IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ET AGGREGATOR, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: N23C-02-096 EMD CCLD
	)	
PFJE ASSETCO HOLDINGS, LLC, and PILOT WATER SOLUTIONS, LLC (f/k/a PDPS, LLC)	)	
	)	
Defendants.	)	

Submitted: July 28, 2025
Decided: September 9, 2025

Upon Plaintiff's Motion for Summary Judgment,
GRANTED.

Upon Defendants' Motion for Summary Judgment,
DENIED.

Bradley R. Aronstam, Esquire, S. Michael Sirkin, Esquire, Thomas C. Mandracchia, Esquire, Ross Aronstam & Mortiz, LLP, Wilmington, Delaware; Adam Slutsky, Esquire, Christina L. Golden Ademola, Esquire, Goodwin Procter LLP, Boston, Massachusetts. *Attorneys for Plaintiff ET Aggregator, LLC.*

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DAVIS, P.J.

I. INTRODUCTION

This is a breach of contract action assigned to the Complex Commercial Litigation Division of the Court. Plaintiff ET Aggregator, LLC ("ETA" or "Seller") commenced this action against Defendants PFJE AssetCo Holdings, LLC ("PFJE" or "Buyer") and Pilot Water

Solutions, LLC (the "Company," and collectively with PFJE, "Defendants") for breach of contract. In its one-count Complaint, ETA seeks recovery for breach of contractual obligations under the parties' Membership Interest Purchase Agreement ("MIPA").[1] Specifically, ETA alleges Defendants failed to: "(i) negotiate at all with [ETA]; (ii) provide any draft 2021 tax returns at any point in time; (iii) direct communications to [ETA's majority owner]; and (iv) pay any Tax Distribution to cover the allocation to [ETA] of $5.5 million of depreciation recapture income."[2] ETA requests that the Court "enforce the terms of the MIPA by requiring [Defendants] to pay [ETA], among other costs, approximately $2.86 million, which is the amount of the Tax Distribution to which [ETA] was entitled under the terms of the MIPA and LLCA."[3]

On December 8, 2023, the Court denied Defendants' Partial Motion to Dismiss.[4] Defendants filed their Answer on December 22, 2023.[5]

Presently before the Court are the parties' Cross-Motions for Summary Judgment pursuant to Superior Court Civil Rule 56 (the "Motions"). Defendants filed their Motion for Partial Summary Judgment on April 24, 2024 (the "Defendants' Motion").[6] On June 18, 2024, ETA filed its Combined Answering Brief in Opposition to the Defendants' Motion and Cross-Motion for Summary Judgment (the "ETA Motion").[7] On December 2, 2024, Defendants filed their Combined Opposition to the ETA Motion and Reply Brief in Support of the Defendants'

[1] *See* Complaint (hereinafter "Compl.") ¶¶ 31-36 (D.I. No. 1).
[2] *Id.* ¶ 35.
[3] *Id.* ¶ 7.
[4] *See* Court's Opinion on Defendants' Partial Motion to Dismiss (hereinafter the "MTD Op.") (D.I. No. 23).
[5] *See* Defendants' Answer and Defenses to Complaint (hereinafter "Answer") (D.I. No. 24).
[6] *See* Defendants' Motion for Partial Summary Judgment (hereinafter "Def. Mot.") (D.I. No. 34).
[7] *See* Plaintiff's Combined Answering Brief in Opposition to Defendants' Motion for Partial Summary Judgment and Opening Brief in Support of Plaintiff's Cross-Motion for Summary Judgment (hereinafter "Pl. Opp'n/Mot.") (D.I. No. 47).

Motion (the "Defendants' Opposition/Reply Brief").[8] ETA filed its Reply Brief in Support of the ETA Motion on December 23, 2024 (the "ETA Reply Brief").[9] The Court heard oral arguments on the Motions on July 28, 2025, at which time the matter was taken under advisement.[10]

For the reasons stated below, the Court **GRANTS** the ETA Motion and **DENIES** the Defendants' Motion.

