IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DENA BENGSON and RICK BENGSON, Plaintiffs, v. ELEVATE RCM HOLDINGS, LLC, Defendant.	C.A. No. 2025-1347-DG **Under Seal**[1]

MEMORANDUM OPINION

Date Submitted: March 12, 2026
Date Decided: August 10, 2026

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GIBBS, M.

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[1] This memorandum opinion is being issued under seal to protect confidential information that may not have been made public through the trial. Under Court of Chancery Rule 5.1, I will unseal this report unless, within five (5) days, either party files a notice stating grounds for any continued restriction and requesting a determination whether good cause exists therefor.

I. FACTUAL BACKGROUND

The facts are drawn from the parties' pleadings, simultaneous opening and answering briefs, exhibits and arguments at trial.

A. The Parties

Defendant Elevate RCM Holdings, LLC, ("Elevate") is a Delaware limited liability company. Until July 2025, Elevate indirectly owned Elevate Patient Financial Solutions ("ElevatePFS"), a company that provided revenue cycle management ("RCM") solutions to hospitals, health systems, and healthcare providers.[2]

Plaintiffs, Dena and Rick Bengson, became members of Elevate in 2023, when ElevatePFS acquired their business, Revenue Masters, LLC ("Transaction"). In connection with the acquisition, Plaintiffs received cash and membership units in Elevate.[3] When Plaintiffs obtained their membership interests in Elevate, each executed a joinder agreement in which they "agree[d] to become a party to, to be bound by, and to comply with the provisions of [Elevate's] Operating Agreement" ("Joinder Agreements").[4]

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[2] *See* Joint Pre-Trial Stipulation and Order ("Pretrial Stipulation"), Dkt. 24 ¶ 17.

[3] *See* Pretrial Stipulation ¶¶ 9, 12–15.

[4] JX-4 (Joinder Agreement of Dana Bengson); JX-5 (Joinder Agreement of Rick Bengson).

B. The Operating Agreement

Section 11.1 of the Operating Agreement governs the inspection rights of Members. Section 11.1(b) relevantly states:

> **Except to the extent expressly required under the Delaware Act** (including § 18-305 thereof) or as otherwise expressly set forth in this Agreement, **no Member shall be entitled to any information, inspection, examination, demand, or similar access rights, and each Member hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law (including as contemplated by § 18-305, subsection (g) of the Delaware Act), any such information, inspection, examination, demand or similar access rights**. Any action to enforce any information, inspection, examination, demand or similar access rights of a Member under the Delaware Act must comply with the requirements of this Agreement and the Delaware Act (including § 18-305, subsection (e) thereof).[5]

Section 4.6(b) of the Operating Agreement provides that, "in order to protect the rights and interests of the Company and the other Members," any information that Elevate is required to share with its members "shall be deemed Confidential information."[6]

[5] JX-1 § 11.1(b) (cited as "Operating Agreement") (emphasis added).

[6] Operating Agreement § 11.1(b).

C. The Dispute

Defendant sold ElevatePFS on July 31, 2025.[7] Defendant distributed the proceeds of the sale to its members as required under the Operating Agreement.[8] Plaintiffs received a wire transfer on the day of closing.[9]

Plaintiffs asked Elevate to provide them with "supporting documentation behind the pay out."[10] Elevate gave Plaintiffs a "waterfall summary" which showed that Plaintiffs made the same Multiple on Invested Capital ("MOIC") return as other members who had invested "alongside [Plaintiffs] at the time of the Revenue Masters acquisition."[11]

On August 12, Plaintiffs informally demanded that Elevate produce seven categories of information relating the to the sale.[12] This request "encompassed not just the particulars of the transaction and an explanation of Plaintiffs' payout, but also a demand that Elevate reveal all interests in the

[7] Pretrial Stipulation ¶ 17.

[8] Def.'s Opening Pre-trial Br. ("DOB"), Dkt. 29 at 5.

[9] Pretrial Stipulation ¶ 21.

[10] JX-14 at 3–4.

[11] *Id.* at 1; *see also* JX-14A.

[12] JX-16A at 1.

