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Case Number 236,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FAIZ KHAN and RALPH FINGER, on behalf of themselves and all others similarly situated, Plaintiffs Below, Appellants, v. WARBURG PINCUS, LLC, WARBURG PINCUS PRIVATE EQUITY XII, L.P., WARBURG PINCUS PRIVATE EQUITY XII-B, L.P., WARBURG PINCUS PRIVATE EQUITY XII-D, L.P., WARBURG PINCUS PRIVATE EQUITY XII-E, L.P., WP XII PARTNERS L.P., WARBURG PINCUS XII PARTNERS, L.P., WP CITYMD TOPCO LLC, WALGREENS BOOTS ALLIANCE, INC., and VILLAGE PRACTICE MANAGEMENT COMPANY LLC, Defendants Below, Appellees.	No. 236, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0523-LWW **PUBLIC VERSION** **Filed August 29, 2025**

THE WARBURG DEFENDANTS-APPELLEES' ANSWERING BRIEF

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NATURE OF PROCEEDINGS

This action is an attempt to bypass the express terms of a Delaware limited liability company agreement under the guise of a claim for breach of the implied covenant of good faith and fair dealing. The Court of Chancery properly dismissed Plaintiffs' belated effort to rewrite the terms of the agreement and this Court should affirm the well-reasoned opinion of the Court below.

Plaintiffs' claims arise out of the 2022 acquisition of WP CityMD Topco LLC (the "Company") and its Fourth Amended and Restated Limited Liability Company Operating Agreement (the "LLC Agreement" or "Agreement"). Plaintiffs were minority members of the Company and, at the time of the challenged merger, the WP Investors[1] held a majority stake in the Company. The LLC Agreement disclaimed all fiduciary duties and expressly permitted the WP Investors and their affiliates to act in their own self-interest. As for the minority members, the LLC Agreement provided that, in certain transactions, each class of unitholders would receive the same form and amount of consideration to be distributed through a specified waterfall structure. The LLC Agreement also provided that amendments

[1] The "WP Investors" refers to Warburg Pincus Private Equity XII, L.P., Warburg Pincus Private Equity XII-B, L.P., Warburg Pincus Private Equity XII-D, L.P., Warburg Pincus Private Equity XII-E, L.P., WP XII Partners L.P., and Warburg Pincus XII Partners, L.P. The WP Investors are investment vehicles managed by Warburg Pincus LLC ("Warburg").

of minority members' rights under the LLC Agreement required a majority vote of each affected member class.

In 2022, Village Practice Management Company, LLC, d/b/a Village-MD ("VillageMD"), a majority-owned subsidiary of Walgreens Boots Alliance, Inc. ("Walgreens"), acquired the Company for an aggregate consideration of [redacted] in a mix of cash and equity (the "Merger"). Under the Merger, all unitholders received the same amount of consideration, but the Company's Class A unitholders, including the WP Investors, would receive near all of their consideration in cash, while the Company's Class B, E, and I unitholders (the "Partial Rollover Holders")—including Plaintiffs—would receive consideration comprising a mix of cash and VillageMD equity. Accordingly, to permit different classes of unitholders to receive different forms of Merger consideration, the Merger was conditioned on an amendment of the LLC Agreement that needed to be approved by the Partial Rollover Holders voting as a class (the "Amendment").

Given the choice between consenting to the Merger and the Amendment and receiving a mix of cash and stock consideration or declining to approve and remaining unitholders in the standalone Company, the Partial Rollover Holders ***overwhelmingly supported the Merger and approved the Amendment***—including the two individuals now serving as named Plaintiffs. Plaintiffs received millions of

dollars in consideration and never argued, as they do now, that the Amendment was "coerced" or unfair. It was only more than a year later that Plaintiffs filed suit, weeks after Walgreens announced a goodwill impairment charge on VillageMD that impacted the value of Plaintiffs' equity.

