IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GEORGE ASSAD, on behalf of himself and all other similarly situated stockholders of HUCKLEBERRY.AI, INC. (f/k/a DOMO, INC.),	)	
Plaintiff,	)	
v.	)	C.A. No. 2026-1264-BWD
CARINE S. CLARK, DANIEL DANIEL, JOSHUA G. JAMES, DAVID JOLLEY, JEFF KEARL, DAN STRONG, RENÉE SOTO, RYAN WRIGHT, and HUCKLEBERRY.AI, INC. (f/k/a DOMO, INC.),	)	
Defendants.	)	

MEMORANDUM OPINION RESOLVING CROSS-MOTIONS FOR SUMMARY JUDGMENT

Date Submitted: October 29, 2026
Date Decided: November 10, 2026

Ned Weinberger, Brendan W. Sullivan, Sebastian Van Oudenallen, LABATON KELLER SUCHAROW LLP, Wilmington, DE; OF COUNSEL: John Vielandi, LABATON KELLER SUCHAROW LLP, New York, NY; Steven J. Purcell, Robert H. Lefkowitz, Stephen C. Childs, PURCELL & LEFKOWITZ LLP, Harrison, NY; Richard Maniskas, RM LAW, PC, Berwyn, PA; *Attorneys for Plaintiff George Assad*.

Raymond J. DiCamillo and Randall P. Ainsworth, RICHARDS, LAYTON & FINGER, P.A., Wilmington, DE; OF COUNSEL: Jonathan A. Shapiro, GOODWIN PROCTER LLP, San Francisco, CA; Tucker DeVoe and Jordan C. Benson, GOODWIN PROCTER LLP, Boston, MA; *Attorneys for Defendants Carine S. Clark, Daniel Daniel, Joshua G. James, David Jolley, Jeff Kearl, Dan Strong, Renée Soto, Ryan Wright, and Huckleberry.ai, Inc. (f/k/a Domo, Inc.)*.

DAVID, V.C.

In July 2026, Huckleberry.ai, Inc., formerly Domo, Inc., entered into an asset purchase agreement to sell substantially all of its assets to a third party. The asset sale was approved by a controlling stockholder holding 75.7% of the company's voting power.

The asset purchase agreement permitted the company to retain net operating loss carryforwards, but the company otherwise did not retain any material non-cash assets after closing. When the company announced the transaction, it told the minority stockholders that the company did not intend to liquidate and its board of directors would instead "evaluate alternatives" to use the cash proceeds from the sale, including possible acquisitions of other operating businesses "without limitation as to industry."

After closing, a stockholder plaintiff filed this action, asserting that the company's refusal to distribute cash to the stockholders following the asset sale violates a provision in the company's charter. The provision states that "[i]n the event of a Liquidation Event," "the assets of the Corporation legally available for distribution to stockholders shall be distributed on an equal priority, pro rata basis to the holders of Common Stock." The parties have cross-moved for summary judgment on the issue of whether "the Asset Sale obligates the Company to distribute all legally available assets" under this provision in the charter. For the reasons explained below, I conclude that it does.

I. BACKGROUND

A. The Company And Its Charter

Huckleberry.ai, Inc. (the "Company"), formerly known as Domo, Inc., operated "a cloud-based AI and data products platform designed to help organizations connect data, derive insight, and operationalize intelligence across their business." Transmittal Aff. of Sebastian Van Oudenallen in Supp. of Pl.'s Opening Br. in Supp. of Mot. for Partial Summ. J. [hereinafter POB Aff.], Ex. 2 at 7, Dkt. 16.

The Company was founded in 2010 by defendant Joshua G. James, who serves as Chief Executive Officer and a director on the Company's eight-member board of directors (the "Board"). *Id.*, Ex. 6 [hereinafter Info St.] at 15, 77–78. Defendants Carine S. Clark, Daniel Daniel, David Jolley, Jeff Kearl, Dan Strong, Renée Soto, and Ryan Wright (with James, the "Director Defendants") also serve as directors on the Board. *Id.* at 77–78.