II. BACKGROUND

A. THE PARTIES

1. Plaintiff

ET Aggregator, LLC is a Delaware limited liability company and was a member of the Company, owning a 1.47% membership interest prior to October 2021.[11] ETA was a party to the MIPA and the Company's Second Amended and Restated Limited Liability Company Agreement (the "LLC Agreement" or "LLCA").[12]

Non-party Mr. David Florance was ETA's majority owner.[13] According to ETA, Mr. Florance has "deep experience and expertise in the transportation, disposal, and recycling of solid waste and liquids, and he was responsible for all trucking operations for the Company."[14]

[8] *See* Defendants' Opposition to Plaintiff's Cross-Motion for Summary Judgment and Reply in Support of its Partial Motion for Summary Judgment (hereinafter "Def. Opp'n/Reply Br.") (D.I. No. 69).
[9] *See* Plaintiff's Reply Brief in Further Support of its Cross-Motion for Summary Judgment (hereinafter "Pl. Reply Br.") (D.I. No. 72).
[10] D.I. No. 75.
[11] *See* Compl. ¶ 8.
[12] *Id.*
[13] *See id.* ¶ 5; *see also* Pl. Opp'n/Mot. at 5.
[14] Compl. ¶ 23.

2. Defendants

PFJE AssetCo Holdings, LLC is a Delaware limited liability company and was a member of the Company.[15] PFJE was party to the MIPA and LLC Agreement.[16] PFJE is a wholly owned subsidiary of non-party Pilot Travel Centers, LLC, "the behemoth fuel supplier and operator of travel centers across the United States that the Haslam family founded in 1958 and turned into the seventh largest privately held company in the country."[17]

Pilot Water Solutions, LLC (f/k/a PDPS, LLC) is a Delaware limited liability company with its principal place of business in Texas.[18] Prior to October 2021, the Company had three members—ETA, PFJE, and non-party Produced Water Transfer, LLC ("PWT," a Texas limited liability company).[19] The Company was a party to the MIPA for the sole purpose of Section 16, titled "Company Agreement."[20]

B. NATURE OF THE DISPUTE

1. The LLC Agreement

Founded in 2018, the Company owns and operates infrastructure associated with the management and disposal of water resulting from the production of oil and gas.[21] On November 1, 2018, ETA and the Company (and others) executed the LLC Agreement.[22]

LLC Agreement Section 9.03(b) sets forth the method of calculating the Company's "Call Option."[23] As originally agreed to, Section 9.03(b) provided PFJE with the option to buy

[15] *See id.* ¶ 9.
[16] *See id.*
[17] *Id.* ¶ 2.
[18] *Id.* ¶ 10.
[19] *See* Pl. Opp'n/Mot. at 4.
[20] *See* Compl. ¶ 10.
[21] *See id.* ¶ 2; *see also* MTD Op. at 3; *see also* Def. Mot. at 3.
[22] *See id.*; *see also* Ex. B to Compl., the Second Amended and Restated Limited Liability Company Agreement of PDPS LLC dated as of November 1, 2018 (hereinafter "LLCA").
[23] *See* Compl. ¶ 14.

ETA's membership interest in the Company at a price "determined by multiplying the product of seven (7) times the Company's LTM EBIT" by ETA's percentage membership interest.[24]

On February 7, 2019, the parties executed the First Amendment to the LLC Agreement.[25] The First Amendment to the LLC Agreement modified Section 9.03(b) so that PFJE's call option would be at a price "determined by the product … resulting from multiplying (i) the difference of: (a) the product of seven (7) times the Company's LTM EBIT … minus (b) the Indebtedness of the Company" by (ii) ETA's percentage membership interest.[26] According to ETA, "this change in valuation methodology to deduct for the Company's debt meant that [PFJE] would be able to exercise its call option at a substantially lower price."[27]