The Court of Chancery properly dismissed Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing because the Complaint is an attempt to bypass the express terms of the LLC Agreement. The WP Investors were permitted to negotiate and propose a merger that provided different forms of consideration to different members, because they owed no fiduciary duties to the Plaintiffs and because they were expressly permitted to act in their own self-interest. Plaintiffs argue that the WP Investors could not alter the tag-along and drag-along rights in the LLC Agreement, but this is contradicted by the LLC Agreement, which expressly provides that the distribution scheme may be amended so long as a majority of the affected unitholder class approved the amendment. That, as Plaintiffs concede, is exactly what happened here.

Left with no contractual basis for their claim, Plaintiffs pivot to a theory that Defendants "coerced" them into approving the Amendment—but Plaintiffs' attempt to rewrite the contract under a "coercion" theory is similarly flawed. Indeed, far from any "coercion," the Information Statement provided to unitholders, which is

incorporated by reference in the Complaint, unambiguously shows that they were provided with a detailed explanation of the Merger, including the purpose of the Amendment and its effect on the tag-along rights in the LLC Agreement. Unitholders had 20 days to evaluate whether to approve the Merger and the Amendment and they were also provided with separate independent counsel that they could consult if they had any questions. And, most tellingly, Plaintiffs did not contend that they were "coerced" until over a year after the Merger. In short, the Complaint does not contain any well-pled allegations that any of the Partial Rollover Holders were coerced into voting for the Amendment.

The Court of Chancery also properly dismissed Plaintiffs' remaining claims. The tortious interference claim against Warburg fails because Plaintiffs do not plead any underlying breach of contract. Beyond that fatal flaw, Plaintiffs also fail to plead the other elements of tortious interference, including any actions taken by Warburg to intentionally interfere with the LLC Agreement or that any alleged interference by Warburg directly caused a breach of the Agreement. Likewise, Plaintiffs' unjust enrichment claim, which they only appeal as to Warburg, fails because the remedy of unjust enrichment is only available in the absence of a valid contract.

In sum, the Court of Chancery duly considered Plaintiffs' arguments on the papers and at oral argument, applied well-settled Delaware law, and properly dismissed the Complaint in its entirety. This Court should affirm.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly dismissed Plaintiffs' claim for breach of the implied covenant. The complained-of conduct was expressly provided for and contemplated by the LLC Agreement and Delaware law does not allow a party to use the implied covenant to rewrite the parties' agreement or to bestow upon themselves rights they never bargained for. The Court of Chancery also correctly held that Plaintiffs' fiduciary duty-based "coercion" theory fails to support a claim for breach of the implied covenant because the LLC Agreement expressly disclaims all fiduciary duties and, in any event, the Complaint does not allege facts showing that the unitholder vote was coerced.

2. Denied. The Court of Chancery correctly dismissed Plaintiffs' claim for tortious interference with contractual relations because Plaintiffs do not plead a predicate breach of contract. Even if Plaintiffs did plead an underlying breach, the claim nevertheless fails because the Complaint fails to allege, among other things, facts showing that Warburg acted to interfere with or cause a breach of the LLC Agreement.

3. Denied. The Court of Chancery correctly dismissed Plaintiffs' claim for unjust enrichment against Warburg because unjust enrichment is unavailable where, as here, a formal contract governs.

STATEMENT OF FACTS

I. WARBURG PINCUS INVESTS IN CITYMD

The WP Investors are investment vehicles managed by Warburg Pincus, a leading global private equity firm. A0028–A0029 (¶¶ 9–10).[2]

CityMD is a provider of urgent care services in the New York metropolitan area. A0031–A0032 (¶ 18). In June 2017, the WP Investors acquired a majority stake in CityMD. A0032 (¶ 21).

In August 2019, CityMD acquired Summit Medical Group (the "Summit Transaction"). A0033, A0036 (¶¶ 23, 34). After the Summit Transaction, the WP Investors held a majority of the Class A units and Plaintiffs held Class B units in the Company. A0033–A0034 (¶¶ 26–28). In connection with the Summit Transaction, the parties negotiated the LLC Agreement, which, among other things, governed the relationship among the Company's unitholders. A0036 (¶ 35); *see also* A0449–A0574 (the LLC Agreement).