The Company is governed by the Amended and Restated Certificate of Incorporation of Domo, Inc. (the "Charter"), which provides for two classes of common stock. *See* POB Aff., Ex. 5 [hereinafter Charter]. Under the Charter, each share of Class A common stock is entitled to forty votes, while each share of Class B common stock is entitled to one vote. *Id.* art. V, § 3.1. Through his company Cocolalla, LLC, James owns all outstanding shares of the Class A common stock.

Transmittal Aff. of Raymond J. DiCamillo, Esq. in Supp. of Opening Br. in Supp. of Defs.' Mot. for Summ. J. [hereinafter DOB Aff.], Ex. 3 at 1, Dkt. 19; Info St. at 78. Class B common stock is publicly traded on the Nasdaq Global Market under the trading symbol HUCK (formerly DOMO). DOB Aff., Ex. 10 at 3. As of July 22, 2026, James's Class A shares represented 75.7% of the Company's voting power. Info St. at 77.

Article V of the Charter concerns "[t]he rights, powers, preferences, privileges, restrictions and other matters relating to the Common Stock." Charter art. V. Article V, Section 2 provides that shares of common stock "shall have the same rights and powers," excluding voting, as follows:

> 2. Identical Rights. Except as otherwise provided in this Amended and Restated Certificate or required by applicable law, shares of Common Stock shall have the same rights and powers, rank equally (including as to dividends and distributions, and any liquidation, dissolution or winding up of the corporation but excluding voting and other matters as described in Section V.3 below), share ratably and be identical in all respects as to all matters, including:
>
> > 2.1 Subject to the prior rights of holders of all classes and series of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board. Any dividends paid to the holders of shares of Common Stock shall be paid pro rata, on an equal priority, pari passu basis, unless different treatment of the shares of any such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of such applicable class of Common Stock treated adversely, voting separately as a class.

Id. §§ 2–2.1.

Pertinent to the present dispute, Article V, Section 4 of the Charter governs common stockholders' rights in a "Liquidation Event," defined to mean "any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, or any Acquisition or Asset Transfer," where an "Asset Transfer" includes "a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Corporation." *Id.* §§ 1.10, 1.3. It provides:

> 4. Liquidation Rights. **In the event of a Liquidation Event**, subject to the rights of any Preferred Stock that may then be outstanding, **the assets of the Corporation legally available for distribution to stockholders shall be distributed on an equal priority, pro rata basis to the holders of Common Stock**, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class; provided, however, that for the avoidance of doubt, consideration to be paid or received by a holder of Common Stock in connection with any Liquidation Event pursuant to any employment, consulting, severance or similar services arrangement shall not be deemed to be "distribution to stockholders" for the purpose of this Section V.4; *provided, further, however*, that shares of such classes may receive, or have the right to elect to receive, different or disproportionate consideration in connection with such consolidation, merger or other transaction if the only difference in the per share consideration to the holders of the Class A Common Stock and Class B Common Stock is that any securities distributed to the holder of a share of Class A Common Stock have forty (40) times the voting power of any securities distributed to the holder of a share of Class B Common Stock.

Id. § 4 (emphasis added).

B. The Company Agrees To Sell Substantially All Of Its Assets.

Since inception, the Company has suffered an accumulated loss of $1.56 billion. DOB Aff., Ex. 3 at 6. As of January 31, 2026, the Company had accrued federal net operating loss carryforwards ("NOLs") of approximately $1.3 billion. *Id.*, Ex. 6 at 103.

In a quarterly report for the quarter ended April 30, 2026, filed with the Securities and Exchange Commission ("SEC"), the Company disclosed that it "was not in compliance with the minimum annualized recurring revenue covenant" under its secured credit facility, which permitted "the lenders . . . to declare the outstanding balance of $136.6 million of principal and related fees immediately due and payable." *Id.*, Ex. 3 at 6. The Company reported that with only $39.1 million in cash and cash equivalents on hand, it would be unable to provide payment upon acceleration, and therefore, "substantial doubt exist[ed] about the Company's ability to continue as a going concern . . . ." *Id.* To prevent acceleration, the Company and its lenders entered into a forbearance agreement under which the lenders agreed to forbear from exercising their rights and remedies under the secured credit facility but did not waive the underlying default. *Id.* The lenders conditioned forbearance "on the Company's pursuit and completion of a strategic transaction, including the Company's entry into a definitive purchase agreement by July 31, 2026[,] and the completion of a transaction no later than November 30, 2026." Info St. at 25.