2. The MIPA

As the deadline for PFJE's call option approached, PFJE proposed acquiring ETA's 1.47% membership interest in the Company for $2.5 million.[28] ETA contends that when it resisted PFJE's offer, PFJE sent ETA a "Call Exercise Notice" on September 16, 2021, "in which [PFJE] threatened to exercise its call option to purchase [ETA's] membership interest for just $977,624."[29] ETA asserts this option was "far less than [ETA's] then-outstanding $8.64 million investment in the Company."[30] ETA claims that it "reluctantly chose to negotiate" with Defendants, stating:

> With its back against the wall, [ETA] had a choice: it could either sue [Defendants] for the improper exercise of its call option, among a litany of other issues plaguing [Defendants'] management and operation of the Company, or it could avoid the expense and distraction of litigation by trying to negotiate the best sale price it could under the circumstances.[31]

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[24] *Id.* ¶ 14.
[25] *See id.* ¶ 14; *see also* Def. Mot. at 7.
[26] Compl. ¶ 14.
[27] *Id.*
[28] *See id.* ¶ 15; *see also* Answer at 9.
[29] Compl. ¶ 16.
[30] Pl. Opp'n/Mot. at 8.
[31] Compl. ¶ 17.

On September 16, 2021—the same day that PFJE sent the Call Exercise Notice—PFJE sent ETA a first draft of what would become the MIPA with a proposed closing date of October 15, 2021.[32] Following negotiations, the parties agreed to a $3 million purchase price for ETA's membership interest in the Company.[33]

ETA maintains that it "insisted on post-closing tax protection from the Company such as it would have received if it had remained a member of the Company"[34] in exchange for accepting a "bargain price" for its membership interest.[35] ETA alleges that it sent an email to the Company on October 15, 2021, stating, "[ETA] should not come out of pocket to pay taxes on any income allocated to it. Either no income should be allocated to [ETA] or [ETA] should be made whole through a tax distribution for any income allocated to it."[36]

ETA contends that the Company agreed to the latter.[37] As such, the parties added Section 16 to the MIPA, titled "Company Agreements," which addresses tax consequences of the transaction and provides in relevant part:

> The Parties intend that, for federal income tax purposes, the purchase and sale described in [the MIPA] be treated as (i) from [ETA's] perspective, the sale of a partnership interest pursuant to Section 741 of the Internal Revenue Code of 1986 (the "Code")[.][38] … Following the Closing, the Parties shall negotiate in good faith to allocate the Purchase Price (and any other items required to be treated as consideration for federal income tax purposes, including amounts described in the penultimate sentence of this Section 16) among the assets deemed to be acquired

[32] *See id*. ¶ 18; *see* Answer at 11.
[33] Compl. ¶ 19; Answer at 11.
[34] Compl. ¶ 19.
[35] Pl. Opp'n/Mot. at 8.
[36] *Id.*
[37] *See id.*
[38] Section 741 of the Tax Code (26 U.S.C. § 741) states: "In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751." Section 751 of the Tax Code (26 U.S.C. § 751) states:

> The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—(1) unrealized receivables of the partnership, or (2) inventory items of the partnership, shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

> by [PFJE] … and, if the Parties reach agreement on such allocation, each Party shall prepare and file all relevant tax returns in a manner consistent with such allocation. As soon as reasonably practicable after the Closing, the Company will deliver or cause to be delivered to [ETA], IRS Schedule K-1 to Form 1065[39] and such other information with respect to the Company as may be necessary for the preparation of [ETA's] federal, state and local income tax returns for 2021. The federal and state and other income tax returns of the Company and related Schedule K-1s for its final year ending as of the Closing shall be prepared in accordance with and consistent with the past practice of the Company. Complete drafts of such income tax returns shall be provided by the Company to [ETA] at least twenty (20) business days in advance of the due date and intended filing date for review and comment, and the Company shall reasonably consider all such comments in good faith. Notwithstanding the Closing and [ETA] ceasing to be a Member (as defined in the LLCA) of the Company as of the Closing, the Company shall timely pay to [ETA] all Tax Distributions and Shortfall Amounts, each as defined in Section 6.02 of the LLCA, to which [ETA] otherwise would be entitled under Section 6.02 of the LLCA with respect to income allocated to [ETA] during the period during which it was a Member. Such payments shall not reduce any amounts to which [ETA] is otherwise entitled under this Agreement.[40]