[2] All citations to "¶" are to the Complaint.

The parties negotiated and agreed to waive all relevant fiduciary duties.[3] The LLC Agreement contained numerous provisions explicitly waiving any fiduciary duties owed by the WP Investors:

- 5.03(b): "…[redacted]"
- 10.01(b): [redacted]…"
- 14.01(b)(i): "…[redacted]…"
- 14.01(b)(ii): "…[redacted]…"

A0515 (§ 5.03(b)), A0537 (§ 10.01(b)), A0553 (§ 14.01(b)(i–ii)) (emphasis added).[4]

[3] These provisions did not waive the fiduciary duties owed by non-WP officers of the Company.

[4] All cites to "§" are to the LLC Agreement.

The LLC Agreement went a step further. Section 5.03(b) provided that the WP Investors were permitted to "[redacted]." A0515 (§ 5.03(b)). Section 14.01(b)(iii) further provided that "[redacted]." A0553–A0554 (§ 14.01(b)(iii)).

The LLC Agreement also contained certain provisions regarding sales of the Company or all or substantially all of its assets. A0036 (¶ 36). Among other things, the LLC Agreement provided that in such a scenario, each class of unitholders would receive the same form and amount of consideration, which would be distributed according to the waterfall structure set forth therein. A0037 (¶ 37); A0503 (§ 4.01(a)). The LLC Agreement also provided for tag-along and drag-along rights. A0038–A0040 (¶¶ 38–43); A0521–A0527 (§§ 7.03, 7.04). These provisions allowed Partial Rollover Holders to participate on equal terms in certain sales of Company units by the WP Investors. A0038 (¶ 38); A0521–A0524 (§ 7.03).

The LLC Agreement expressly provided procedures for amendments that could adversely affect particular classes of unitholders. A0556–A0557 (§ 1404). In

particular, the LLC Agreement permitted amendments of the distribution rights under the waterfall so long as the Company first received written consent from the majority of any class of unitholders whose rights would be adversely affected by such amendment. A0041 (¶ 44); A0556 (§§ 14.04(d) (providing that an amendment that "[redacted]"), 14.04(e) (providing that an amendment that "[redacted]")).

II. THE COMPANY NEGOTIATES A [redacted] MERGER WITH VILLAGEMD

Starting in November 2021, the Company and VillageMD[5] began negotiating a potential transaction. A0042–A0043 (¶¶ 45–48). On August 8, 2022, VillageMD sent the Company a non-binding letter of intent (the "LOI"). A0043–A0044 (¶ 49). [redacted]

[5] VillageMD is a primary care provider and is majority-owned by Walgreens. A0030, A0042 (¶¶ 11, 46).

[redacted]. *Id.* ¶ 49. Negotiations continued, and included separate legal counsel engaged to represent the Partial Rollover Holders. A0044, A0048 (¶¶ 50, 63); A1050. During these negotiations, the proportion of the cash to equity consideration for the Partial Rollover Holders increased twice. A0044 (¶¶ 50–51). On November 6, 2022, the Company's Board of Directors received an opinion from a financial advisor that the [redacted] aggregate amount to be paid in the Merger was fair from a financial point of view. A0045, A0048, A0051 (¶¶ 54, 64, 73).

On November 7, 2022, the parties signed the merger agreement (the "Merger Agreement"). A0044–A0045 (¶¶ 52–53); *see also* A0584–A1030 (the Merger Agreement). Under the Merger Agreement, (i) Class A unitholders, including the WP Investors, would receive [redacted] in VillageMD equity and the remainder of their consideration in cash, and (ii) the Partial Rollover Holders, including Plaintiffs, would roll over at least [redacted] of their holdings into VillageMD equity, with the option to roll over more, and would receive the rest of their consideration in cash, with a prorationing mechanism to ensure that the aggregate cash amount did not exceed [redacted] A0045–A0046 (¶¶ 55–56); A0584–A1030.