C. The Company Publicly Announces The Asset Sale.

On July 22, 2026, the Company entered into an Asset Purchase Agreement (the "APA") with Progress Software Corporation ("Progress") under which the Company agreed to sell substantially all of its assets to Progress for approximately $400 million, subject to adjustments (the "Asset Sale"). Info St., Notice at 1–2. The APA permitted the Company to retain over $900 million of NOLs. *Id.* at 31. Other than the NOLs, the Company would not own any material non-cash assets after the closing of the Asset Sale. *Id.* at 34.

The Board unanimously approved, and resolved to recommend that the Company's majority stockholders approve, the APA and Asset Sale thereunder. *Id.* at 2–3. James and Cocolalla, LLC then executed a written consent approving the APA and the Asset Sale. *Id.* at 3.

The Company also adopted a Tax Benefits Preservation Plan to "protect against a possible limitation on the Company's ability to use its [NOLs] and certain other tax attributes to reduce potential future U.S. federal income tax obligations." DOB Aff., Ex. 13 at 1.

The same day, the Company publicly announced that it had entered into the APA to sell "substantially all of the [Company's] assets" to Progress. *Id.*, Ex. 7 at 2. The Company's announcement disclosed that:

> The Company does not intend to liquidate following the Closing. The Company's board of directors will evaluate alternatives for the use of

> cash proceeds from the [Asset Sale]. Those alternatives are currently expected to include using such cash proceeds to fund, at least in part, the acquisition of assets that will allow the Company to potentially derive a benefit from the NOLs and certain other tax attributes, which will be retained by the Company . . . .

Id.

On August 24, 2026, the Company filed with the SEC a Definitive Information Statement on Schedule 14C (the "Information Statement") in connection with the majority stockholders' written consent approving the Asset Sale. Info St., Notice at 2. In that filing, the Company repeated:

> If the [Asset Sale] close[s], the Company will exit the operation of its business and other historical operations. However, the Company does not intend to liquidate following the Closing. The Company's board of directors . . . will evaluate alternatives for the use of the proceeds from the [Asset Sale]. Those alternatives are currently expected to include using the proceeds to fund, at least in part, the acquisition of assets that will potentially allow the Company to utilize the NOLs and certain other tax attributes.

Id., Notice at 1. The Information Statement stated that the Company, and not its stockholders, would receive the proceeds from the Asset Sale:

> **Q: How will the Company use the proceeds from the [Asset Sale] available to it after the [Asset Sale] close[s]?**
>
> A: The Company, and not its stockholders, will receive the proceeds from the [Asset Sale]. The Company Board intends to use the proceeds from the [Asset Sale] to identify opportunities to monetize its NOLs. The Company Board may consider acquisitions of operating businesses, without limitation as to industry. Subject to certain restrictive covenants contained in the [APA], following the Closing, where beneficial, the Company intends to apply AI and automation to improve the profitability of any business it acquires. The Company

> Board may also consider other uses of the proceeds, which could include a return of capital to stockholders. . . .
>
> **Q: Will I receive any of the proceeds from the [Asset Sale]?**
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> A: No. The Company, and not its stockholders, will receive the proceeds from the [Asset Sale].

Id. at 8–9. The Information Statement further stated that the Company would not liquidate after the closing of the Asset Sale:

> **Q: Will the Company liquidate following the [Asset Sale]?**
>
> A: No. The Company does not intend to liquidate following the closing of the [Asset Sale]. The Company will change its name and ticker symbol to remove any reference to "Domo" and any derivations thereof and will remain a separate publicly listed entity with limited operating expenses. The Company's outstanding indebtedness under its existing credit facility is expected to be repaid or discharged at or prior to the Closing.

Id. at 10.

