

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

APRIO ADVISORY GROUP, LLC.
EVOLUTION BUYER, LLC, and
EVOLUTION PARENT HOLDINGS, LLC,

Plaintiffs,

v.

DIMITRI ALEXEEV,

Defendant.

C.A. No. 2026-0508-JTL

MEMORANDUM OPINION GRANTING RULE 12(B)(2) MOTION

Date Submitted: June 15, 2026

Date Decided: October 16, 2026

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LASTER, V.C.

An employee owned a small equity interest in his accounting firm's parent company. A private-equity-backed sponsor acquired the parent company. As a condition to the acquisition, the buyer required that everyone who owned equity in the acquired entity enter into agreements containing restrictive covenants. The employee signed one.

The employee left his firm and began to compete. The buyer sued the employee in this court. The employee moved to dismiss on various grounds, including lack of personal jurisdiction.

The only basis on which this court could exercise personal jurisdiction over the employee is a provision in the agreement containing the restrictive covenants. That provision vests exclusive jurisdiction in this court and provides that Delaware law governs the agreement.

The employee is a California resident who signed the agreement containing the restrictive covenants in California, performed in California, and allegedly breached the provisions in California. By statute, California prohibits employers from requiring employees to agree to litigate in a foreign state under foreign law as a condition of their employment.

Consistent with prior decisions of this court, this decision holds that the California statute renders the Delaware forum and Delaware law provisions voidable at the employee's election. By challenging the existence of personal jurisdiction, the employee has made that election. The provisions are therefore invalid.

The provisions cannot support personal jurisdiction, and no other basis for personal jurisdiction exists. The case is dismissed for lack of personal jurisdiction.

I. FACTUAL BACKGROUND

The facts are drawn from the complaint, the documents it incorporates by reference, and other filings on the docket.¹ At this procedural stage, the complaint's well-pled allegations are assumed to be true, and all reasonable inferences are drawn in the plaintiff's favor.

A. The Merger

Dimitri Alexeev was a partner in Aprio LLP (the "Firm"), an accounting firm. The Firm was a subsidiary of Aprio Advisory Group LLC ("Holdco"), a holding company. Alexeev owned equity in Holdco.

Evolution Parent Holdings, LLC (the "Buyer") is an acquisition vehicle backed by Charlesbank Capital Partners, LLC (the "Sponsor"). Through a merger, the Buyer acquired all of the equity in Holdco (the "Merger"). The Merger closed on August 1, 2024.

Under the agreement governing the Merger (the "Merger Agreement"), Alexeev's equity interest in Holdco was converted into the right to receive specified

¹ Citations in the form "Compl. ¶ ____" refer to paragraphs of the verified amended complaint, which is the operative pleading. Citations in the form "Ex. ____ at ____" refer to exhibits to the complaint. Citations in the form "OB Ex. ____ at ____" and "AB Ex. ____ at ____" refer to exhibits to defendant's opening brief and plaintiff's answering brief, respectively.

consideration.² Alexeev received approximately \$1 million in consideration, comprising 445,918.27 Buyer member units valued at \$1 per unit, plus deferred cash consideration of \$531,003.10, payable in May 2025.

B. The Challenged Agreement

As a condition to the Acquisition, the Buyer demanded that each holder of Holdco equity sign a restrictive covenant agreement. Alexeev signed one (the “Challenged Agreement”).³ The formal parties to the Challenged Agreement are Alexeev, Buyer, and Holdco.

The Challenged Agreement imposes a series of restrictive covenants that would typically appear in an employment agreement. They include:

- A restriction prohibiting Alexeev from competing with the Firm (the “Competition Restriction”);
- Restrictions prohibiting Alexeev from soliciting any of the Firm’s employees, vendors, partners, and clients (the “Solicitation Restriction”); and
- Restrictions prohibiting Alexeev from using the Firm’s confidential information (the “Confidentiality Restriction”).⁴

² Ex. A § 2.10 (cited as “MA”).

³ Ex. B (cited as “Agr.”).

⁴ *Id.* § 3.

Those restrictions (together, the “Covenants”) apply during a “Restricted Period,” defined as a period starting when the Acquisition closed and ending three years later.⁵

The Challenged Agreement does not contain a choice-of-law or choice-of-forum provision. Instead, it incorporates a section of the Merger Agreement.⁶ The Merger Agreement calls for Delaware law to govern its terms (the “Delaware Law Provision”).⁷ It also designates courts in the state of Delaware as the exclusive forum for “any action, suit, or proceeding with respect to any matter arising out of or relating to this Agreement, any other Transaction Document, any Schedules hereto and the other documents, instruments and agreements referred to herein or therein or delivered pursuant hereto or thereto. . . .” (the “Delaware Forum Provision”).⁸

⁵ *Id.* (“[T]he period between the Closing Date and the date that is 3 years following the Closing Date.”). The Complaint alleges the Restricted Period is five years, but the Agreement says three years.