Because the Merger Agreement provided for the distribution of a different mix of Merger consideration to different classes of unitholders, the Merger was

conditioned on the Company amending the LLC Agreement. A0047 (¶ 62). Specifically, the Amendment provided for modifications to Sections 4.01 (Distributions), 7.03 (Tag-along), and 7.04 (Drag-along). A0577–A0578 (§§ 1(b), (d)–(f)). As such, Section 14.04 of the LLC Agreement required that the Amendment be approved by the majority of Partial Rollover Holders voting as a single class. A0556–A0557 (§ 14.04).

As discussed below, there is no dispute that the Amendment was properly obtained pursuant to such a vote.

The Merger Agreement also contemplated that the Partial Rollover Holders would be required to complete, execute and submit a letter of transmittal in order to receive the consideration in the Merger (the "Letter of Transmittal"). A0049 (¶ 68). The form of the Letter of Transmittal was attached to the Merger Agreement. *See* A0970–A0993 (the Letter of Transmittal). The purpose of the Letter of Transmittal was to return a unitholder's units to the Company in order to enable the Company to pay the unitholder the requisite consideration. *See generally* A0970–A0993. To that end, the Letter of Transmittal required a unitholder to provide payment instructions and information related to the withholding of taxes in connection with the payment of the consideration. *See* A0970–A0993; *see also* A1076. The Letter of Transmittal also included language releasing claims the Partial Rollover Holders

may have had related to, among other things, [redacted] ” and “[redacted],” which included the Amendment. A0975.

III. THE COMPANY PROVIDES ALL MATERIAL INFORMATION REGARDING THE MERGER AGREEMENT AND THE AMENDMENT AND SEEKS UNITHOLDER APPROVAL

The Company provided the Partial Rollover Holders with all material information regarding the Amendment and Merger to allow each Partial Rollover Holder to decide whether he wanted to approve or reject the transaction. A0047, A0049–A0050 (¶¶ 62, 69). On November 14, 2022, the Company provided the Partial Rollover Holders with an information statement (the “Information Statement”) describing, among other things, the Amendment and Merger in detail. A1031–A1140 (the Information Statement).

The Information Statement clearly explained the purpose and effect of the Amendment. *See* A1033, A1043–A1044, A1046–A1047, A1095–A1103. In the “[redacted] portion, the Information Statement provided:

> “[redacted]
>
> … [redacted]

[redacted]…"

A1043 (emphasis added).

Contrary to Plaintiffs' suggestion that unitholders were not provided adequate information concerning the impact of the Amendment, (Plaintiffs' Opening Brief (the "POB") at 19 n.62), the Information Statement explicitly explained that [redacted] A1043, A1084–A1085. Specifically, the Information Statement explained:

[redacted]

A1043 (emphasis added). The Information Statement also made clear, including ***on the very first page***, that [redacted]:

[redacted]

A1032.

Regarding the Merger, in a section titled [redacted]," the Information Statement explained that [redacted] A1095–A1135. The Information Statement encouraged unitholders to "[redacted]." A1095.

The Information Statement also explained that [redacted]. *See* A1033, A1044, A1047, A1068, A1095, A1097.

The Information Statement explained [redacted]. A1047, A1076. In response to the question "[redacted]" the Information Statement explained, [redacted] A1047. In the "[redacted]" the Information Statement explained that, [redacted]" A1076. [redacted] A0974 (§ 4(B)). The Letter of Transmittal also contained a provision detailing that [redacted]

[redacted]. A0972 (§ 1(G)).

The Company retained competent counsel for the Partial Rollover Holders to consult with, A0048 (¶ 63), and the Information Statement encouraged [redacted] A0972 (§ 1(G)).

The Unitholders had 20 days to consider the Amendment and Merger. A0048–A0050 (¶¶ 63, 67–69). The LLC Agreement does not contain any minimum time requirement for consideration of an amendment or merger. *See generally* A0449–A0574 (the LLC Agreement).[6]

The Complaint does not allege that there were any material misstatements or omissions in the Information Statement. *See generally* A0023–A0063 (the Complaint). The Complaint also does not allege that any unitholders requested any additional information that was not provided. *See generally id*. There are similarly

[6] Section 3.11 of the LLC Agreement required reasonable and sufficient notice of a member meeting through [redacted]" A0501-A0502 (§ 3.11).

no allegations that any unitholder lodged any complaints or raised any issues about the Letter of Transmittal. *See generally id*.