The Asset Sale closed on September 22, 2026. DOB Aff., Ex. 10 at 2. The Company received approximately $221 million at closing after repayment of debts. *Id.* The Company changed its name from Domo, Inc. to Huckleberry.ai, Inc., and its trading symbol from "DOMO" to "HUCK." *Id.*

D. Procedural History

On September 24, 2026, plaintiff George Assad ("Plaintiff"), a Class B common stockholder, initiated this action through the filing of a Verified Stockholder Class Action Complaint (the "Complaint"). *See* Verified Stockholder Class Action Compl. [hereinafter Compl.], Dkt. 1. The Complaint alleges two

counts. Count I alleges a claim against the Company for breach of the Charter. *Id.* ¶¶ 92–99. Plaintiff contends that the Asset Sale constituted an "Asset Transfer" and "Liquidation Event," and the Company has breached Article V, Section 4 of the Charter by failing to distribute the assets "legally available for distribution" following the sale. *Id.* ¶¶ 94–96. Count II alleges that the Director Defendants have breached their fiduciary duties by causing the Company to breach the Charter. *Id.* ¶¶ 100–08. The Complaint seeks an order declaring that "the Asset Sale is a sale of all or substantially all of the Company's assets"; "absent an amendment to [Article V, Section 4] approved by the affirmative vote of a majority of the Company's Class B common stock voting separately as a class, upon completion of the Asset Sale, the Charter requires the Company to distribute all of its legally available assets to the holders of its common stock on an equal priority, pro rata basis"; and "the Company is violating the Charter by failing to distribute all legally available assets to the holders of its common stock upon consummation of the Asset Sale." *Id.* at 29. The Complaint also seeks an order directing "the Company to distribute to the holders of its common stock, on an equal priority, pro rata basis, all of its legally available assets, including any interest, income, or other returns realized on the proceeds of the Asset Sale while they were withheld." *Id.* at 30.

The Court expedited proceedings on September 30. Dkt. 9. The parties agreed to cross-move for summary judgment (the "Cross-Motions") on the issue of

"whether, pursuant to the Charter, the Asset Sale obligates the Company to distribute all legally available assets pursuant to Article V, Section 4 of the Charter." Dkt. 15 at 2. In connection with the Cross-Motions, the parties have stipulated that "[t]he Asset Sale constitutes a sale of 'all or substantially all' of the Company's assets as that term is used in Section 271 of the DGCL." *Id.*

The parties filed opening briefs in support of the Cross-Motions on October 12 and answering briefs on October 23. Dkts. 16, 18, 22–23. The Court heard oral argument on the Cross-Motions on October 29. Dkt. 27.[1]

II. ANALYSIS

The Court will enter summary judgment where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Ct. Ch. R. 56(a). Ordinarily, "[w]hen the Court is faced with cross-motions for summary judgment[,] the same standard must be applied to each of the parties' motions and the mere existence of cross-motions does not necessarily indicate that summary judgment is appropriate for one of the parties." *Baring v. Condrell*, 2004

[1] Plaintiff moves for summary judgment in his favor on Count I of the Complaint, which seeks a declaratory judgment that the Asset Sale constitutes a Liquidation Event and the Company must distribute all assets legally available for distribution to its common stockholders. *See* [Proposed] Order Granting Pl.'s Mot. for Partial Summ. J. ¶ 2, Dkt. 16; Compl. ¶¶ 94–96. Defendants seek summary judgment in their favor on Count I as well as Count II, which alleges a claim for breach of fiduciary duty premised on similar allegations. Opening Br. in Supp. of Defs.' Mot. for Summ. J. [hereinafter DOB] at 8, Dkt. 18.

WL 2340047, at *3 (Del. Ch. Oct. 18, 2004). But "[w]hen the parties have filed cross motions for summary judgment and have not identified a disputed issue of fact material to the disposition of either motion, then the Court may deem the motions to be a stipulation for decision on the merits based on the record submitted with the motions." Ct. Ch. R. 56(i); *see also* Dkt. 15. And, even absent the parties' agreement, "[s]ummary judgment is . . . appropriate in a dispute over an unambiguous contract 'because there is no need to resolve material disputes of fact.'" *XO Commc'ns, LLC v. Level 3 Commc'ns, Inc.*, 948 A.2d 1111, 1124 (Del. Ch. 2007) (quoting *NBC Universal, Inc. v. Paxson Commc'ns Corp.*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005)).

A. The Charter Requires The Company To Distribute The Assets "Legally Available For Distribution" In A Liquidation Event.

Count I of the Complaint asserts that the Company has breached Article V, Section 4 of the Charter by failing to distribute the assets "legally available for distribution" after the Asset Sale, which was a "Liquidation Event" as defined in the Charter. Compl. ¶¶ 92–99.

