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RE: *Golden Rule Fin. Corp. v. S'holder Representative Servs. LLC*, C.A. No. 2022-0065-PAF

Dear Counsel:

This letter decision resolves the parties' dispute concerning the form of final order implementing the court's post-trial memorandum opinion.[1] The dispute concerns the interaction between the Memorandum Opinion and the court's June 21, 2023, order awarding SRS prejudgment interest. For the reasons explained below, the court denies Golden Rule's proposed order and grants SRS's proposed partial final judgment pursuant to Court of Chancery Rule 54(b).

[1] This order adopts the defined terms used in the memorandum opinion *Golden Rule Financial Corp. v. Shareholder Representative Services LLC*, 2026 WL 1182159 (Del. Ch. Apr. 30, 2026), Dkt. 176 (the "Mem. Op."). Unless otherwise indicated, citations to the parties' briefs are to supplemental briefs on the proposed implementing orders (Dkts. 184, 186–187).

I. BACKGROUND

A. The Merger Agreement

Golden Rule acquired USHEALTH in 2019. The terms of the transaction are documented in a June 2, 2019, Merger Agreement.[2] The Merger Agreement required Golden Rule, at Closing, to deposit: (1) the cash needed to pay the Initial Merger Consideration, less the Escrow Deposit and the Representative Fund, with the designated paying agent,[3] and (2) the $75 million Escrow Deposit with the designated escrow agent in accordance with the terms of the Escrow Agreement.[4]

Within 90 days after Closing, Golden Rule was required to deliver to SRS a Final Adjustment Statement setting forth the Final Adjustment Amount.[5] SRS then had 45 days to review Golden Rule's calculation and, if it disagreed, to deliver a Dispute Notice identifying the disputed items.[6] If the parties could not resolve the

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[2] *See* JX 161 ("Merger Agreement") § 1.1 "Final Adjustment Amount"; Mem. Op. at *9 n.81.

[3] Merger Agreement § 3.2(a). The Merger Agreement defined "Escrow Deposit" as "an amount equal to $75,000,000" and "Representative Fund" as "a portion of the Initial Merger Consideration equal to $1,000,000 . . . deposited in an account designated by the Stockholder Representative." *See id*. §§ 1.1, 10.10(d).

[4] Merger Agreement § 3.3(a); *see id*. Ex. D (hereinafter the "Escrow Agreement").

[5] Merger Agreement § 3.4(b).

[6] *Id*. § 3.4(b)(i)–(ii).

disputed items, either side could submit them to KPMG LLP, acting as an expert, to decide the issues in dispute.[7]

Section 3.4(a) prescribed the payment obligation upon the "final determination" of the Final Adjustment Amount. If the Final Adjustment Amount exceeded the Adjusted Initial Amount, Golden Rule had to pay the excess to the paying agent for further distribution to the former USHEALTH securityholders within five business days.[8] If the Final Adjustment Amount was lower than the Adjusted Initial Amount, Golden Rule and SRS had to instruct the escrow agent to pay the difference to Golden Rule from the Escrow Funds.[9]

Section 9.2(a) of the Merger Agreement requires the former USHEALTH securityholders to indemnify Golden Rule and related indemnitees for Losses attributable to, resulting from, or arising out of specified breaches of representations, warranties, and covenants. Under Section 9.3(b), subject to specified exceptions, the former USHEALTH securityholders' aggregate liability for those Losses could not exceed the Escrow Funds then remaining in the Escrow Account. Under Section

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[7] *See id*. § 3.4(b)(iv).

[8] *Id*. § 3.4(a).

[9] *Id*.; *see* Escrow Agreement § 1.1 ("The initial escrow deposit will be an amount of cash equal to $75,000,000 (such amount, together with interest, dividends, gains and other income earned with respect thereto, the 'Escrow Funds').").

9.3(c), subject to specified exceptions, the Escrow Funds were the sole source of recovery and exclusive remedy for those claims.

B. The Prior Action

In the Prior Action, Golden Rule sought declaratory and injunctive relief to prevent SRS from asking KPMG to determine the Final Adjustment Amount using an application of ASC 606 different from the one used in the Company's pre-closing financial statements.[10] Golden Rule argued that the court, rather than KPMG, should decide the contract-construction issue regarding the application of ASC 606.