In addition to the Information Statement and access to independent counsel, the Partial Rollover Holders were also invited to attend information sessions about the Merger presented by representatives of Warburg. A0049–A0050 (¶ 69). The Complaint makes a passing allegation that during these informational sessions, Warburg did not "mention or explain" the tag-along rights. *Id*. (¶¶ 69–70). The Complaint, however, makes no allegation that Warburg made any misrepresentations, threats, lies, or false implications about tag-along rights, or that Warburg said anything contradicting the lengthy disclosures contained in the Information Statement. *See generally* A0023–A0063 (the Complaint).

IV. THE PARTIAL ROLLOVER HOLDERS PROVIDE FULLY INFORMED AND UNCOERCED APPROVAL OF THE MERGER AND AMENDMENT

There is no dispute that the Company received the requisite approvals for both the Amendment and Merger consistent with the LLC Agreement. *See* A0047, A0050–A0051 (¶¶ 61, 71). The Amendment received the majority of votes of the Partial Rollover Holders voting as a single class and the Class A unitholders acting as a single class. And the Merger received the majority of votes of Class A units and Class B units voting as a single class.

Both Plaintiffs Khan and Finger voted in favor of the Amendment and Merger and returned executed Letters of Transmittal before the December 4, 2022 deadline. *See* A1149 (Finger Letter of Transmittal (Signature Page), dated November 28, 2022); A1165 (Khan Letter of Transmittal (Signature Page), dated December 3, 2022). Unitholders subsequently received Merger consideration when the Merger closed on January 3, 2023. Plaintiffs Khan and Finger claim they respectively held [redacted] and [redacted] of equity in the Company at the time of the Merger. A0028 (¶¶ 7–8). As a result, they would have been eligible to receive approximately [redacted] and [redacted] of cash consideration through the Merger, respectively. A0046 (¶ 56).

V. THIS ACTION

On March 28, 2024, ***more than a year after*** the Merger closed and Plaintiffs accepted their Merger consideration, Walgreens disclosed a goodwill impairment charge on VillageMD. A0051 (¶ 73). Walgreens reported the impairment charge was "due to downward revisions in [the Company's] longer term forecast received during" Q1 2024, and not as a result of "anything predating the Merger."[7]

[7] *See* Walgreens Boots Alliance, Inc., Quarterly Report (Form 10-Q) (Mar. 28, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001618921/000161892124000035/wba-20240229.htm, at 15 (specifying that the impairment charge was "due to downward revisions in its longer term forecast received during the quarter").

On May 16, 2024, Plaintiffs filed the Complaint. The Court of Chancery held oral argument on Defendants' motion to dismiss on January 23, 2025. On April 30, 2025, the Court of Chancery issued the opinion (the "Opinion"), in which the Court explained that the LLC Agreement "leaves no room for a quasi-fiduciary theory disguised as an implied covenant claim." Ex. A (April 30, 2025 Memorandum Opinion (the "Mem. Op.")) at 2. The Court of Chancery subsequently entered an order implementing the Opinion and dismissing the Complaint with prejudice. On May 29, 2025, Plaintiffs filed a notice of appeal.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY DISMISSED PLAINTIFFS' CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

A. Question Presented

Whether the Court of Chancery correctly held that Plaintiffs failed to state a claim for breach of the implied covenant of good faith and fair dealing against the WP Investors and the Company (the "Contracting Defendants")[8] because the LLC Agreement expressly addressed the conduct at issue. This issue was preserved below, *see* A1206–A1229 (Answering Br. at 25–48), and addressed by the Court of Chancery, *see* Mem. Op. at 13–24.