Under Delaware law, "[c]ertificates of incorporation are regarded as contracts between the shareholders and the corporation, and are judicially interpreted as such." *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012). A corporation's governing documents are "interpreted using standard rules of contract interpretation which require a court to determine from the language of the contract

the intent of the parties." *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996). Contracts must be "read . . . as a whole," giving "each provision and term effect, so as not to render any part of the contract mere surplusage." *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396–97 (Del. 2010).

"When [a] contract is clear and unambiguous, [Delaware courts] will give effect to the plain-meaning of the contract's terms and provisions." *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159–60 (Del. 2010). "A contract is not rendered ambiguous simply because the parties do not agree upon its proper construction." *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992). Rather, "[t]o be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning." *Alta Berkeley*, 41 A.3d at 385.

"If a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent." *City Investing Co. Liquidating Tr. v. Cont'l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993). If language is ambiguous, however, the Court applies the doctrine of *contra proferentem*, under which "ambiguity in the corporate certificate is construed against the corporation." *Bergonzi v. Rite Aid Corp.*, 2003 WL 22407303, at *3 n.14 (Del. Ch. Oct. 20, 2003); *see also Bank of New York Mellon v. Commerzbank Cap. Funding Tr. II*, 65 A.3d 539, 551–52 (Del. 2013) (*Contra proferentem* "requires that a contract which creates rights in public

securities investors be interpreted to give effect to those investors' reasonable expectation").

The parties have stipulated that "[t]he Asset Sale constitutes a sale of 'all or substantially all' of the Company's assets," meaning the Asset Sale is an "Asset Transfer," and also a "Liquidation Event," under the Charter. *See* Charter art. V, § 1.3 (defining an "Asset Transfer" to include a "disposition of all or substantially all of the assets of the Corporation"); *id.* § 1.10 (defining a "Liquidation Event" to include "any . . . Asset Transfer"). And, again, Article V, Section 4 of the Charter states:

> In the event of a Liquidation Event, . . . the assets of the Corporation legally available for distribution to stockholders shall be distributed on an equal priority, pro rata basis to the holders of Common Stock . . . .

Id. § 4.

The parties advance opposing interpretations of this language. According to Plaintiff, Article V, Section 4 means that in a Liquidation Event, the Company "shall"—*i.e.*, must—distribute the assets "legally available for distribution" to stockholders. Pl.'s Opening Br. in Supp. of His Mot. for Partial Summ. J. [hereinafter POB] at 23–24, Dkt. 16; *see, e.g.*, *Zurich Am. Ins. Co. v. St. Paul Surplus Lines, Inc.*, 2009 WL 4895120, at *7 n.55 (Del. Ch. Dec. 10, 2009) ("In both contracts and statutes, the term 'shall' is used to make an act mandatory."). Defendants counter that Article V, Section 4 does not mandate a distribution in a

Liquidation Event and is instead an "equal treatment provision which describes how assets must be distributed *if and when* the Company determines to make a distribution as part of a Liquidation Event." DOB at 36 (emphasis added).

In my view, Plaintiff offers the only reasonable interpretation of the plain language of the Charter. Article V, Section 4 unambiguously mandates that in a Liquidation Event, the assets legally available for distribution must be distributed to the stockholders.

Defendants' proposed interpretation is not reasonable. By its plain language, Article V, Section 4 is not limited to "if" and "when" the Board approves a distribution. Article V, Section 2.1 makes this apparent. Under Section 2.1, stockholders are "entitled to receive" dividends "*when, as and if declared by the Board*, out of any assets of the Corporation legally available therefor." Charter art. V, § 2.1 (emphasis added). Article V, Section 4 includes no similar limitation on distributions in a Liquidation Event. "[T]he use of different language in different sections of a [charter] suggests the difference is intentional—*i.e.*, the parties intended for the sections to have different meanings." *Williams Cos., Inc. v. Energy Transfer LP*, 2020 WL 3581095, at *12 n.123 (Del. Ch. July 2, 2020).[2]

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[2] *See also, e.g.*, *GC Broadway, LLC v. AN SM 1925 Broadway Hldgs., LLC*, 2026 WL 539233, at *15 (Del. Ch. Feb. 26, 2026) ("[T]he LLC Agreement separately defines and