Company and how the transaction 'affects' Elevate."[13] Elevate denied Plaintiffs' informal request.[14]

D. The Demand

On September 2, Plaintiffs issued a formal "Request to Inspect Books and Records of Elevate RCM Holdings, LLC" pursuant to Section 11.1 of the Operating Agreement and Section 18-305 of the LLC Act ("Demand").[15] Plaintiffs sought inspection, examination, and copies of ten categories of documents, asserting:

> The purpose of this request is to (i) evaluate the value of [their] current interest in ERCM; (ii) determine whether [they] received a proper distribution following the recent transaction involving Elevate Patient Financial Solutions ("EPFS") (the "Transaction") and (iii) understand the current status of ERCM, including whether it retains any ownership interest in EPFS.[16]

Elevate responded to the Demand on September 9, asserting that Plaintiffs waived their inspection rights under Section 18-305 when they became bound by the Operating Agreement. Despite its general rejection of the Demand, Defendant offered a "clean room work plan" to facilitate a

[13] DOB at 6; *see also* JX-16A at 1.

[14] *See* JX-17 at 3.

[15] JX-18A ("Demand").

[16] *Id.* at 1.

limited inspection for Plaintiffs.[17] Under this proposal, Plaintiffs could engage an independent, nationally recognized accounting firm to conduct a one-day, on-site inspection of records that Elevate was willing to provide.[18] Plaintiffs rejected that offer and initiated this action.[19]

In this action, Elevate argues that it is not required to produce any books and records because, by executing a joinder to the Operating Agreement, Plaintiffs waived their rights to inspect records under Section 11.1(b) of the Operating Agreement.[20] Plaintiffs argue that Section 18-305 does not permit the elimination of statutory inspection rights and that they are entitled to the information demanded in the complaint.[21]

E. Procedural Posture

Plaintiffs filed the Verified Complaint on November 19, 2025.[22] The parties stipulated to a Final Resolution by the Magistrate in Chancery, which the Court entered on December 8.[23] Elevate filed an answer to the Complaint

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[17] *See* JX-19A at 1–3.

[18] *Id.* at 4.

[19] *See* Pretrial Stipulation ¶ 27.

[20] DOB at 9.

[21] *See* Pls.' Pre-Trial Opening Br. ("POB"), Dkt. 30 at 14.

[22] *See generally* Compl.

[23] *See* Dkts. 10–11.

on December 17.[24] On March 19, the Court conducted a trial on a paper record and took the matter under advisement.[25]

II. ANALYSIS

The central issue in this case is whether Plaintiffs waived their statutory inspection rights when they agreed to be bound by Defendant's Operating Agreement. A preliminary issue is whether Section 11.1(b) of the Operating Agreement constitutes a permissible and enforceable waiver. I conclude that Section 18-305 of the LLC Act does not expressly prohibit the waiver of inspection rights, and Defendant's Operating Agreement expresses the waiver in sufficiently clear terms. Plaintiffs freely and knowingly waived their statutory inspection rights when they executed joinders to Defendant's Operating Agreement, and public policy does not preclude the Court from holding Plaintiffs to their bargain.

A. Delaware law does not prohibit members from waiving inspection rights via a clearly expressed provision in an operating agreement.

Plaintiffs' primary argument is that the LLC Act does not permit an operating agreement to eliminate Section 18-305's statutory inspection rights. This is so, they argue, because Section 18-305, unlike Section 18-1101, does

[24] *See* Def.'s Answer to Compl., Dkt. 12.

[25] Dkt. 48.

not expressly state that inspection rights may be "eliminated."[26] Defendant, in contrast, argues that members may waive inspection rights, because nothing in the LLC Act expressly prohibits members from doing so.[27] Certainly, Section 18-305 does not expressly prohibit such a waiver.[28]

I agree with Defendant. Plaintiffs incorrectly use the lens of "elimination" in their interpretation of Section 11.1(b). The Operating Agreement employs a regime of waiver.[29] Section 11.1(b) states that

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[26] *See* POB at 7; *see also* 6 *Del. C.* § 18-1101(c) ("To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.").

[27] Def.'s Answering Pre-Trial Br. ("DAB"), Dkt. 39 at 5.

[28] *See generally* 6 *Del. C.* § 18-305.

