circumstances in *Narrowstep*, Flex's unjust enrichment allegations are interrelated with its mistake claim, "which is not limited to the terms" of the parties' agreements. 2010 WL 5422405, at *17 (rejecting argument that unjust enrichment precluded by contractual relationship).

to the Distribution. (CAB 40-41.) But, assuming *arguendo* that the TMA supplanted the Separation Agreement with respect to the Q3 Tax Distribution, the parties' agreements do not prescribe Nextracker's rights to post-spin-off distributions such that the equitable unjust enrichment claim is precluded. *See Narrowstep*, 2010 WL 5422405, at *16-17 (integrated agreements did not specify the parties' relationship as to specific issues); *Great Hill Equity*, 2014 WL 6703980, at *27 (restitution deprives defendant of benefits that equity does not permit it to retain, even if honestly received).).[8]

[8] Nextracker's cases are inapposite because neither involved a separate, non-contractual basis upon which the plaintiff held any entitlement. *Hassanein v. NTO Fund I, LLC*, 2026 WL 206873, at *5 (Del. Ch. Jan. 27, 2026) (investor seeking to regain investments made under a contract was limited to the provisions in the contract); *Doberstein v. G-P Indus., Inc.*, 2015 WL 6606484, at *6 (Del. Ch. Oct. 30, 2015) (homeowner's request for refund from contractor was governed by the contracting agreement). In contrast, Flex is not seeking a return of funds it paid under the Separation Agreement. Instead, if the Separation Agreement does not address the Q3 Tax Distribution, Nextracker's retention of the Distribution is unjust because Flex incurred the corresponding tax liability. *See Great Hill Equity*, 2014 WL 6703980, at *27 (right to recovery "not controlled by contract" is valid theory of unjust enrichment).

CONCLUSION

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

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