Moreover, Article V, Section 2, entitled "Identical Rights," describes the equal treatment of shares of common stock in different matters, "including as to dividends and distributions, and any liquidation, dissolution or winding up of the corporation but excluding voting . . . ." Charter art. V, § 2. Subsections 2.1, 2.2, and 2.3 then address equal treatment in different scenarios. If Defendants were correct that Article V, Section 4 is just another "equal treatment provision," it would largely repeat Section 2.1.[3] "Delaware courts have consistently held that an

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describes a 'Loan' from the seller, demonstrating that the parties knew how to create a debt instrument when they intended to."); *Pacira BioSciences, Inc. v. Fortis Advisors LLC*, 2021 WL 4949179, at *12 (Del. Ch. Oct. 25, 2021) ("Section 1.15(e) demonstrates that the parties knew how to specify whether a party is required 'to refrain from taking any specific actions' in the post-closing operations of the business."); *Deluxe Ent. Servs. Inc. v. DLX Acq. Corp.*, 2021 WL 1169905, at *7 (Del. Ch. Mar. 29, 2021) ("[T]he Excluded Assets provision makes clear the parties knew how to exclude assets from the Transaction."); *Hampton v. Turner*, 2015 WL 1947067, at *5 (Del. Ch. Apr. 29, 2015) ("The parties knew how to address specific situations when they wanted the payment waterfall to apply, but they chose not to refer to the waterfall in describing the purchase option."); *MicroStrategy Inc. v. Acacia Rsch. Corp.*, 2010 WL 5550455, at *7 (Del. Ch. Dec. 30, 2010) ("The use of different language in the two sections shows the parties knew how to cover patents beyond the Licensed Patents when that was their intent. The absence of such broad language in § 2.2, therefore, suggests the release was not meant to cover [other] patents.").

[3] Sections 2.1 and 4 of the Charter include similar "equal treatment" language. *Compare* Charter art. V, § 2.1 ("Any dividends paid to the holders of shares of Common Stock shall be paid *pro rata, on an equal priority, pari passu basis, unless different treatment of the shares of any such class is approved* by the affirmative vote of the holders of a majority of the outstanding shares of such applicable class of Common Stock treated adversely, voting separately as a class.") (emphasis added), *with id.* § 4 ("[T]he assets of the Corporation legally available for distribution to stockholders shall be distributed on *an equal priority, pro rata basis to the holders of Common Stock, unless different treatment of the shares of each such class is approved* by the affirmative vote of the holders of a majority of the

interpretation that gives effect to each term of an agreement is preferable to any interpretation that would . . . conclu[de] that some terms are uselessly repetitive." *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 287 (Del. 2001); *see also West Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2007 WL 3317551, at *11 (Del. Ch. Nov. 2, 2007) ("Delaware courts do prefer to interpret contracts to give effect to each term rather than to construe them in a way that renders some terms repetitive or mere surplusage.").

On its own and in context, Article V, Section 4 is unambiguous—in a Liquidation Event, the Company must distribute the assets legally available for distribution.

Defendants nevertheless make several arguments in an effort to show that Plaintiff's plain-language reading is not reasonable. First, Defendants assert that interpreting Article V, Section 4 to mandate a distribution could "serve no

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outstanding shares of Class A Common Stock and Class B Common Stock, each voting separately as a class . . . .") (emphasis added). Defendants argue that Plaintiff seeks nothing more than a dividend. *See* Defs.' Answering Br. in Opp'n to Pl.'s Mot. for Partial Summ. J. [hereinafter DAB] at 11, Dkt. 23 ("What else is Plaintiff asking for if not a 'dividend'?"). If that is true, then under Defendants' reading, Section 4 does no additional work at all.