The court dismissed the Prior Action, concluding that, "[u]nder the language of the [Merger] Agreement, consistency with past practices cannot justify a concededly incorrect application of ASC 606."[11] The Delaware Supreme Court affirmed that decision.[12]

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[10] *See* Dkt. 1, *Golden Rule Fin. Corp. v. S'holder Representative Servs. LLC*, C.A. No. 2020-0378-PAF (May 18, 2020) ¶¶ 81–106; *id*. ¶ 105 ("The Court should declare that, under the doctrine of quasi-estoppel, the Seller may not ask KPMG to award any Final Adjustment Amount that relies on an application of ASC 606 that is ***different from or inconsistent with*** the application of ASC 606 that the Company relied on and disclosed to Golden Rule before closing, and enjoin the Seller from making such a request.").

[11] *Golden Rule Fin. Corp. v. S'holder Representative Servs. LLC*, 2021 WL 305741, at *12 (Del. Ch. Jan. 29, 2021), *aff'd*, 267 A.3d 382 (Del. 2021) (TABLE).

[12] *Golden Rule Fin. Corp. v. S'holder Representative Servs. LLC*, 267 A.3d 382 (Del. 2021) (TABLE).

C. This Action and the Summary Judgment Order

Golden Rule then commenced this action in 2022, asserting claims for indemnification and damages based on alleged breaches of the Merger Agreement.[13] SRS asserted counterclaims.[14] The first counterclaim ("Counterclaim I") alleged that Golden Rule breached the Merger Agreement by refusing to pay the Final Adjustment Amount when it was due.[15] SRS sought payment of the $40,164,358.82 Final Adjustment Amount, plus pre- and post-judgment interest and attorneys' fees.[16]

SRS moved for partial summary judgment on Counterclaim I. SRS sought payment of the Final Adjustment Amount, prejudgment interest, reasonable attorneys' fees and expenses, and entry of partial final judgment under Court of Chancery Rule 54(b). SRS argued that, under Section 3.4(a) of the Merger Agreement, Golden Rule was required to pay the Final Adjustment Amount within

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[13] Dkt. 1.

[14] Dkt. 5.

[15] Dkt. 5 Counterclaims ¶¶ 84–85 (quoting Merger Agreement § 3.4(a)); *see also* Dkt. 51 ("Summary Judgment Arg.") at 4:13–15 (Def.'s Counsel: "Today's motion is on Golden Rule's failure to pay the purchase price adjustment when it was due under the contract.").

[16] Dkt. 5 Counterclaims ¶ 86.

five business days of its final determination and that Golden Rule's indemnification claims did not excuse or delay that payment obligation.[17]

In opposing the motion, Golden Rule did not contest SRS's right to prejudgment interest, but it disputed when prejudgment interest began to accrue.[18] Golden Rule also opposed entry of a partial final order under Court of Chancery Rule 54(b), arguing that its indemnification claims remained pending and that there was a reasonable possibility of overlapping fee, interest, and offset issues.[19]

Before argument on the motion, Golden Rule paid the Final Adjustment Amount of $40,164,358.82, thereby mooting SRS's request for an order compelling payment of the principal amount.[20] In an oral ruling granting partial summary judgment (the "Summary Judgment Ruling") to Defendant, the court determined that SRS was entitled to prejudgment interest beginning on May 18, 2020, the date that

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[17] Dkt. 18 ("Def.'s Summary Judgment Opening Br.") 19; Dkt. 24 ("Def.'s Summary Judgment Reply Br.") 4–6.

[18] Dkt. 21 ("Pl.'s Summary Judgment Answering Br.") 12–13.

[19] *Id*. at 21–23.

[20] Mem. Op. at *14; *see also Golden Rule Fin. Corp. v. S'holder Representative Servs. LLC*, C.A. No. 2022-0065-PAF (Del. Ch. May 22, 2023) (TRANSCRIPT) ("Summary Judgment Ruling") at 13:6–15.

Golden Rule filed the Prior Action.[21] The court's implementing order (the "Summary Judgment Order") awarded SRS prejudgment interest "from May 18, 2020 through June 16, 2023 in the amount of $7,219,340," with interest continuing "to accrue on $7,219,340 from June 16, 2023 at the legal rate, compounded quarterly with a fluctuating interest rate until the date of payment by Golden Rule of the outstanding interest owed to SRS."[22]

The court denied SRS's request for entry of a partial final order under Rule 54(b).[23] Thus, the Summary Judgment Order remained interlocutory and subject to revision before entry of final judgment. *See C. v. C.*, 320 A.2d 717, 720 (Del. 1974) ("An interlocutory judgment is one made in the progress of a case, and which is only intermediate and does not finally determine or complete the suit."); *see also Frank G.W. v. Carol M.W.*, 457 A.2d 715, 719 (Del. 1983) ("Until the rendition of the final judgment, the interlocutory judgment remains within the control of the court.") (citation modified).