[29] *See Juul Labs, Inc. v. Grove*, 238 A.3d 904, 911 (Del. Ch. 2020) ("Although the first sentence in the waiver provision speaks only in terms of inspection rights under Section 220, the second sentence has broader effect. The second sentence makes the contractual information rights in the Investor Agreements the sole and exclusive method of accessing the Company's books and records. The second sentence thus purports to eliminate all rights to inspection other than the contractual information rights that are provided in the Investor Agreements."). The Operating Agreement here does not so limit a member's inspection right; instead, Section 11.1(b) is a member's waiver of inspection rights "[e]xcept to the extent expressly required under the Delaware Act (including § 18-305 thereof) *or* as otherwise expressly set forth in this Agreement[.]" Operating Agreement § 11.1(b) (emphasis added); *see also infra* Part II.B.1. Section 11.1(b) does not act as an "elimination" of inspection rights because it leaves open the possibility that the law may expressly require the production of information to members.

members who wish to invest in Defendant agree to "*waive[]*, to the fullest extent permitted by applicable law (including as contemplated by § 18-305, subsection (g) of the Delaware Act), any . . . information, inspection, examination, demand or similar access rights[.]"[30]

Thus, Plaintiffs are correct that, unlike Section 18-1101, Section 18-305(g) does not include the word "eliminate" when discussing the right to alter inspection rights in an operating agreement. But the issue at the heart of this case is not whether the Operating Agreement eliminates a statutory inspection right. Instead, it is whether *Plaintiffs*, in agreeing to be bound by the Operating Agreement, agreed to an enforceable waiver of a statutory inspection right.[31] Barring sufficient public policy concerns or express statutory language prohibiting a waiver, sophisticated parties may contractually waive a statutory right in exchange for valuable consideration.[32] Thus, what matters in this case is that, unlike Section 18-1101, for example,

[30] Operating Agreement § 11.1(b).

[31] *See Minna v. Energy Coal S.p.A.*, 984 A.2d 1210, 1214 (Del. 2009) ("Waiver is the intentional relinquishment of a known right.") (citing *AeroGlob. Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 444 (Del. 2005)).

[32] *See Manti Hldgs., LLC v. Authentix Acq. Co., Inc.*, 261 A.3d 1199, 1219–21 (Del. 2021).

Section 18-305 *does not expressly prohibit* the waiver of its default inspection right.[33]

1. The LLC Act does not expressly prohibit contractual waiver of Section 18-305's default inspection right.

The policy of the Delaware LLC Act is "to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company [operating] agreements."[34] Thus, the first step in a case "involving the internal affairs of a limited liability company . . . is to examine the [operating] agreement to determine whether it addresses the issue."[35] If the agreement addresses the issue, "the agreement controls unless it violates one of the [LLC Act]'s mandatory provisions."[36] A mandatory provision is

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[33] *See* 6 *Del. C.* § 18-1101(c) ("[T]he member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.").

[34] *Id.* § 18-1101(b).

[35] *See Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 923 (Del. 2023).

[36] *Id.* (quoting *In re Coinmint, LLC*, 261 A.3d 867 (Del. Ch. 2021)); *see also id.* ("Members of alternative entities must appreciate that with the benefits of investing in alternative entities often comes the limitation of looking to the contract as the exclusive source of protective rights. In other words, particularly in the alternative entity context, equity will not save a bad contract.") (citation modified).

one that may not be varied by the operating agreement.[37] These provisions are, generally, those considered "fundamental" to the LLC's identity.[38]

Defendant argues that Section 18-305 is not a mandatory provision of the LLC Act.[39] Defendant notes that Section 18-305(g) expressly allows for contractual variation of the default inspection right and does not contain "mandatory language."[40] Also, Defendant argues, neither Section 18-305 nor the broader LLC Act expressly prohibits the waiver of a member's statutory inspection right.[41]

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[37] *Cf. Manti Hldgs.*, 261 A.3d at 1220 ("In framing the legal issues, the court stated that appraisal rights were among the 'mandatory provisions' of the DGCL that 'may not be varied by terms of the certificate of incorporate or otherwise.'") (quoting *In re Appraisal of Ford Hldgs. Preferred Stock*, 698 A.2d 973, 976 (Del. Ch. 1997)); *In re Coinmint, LLC*, 261 A.3d 867, 901 (Del. Ch. 2021) ("Section 18-216(b) supplies a default rule that is subject to contractual variation, not a mandatory rule.") (citation omitted).

[38] *Manti Hldgs.*, 261 A.3d at 1204; *see Totta v. CCSB Fin. Corp.*, 2022 WL 1751741, at *17 n.193 (Del. Ch. May 31, 2022) (explaining "LLCs, which are frequently described in this court and elsewhere as 'creatures of contract,' are not devoid of mandatory components that inhere in every entity whose existence is dependent on an act of the sovereign. Indeed, there are 'core attributes of the LLC that only the sovereign can authorize, such as its separate legal existence, potentially perpetual life, and limited liability for its members" and citing 6 *Del. C.* 18-201 as an example of one such "mandatory component" of a Delaware LLC) (additional citations omitted).