Defendants separately argue that "[i]n determining the plain meaning of a provision, the Court must look not just to the text of the specific provision at issue, but also to its place within the agreement as a whole." DOB at 35–36. If Section 4 were intended solely as an "equal treatment" provision, one would expect it to fall under Section 2, "Identical Rights." Instead, it stands alone as a "Liquidation Rights" provision.

conceivable commercial purpose." DOB at 40. I am not convinced that is true. It is not patently irrational to mandate a distribution in a Liquidation Event, preventing the Company from liquidating its business to invest in an entirely new sector. Defendants suggest that if stockholders do not like the new business, they can sell their shares, but it is noteworthy that the Company's shares now trade for substantially less than the cash it holds.[4] In any event, the outcome Defendants support is equally strange—stockholders formerly invested in an AI company now own shares in a shell that holds only cash and NOLs, governed by a board without a business plan, and prohibited from carrying on the prior business.[5]

Defendants contend that Plaintiff's interpretation "leads to irrational results that no one could reasonably have intended." DOB at 40. To support that argument, Defendants identify examples of Liquidation Events that could not "sensibly include any 'distribution' of the 'assets of the Corporation' to stockholders." *Id.* For instance, Defendants posit that under Plaintiff's reading, a stock-for-stock merger

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[4] *See* DAB at 24 (acknowledging that "the Company's net cash per share exceeds its current trading price" but arguing that stockholders still may not be "better off" in a distribution because "[t]he amount of cash that could actually be made available for distribution to stockholders would certainly be far less than the $221 million in cash received at the closing of the Sale").

[5] *See* Info St. at 8 ("The Company Board may consider acquisitions of operating businesses, without limitation as to industry."); *id.* at 34–35 ("The [APA] imposes a three-year non-competition covenant . . . restricting the Company from engaging in competitive activities . . . anywhere in the world, including developing, providing, marketing or commercializing software platforms, applications or related technologies that compete with the Business.").

that results in the Company owning less than a majority stake in the surviving company could require distribution of all legally available assets. *Id.* at 41. Defendants' ability to conceive of Liquidation Events in which a distribution of assets would be undesirable does not, to my mind, render Plaintiff's interpretation of the Charter unreasonable. As Plaintiff points out, the Company could amend the Charter to eliminate the distribution requirement, or choose not to enter such a transaction. Pl.'s Answering Br. in Opp'n to Defs.' Mot. for Summ. J. [hereinafter PAB] at 26, Dkt. 22.

Defendants also argue that Article V, Section 4 cannot reasonably be interpreted to require the Company to distribute "all of its net cash" and liquidate before making provisions to pay all "claims and obligations" under Section 281 of the Delaware General Corporation Law. DOB at 46. As Defendants acknowledge, Article V, Section 4 does not require the Company to distribute "all" assets, but rather, the "assets of the corporation" that are "legally available for distribution." *Id.* at 37. Defendants do not explain how that language conflicts with Section 281 even if the Company liquidates.[6] Instead, Defendants point to this language as presenting an interpretative problem for the Court, but determining the assets "legally available

[6] The parties agree that some of the Company's assets, namely the NOLs, are not available for distribution. *Id.* at 37; PAB at 14–15. But without cash to purchase assets to monetize the NOLs, liquidation could be the next step.

for distribution" is a matter for the Company's board of directors, not the Court, at least in the first instance.

Defendants' arguments fail to persuade me that Plaintiff's interpretation of Article V, Section 4 of the Charter as mandating the distribution of assets "legally available for distribution" in a Liquidation Event is unreasonable. Therefore, even if Defendants' reading were also reasonable—and I do not believe that it is—at best, the Charter would be ambiguous, and the doctrine of *contra proferentem* would dictate that the ambiguity be construed against the corporation. *See Bergonzi*, 2003 WL 22407303, at *3 n.14; *Bank of New York Mellon*, 65 A.3d at 551–52. Plaintiff's interpretation controls in either case.[7]

B. Laches Does Not Bar Plaintiff's Challenge.

Defendants argue that even if Plaintiff's interpretation of the Charter prevails, his challenge should be barred by laches. The equitable doctrine of laches "is rooted in the maxim that equity aids the vigilant, not those who slumber on their rights." *Whittington v. Dragon Grp., L.L.C.*, 991 A.2d 1, 8 (Del. 2009) (quoting *Adams v.*

[7] Beyond the doctrine of *contra proferentem*, Plaintiff also identifies other corporate charters that he believes support his interpretation, if the Court finds the Charter ambiguous. POB at 26. Defendants respond that "market precedent" is "irrelevant" for interpreting the Charter. DAB at 14; *id.* at 16 ("Plaintiff offers no authority, nor reasoning, why *different* language in a handful of *different* charters cherrypicked from the thousands publicly available should bear on the Court's interpretation of the language that is actually in *this* Company's Charter."). Because the Charter is unambiguous, I do not assess whether other charters support Plaintiff's interpretation.