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[21] Summary Judgment Ruling at 19:5–13; *see also id*. at 24:7–14 ("[P]rejudgment interest accrued from the date that payment was due, which was the date that Golden Rule filed its original action in this Court on May 18, 2020, bypassing the independent accountant process and opting for a judicial determination on the purely legal issue of whether ASC 606 dictated payment of a Final Adjustment Amount in the way that Golden Rule saw it or how SRS saw it.").

[22] Dkt. 73 ("Summary Judgment Order") ¶ 2(a)(1).

[23] Summary Judgment Ruling at 29:13–19; *see* Summary Judgment Order ¶ 3(c).

D. The Memorandum Opinion

The action proceeded to trial on Golden Rule's affirmative claims.[24] Count I asserted breach of the representations and warranties in Section 4.5 of the Merger Agreement. Count II asserted breach of covenants and obligations under Sections 3.1 and 3.5 of the Merger Agreement. Plaintiff sought specific performance requiring indemnification or, in the alternative, damages.[25]

In a post-trial Memorandum Opinion, the court determined that "USHEALTH breached its financial statement representation in Section 4.5(a) and its obligations under Section 3.1(a), and SRS is liable for those breaches under the Merger Agreement's indemnification provisions."[26] Golden Rule established an "indemnifiable Loss in the amount of $38.3 million, plus prejudgment interest at the legal rate from the date it paid the additional consideration attributable to the Final Adjustment Amount through the date of judgment, compounded quarterly."[27]

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[24] *See* Dkts. 143, 145–147.

[25] Mem. Op. at *14.

[26] *Id*. at *28.

[27] *Id*.

E. The Competing Proposed Orders

The parties submitted competing forms of order to implement the Memorandum Opinion.[28] The parties agree that: (i) Golden Rule is entitled to $38,342,458, plus prejudgment interest from January 25, 2023 through the date of judgment, (ii) partial Rule 54(b) certification is appropriate, and (iii) the court should reserve jurisdiction to resolve attorneys' fees and costs issues.

The parties' disagree over the treatment of prejudgment interest that was awarded to SRS in the Summary Judgment Order. Golden Rule proposes to limit SRS's recovery to prejudgment interest on the approximately $1.8 million portion of the Final Adjustment Amount that Golden Rule does not attribute to USHEALTH's breaches.[29] Golden Rule calculates the amount as $327,477 and, with additional interest, $434,693. Golden Rule's proposed order would apply that amount only as an offset against Golden Rule's prejudgment interest award and provide that the Summary Judgment Order is "satisfied and of no further effect."[30]

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[28] Dkts. 181 ("Def.'s Proposed Implementing Order"), 182 ("Pl.'s Proposed Implementing Order").

[29] *See* Pl.'s Proposed Implementing Order ¶ 3.

[30] *Id*.

SRS proposes judgment for Golden Rule in the amount awarded by the Memorandum Opinion—$38,342,458 in damages, plus $14,614,103 in prejudgment interest, for a total judgment amount of $52,956,561. Unlike Golden Rule's proposed order, SRS's proposed order would not disturb the prejudgment interest awarded to SRS in the Summary Judgment Order.[31]

II. ANALYSIS

A. Entry of a Partial Final Judgment Is Warranted.

"A final judgment is generally defined as one that determines the merits of the controversy or defines the rights of the parties and leaves nothing for future determination or consideration." *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 579 (Del. 2002). "Under the 'merger rule,' prior interlocutory orders merge with the final judgment in a case, and the interlocutory orders (to the extent that they affect the final judgment) may be reviewed on appeal from the final order." *DeMatteis v. RiseDelaware Inc.*, 315 A.3d 499, 510 n.72 (Del. 2024) (quoting *Camesi v. Univ. of Pittsburgh Med. Ctr.*, 729 F.3d 239, 244–45 (3d Cir. 2013)); *see also Tyson*, 809 A.2d at 580 ("[O]nce interlocutory rulings achieve finality at the trial level, through

[31] Def.'s Proposed Implementing Order ¶¶ 3–4.

incorporation in the final judgment of the trial court, review of those subsidiary rulings must be achieved through a timely appeal of that final order.").