B. Scope of Review

This Court reviews *de novo* a decision to grant a motion to dismiss under Court of Chancery Rule 12(b)(6). *Olenik v. Lodzinski*, 208 A.3d 704, 714 (Del. 2019). Rule 12(b)(6) requires dismissal where the plaintiff cannot recover under any "reasonably conceivable set of circumstances susceptible of proof" based on the complaint's well-pleaded facts. *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A.3d 245, 251 n.16 (Del. 2019) (internal citations omitted). The Court need "not blindly accept as true all allegations," and may only draw inferences in the plaintiff's failure

[8] The POB refers to the WP Investors and the Company as the Contracting Defendants. For ease of this Court's review, this brief does the same.

where "they are reasonable." *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 439 (Del. 2005) (cleaned up). Similarly, courts "need not credit an allegation that is unambiguously contradicted by the documents integral to the Complaint's allegations." *Teamsters Loc. 677 Health Servs. & Ins. Plan v. Martell*, 2023 WL 1370852, at *20 (Del. Ch. Jan. 31, 2023).

C. Merits of Argument

The Court of Chancery properly dismissed Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing. Plaintiffs argue that it was "nonsensical to conclude, like the trial court, that the implied covenant has no role simply because another contractual provision provides a limited waiver of fiduciary duties." POB at 32. This is wrong on numerous fronts. To start, the Opinion made no such sweeping finding. And the Court of Chancery's Opinion was far from "nonsensical"—it was based in well-established law and sound reasoning. The Court of Chancery held that, on the facts alleged, Plaintiffs failed to plead a breach of the implied covenant because, among other things, the LLC Agreement contained express provisions addressing each of the complained-of actions.

1. Plaintiffs ignore the express terms of the LLC Agreement.

To succeed on their implied covenant claim, the Plaintiffs must show "a specific implied contractual obligation, a breach of that obligation by the Company and the WP Investors, and resulting damage to the plaintiffs." Mem. Op. at 14

(cleaned up). Under Delaware law, "[t]he implied covenant of good faith is a cautious enterprise that is best understood as a way of implying terms in the agreement, whether employed to analyze unanticipated developments or to fill gaps in the contract's provisions." *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 506–07 (Del. 2019) (internal citations omitted). Accordingly, the implied covenant "does not apply when the contract addresses the conduct at issue, but only when the contract is truly silent concerning the matter at hand." *Id*. at 507.

Plaintiffs argue that the Contracting Defendants "upset" the Partial Rollover Holders' reasonable expectations at the time of contracting and thereby breached the implied covenant of good faith and fair dealing. POB at 2–3. Plaintiffs seek to imply two terms in the LLC Agreement which they allege the WP Investors violated: ***one***, a term "prohibiting the WP Investors from taking action with 'the effect of destroying, injuring, or frustrating the Class B [unitholder's] right to receive the fruits of the tag-along right,'" Mem. Op. at 15 (citing A1211–A1212 (Answering Br. 30–31)), and ***two***, a term that the WP Investors "would not eliminate Class B unitholders' tag-along right through a 'coerced' Amendment to permit differential consideration." *Id*. at 17 (citing A1214–A1219 (Answering Br. at 33–38)).

As the Court of Chancery held, Plaintiffs' theory fails because the LLC Agreement "explicitly addressed the matters at issue." *Id*. at 15; *see also id*. at 19 ("the LLC Agreement has no gap preventing the WP Investors from negotiating for disparate consideration—or undertaking an Amendment to permit it.")

As set forth above, the LLC Agreement provided that the WP Investors may "act exclusively in [their] own interest[s] and without regard to the interest of any other Person." Mem. Op. at 18 (citing A0515 (§ 5.03(b))); *see also* A0553–A0554 (§ 14.01(b)(iii)). The LLC Agreement also eliminated any fiduciary duties owed by the WP Investors.[9] *Id.* at n.92 (citing the same). Finally, Section 14.04 of the LLC Agreement [redacted]. A0556–A0557 (§ 14.04); *see also* Mem. Op. at 4, 15. Though Plaintiffs contend that the intent of the parties at the time of contracting the LLC Agreement was that the tag-along rights would never change, Section 14.04 of the Agreement [redacted]. A0556 (§§ 14.04(d–e)).