LLC Agreement Section 6.02 describes when the Company is required to make "Tax Distributions," which are payments from the Company to cover the taxes that a member pays on their share of the Company's taxable income.[41] "Tax Amount" is a defined term under the LLC Agreement that "means the product of (a) the Tax Rate for such Fiscal Year and (b) the Adjusted Taxable Income of the Member for such Fiscal Year with respect to its Membership Interest."[42] "Adjusted Taxable Income" is a defined term under the LLC Agreement that "means the federal taxable income allocated by the Company to the Member with respect to its Membership Interest."[43]

MIPA Section 8, titled "Notices," requires the Company to provide "all notices, requests, consents, claims, demands, waivers and other communications … in writing and addressed to the

[39] Compl. ¶ 24: IRS Schedule K-1 is "the federal tax document that reports the income and losses for the partners in a partnership."
[40] *Id*. ¶ 21 (referencing MIPA § 16, Company Agreements).
[41] *Id.* (referencing LLCA § 6.02, Tax Distributions).
[42] *Id.* (referencing LLCA § 1.01, Definitions).
[43] *Id.* (referencing LLCA § 1.01, Definitions).

parties at the addresses set forth on the signature page(s) of this Agreement[.]"[44] On the signature page, Mr. Florance is set forth as the addressee for ETA.[45]

The parties closed on the MIPA on October 15, 2021.[46] ETA contends that PFJA acquired ETA and PWT's interests in the Company "to consolidate [Defendants'] holdings to clear the path for Berkshire Hathaway's acquisition of [Pilot Travel Centers, LLC], which was completed earlier this year."[47]

3. The Company's 2021 Tax Return and the Present Action

ETA states that while it was a member of the Company in 2018, 2019, and 2020, the Company "took advantage of a tax incentive called 'bonus depreciation,' which allowed the Company to report lower current income by immediately deducting a significant percentage of the purchase price of various assets, rather than writing them off over the useful life of those assets."[48] ETA continues, "This bonus depreciation meant that the taxable income that the Company allocated to members from 2018 through 2020—and then covered through Tax Distributions to those members—was lower than it otherwise would have been in those years."[49]

On July 8, 2022, the Company filed its 2021 tax return, listing on its IRS Schedule K-1 an allocation of $5,523,798.00 of taxable income generated from the sale of ETA's membership interest in the form of "depreciation recapture."[50] ETA contends that by doing this, the

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[44] *Id.* ¶ 23 (referencing MIPA § 8, Notices).
[45] *Id.*
[46] *See id.* ¶ 18.
[47] Pl. Opp'n/Mot. at 5. PWT sold its interest in the Company to PFJA on July 26, 2021.
[48] Compl. ¶ 3.
[49] *Id.*
[50] *See id.* ¶ 4:

> Under [Section 751 of the Internal Revenue Code], a partner that sells its interest in a partnership must pay the ordinary income tax rate on any built-in gain realized with respect to its share of certain partnership property to the extent of prior depreciation taken on such property, rather than the more favorable capital gains tax rate. This enables the Internal Revenue Service ("IRS") to recoup the tax payable on the taxable income previously offset by the depreciation. The IRS refers to this process as "depreciation recapture."

Company "recaptured" all the aforementioned bonus depreciation by reporting it as income, thus reversing the tax benefits.[51] ETA maintains that this depreciation recapture was a "windfall" for the Defendants, stating:

> [Defendants] not only dodged paying a Tax Distribution to [ETA], but the depreciation recapture that it imposed on [ETA] also effectively increased [Defendants'] tax basis in the partnership assets so that [Defendants'] own tax payment on those assets—in connection with an impending sale of the assets to Warren Buffett's Berkshire Hathaway—would be substantially lower.[52]