The Delaware Supreme Court "has consistently held . . . that a judgment on the merits is not final until an outstanding application for an award of attorney's fees has been decided." *Emerald P'rs v. Berlin*, 811 A.2d 788, 790–91 (Del. 2001). "A trial court therefore cannot defer ruling on an application for expenses until after the merits appeal is completed, unless the trial court first certifies its merits ruling as interlocutory or as a partial final judgment pursuant to Court of Chancery Rule 54(b)." *Marilyn Abrams Living Tr. v. Pope Invs. LLC*, 188 A.3d 829, 835 (Del. Ch. 2018).

The competing forms of order contemplate entry of partial final judgment under Rule 54(b), leaving the attorneys' fees and costs for later determination. "[A]n attorneys' fees petition does not foreclose this court from granting [a] Rule 54(b) [m]otion." *Totta v. CCSB Fin. Corp.*, 2022 WL 4087800, at *2 (Del. Ch. Sep. 7, 2022); *see also Campbell v. Caravel Acad., Inc.*, 1989 WL 25804, at *1 (Del. Ch. Mar. 16, 1989) ("Costs and attorney fees are best addressed after the appellate process is completed."). There is no just reason to delay entry of judgment on the resolved merits issues. Therefore, entry of a partial final judgment is appropriate at this stage.

B. The Law of the Case Doctrine Governs Golden Rule's Request to Revise the Summary Judgment Order.

The parties agree that partial final judgment should be entered, but they disagree about the treatment of the Summary Judgment Order. Golden Rule's proposed order would reduce the prejudgment interest awarded to SRS in the Summary Judgment Order, declaring it "satisfied and of no further effect."[32] In other words, entry of Golden Rule's proposed order revises the Summary Judgment Order.

Under Court of Chancery Rule 54(b), "any order . . . that adjudicates fewer than all the claims or the rights and liabilities . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Ct. Ch. R. 54(b). The court's exercise of that authority is guided by law of the case principles. *See Tornetta v. Musk*, 326 A.3d 1203, 1223 (Del. Ch. 2024) ("Rule 54(b) does not, on its face, 'identify a standard for determining when it would be warranted to revise an earlier interlocutory order' under the second sentence, but the 'law-of-the-case doctrine fills the gap.'" (quoting *Perry v. Neupert*, 2019 WL 719000, at *28 n.221 (Del. Ch. Feb. 15, 2019))), *rev'd on other grounds sub nom. In re Tesla, Inc. Deriv. Litig.*, 351 A.3d 1005 (Del. 2025).

[32] Pl.'s Proposed Implementing Order ¶ 3.

"The 'law of the case' doctrine requires that issues already decided by the same court should be adopted without relitigation, and once a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that court unless compelling reason to do so appears." *Taylor v. Jones*, 2006 WL 1510437, at *5 (Del. Ch. May 25, 2006) (citation modified); *see also State v. Wright*, 131 A.3d 310, 321 (Del. 2016) ("The law of the case doctrine is a self-imposed restriction that prohibits courts from revisiting issues previously decided, with the intent to promote 'efficiency, finality, stability and respect for the judicial system.'" (quoting *Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 39 (Del. 2005))). The law of the case doctrine "is not inflexible in that, unlike *res judicata*, it is not an *absolute* bar to reconsideration of a prior decision that is clearly wrong, produces an injustice or should be revisited because of changed circumstances." *Gannett Co., Inc. v. Kanaga*, 750 A.2d 1174, 1181 (Del. 2000).

C. The Memorandum Opinion Does Not Justify Revising the Summary Judgment Order.

Golden Rule's principal argument rests on the Memorandum Opinion's finding that SRS must indemnify Golden Rule for $38.3 million in Losses under Article IX due to USHEALTH's breach of its representations and warranties.

Golden Rule contends that SRS should not be entitled to prejudgment interest on an amount SRS obtained through USHEALTH's breaches for which SRS is liable.[33] But that argument conflates Golden Rule's obligation to pay the Final Adjustment Amount under Section 3.4(a) with its indemnification right under Article IX.