⁶ *See id.* § 16 (“Governing Law; Jurisdiction; WAIVER OF JURY TRIAL. Section 10.13 of the Merger Agreement is hereby incorporated herein by reference *mutatis mutandis*.”).

⁷ MA § 10.13 (“This Agreement will be governed by, and construed in accordance with, the Laws of the State of Delaware without regard to the conflict of Laws rules of any state.”).

⁸ *Id.*

C. Alexeev Leaves The Firm.

On October 27, 2025, Alexeev resigned from the Firm. The Buyer⁹ later learned that Alexeev had created Pheonix Tax LLC and was acting as its managing member.

After his departure, some of the Firm's clients contacted the Firm about moving their accounts to Alexeev's new firm. By letter dated December 19, 2025, the Buyer reminded Alexeev of the Challenged Agreement and the Covenants it contains.

D. This Litigation

On April 20, 2026, the Buyer filed this suit.¹⁰ The complaint contains four counts:

- Count I asserts that Alexeev breached the Covenants in the Challenged Agreement.
- Count II asserts that Alexeev tortiously interfered with the Buyer's business relationships.
- Count III asserts Alexeev misappropriated confidential and propriety business information in violation of California Uniform Trade Secrets Act.¹¹
- Count IV asserts Alexeev misappropriated trade secrets in violation of the federal Defend Trade Secrets Act.¹²

⁹ After the closing of the Merger, the Buyer controlled Holdco and the Firm. For simplicity, this decision speaks in terms of the Buyer taking action, even when the Buyer technically caused one of its affiliates to act.

¹⁰ The plaintiffs are the Buyer, Holdco, and Evolution Buyer LLC, which is a member of the Buyer and wholly owned by the Sponsor. This decision refers generally to the Buyer except where the context requires referring to a specific entity.

¹¹ Cal. Civ. Code § 3426.

¹² 18 U.S.C. § 1836.

Alexeev moved to dismiss the complaint on multiple grounds. He argues under Rule 12(b)(2) that this court cannot exercise personal jurisdiction over him. He contends under Rule 12(b)(3) that venue in this court is improper. And he asserts under Rule 12(b)(6) that the complaint fails to state any claim on which relief can be granted.

This decision only reaches the issue of personal jurisdiction under Rule 12(b)(2).

II. LEGAL ANALYSIS

Alexeev seeks dismissal under Rule 12(b)(2) on the grounds that this court cannot exercise jurisdiction over him. As the sole basis for this court's exercise of personal jurisdiction, the Buyer relies on the Delaware Forum Provision, which it seeks to interpret under the Delaware Law Provision. But those provisions cannot support personal jurisdiction over Alexeev because California law renders them voidable at Alexeev's request. Alexeev has challenged their effectiveness by contesting jurisdiction, and they cannot provide a basis for jurisdiction in this court.

A. Standard For A Rule 12(b)(2) Motion

“When a defendant moves to dismiss a complaint pursuant to Court of Chancery Rule 12(b)(2), the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the defendant.”¹³ Determining whether the court has jurisdiction over a defendant engages a two-step analysis, “the court must first

¹³ *Ryan v. Gifford*, 935 A.2d 258, 265 (Del. Ch. 2007).

determine that service of process is authorized by statute and then must determine that the exercise of jurisdiction over the nonresident defendant comports with traditional due process notions of fair play and substantial justice.”¹⁴ The court may consider the pleadings, affidavits, and any discovery of record. If there has not been an evidentiary hearing, the plaintiff “need only make a *prima facie* showing of personal jurisdiction and ‘the record is construed in the light most favorable to the plaintiff.’”¹⁵

A defendant can consent to a court’s exercise of personal jurisdiction. If the consent is valid, then it obviates the need to conduct the formal Rule 12(b)(2) analysis.¹⁶

A forum selection provision in a contract can provide the necessary consent. “Where the parties to the forum selection clause have consented freely and knowingly to the court’s exercise of jurisdiction, the clause is sufficient to confer personal jurisdiction on a court.”¹⁷

To support personal jurisdiction over Alexeev, the Buyer relies exclusively on the Delaware Forum Provision, which it interprets under the Delaware Law

¹⁴ *Id.*

¹⁵ *Id.* (footnote omitted).