Jankouskas, 452 A.2d 148, 157 (Del. 1982)). "To sustain a laches defense, a defendant must show that it was prejudiced because the plaintiff unreasonably delayed bringing suit after being on at least inquiry notice of its claims." *Quill v. Malizia*, 2005 WL 578975, at *14 (Del. Ch. Mar. 4, 2005).

Defendants argue that Plaintiff unreasonably delayed in filing suit. DOB at 24–27. The Company publicly announced on July 22, 2026, that it had entered into the APA and that the Company "d[id] not intend to liquidate following the Closing." DOB Aff., Ex. 7 at 2. The next month, on August 24, the Company disseminated the Information Statement, which reiterated that "the Company d[id] not intend to liquidate following the Closing." Info St., Notice at 1. Plaintiff initiated this lawsuit one month later, on September 24, two days after the Asset Sale closed.

Plaintiff's delay in filing suit was not unreasonable. Defendants insist that Plaintiff should have "assert[ed] his rights after the July 22 announcement," DOB at 24, but under the circumstances, it was not unreasonable for Plaintiff to "wait[] until [he] w[as] certain that the [Asset Sale] was going to" close and the Board would in fact withhold the proceeds from distribution. *Gradient OC Master, Ltd. v. NBC Universal, Inc.*, 930 A.2d 104, 135 (Del. Ch. 2007). Filing suit two days after the Asset Sale closed "[wa]s not unreasonable." *Id.* To argue otherwise, Defendants cite authority applying laches for longer delays, where plaintiffs sought to enjoin a proposed transaction. *See* DOB at 25–26. But this is not a case where Plaintiff "for

some reason . . . delayed . . . to institute th[is] action[] to prevent the consummation of [a] transaction." *Bacine v. Scharffenberger*, 1984 WL 21128, at *4 (Del. Ch. Dec. 11, 1984). Plaintiff does not challenge the Asset Sale, only the refusal to distribute proceeds therefrom.

Nor did Plaintiff's "delay" result in any prejudice to Defendants. Defendants claim that if Plaintiff had filed suit before closing, the Company could have "consider[ed] alternative transactions, or alternative structures of the [Asset] Sale . . . , that would have valued the NOLs and offered far more value to stockholders . . . ." DOB at 28. But both the Board and the Company's majority stockholders approved the Asset Sale before it was publicly announced. The Information Statement was clear that the majority stockholders' "execution and delivery of a written consent adopting the [APA] and approving the consummation of the [Asset Sale] within one hour of the execution and delivery of the [APA] eliminate[d] the Company's ability . . . to terminate the [APA] . . . ." Info St. at 34. And, by the time the Company announced the Asset Sale on July 22, 2026, it had just nine days left to enter into a transaction under its forbearance agreement with the lenders. The Information Statement disclosed that the Company "would likely need to file for bankruptcy if it failed to enter into a transaction agreement by July 31 as required by the forbearance agreement." DOB at 17; *see* Info St. at 32. The undisputed record

refutes Defendants' position that Plaintiff's delay was prejudicial because it foreclosed alternative transactions.

In any event, "prejudice does not exist where [Defendants] 'could not reasonably have been unaware of the possibility of future claims against them arising out of their dealings' . . . ." *Deputy v. Deputy*, 2020 WL 1018554, at *54 (Del. Ch. Mar. 2, 2020) (quoting *Stewart v. Wilm. Tr. SP Servs., Inc.*, 112 A.3d 271, 296 (Del. Ch. 2015)). Defendants were on notice of the plain language in the Charter. They cannot blame Plaintiff for any harm caused from failing to structure the Asset Sale in compliance with the Company's own governing documents.

III. CONCLUSION

The parties filed Cross-Motions on the issue of "whether, pursuant to the Charter, the Asset Sale obligates the Company to distribute all legally available assets pursuant to Article V, Section 4 of the Charter." Dkt. 15. As set forth above, the Court concludes that it does.