The Summary Judgment Order addressed Golden Rule's obligation to pay the Final Adjustment Amount after its final determination under Section 3.4(a) of the Merger Agreement. Although Golden Rule's January 25, 2023, payment mooted SRS's request for the principal amount, the court held that "the litigation over ASC 606 and Golden Rule's persistent refusal to pay the base amount until [January 25, 2023,] . . . resulted in Golden Rule having use of SRS's funds for nearly three years from the commencement of the [P]rior [Action] and nearly three and a half years since the [C]losing . . . ."[34] At that stage, the parties agreed that SRS was entitled to prejudgment interest as a matter of right, and the only dispute concerned when interest began to accrue. The court determined that the accrual starting date was May 18, 2020, *i.e.*, the date on which Golden Rule filed the Prior Action.

The Memorandum Opinion resolved Golden Rule's indemnification claims under Article IX. After trial, the court held that USHEALTH breached

[33] Pl.'s Opening Br. 1–2, 10–13, 15.

[34] *See* Summary Judgment Ruling at 20:10–17.

Sections 3.1(a) and 4.5(a), that Golden Rule had established an indemnifiable Loss of $38.3 million, and that SRS was liable for that Loss, plus prejudgment interest from January 25, 2023—the date of Golden Rule's payment of the Final Adjustment Amount—through judgment.

The two rulings addressed different contractual rights. The Summary Judgment Order addressed SRS's right to receive payment of the Final Adjustment Amount under Section 3.4(a) and Golden Rule's delay in satisfying that obligation. The Memorandum Opinion addressed Golden Rule's right to indemnification under Article IX.

Golden Rule suggests that the court's decision not to certify the Summary Judgment Order as a partial final judgment reflects the court's predisposition to revise its decision at a later stage.[35] While the court noted that other claims and counterclaims remained pending and that fee-shifting issues could benefit from a more developed record,[36] it did not reserve SRS's entitlement to prejudgment

[35] Pl.'s Opening Br. 13.

[36] Summary Judgment Ruling at 27:10–18 ("There are several other claims remaining in this case on both sides that may, upon final resolution, implicate whether fee shifting is available under the indemnity provisions of Section 9.2(a) and 9.2(b). In my view, issues concerning the scope of Section 9.2, including issues pertaining to the application for fees on the present motion, can benefit from a better development of the factual record to clarify the law and its application.").

interest for later redetermination. The court denied Rule 54(b) certification because SRS had not shown the infrequent and harsh case warranting immediate partial final judgment. Nothing in the Summary Judgment Ruling suggested that the prejudgment interest award was dependent on Golden Rule's later success on its indemnification claims.

Therefore, Golden Rule has failed to show any compelling reason to revise the Summary Judgment Order in light of the determinations made in the Memorandum Opinion.

1. The *res judicata* ruling is not implicated.

SRS argues that Golden Rule's request to revise the Summary Judgment Order cannot be reconciled with the Memorandum Opinion's *res judicata* ruling.[37] That argument lacks merit. SRS contended that the indemnification claim was barred by *res judicata* because Golden Rule had not asserted it in the Prior Action. The Memorandum Opinion rejected that theory because Golden Rule's

[37] SRS argues that Golden Rule's position *vis-à-vis* the post-trial implementing order requesting unwinding of the prejudgment interest award in the Summary Judgment Order "runs head-on into the Court's res judicata ruling, in which the Court accepted—at Golden Rule's urging—that this action is wholly distinct from the first one." Def.'s Answering Br. 2; *see also id*. at 9 ("Golden Rule resists this straightforward application of Delaware law by arguing that SRS's later liability for indemnification in ***this action*** extinguishes its award of prejudgment interest on the Final Adjustment Amount from ***the first action***. . . . But that novel position has no binding legal basis and cannot be reconciled with this Court's res judicata ruling.").

indemnification claim was not ripe at the time of the Prior Action, which resolved whether the Final Adjustment Statement had to reflect the correct application of ASC 606 under GAAP or consistently with historical practice. The Memorandum Opinion further observed that, had Golden Rule prevailed in the Prior Action, it would not have incurred a Loss giving rise to an indemnification claim. Thus, the scope of the Prior Action was limited to addressing the dispute arising from the calculation of the Final Adjustment Amount.