¹⁶ *See Cap. Gp. Cos., Inc. v. Armour*, 2004 WL 2521295, at *2 (Del. Ch. Oct. 29, 2004).

¹⁷ *Nat’l Indus. Gp. (Hldg.) v. Carlyle Inv. Mgmt. L.L.C.*, 67 A.3d 373, 381 (Del. 2013).

Provision. Alexeev's Rule 12(b)(2) motion rises or falls based on the validity of those provisions.

B. Voidability Under California Law

Alexeev contends that the Delaware Forum Provision and Delaware Law Provision are voidable under California law. He is correct. Those provisions therefore cannot provide a basis for this court's exercise of personal jurisdiction.

California has enacted a statute that renders both choice-of-forum and choice-of-law provisions voidable at the request of an employee when those provisions appear in an agreement that the employee was required to sign "as a condition of employment."¹⁸ The statute states:

(a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.¹⁹

¹⁸ Cal. Lab. C. § 925(a).

¹⁹ *Id.* § 925.

Whether that statute applies presents a threshold question of choice of law. If the statute applies, then the court must determine whether the Delaware Forum Provision and the Delaware Law Provision violate its terms.

1. Choice Of Law

When determining what law governs a contract, Delaware follows the *Restatement (Second) of Conflict of Laws*.²⁰ It provides that if the parties to a contract have selected the law of a particular jurisdiction to govern their agreement, then “[t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied,” unless either

(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or

(b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.²¹

Here, the Delaware Law Provision passes muster under Section 187(a) but fails under Section 187(b).

²⁰ *Certain Underwriters at Lloyds, London v. Chemtura Corp.*, 160 A.3d 457, 464 (Del. 2017).

²¹ *Restatement (Second) of Conflict of Laws* § 187 (1971).

a. Delaware Has a Substantial Relationship To The Parties Or The Transaction.

The first step in evaluating a choice-of-law provision is to determine whether the parties selected the law of a state with “no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice.”²² The Challenged Agreement incorporates the Delaware Law Provision from the Merger Agreement.

Delaware has a sufficient relationship to the parties to be a viable selection. Commentary to the *Restatement* explains that “[w]hen the state of the chosen law has some substantial relationship to the parties or the contract,” then the parties have a reasonable basis for their choice of law.²³ A substantial relationship exists “when this state is that where performance by one of the parties is to take place or where one of the parties is domiciled or has his principal place of business.”²⁴ The Buyer and its affiliate, Evolution Buyer, LLC, are both Delaware limited liability companies, making Delaware their domicile. Under the *Restatement*, that connection provides a reasonable basis for selecting Delaware Law.

By statute, Delaware takes a more assertive position than the *Restatement* about when a substantial relationship exists. When a contract governs a transaction involving \$100,000 or more and the parties agree that the contract “shall be governed

²² *Id.* § 187(a).

²³ *Id.* cmt. f.

²⁴ *Id.*

by or construed under the laws of this State, without regard to principles of conflict laws,” then that provision “shall conclusively be presumed to be a significant, material and reasonable relationship with this State and shall be enforced whether or not there are other relationships with this State.”²⁵ No one has argued against that statute’s application, whether under the *Restatement* test or otherwise. The Delaware Law Provision standing alone therefore establishes a significant, material, and reasonable relationship with Delaware, providing a reasonable basis for selecting Delaware law.

b. California Is The Default State

The next step in a choice-of-law analysis is to determine “what state's law would apply *but for* the Delaware choice-of-law provision.”²⁶ The Buyer argues for Delaware law; Alexeev argues for California law.

Absent a binding choice-of-law clause, Section 6 of the *Restatement* calls for applying the law of the jurisdiction with the most significant relationship to the issue in dispute.²⁷ A court determines which jurisdiction has the most significant relationship by considering the following factors,

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,

²⁵ 6 *Del. C.* § 2708(a).

²⁶ *FP UC Hldgs., LLC v. Hamilton*, 2020 WL 1492783, at *9 (Del. Ch. Mar. 27, 2020).

²⁷ *See Certain Underwriters*, 160 A.3d at 465.

- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and
- (g) ease in the determination and application of the law to be applied.²⁸

Other sections of the *Restatement* provide guidance on how to apply those factors to particular types of disputes.²⁹

Section 188 provides guidance on applying the factors to a contract dispute. It states,

- (1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in § 6.
- (2) In the absence of an effective choice of law by the parties (see § 187), the contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
 - (a) the place of contracting,
 - (b) the place of negotiation of the contract,
 - (c) the place of performance,
 - (d) the location of the subject matter of the contract, and
 - (e) the domicil, residence, nationality, place of incorporation and place of business of the parties.

²⁸ *Restatement, supra*, § 6(2).

²⁹ *See Certain Underwriters*, 160 A.3d at 465.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

(3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied, except as otherwise provided in §§ 189- 199 and 203.³⁰

Those factors point to California law.

The first factor is place of contracting. Under the *Restatement*, “the place of contracting is the place where occurred the last act necessary, under the forum's rules of offer and acceptance, to give the contract binding effect.”³¹ “Standing alone, the place of contracting is a relatively insignificant contact.”³² This factor nevertheless points to California, where Alexeev executed the Challenged Agreement.

The second factor is the place of the negotiations. The *Restatement* states that “where the parties negotiate and agree on the terms of their contract” is “a significant contact,” but that is contact has “less importance when there is no one single place of negotiation and agreement, as, for example, when the parties do not meet but rather conduct their negotiations from separate states by mail or telephone.”³³ The pleadings suggest that no negotiations took place. The Challenged Agreement was a form agreement that the Buyer presented to Alexeev on a take-it-or-leave-it basis.

³⁰ *Restatement, supra*, § 188.

³¹ *Id.* cmt. e.

³² *Id.*

³³ *Id.*

This factor does not apply. To the extent it applies, it favors California, where Alexeev was presented with the Challenged Agreement.

The third factor looks to the place of performance. The *Restatement* regards this factor as the most important, explaining “the state where performance is to occur has an obvious interest in the question whether this performance would be illegal.”³⁴ The place of performance for purposes of the Challenged Agreement was California. That is where Alexeev worked and where his alleged violations of the Covenants took place.

The fourth factor considers the location of the contract’s subject matter. Because the Covenants applied to Alexeev, the subject matter of the contract was located where he lived and worked. The location of the contract’s subject matter was therefore California.

The fifth factor considers the domicile, residence, state of incorporation, or principal place of business of the parties. The formal parties to the Challenged Agreement are Alexeev, Buyer, and Holdco.

Alexeev is a human domiciled in California. The Buyer and one of its affiliate are Delaware limited liability companies, but the affiliate is not a party to the Challenged Agreement. Holdco is a Georgia limited liability company and a party to the Challenged Agreement. The Firm is a Georgia limited liability company, and the

³⁴ *Id.*

Sponsor is a Massachusetts limited liability company. Neither is a party to the Challenged Agreement.

The *Restatement* cautions that “with respect to most issues, a corporation's principal place of business is a more important contact than the place of incorporation, and this is particularly true in situations where the corporation does little, or no, business in the latter state.”³⁵ The plaintiffs have not identified their principal places of business, and it seems likely they are holding companies that either lack substantial business operations of their own or operate through subsidiaries. The plaintiffs’ failure to identify their principal places of business when it would be easy to do so supports an inference that the information, if provided, would have been adverse.³⁶

³⁵ *Id.*

³⁶ *Smith v. Van Gorkom*, 488 A.2d 858, 878 (Del. 1985) (subsequent history omitted) (“[I]t is a well established principle that the production of weak evidence when strong is, or should have been, available can lead only to the conclusion that the strong would have been adverse.” (citing *Interstate Circuit v. United States*, 306 U.S. 208, 226 (1939); *Deberry v. State*, 457 A.2d 744, 754 (Del. 1983))); *accord Kahn v. Lynch Commc’n Sys., Inc.*, 638 A.2d 1110, 1119 n.7 (Del. 1994) (“As we have previously noted, the production of weak evidence when strong is, or should have been, available can lead only to the conclusion that the strong would have been adverse.”); *see Barbey v. Cerego, Inc.*, 2023 WL 6366055, at *8 (Del. Ch. Sep. 29, 2023) (“Intervenor’s production hurts, rather than helps, his case. . . . The Screenshots do not include any metadata from the Emails, and therefore are weak evidence. The Emails in their native format would contain metadata verifying their authenticity, and therefore would be strong evidence. . . . Intervenor produced weak evidence – the Screenshots – when strong evidence – the Emails in native format – was, or should have been, available. . . . [F]ailure to produce the Emails in their native format ‘can only lead to the conclusion’ that they would have been adverse to Intervenor’s case.”), *aff’d sub nom. Barbey v. Young*, 319 A.3d 908 (Del. 2024); *Chesapeake Corp. v. Shore*, 771 A.2d 293, 300–01 & n.7 (Del. Ch. 2000) (relying on principle from *Van Gorkom*

There is thus one party to the Challenged Agreement with a connection to Delaware, and that connection is the Buyer's status as a Delaware entity. Outside of issues implicating an entity's internal affairs, the *Restatement* regards that connection as both weak and less important than the Buyer's principal place of business, which is unknown. The other parties to the Challenged Agreement are Alexeev, a natural person domiciled in California, and Holdco, a Georgia entity. Among those ties, the Buyer's status as a Delaware entity does not predominate.