[39] *See* DAB at 5–6.

[40] *See id.*

[41] *See id.*

In this case, however, it is immaterial whether Section 18-305 is a mandatory provision. Sophisticated and informed "parties can agree to waive mandatory rights" in exchange for valuable consideration unless the General Assembly expressly prohibits it or public policy counsels against it.[42] For such a waiver to be enforceable, it must be clear and unequivocal, and the waiving party must know of the requirement or condition they are agreeing to waive.[43] Section 18-305 contains no express language prohibiting a waiver of the default inspection right.[44] Neither does the LLC Act. Accordingly, contractual waiver of Section 18-305's default inspection right is permissible under the LLC Act.

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[42] *See Manti Hldgs.*, 261 A.3d at 1219–21.

[43] *See id.* at 1211–12, 1221. Plaintiffs do not claim they lacked knowledge of the waiver.

[44] *Cf. id.* at 1219 ("[T]he General Assembly knows how to draft language that prohibits parties from altering a mandatory provision of the DGCL in a corporation's charter or bylaws. For example, Section 115 states that 'no provision of the certificate of incorporation or the bylaws may prohibit bringing' 'internal corporate claims' 'in the Courts of this State.' Similarly, Section 102(f) prohibits charter provisions that attempt to shift fees onto stockholders litigating internal corporate claims. Presumably the General Assembly could draft language prohibiting stockholders from altering a mandatory provision under a stockholders agreement if it chose to do so. *But Section 262 does not contain any language that prohibits stockholders from waiving their appraisal rights*.") (citations omitted) (emphasis added).

2. Public policy does not require the Court to disregard a clear waiver of Section 18-305's inspection right.

Plaintiffs argue that Section 18-305 cannot be fully waived because it would contradict the purpose of an inspection right, "which is to afford passive investors access to information that allows them to protect their financial stake in the entity[.]"[45] Sanctioning contractual waiver here, Plaintiffs say, "would constitute a license for an LLC's manager to swindle other members with impunity."[46]

It is true that inspection rights are important tools for investors. Indeed, there is legal and academic support for the proposition that Section 220 of the Delaware General Corporation Law, Section 18-305's corporate analogue, confers a "mandatory" right.[47] But this case does not concern Section 220, it concerns Section 18-305 of the LLC Act. And, unlike the DGCL, the LLC Act expressly intends "to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company

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[45] Pls.' Pre-Trial Answering Br. ("PAB"), Dkt. 40 at 5.

[46] PAB at 9–10.

[47] *See, e.g.*, Leo E. Strine Jr. & J. Travis Laster, *The Siren Song of Unlimited Contractual Freedom*, Harvard L. School John M. Olin Center Discussion Paper No. 789, at 10–11 (Aug. 1, 2014); Edward P. Welch & Robert S. Saunders, *Freedom and Its Limits in the Delaware General Corporation Law*, 33 Del. J. Corp. L. 845, 858–59 (2008) (quoting *Jones Apparel Gp., Inc. v. Maxwell Shoe Co.*, 883 A.2d 837, 849 n.30 (Del. Ch. 2004)).

agreements."[48] Accordingly, investors are advised to review contract terms carefully before investing and not to look to the courts to save them from contracts that may appear ill-advised in retrospect. As the Delaware Supreme Court explained in *Holifield v. XRI Investment Holdings*,

> [T]his Court has observed . . . that "the doctrine of caveat emptor . . . is fitting" in the alternative entity context. This is because investors in alternative entities willingly invest in such entities, despite the fact that the entities have "fewer protections . . . than those provided under corporate fiduciary duty principles. Thus, we have warned that investors in alternative entities must read the entity's constituent documents carefully to understand their rights, and the limitations on their rights. Members of alternative entities "must appreciate that 'with the benefits of investing in alternative entities often comes the limitation of looking to the contract as the exclusive source of protective rights.'" In other words, particularly in the alternative entity context, equity will not save a bad contract.[49]

In this case, sophisticated plaintiffs negotiated a sale of their company to Defendant. They agreed to accept as consideration for the sale cash and membership units in Defendant. Plaintiffs executed Joinder Agreements agreeing to be bound by the Operating Agreement. The Operating Agreement contains a provision waiving inspection rights "to the fullest extent"

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[48] 6 *Del. C.* § 18-1101(b).