The Memorandum Opinion held that the doctrine of *res judicata* did not bar the present action, which concerns whether Golden Rule had incurred a Loss indemnifiable under Article IX. The Summary Judgment Ruling addressed Counterclaim I and awarded SRS prejudgment interest on Golden Rule's obligation to pay the Final Adjustment Amount under Section 3.4(a) of the Merger Agreement, beginning from May 18, 2020. As the court observed, that was the date Golden Rule filed the Prior Action, and thereby "eschewed the independent accountant process and acknowledged that it owed a base Final Adjustment Amount of $40,164,3[58].82 if SRS's position on the application of ASC 606 were correct."[38]

[38] Summary Judgment Ruling at 19:5–13; *see also id*. at 24:7–14 ("[P]rejudgment interest accrued from the date that payment was due, which was the date that Golden Rule filed its

The distinction between the different actions and rulings is therefore straightforward. The Prior Action concerned the dispute about the calculation of the Final Adjustment Amount. The Summary Judgment Order and the Summary Judgment Ruling address SRS's prejudgment interest request on Golden Rule's delayed payment of the Final Adjustment Amount under Section 3.4(a) of the Merger Agreement asserted in Counterclaim I. The Memorandum Opinion addressed Golden Rule's indemnification right under Article IX. Therefore, the *res judicata* ruling is not implicated here because it was not the Prior Action that entitled SRS to prejudgment interest. It was Golden Rule's delay in paying the Final Adjustment Amount when it was due under the Merger Agreement, which was asserted in Counterclaim I.

D. The Interest Awarded to SRS Was Not Awarded as an Additional Indemnifiable Loss.

Golden Rule advances another argument in support of its proposed implementing order, relying on the Merger Agreement's definition of "Losses." The Merger Agreement defines "Losses" as

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original action in this Court on May 18, 2020, bypassing the independent accountant process and opting for a judicial determination on the purely legal issue of whether ASC 606 dictated payment of a Final Adjustment Amount in the way that Golden Rule saw it or how SRS saw it.").

> any and all costs, losses, damages, Liabilities, charges, interest, judgments, sanctions, fines, penalties and settlements, in each case whether or not arising out of any demands or Actions brought by third parties, and reasonable fees and expenses (including reasonable legal, accounting and investigation fees and expenses) in connection with any of the foregoing or similar damages incurred, sustained or suffered by them . . . attributable to, resulting from or arising out of . . . any breach of, or inaccuracy in, any of the representations or warranties of the Company contained in Article IV . . . [or] the breach of any covenant . . . contained in [the Merger] Agreement.[39]

Golden Rule argues that if it must pay interest to SRS on the portion of the Final Adjustment Amount attributable to USHEALTH's breaches, then that interest necessarily arises out of those breaches and is indemnifiable.[40] Golden Rule further contends that, if it had paid the prejudgment interest awarded to SRS in the Summary Judgment Order when entered, it would now be entitled to recover that amount from the Escrow Funds. According to Golden Rule, requiring payment now would create an unnecessary "daisy-chain."[41]

Golden Rule relies on *Arwood v. AW Site Services, LLC*, where this court granted plaintiff's motion for reargument following a post-trial judgment for the defendant. 2022 WL 973441, at *3 (Del. Ch. Mar. 31, 2022). In granting

[39] Merger Agreement § 9.2(a)(i)–(ii).

[40] Pl.'s Opening Br. 12–13; Pl.'s Reply Br. 4–5.

[41] Pl.'s Opening Br. 18.

reargument, this court held that prejudgment interest and costs awarded in the post-trial ruling fell within the parties' contractual definition of "Losses" and therefore could not be awarded above the contractual cap of recoverable losses that had already been exhausted by the defendant's proven damages. *Id*. at *2–3. Golden Rule is correct that the contractual definition at issue in *Arwood* bears similarities to the definition of "Losses" in the Merger Agreement. Yet, in *Arwood*, the court addressed whether the same party that had recovered capped damages could also recover prejudgment interest and costs above the cap.

Arwood did not involve a separate, previously adjudicated interest award in favor of the opposing party as here, nor did it hold that an indemnification judgment retroactively extinguishes interest awarded for a distinct payment delay. Most important, the Memorandum Opinion did not hold that SRS's prejudgment interest award was an indemnifiable "Loss" under Article IX. That is because SRS's prejudgment interest awarded in the Summary Judgment Order originated from Golden Rule's delay in paying the Final Adjustment Amount when it was due under

Section 3.4(a) of the Merger Agreement, not from USHEALTH's breach of Sections 3.1(a) or 4.5(a).[42]

The Memorandum Opinion further identified the interest component of Golden Rule's indemnifiable Loss by awarding prejudgment interest from January 25, 2023, the date Golden Rule paid the additional consideration attributable to the Final Adjustment Amount. Had Golden Rule paid the Final Adjustment Amount earlier, Golden Rule's prejudgment interest on its indemnifiable Loss would have begun to accrue sooner. Golden Rule's proposed order would shift to SRS the interest consequences of Golden Rule's payment delay.