To strengthen its Delaware connection, the Buyer has pointed to a non-party affiliate that is also a Delaware entity. That does not help, because the Buyer also has non-party affiliates that are Georgia and Massachusetts entities. On these facts, entity status is not a significant factor when determining the default choice of law.

The *Restatement* calls for giving preponderant weight to the places of negotiation and performance. When those are the same, "the local law of this state will usually be applied."³⁷ That state is California.

The *Restatement* factors, considered as a whole, also point to California. There is only one tie to Delaware, and that is the state of incorporation of one of the parties to the Challenged Agreement.

and *Kahn* where "defendants chose not to have any of the key insiders at Shorewood testify at trial," so the court "never got to hear the 'Shorewood board's story' from its leader, Marc Shore, or one of its top managers").

³⁷ *Restatement, supra*, § 188(3).

But for the Delaware Law Provisions, California law would govern. California is therefore the default state.

c. The Existence Of A Conflict

The next step in the choice-of-law analysis is to determine “if there is an actual conflict between the laws of the different states each party urges should apply.”³⁸ To make this determination, a court compares the laws from the competing jurisdictions to determine whether they conflict on a relevant point.³⁹

If Section 925 applies, then true conflict exists between California and Delaware law over the effectiveness of the Delaware Forum Provision and Delaware Law Provision. California would render those provisions voidable at the request of an employee.⁴⁰ By contrast, Delaware law generally enforces choice-of-forum and choice-of-law provisions.⁴¹ To avoid the conflict, the Buyer contends that Section 925 does not apply.

On its face, Section 925 governs this case. Alexeev is an employee who primarily resides and works in California and Buyer required Alexeev to sign an

³⁸ *Certain Underwriters*, 160 A.3d at 464.

³⁹ *See, e.g., Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1162–65 (Del. 2010) (comparing laws of Delaware and Dubai); *Silverberg v. Padda*, 2019 WL 4566909, at *12 (Del. Ch. Sept. 19, 2019) (comparing pleading requirements of four jurisdictions).

⁴⁰ Cal Lab. C. § 925(b).

⁴¹ *See, e.g., Carlyle*, 67 A.3d at 381; *J.S. Alberici Const. Co. v. Mid-West Conveyor Co.*, 750 A.2d 518, 520 (Del. 2000).

agreement to litigate in a foreign state under foreign law as a condition of his employment.

(i) Alexeev's Status As A Partner

The Buyer argues that Section 925 does not apply because Alexeev was a partner of the Firm, not an employee. The Buyer reasons that because Alexeev was not an employee, he could not have signed the Challenged Agreement as a condition of employment. They conclude that Section 925 therefore cannot apply. Unfortunately for the Buyer, Alexeev qualifies as an employee for purposes of Section 925.

There is virtually no California authority interpreting who qualifies as an employee for purposes of Section 925. California authorities from other contexts deploy a fact-specific analysis when determining whether an individual with a “partner” title nevertheless qualifies as an employee for purposes of its labor laws.

One instructive case is *Ramos*.⁴² There, the California First District Court of Appeals considered whether a lawyer who held the title of “partner” qualified as an employee for purposes of whether she could bring claims under the California Fair Employment and Housing Act.⁴³ The court focused on whether the internal governance structure of the firm revealed power imbalance such that the lawyer was more akin to an employee than an owner-manager.⁴⁴ The lawyer was an income

⁴² *Ramos v. Super. Ct.*, 239 Cal. Rptr. 3d 679 (Ct. App. 2018).

⁴³ *Id.* at 692.