ETA states that it was "shocked when it belatedly saw" this "unexpected" allocation because the Company did not send the IRS Schedule K-1 to Mr. Florance to negotiate, review, and provide comments prior to filing as required by MIPA Sections 8 and 16.[53] ETA also claims that the Company violated MIPA Section 16 because the Company "did not pay to [ETA] a corresponding Tax Distribution to cover that allocation despite its historical practice of using bonus depreciation—the very reason for the subsequent depreciation recapture—to reduce the Company's ordinary income and the corresponding amount of Tax Distributions to [ETA]."[54]

As a result, ETA contends that on October 17, 2022, it was "forced to pay substantial taxes on the unanticipated depreciation recapture income that was subject to the ordinary income tax rate, in addition to significant accounting and legal fees."[55]

On February 13, 2023, ETA brought the present action for breach of contract against Defendants.[56] ETA is requesting that the Court "enforce the terms of the MIPA by requiring [Defendants] to pay [ETA], among other costs, approximately $2.86 million, which is the

[51] *See id.* ¶ 25.
[52] *Id.* ¶ 6.
[53] *Id.* ¶ 25
[54] *Id.* ¶¶ 4, 25.
[55] *Id.* ¶ 30.
[56] *See id.* ¶ 7.

amount of the Tax Distribution to which [ETA] was entitled under the terms of the MIPA and LLCA."[57]

III. PARTIES' CONTENTIONS

A. DEFENDANTS

Defendants argue that they are entitled to partial summary judgment on ETA's claim that Defendants breached MIPA Section 16 by failing to pay a Tax Distribution.[58] Defendants assert that the plain language of the MIPA and LLC Agreement (together, the "Governing Agreements") precludes ETA's claim for Tax Distributions.[59]

B. PLAINTIFF

ETA asserts that it is entitled to summary judgment because Defendants breached the following obligations: (i) to share draft tax returns with ETA and consider ETA's comments in good faith under Section 16 of the MIPA;[60] (ii) to negotiate the Tax Distribution due to ETA under Section 16 of the MIPA;[61] (iii) to provide notice to Mr. Florance under Section 8 of the MIPA;[62] and (iv) to make a Tax Distribution to ETA under Section 16 of the MIPA.[63]

IV. STANDARD OF REVIEW

Superior Court Civil Rule 56 governs motions for summary judgment.[64] The Court's principal function when considering a motion for summary judgment is to examine the record to determine whether genuine issues of material fact exist, "but not to decide such issues."[65]

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[57] *Id.* ¶ 7.
[58] *See* Def. Mot. at 3.
[59] *See id*. at 14.
[60] *See* Pl. Mot. at 18.
[61] *See id.*
[62] *See id.* at 19.
[63] *See id.*
[64] Del. Super. Ct. Civ. R. 56.
[65] *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992) (internal citations omitted); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. 1973).

Summary judgment will be granted if, after viewing the record in a light most favorable to a nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.[66] If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, then summary judgment will not be granted.[67] The moving party bears the initial burden of demonstrating that the undisputed facts support its claims or defenses.[68] If the motion is properly supported, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact for the resolution by the ultimate fact-finder.[69]

"These well-established standards and rules equally apply [to the extent] the parties have filed cross-motions for summary judgment."[70] Where cross-motions for summary judgment are filed and neither party argues the existence of a genuine issue of material fact, "the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions."[71] However, "the existence of cross motions for summary judgment does not act *per se* as a concession that there is an absence of factual issues."[72] Therefore, where cross-motions for summary judgment are filed and an issue of material fact exists, summary judgment is not appropriate.[73] To determine whether there is a genuine issue of