E. The Summary Judgment Ruling Awarded SRS Prejudgment Interest.

Golden Rule also argues that the Summary Judgment Order should not be treated as a prejudgment interest award because SRS's principal counterclaim was mooted when Golden Rule paid the Final Adjustment Amount before argument. Rather, Golden Rule contends that the award should be understood as damages for delay in payment.[43] Golden Rule contends "[t]hat also explains [the] [c]ourt's order

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[42] *See* Summary Judgment Ruling at 24:4–8 (because "Golden Rule was obligated to make the payment, could make the payment, and did not do so until shortly before the argument on this motion . . . prejudgment interest [had] accrued from the date the payment was due").

[43] Pl.'s Opening Br. 14.

of interest on top of the prejudgment-interest award; it considered the first level of prejudgment interest as the principal damages and ordered as-of-right prejudgment interest on that award."[44]

Golden Rule's argument is unpersuasive. The Summary Judgment Ruling determined that SRS was entitled to prejudgment interest as a matter of right, that Golden Rule did not dispute that entitlement, and that the only question was when prejudgment interest began to run. "Prejudgment interest serves two purposes: first, it compensates the [prevailing party] for the loss of the use of [its] money; and, second, it forces the [non-prevailing party] to relinquish any benefit that it has received by retaining the [prevailing party's] money in the interim." *Brandywine Smyrna, Inc. v. Millennium Builders, LLC*, 34 A.3d 482, 486 (Del. 2011); *see also id*. ("[P]rejudgment interest in Delaware cases is awarded as a matter of right[;] the general rule is that 'interest accumulates from the date payment was due the plaintiff, because full compensation requires an allowance for the detention of the compensation awarded and interest is used as a basis for measuring that allowance.'" (quoting *Moskowitz v. Mayor & Council of Wilm.*, 391 A.2d 209, 210 (Del. 1978))).

[44] *Id*. at 15.

Consistent with these principles, the Summary Judgment Order awarded SRS prejudgment interest on the delayed payment of the Final Adjustment Amount and provided that interest would continue to accrue on the unpaid prejudgment interest amount until payment.

F. Offset of the Prejudgment Interest Is Not Warranted.

In addition to arguing that SRS should not be entitled to prejudgment interest on $38.3 million, Golden Rule seeks to offset any prejudgment interest awarded to SRS. Golden Rule concedes that SRS is entitled to prejudgment interest, but only on a portion of the Final Adjustment Amount amounting to approximately $1.8 million.[45] It contends that the court should apply that interest as an offset against Golden Rule's award. Golden Rule calculates prejudgment interest on that amount as $327,477, with additional interest bringing the total to $434,693. Golden Rule further contends that, if the court were to award interest on the $38.3 million, "the equities doubly demand an offset as to that interest."[46]

"'Set-off' is a legal or equitable remedy that may occur when two entities that owe money to each other apply their mutual debts against each other." 80 C.J.S. *Set-off and Counterclaim* § 5 (2026). Golden Rule invokes equitable offset here. As

[45] Pl.'s Opening Br. 2, 10–11.

[46] *Id*. at 18; *see also* Pl.'s Reply Br. 10.

the Delaware Supreme Court has observed, "a set-off should be allowed only when, in view of all the circumstances, equity and good conscience require it to be made, substantial justice will be promoted thereby, and the rights and interests of third persons will not be infringed." *Pettinaro Constr. Co., Inc. v. Lindh*, 428 A.2d 1161, 1164 (Del. 1981) (citation modified). "Generally, a setoff procedure simply eliminates a superfluous exchange of money between the parties." 80 C.J.S. *Set-off and Counterclaim* § 5 (2026).

Golden Rule relies on *Reddy v. PrimeCare International, Inc.*, where an officer and director sought advancement from a corporation for litigation expenses, but the officer had assumed the primary obligation under a merger agreement to indemnify the corporation and its parent for the same litigation expenses. 2000 WL 1654834, at *2 (Del. Ch. Oct. 20, 2000). The court reasoned that if the corporation owed advancement, the officer had an identical obligation to reimburse the corporation. *Id*. at *4. Offset was appropriate because the obligations were identical and circular. *See id*.