⁴⁴ *Id.* at 694.

partner who did not own equity in the firm and could be expelled “for any reason” by a vote of two-thirds of the equity partners.⁴⁵ The firm also had an executive committee of equity partners who exercised “complete and sole management of the Partnership.”⁴⁶ The court held that the power imbalance between the employee and firm management demonstrated that she was an employee for purposes of the statute at issue.⁴⁷

Another instructive case is *Strother*.⁴⁸ There, a physician with the title “partner” sued under California’s Fair Employment and Housing Act. The United States Court of Appeals for the Ninth Circuit explained that “determining whether an individual is an ‘employee’ typically requires a factual inquiry which goes beyond merely the partnership agreement and the ‘partner’ label.”⁴⁹ The court cautioned that the analysis should examine “the true relationship among partners, including the method of compensation, the ‘partner’s’ responsibility for partnership liabilities, and the management structure and the ‘partner’s’ role in that management, to determine if an individual should be treated as a partner or an employee for the purpose of

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Strother v. S. Cal. Permanente Med. Gp.*, 79 F.3d 859 (9th Cir. 1996).

⁴⁹ *Id.* at 867.

employment discrimination laws.”⁵⁰ The court concluded that because the affairs of the partnership were predominantly conducted by the board, her compensation was determined by her performance, she could be disciplined for poor performance, and there was a large number of partners, the lower court erred in determining that the physician could plead no set of facts to show that she was an employee.⁵¹

Decisions from other jurisdictions call for similar inquiries. Most notably, in *Clackamas*, the Supreme Court of the United States considered whether four shareholders who owned the corporation and made up the board of directors counted as employees.⁵² The Court explained that the question of whether a partner, officer, board member, or major shareholder qualifies as an employee is based on six EEOC factors, which focus mainly on the level of control the individual is subjected to.⁵³ The six factors are,

Whether the organization can hire or fire the individual or set the rules and regulations of the individual's work

Whether and, if so, to what extent the organization supervises the individual's work

Whether the individual reports to someone higher in the organization

Whether and, if so, to what extent the individual is able to influence the organization

⁵⁰ *Id.*

⁵¹ *Id.* at 867–68.

⁵² *Clackamas Gastroenterology Assocs., P. C. v. Wells*, 538 U.S. 440, 442 (2003).

⁵³ *Id.* at 449.

Whether the parties intended that the individual be an employee,
as expressed in written agreements or contracts

Whether the individual shares in the profits, losses, and liabilities
of the organization.⁵⁴

The Court further highlighted that “[t]he mere fact that a person has a particular title—such as partner, director, or vice president—should not necessarily be used to determine whether he or she is an employee or a proprietor.”⁵⁵ The Court reversed the judgement and remanded for further proceedings emphasizing that “the answer to whether a shareholder-director is an employee depends on ‘all of the incidents of the relationship . . . with no one factor being decisive.’”⁵⁶

Taking into account the purpose of Section 925, the fact-specific inquiry envisioned by *Ramos*, *Strother*, and *Clackamas* mandates the conclusion that Alexeev was an employee for purposes of Section 925. As a threshold matter, “[i]t is evident from the text of Section 925 that the statute's intent is to provide a California-based employee with a California forum to litigate employment-related claims if the terms of his or her employment change on or after January 1, 2017.”⁵⁷ Classifying Alexeev as an employee upholds the protective intent of Section 925 and avoids the statute being easily circumvented.

⁵⁴ *Id.* at 449–50.

⁵⁵ *Id.* at 450.

⁵⁶ *Id.* at 451 (quoting *NLRB v. United Ins. Co. of Am.*, 390 U.S. 254, 258 (1968)).

⁵⁷ *LGCY Power, LLC v. Super. Ct.*, 291 Cal. Rptr. 3d 50, 58–59 (2022).

Sometimes, determining employee status might require discovery and a hearing. Alexeev's employee status can be determined now.

To bolster Alexeev's status as a partner, the Buyer relies on the Fifth Amended and Restated Operating Agreement of Holdco, which granted Alexeev Class A units (the "Holdco Agreement"). Alexeev joined Holdco by executing a joinder agreement to the Holdco Agreement.⁵⁸

As a Class A member, Alexeev had minimal rights. Section 4.2 of the Holdco Agreement, titled "Limited Rights of Members," states,

The Members acknowledge and agree that the business and affairs of the Company shall be managed exclusively by the Managing Partner & CEO, subject to the limited approval rights reserved to the Board of Directors and the Class A Members pursuant to the terms of this Agreement. Except as otherwise specifically provided under this Agreement or non-waivable provisions of applicable law, (i) the Members shall have no part in, and shall not interfere in any manner with, management or control of the Company and shall have no authority or right to act on behalf of the Company or to bind the Company in connection with any matter, and (ii) no Member shall take part in, or interfere in any manner with, the conduct or control of the Company business, and no Member shall have any right or authority to act or sign for, or to obligate the Company.⁵⁹

Alexeev had no authority to act on Holdco's behalf or participate in management. Instead, he was subject to managerial control. Under *Ramos*, *Strother*, and *Clackamas*, that power imbalance and level of non-control qualifies Alexeev as an employee.