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[66] *See Merrill*, 606 A.2d at 99-100.
[67] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962); *see also Cook v. City of Harrington*, 1990 WL 35244, at *3 (Del. Super. Feb. 22, 1990) (citing *Ebersole*, 180 A.2d at 467) ("Summary judgment will not be granted under any circumstances when the record indicates … that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.").
[68] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1970) (citing *Ebersole*, 180 A.2d at 470).
[69] *See Brzoska v. Olsen*, 668 A.2d 1355, 1364 (Del. 1995).
[70] *IDT Corp. v. U.S. Specialty Ins. Co.*, 2019 WL 413692, at *5 (Del. Super. Jan. 31, 2019) (citations omitted); *see Capano v. Lockwood*, 2013 WL 2724634, at *2 (Del. Super. May 31, 2013) (citing *Total Care Physicians, P.A. v. O'Hara*, 798 A.2d 1043, 1050 (Del. Super. 2001)).
[71] Del. Super. Ct. Civ. R. 56(h).
[72] *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A. 2d 1076, 1079 (Del. 1997).
[73] *Motors Liquidation Co. DIP Lenders Tr. v. Allianz Ins. Co.*, 2017 WL 2495417, at *5 (Del. Super. June 19, 2017), *aff'd sub nom., Motors Liquidation Co. DIP Lenders Tr. v. Allstate Ins. Co.*, 191 A.3d 1109 (Del. 2018); *Comet Sys., Inc. S'holders' Agent v. MIVA, Inc.*, 980 A.2d 1024, 1029 (Del. Ch. 2008); s*ee also Anolick v. Holy Trinity Greek*

material fact, the Court evaluates each motion independently.[74] And again, where it seems prudent to make a more thorough inquiry into the facts, summary judgment will be denied.[75]

V. DISCUSSION

A. THE COURT FINDS THAT DEFENDANTS BREACHED THEIR OBLIGATION UNDER MIPA SECTION 16 TO PAY ETA TAX DISTRIBUTIONS.

Defendants argue that under the Governing Agreements, "Tax Distributions are triggered solely by taxable income generated by the *everyday operations* of the Company."[76] Defendants contend that the Tax Distributions merely provide a "temporary advance on a member's future cash distributions," *not* "indemnification or gross-up payments."[77] Defendants assert that ETA is attempting to "obtain a bonus payment via tax indemnification. This is on top of the $3 million of cash consideration that [ETA] has already received."[78]

ETA opposes Defendants' argument that Tax Distributions are only triggered by "everyday operations," stating:

> On its face, there is no language in Section 16 of the MIPA that references the types of income for which Tax Distributions apply. Section 16 plainly says that after [ETA] "ceas[es] to be a Member," it will continue to receive Tax Distributions and Shortfall Amounts "with respect to income allocated to [ETA] during the period during which it was a Member." The MIPA contains no modifier for "income," and, as [Defendants] concede[], had the parties intended such a modifier to apply, they would have included it.[79]

In denying the Defendants' Partial Motion to Dismiss, the Court noted that the language of the Governing Agreements as it relates to taxable income "seems plain and unambiguous."[80]

Orthodox Church, Inc., 787 A.2d 732, 738 (Del. Ch. 2001) ("[T]he presence of cross-motions 'does not act per se as a concession that there is an absence of factual issues.'" (quoting *United Vanguard Fund, Inc.*, 693 A.2d at 1079).
[74] *Motors Liquidation*, 2017 WL 2495417, at *5; *see Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 167 (Del. Ch. 2003).
[75] *Ebersole*, 180 A.2d at 470-72; *Pathmark Stores, Inc. v. 3821 Assocs., L.P.*, 663 A.2d 1189, 1191 (Del. Ch. 1995).
[76] Def. Mot. at 2 (emphasis added).
[77] *Id.* at 2-3, 6.
[78] *Id.* at 2.
[79] Pl. Opp'n/Mot. at 26.
[80] MTD Op. at 5 n.29.

The Court similarly finds that, after closely reviewing the Governing Agreements, the language unambiguously obligates Defendants to pay ETA Tax Distributions based on income allocated to ETA before closing.