Golden Rule's reliance on *Reddy* is misplaced. SRS's interest award compensates SRS for Golden Rule's payment delay in satisfying the Final Adjustment Amount under Section 3.4(a). Golden Rule's judgment reflects SRS's liability under Article IX for USHEALTH's breaches of Sections 3.1(a) and 4.5(a),

plus prejudgment interest from the date Golden Rule paid the additional consideration. The obligations are related but not identical. Thus, in this instance, an offset would not be limited to the superfluous exchange of money between the parties. Instead, it would reduce or extinguish a separately adjudicated prejudgment award.

Another argument that Golden Rule advances is that the equities of the present circumstances demand offset because only $44.6 million remains in the Escrow Funds, making the Escrow Funds insufficient to satisfy Golden Rule's judgment.[47] But the requested offset risks circumventing the Merger Agreement's remedial structure. The Merger Agreement provides that, subject to specified exceptions, the Escrow Funds are Golden Rule's sole source of recovery and exclusive remedy for indemnification claims.[48] "Delaware courts are 'especially chary about relieving sophisticated business entities of the burden of freely negotiated contracts.'" *New Enter. Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 566 (Del. Ch. 2023) (quoting *Abry P'rs V, L.P. v. F & W Acq. LLC*, 891 A.2d 1032, 1061–62 (Del. Ch. 2006)). Golden Rule's requested offset would reduce an independent obligation owed to SRS and

[47] Pl.'s Opening Br. 17.

[48] *See* Merger Agreement § 9.3(b)–(c).

would contravene the contractual limitation of Golden Rule's indemnification recovery to the Escrow Funds.

As this court observed in *FdG Logistics LLC v. A&R Logistics Holdings, Inc.*, the buyer, "a sophisticated contracting party, could have bargained for the right to delay payment . . . pending the resolution of its indemnification or other claims arising out of [the] Merger Agreement. It did not do so." 131 A.3d 842, 866 (Del. Ch. 2016), *aff'd*, 148 A.3d 1171 (Del. 2016) (TABLE). The same is true here. Golden Rule could have bargained for a right to delay an upward true-up payment pending resolution of its indemnification claims. In the absence of such a provision, Golden Rule remained obligated to make the Section 3.4(a) payment when due. Its later success on its indemnification claims does not supply an entitlement to offset. Moreover, Golden Rule's further contention that SRS's conduct in this litigation warrants the requested offset is equally unpersuasive for the same reasons grounded in the contractual mechanics reflected in the Merger Agreement.

Golden Rule suggests that the court's decision not to certify the Summary Judgment Order as a partial final judgment made sense in light of the "reasonable chance that the claims for fees or interest could offset one another."[49] But the court

[49] Pl.'s Opening Br. 8–9 (quoting Pl.'s Summary Judgment Answering Br. 22).

did not indicate at that stage that offset was a possibility. The court declined to enter final partial judgment because "other claims and counterclaims" remained pending.[50] The denial preserved the court's authority to revisit the Summary Judgment Order if warranted, rather than holding that a revision was necessary upon determination of Golden Rule's claims.

G. SRS's Proposed Order Properly Implements the Memorandum Opinion and Incorporates the Summary Judgment Order.

SRS's proposed order properly implements the Memorandum Opinion. The Memorandum Opinion held that Golden Rule prevailed on Counts I and II and established an indemnifiable Loss of $38.3 million, plus prejudgment interest at the legal rate from January 25, 2023, through judgment, compounded quarterly. SRS's proposed order enters judgment for Golden Rule on Counts I and II, awards Golden Rule $38,342,458 in damages, and awards prejudgment interest of $14,614,103 from January 25, 2023, through judgment, for a total judgment amount of $52,956,561. SRS's proposed order also properly incorporates the Summary Judgment Order, which awarded SRS prejudgment interest for Golden Rule's delay in paying the Final Adjustment Amount.

[50] *See* Summary Judgment Ruling at 29:11–13.

III. CONCLUSION

For the foregoing reasons, Golden Rule's proposed order is DENIED. SRS's proposed partial final judgment under Court of Chancery Rule 54(b) is GRANTED. The parties are directed to submit a revised order consistent with this decision.

IT IS SO ORDERED.

Very truly yours,

/s/ Paul A. Fioravanti, Jr.

Vice Chancellor