[49] *Holifield*, 304 A.3d at 922–23 (citations omitted).

permissible under Delaware law. Under these circumstances, it is not against public policy to hold the parties to their bargain.[50]

As previously stated, the LLC Act does not prohibit the contractual waiver of the inspection right available under Section 18-305. Under the circumstances of this case, public policy does not preclude such a waiver. Defendant will thus prevail in this action if the contractual language to which Plaintiffs assented is sufficiently clear to constitute a knowing and unequivocal waiver and Plaintiffs received valuable consideration. The Court turns to those issues next.

B. Plaintiffs clearly and unequivocally waived their statutory inspection rights for valuable consideration.

In this section, the Court first assesses the waiver language in Section 11.1(b). The Court next addresses Plaintiffs' specific arguments against enforcing Section 11.1(b) against them. For the reasons discussed below, I conclude that Section 11.1(b) is a clear and unequivocal waiver that extends

[50] *See, e.g.*, *REM OA Hldgs., LLC v. N. Gold Hldgs., LLC*, 2023 WL 6143042, at *19 ("Delaware is a 'contractarian' state. Our law recognizes that 'parties have a right to enter into good and bad contracts' and 'enforces both.' 'As a matter of ordinary course, parties who sign contracts and other binding documents, or authorize someone else to execute those documents on their behalf, are bound by the obligations that those documents contain.' 'The presumption that the parties are bound by the language of the agreement' they signed 'applies with even greater force when the parties are sophisticated' and 'engaged in arms-length negotiations.'") (citations omitted).

to inspection rights under Section 18-305, and that Plaintiffs' arguments against enforcement fail.

1. Section 11.1(b) is a clear and unequivocal waiver of Section 18-305's default inspection right.

Section 11.1(b)'s waiver language is clear and unequivocal. The section states, in pertinent part:

> Except to the extent expressly required under the Delaware Act [*i.e.*, the Delaware Limited Liability Company Act] (including § 18-305 thereof) or as otherwise expressly set forth in this Agreement, no Member shall be entitled to any information, inspection, examination, demand or similar access rights, and each Member hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law (including as contemplated by § 18-305, subsection (g) of the Delaware Act), any such information, inspection, examination, demand or similar access rights.[51]

The first clause of Section 11.1(b) is an exception to the provision that follows. Contrary to Plaintiffs' interpretation, this clause does not "recognize[]" that Section 18-305's default inspection right cannot be waived.[52] The language plainly states that if there is an express requirement stated in the LLC Act or the Operating Agreement requiring the company to provide information to a member, Section 11.1(b) should not be read to

[51] Operating Agreement § 11.1(b).

[52] *See* POB at 13.

conflict with the express requirement. The plain language of Section 18-305 does not "expressly require" that members of an LLC possess a minimum inspection right. To the contrary, Section 18-305 is a default provision that does not apply in all circumstances.[53] The right may be modified and, as I have concluded earlier in this report, the right may also be waived. Plaintiffs have pointed to no mandated information rights in the Operating Agreement that are impinged by Section 11.1(b).

Section 11.1(b) plainly states that a member "irrevocably and unconditionally waives any information or inspection right to the fullest extent permitted by applicable law (including as contemplated by § 18-305, subsection (g) of the Delaware Act)."[54] Plaintiffs contend that the language in the parenthetical limits the extent of the waiver.[55] That is not a reasonable interpretation. Read literally, the parenthetical says that Section 18-305(g)

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[53] *See, e.g.*, *Cornett v. Collectable Sports Assets, LLC*, 2025 WL 1531160, at *9 (Del. Ch. May 29, 2025); *RED Cap. Inv. L.P. v. RED Parent LLC*, 2016 WL 612772, at *2 (Del. Ch. Feb. 11, 2016) ("Limited liability company agreements are contracts and must be interpreted as such. Such agreements operate to displace otherwise applicable default provisions in Delaware's Limited Liability Company Act.") (first citing 6 *Del. C.* § 18-305(a); and then citing *Grove v. Brown*, 2013 WL 4041495, at *5 (Del. Ch. Aug. 8, 2013)); *see also* 6 *Del. C.* § 18-305(g) (statutory inspection rights may be modified).

[54] Operating Agreement § 11.1(b).