The last two sentences of Section 16 of the MIPA are key:

> ***Notwithstanding*** the Closing and [ETA] ceasing to be a Member (as defined in the LLCA) of the Company as of the Closing, **the Company shall timely pay to [ETA] all Tax Distributions** and Shortfall Amounts, each as defined in Section 6.02 of the LLCA, to which [ETA] ***otherwise*** would be entitled under Section 6.02 of the LLCA with respect to income allocated to [ETA] during the period during which it was a Member. Such payments **shall not reduce** any amounts to which [ETA] is otherwise entitled under this Agreement.[81]

The penultimate sentence unambiguously states that even though ETA is no longer a member of the Company after the transaction closes, the Company is *still required* to pay ETA Tax Distributions that relate to the income allocated to ETA while they were still a member. The last sentence makes clear that any tax-related payments do not reduce any other amounts that ETA is owed—*i.e.*, Tax Distributions are paid *in addition to* the purchase price.

LLC Agreement Section 6.02 bolsters this conclusion. Under Section 6.02, Tax Distributions are "triggered" by taxable income alone—no restrictions or conditions are attached. The Court notes, contrary to Defendants' argument, Section 6.02 contains no language or limitation that restricts Tax Distributions to "everyday operations," nor does it exclude income from the sale of interests, assets, or other events. The unambiguous language provides that if *any* taxable income is allocated to ETA, then the Tax Distribution is triggered.

The Court, therefore, finds that no genuine dispute of material fact exists as to whether Defendants breached their obligation to pay ETA Tax Distributions under MIPA Section 16. Accordingly, the Court finds that ETA is entitled to receive Tax Distributions under MIPA

[81] MIPA § 16.

Section 16 with respect to taxable income allocated to it during the period in which it was a member, regardless of whether that income was generated from everyday operations or from the transaction itself.

Therefore, the Court **GRANTS** ETA's Motion with respect to whether Defendants breached Section 16 of the MIPA by failing to pay ETA a Tax Distribution and **DENIES** Defendants' Motion.

B. THE COURT FINDS THAT ANY ADDITIONAL BREACHES OF DEFENDANTS' COMPLIANCE OBLIGATIONS UNDER THE MIPA ARE IMMATERIAL BECAUSE ETA DOES NOT CLAIM INDEPENDENT DAMAGES.

In addition to claiming that Defendants breached MIPA Section 16 by failing to pay ETA a Tax Distribution, ETA also claims that Defendants breached the following three obligations: (i) to share draft tax returns with ETA and consider ETA's comments in good faith under Section 16 of the MIPA; (ii) to provide notice of its draft 2021 tax returns directly to Mr. Florance under Section 8 of the MIPA; and (iii) to negotiate the Tax Distribution due to ETA under Section 16 of the MIPA.[82]

Defendants essentially concede to breaching these compliance obligations.[83] Nevertheless, Defendants argue that ETA fails to demonstrate harm.[84]

The Court finds that even if Defendants breached these compliance obligations under the MIPA, ETA is not entitled to additional damages. ETA does not demonstrate how Defendants' failure to send the tax documents to Mr. Florance to negotiate, review, and provide comments prior to filing with the IRS caused ETA to suffer *independent* harm. ETA provides no evidence showing that the Company's tax allocations were inaccurate, that earlier review would have

[82] *See* Pl. Opp'n/Mot. at 13, 18-19.
[83] *See* Answer at 14.
[84] *See* Def. Opp'n/Reply Br. at 4, 30.

altered the outcome of the tax documents, or that Mr. Florance would have objected or proposed changes. Thus, ETA is not entitled to additional damages for Defendants' compliance-related breaches of the MIPA.

ETA claims that the amount of its damages is "approximately $2.86 million, which is the amount of the Tax Distribution to which [ETA] was entitled under the terms of the MIPA and LLCA."[85] As stated above, the Court agrees that ETA is entitled to that relief. ETA, however, fails to allege that breaches of Defendants' compliance obligations under the MIPA give rise to further liability. Accordingly, because the Court finds that ETA is entitled to its relief sought, any additional breaches of Defendants' compliance obligations under the MIPA are immaterial.

VI. CONCLUSION

For the reasons stated above, the ETA Motion is **GRANTED** and the Defendants' Motion is **DENIED**.

IT IS SO ORDERED.

September 9, 2025
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress

[85] Compl. ¶ 7; Pl. Reply Br. at 4.