⁵⁸ Walker Aff. ¶¶ 4–5.

⁵⁹ AB Ex. B § 4.2.

Consistent with that conclusion, Holdco recognized Alexeev as an employee rather than a partner on multiple occasions:

- “Alexeev was a beneficial owner of an equity interest in AAG and an employee of Aprio LLP.”⁶⁰
- “Under Section 7(d) of the Service Agreement, Aprio is entitled to terminate your employment immediately. . . .”⁶¹
- “On October 27, 2025, Alexeev’s employment with AAG ended.”⁶²

Holdco’s references to Alexeev as an employee confirm that when not pursuing this litigation, the Buyer and its affiliates viewed Alexeev as an employee.

Last, Alexeev was not involved in negotiating the Merger Agreement that led to his post-Merger status.⁶³ Paraphrasing Orwell, all partners are equal, but some are more equal than others. Alexeev had a partner title but not managerial authority. He held equity, but not the rights associated with equity partnership. He was functionally an employee.

(ii) A Condition Of The Merger, Not Employment

The Buyer next argues that Section 925 does not apply because Alexeev executed the Challenged Agreement as a condition of the Merger, not as a condition of employment. That argument fails as well.

⁶⁰ Compl. ¶ 7.

⁶¹ AB Ex. I at 1.

⁶² AB at 8.

⁶³ See Walker Aff. ¶ 25 (“[N]egotiating the terms of a Merger Agreement with 216 partners would be completely unworkable. . . .”).

Whether an agreement is a condition of employment turns on whether the employee could continue with the company without signing the agreement. In *Dalavai*, for example, the United States District Court for the Southern District of California held that an agreement was not a “condition of employment” where the consequence for an employee of failing to sign the agreement was losing equity, not his job.⁶⁴ Similarly in *Patel*, the United States District Court for the Northern District of California held that when an employee is not required to accept terms as a condition to their initial employment or to remain employed with the employer, then the acceptance is not a condition of employment.⁶⁵

The Buyer acknowledges that if Alexeev had refused to sign the Challenged Agreement, he would have lost his job.⁶⁶ Signing the Challenged Agreement was a condition of his employment.

(iii) Representation By Counsel

In its next attempt to escape from Section 925, the Buyer argues that Alexeev was independently represented by counsel. That argument fails as well.

Section 925(e) provides “[t]his section shall not apply to a contract with an employee who is in fact individually represented by legal counsel in negotiating the

⁶⁴ *Dalavai v. Amazon.com, Inc.*, 2026 WL 776364, at *3 (S.D. Cal. Mar. 19, 2026).

⁶⁵ *Patel v. SAP Am., Inc.*, 2025 WL 1810011, at *3 (N.D. Cal. July 1, 2025).

⁶⁶ AB at 18 (“[A]ny partner who did not wish to participate in the Transaction would not continue to be a Member of the Firm following closing of the Transaction.”); *accord* AB Alexeev Aff. ¶¶ 12, 19.

terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.”⁶⁷ That section requires both representation and negotiation. Neither exists here.

The first missing requirement is representation. The Buyer argues in its brief that Russell Shaprio and Nancy Lieberman of Levenfeld Pearlstein represented the partners and answered their questions about the transaction.⁶⁸ But Nancy Lieberman’s affidavit puts that argument to rest. She avers that “Levenfeld Pearlstein did not represent the individual AAG members or Aprio partners but was retained by AAG to assist those individuals who elected to contact the firm with questions.”⁶⁹ Notably, she did not have any recollection of speaking or emailing with Alexeev, nor did she have any documents suggesting she did.⁷⁰

The other missing requirement is negotiation. Alexeev did not have the ability to negotiate anything. The Buyer presented the Challenged Agreement as a take-it-or-leave-it proposition.

Alexeev does not fall within the exclusion established by Section 925(e).

⁶⁷ Cal. Lab. Code § 925(e).

⁶⁸ AB at 17.

⁶⁹ Lieberman Aff. ¶ 6.

⁷⁰ *Id.* ¶ 9.