[55] *See* POB at 2, 13.

contemplates the waiver stated immediately before the parenthetical.[56] It acknowledges that Section 18-305(g) provides a basis to vary the inspection right[57] and, in my view, highlights for readers that they are agreeing to waive the right.

2. Plaintiffs received valuable consideration in the Transaction and consented to the waiver in Section 11.1(b).

Plaintiffs argue that they should not be subject to Section 11.1(b) because the Operating Agreement is a contract of adhesion that they did not negotiate.[58] Not so. "A contract of adhesion is merely a 'printed form of boilerplate contract[] drawn skillfully by the party in the strongest economic position, which establish[es] industry wide standards offered on a take it or leave it basis to the party in a weaker economic position.'"[59] Plaintiffs offer

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[56] Of course, it is up to Delaware courts to determine whether the statement is accurate or not, but the drafters' meaning is clear.

[57] *See S'holder Rep. Servs. v. Alexion Pharmas., Inc.*, 2024 WL 4052343, at *34 (Del. Ch. Sep. 5, 2024) ("The introduction of the IgG reduction metric through the use of 'including' conveys that IgG reduction would be one of several factors to consider.") (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 132 (2012) (explaining the use of the word '*include* does not ordinarily introduce an exhaustive list'); and citing *Pauls v. State*, 554 A.2d 1125, at *2 (Del. 1989) ("As mentioned above, 11 *Del. C.* § 222(5) merely provides an *illustrative* list of the instruments which qualify as deadly weapons, as is made clear by its use of the word 'includes' before giving the list containing examples of proscribed weapons.") (additional citation omitted) (emphasis in original).

[58] *See* PAB at 7.

[59] *U.S. Bank Nat'l Assoc. v. Stevens, Tr. of Heather Michele Stevens Tr.*, 2025 WL 1139329, at *5 (Del. Super. Apr. 17, 2025).

no support for this characterization of the Operating Agreement. Nor have Plaintiffs shown they lacked bargaining power when they negotiated the sale of their company. Plaintiffs are sophisticated parties who knowingly executed Joinder Agreements that clearly expressed their agreement to be bound by the Operating Agreement.[60]

Plaintiffs next contend that Section 11.1(b) cannot be enforced against them because they did not receive additional consideration tied solely to the waiver.[61] I disagree. Plaintiffs executed the Joinder Agreements as part of the Transaction. Plaintiffs negotiated the Transaction, including consideration consisting of cash and membership units in the entity. Section 11.1(b) is as enforceable as any other provision in the transaction documents. This single provision in the Operating Agreement does not require separate, additional consideration to be binding.[62]

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[60] *See* JX 4, 5; *see, e.g.*, *REM OA Hldgs.*, 2023 WL 6143042, at *19. Plaintiffs do not contend that they did not negotiate the Transaction—the overarching exchange of consideration for which Plaintiffs executed the Joinder Agreements and gained membership units in Elevate.

[61] PAB at 7 (arguing they "were required to sign on to a pre-existing agreement, so they did not negotiate the LLC Agreement or receive any consideration for the restrictions on their inspection rights").

[62] *Cf. Jhaveri v. K1 Inv. Mgmt. LLC*, 2025 WL 1779507, at *6 n.86 (Del. Ch. June 27, 2025) (explaining no new consideration was needed to bind a party to a release contained in a merger agreement where the party executed a joinder agreement to a merger agreement because "the release was not effectuated by a separate agreement but included within the Merger Agreement itself"). Here, Section 11.1(b) is a

In sum, Plaintiffs bargained with Defendant for the sale of their company. In exchange for cash and membership units, Plaintiffs sold Defendant their company and agreed to be bound by Defendant's Operating Agreement. The Operating Agreement contains a clear and unequivocal waiver of members' statutory inspection rights. Plaintiffs have accordingly agreed to be bound by the waiver.

III. CONCLUSION

Section 11.1(b) of Defendant's Operating Agreement contains a clear and unequivocal waiver of statutory inspection rights, and sophisticated parties—Plaintiffs—consented to the waiver when they agreed to be bound by the Operating Agreement in connection with the sale of their company to Defendant. I therefore deny Plaintiffs' request to inspect Defendant's books and records. The parties agreed to accept my decision as a final ruling. Accordingly, this decision is subject to the same rules for review and appeal as a decision denying inspection issued by the constitutional officers of this Court.

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provision within the Operating Agreement that Plaintiffs knowingly and voluntarily bound themselves to in exchange for valuable consideration.