[9] 6 *Del. C.* § 18-1101(c); "Delaware law upholds the elimination of fiduciary duties in LLC agreements." Mem. Op. at 21 (citing *AM Gen. Hldgs. LLC v. The Renco Gp., Inc.*, 2016 WL 4440476, at *15 (Del. Ch. Aug. 22, 2016)) (noting that "the LLC Act enables contracting parties to alter and even eliminate equitable fiduciary duties in the LLC context").

Thus, the WP Investors were permitted to propose a transaction that provided a greater proportion of the merger consideration in equity to the minority members, including minority physician-members like the Plaintiffs. The WP Investors did not owe any fiduciary duties to Plaintiffs or the minority members, and they were expressly permitted to act in their own self-interest. As the Court of Chancery explained, "[t]here is no reasonably conceivable basis to conclude the WP Investors or Company's actions 'frustrat[ed] the fruits of the bargain that the [plaintiffs] reasonably expected.'" Mem. Op. at 19 (citing *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010)). In fact, "[t]he contractual arrangement the parties reached suggests that the plaintiffs would have expected otherwise." *Id*.

As to the Amendment specifically, the LLC Agreement set forth specific requirements to amend its distribution terms, namely, a majority vote of the affected class—and there is no dispute that the required class vote was obtained. *See* A0556 (§§ 14.04(d–e)). Accordingly, there is "no gap for the implied covenant to fill," because the contract directly addresses the conduct that Plaintiffs contend constituted a breach of the implied covenant. Mem. Op. at 15.

As the Court of Chancery observed, it would have been easy for the parties to the LLC Agreement to "include additional protections against amending the tag-along provision—or to bar changes to it," but "[t]hey did not." *Id*. at 17. Plaintiffs'

belated attempt to add such protections years later fails because the implied covenant "cannot be wielded to rewrite the Agreement or grant the plaintiffs rights they never bargained for." *Id*. (citing *Aspen Advisors LLC v. United Artists Theatre Co.*, 843 A.2d 697, 707 (Del. Ch. 2004)) (declining to find a breach of implied covenant where "do[ing] so would be to grant the plaintiffs, by judicial fiat, contractual protections that they failed to secure for themselves at the bargaining table"), *aff'd*, 861 A.2d 1251 (Del. 2004); *see also Nemec*, 991 A.2d at 1126.

As a final matter, Plaintiffs argue that their claims cannot be dismissed because the LLC Agreement did not waive fiduciary duties as to non-Warburg officers. POB at 31. The Court of Chancery correctly rejected this argument because the Complaint is entirely devoid of any allegations as to any Company officers and none of them have been named as defendants in this lawsuit. As the Court of Chancery held, the "narrow provision addressing non-Warburg officers' fiduciary duties in no way overrides the broad waiver of fiduciary duties for Warburg and its affiliates." Mem. Op. at 20–21; *see also* Ex. C (Transcript of Oral Argument on Defendants' Motions to Dismiss (the "Tr.")) at 50:1–4; 59:1–8.

2. Plaintiffs' theory of coercion fails on the facts and the law.

As a fallback, Plaintiffs argue that the implied covenant was nevertheless breached because the Partial Rollover Holders were supposedly "coerced" into

voting for the Amendment and executing the Letter of Transmittal. POB at 34–42. The Complaint lacks well-pled allegations supporting a claim that the WP Defendants "coerced" Plaintiffs, let alone any facts remotely suggesting that the WP Defendants "threatened" or "lied" to them in any respect. Indeed, Plaintiffs' counsel had no response during argument on Defendants' motions when the Court "repeatedly" asked "[w]hat exactly was the coercion?" Tr. at 57:4–9; *see also id.* at 59:12–13. Moreover, the theory of coercion that Plaintiffs advance is also wholly unsupported by Delaware precedent on the implied covenant. The Court of Chancery thus properly dismissed Plaintiffs' claim.

a. *Plaintiffs were not "coerced."*

Plaintiffs contend that Defendants "coerced" minority unitholders into approving the Amendment based on "factors other than merit," by "imposing economic duress to induce the waivers," and by triggering "effective forfeitures" of the minority holders' units. POB at 34–42. Plaintiffs' arguments are without merit.