(iv) The Section 16601 Argument

In its last argument, the Buyer contends that Section 925 does not apply because the Challenged Agreement was ancillary to the sale of a business. The court need not address that issue, because it does not affect whether this court has jurisdiction.

Section 16601 of the California Business & Professions Code authorizes restrictive covenants in connection with the sale of a business. It states:

Any person who sells the goodwill of a business, or any owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity, or any owner of a business entity that sells (a) all or substantially all of its operating assets together with the goodwill of the business entity, (b) all or substantially all of the operating assets of a division or a subsidiary of the business entity together with the goodwill of that division or subsidiary, or (c) all of the ownership interest of any subsidiary, may agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold, or that of the business entity, division, or subsidiary has been carried on, so long as the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein.⁷¹

Section 16601 validates restrictive covenants that meet its terms. The current dispute, however, is not about whether the Covenants are valid. The current dispute is about whether the Delaware Forum Provision and the Delaware Law Provision are valid. Section 16601 does not validate those provisions.

⁷¹ Cal. Bus. & Prof. Code § 16601.

If this case proceeds in a forum that can exercise jurisdiction over Alexeev, then the Buyer might attempt to rely on Section 16601 to defend the Covenants against challenge. That issue is not currently before the court.

d. Resolving The Conflict

Because Section 925 applies, a true conflict exists between California law and Delaware law over the validity of the Delaware Forum Provision and Delaware Law Provision. The California statute controls.

Under the *Restatement*, a court faced with a true conflict must determine whether

application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.⁷²

Although “[n]o detailed statement can be made of the situations where a ‘fundamental’ policy of the state of the otherwise applicable law will be found to exist,”⁷³ the *Restatement* provides an example that maps onto this case. According to the *Restatement*, a state’s fundamental policy may exist when a statute “makes one or more kinds of contracts illegal or which is designed to protect a person against the oppressive use of superior bargaining power.”⁷⁴

⁷² *Restatement, supra*, § 187.

⁷³ *Id.* § 187 cmt. g.

⁷⁴ *Id.*

So here. “Section 925 expresses California's strong public policy against forum-selection clauses in employment agreements.”⁷⁵ The statute “establishes a policy prohibiting employers from requiring California employees from agreeing to litigate in a different forum as a prerequisite to employment.”⁷⁶ As the *Restatement* envisions, Section 925 is designed to protect employees against the superior bargaining power of their employers.

The next step is to consider the weight of California’s public policy against Delaware’s interest. In contrast to California’s strong public policy, Delaware only has a general interest in promoting freedom of contract, and the former overrides the latter.

[W]here it is clear that the policy of the default state is that the contract at issue is abhorrent and void, and where, as here, the formation and enforcement of the contract relate overwhelmingly to the default state, a general interest in freedom of contract is unlikely to be the equal of that public policy under the Restatement analysis. The entire purpose of the Restatement analysis is to prevent parties from contracting around the law of the default state by importing the law of a more contractarian state, unless that second state also has a compelling interest in enforcement. In other words, in every instance where the parties seek to circumvent application of the law of the default state, the state whose law was chosen and is asked to enforce the contract will have the interest of protecting freedom to contract. It would be a tautology to suggest that such an interest alone, arising in every case, can trump the public interest of the default state, which, by definition, has the greatest contacts with the contract at issue; otherwise, the

⁷⁵ *Bromlow v. D & M Carriers, LLC*, 438 F. Supp. 3d 1021, 1029 (N.D. Cal. 2020).

⁷⁶ *Ryze Claim Sols. LLC v. Super. Ct.*, 33 Cal. App. 5th 1066, 1072, (2019).

Restatement test would be meaningless, and the default state would lose its ability to constrain pernicious enforcement of contract rights.⁷⁷

California's materially greater interest renders the Delaware Forum Provision and Delaware Law Provision voidable at Alexeev's request.

2. The Provisions Do Not Support Jurisdiction.

Through his Rule 12(b)(2) motion, Alexeev has invoked his right to invalidate the Delaware Forum Provision and Delaware Law Provisions as voidable. The Buyer cannot rely on them to support jurisdiction.

Without the ability to rely on the Delaware Forum Provision, this court would normally analyze whether Alexeev is otherwise subject to personal jurisdiction. In this case, however, it is undisputed that personal jurisdiction does not otherwise exist.

III. CONCLUSION

This court lacks personal jurisdiction over Alexeev. The case is dismissed on that basis.

⁷⁷ *Ascension Ins. Hldgs., LLC v. Underwood*, 2015 WL 356002, at *5 (Del. Ch. Jan. 28, 2015).