First, Plaintiffs assert that by conditioning the Merger on the Amendment, Defendants forced "Plaintiffs and other Class B members to decide on the waiver, not on its merits, but because otherwise there would be no exit event." POB at 34–36. But giving the Partial Rollover Holders a ***choice***—as specifically permitted under the terms of the LLC Agreement—is not coercion. As described above,

Plaintiffs and the other Class B unitholders voluntarily amended the LLC Agreement pursuant to the amendment procedures set forth therein. Regardless of how Plaintiffs now characterize their voluntary consent to the Amendment, Plaintiffs' approval was exclusively based on the economic merits of the transaction. As Plaintiffs' own brief admits, the choice was about "whether they wanted to receive some Merger consideration"—i.e., by approving the Merger—or "no Merger consideration"—i.e., by refusing to consent to the Amendment and continuing to own equity in the Company as a stand-alone entity. POB at 36. There is no dispute Plaintiffs and other minority unitholders overwhelmingly made that choice in favor of the Merger and its attendant economic benefits.

Plaintiffs also claim that "Warburg, acting as the WP Investors' agents" purportedly misrepresented "that no Merger consideration would flow to each of them unless and until each of them signed" the Letter of Transmittal. *Id*.; *see also id*. at 39–40. For the first time on appeal, Plaintiffs go further and outrageously characterize these representations as "threats," "lies," and "false[] implications."[10]

[10] POB at 2 (unitholders "consent[ed] to waive their tag-along rights and waive potential claims…***under threats*** that gave Plaintiffs and Class B unitholders no reasonable alternative") (emphasis added); *id*. ("Warburg ***lied*** to unitholders, implying that they would either receive no cash consideration or no deal would occur at all unless they promptly signed the 'Letter of Transmittal.'") (emphasis added).

Plaintiffs' inflammatory characterizations are misleading, and there are no well-pled allegations of "threats" or "lies" anywhere in the Complaint. Instead, the representations regarding the Letter of Transmittal accurately reflected that each member was required to transmit his or her equity in order to receive Merger consideration. Those representations were entirely consistent with the Information Statement, which likewise explained to unitholders that returning an executed Letter of Transmittal was a pre-condition to receiving their Merger consideration. *See supra* at 14; A1033–A1034.

These alleged representations are also consistent with customary market practice, in which the Letter of Transmittal serves as a formal mechanism for a unitholder or stockholder to effectuate a return of their units or shares to the company in order to receive merger consideration. *See Sorenson Impact Found. v. Cont'l Stock Transfer & Tr. Co.*, 2022 WL 986322, at *10 (Del. Ch. Apr. 1, 2022) (explaining that a letter of transmittal is "a procedural device for assigning payment"); AM. BAR ASS'N, MODEL MERGER AGREEMENT FOR ACQUISITION OF A PUBLIC COMPANY, Art. 1 (2011), Bloomberg Law (providing for use of letter of transmittal to effectuate distribution).

In short, accurate factual statements about the Merger and the Amendment are not coercive. *See, e.g.*, *In re Columbia Pipeline Gp., Inc. Merger Litig.*, 299 A.3d

393, 477 (Del. Ch. 2023), *rev'd on other grounds*, 2025 WL 1693491 (Del. June 17, 2025) (collecting cases) ("Delaware law distinguishes between a coercive threat and a factual statement about natural consequences"); *Gradient OC Master, Ltd. v. NBC Universal, Inc.*, 930 A.2d 104, 120–21 (Del. Ch. 2007) ("Accurately disclosing circumstances or realities surrounding a [transaction] … is not actionably coercive").

Second, Plaintiffs argue that it was coercive for the Contracting Defendants to condition the Merger on approval of the Amendment because they purportedly imposed "economic duress" sufficient to "overcome[] the other party's will." POB at 36. This argument, too, fails, because again, it is simply an attempt to erase the contractually agreed-upon procedures to amend the LLC Agreement.

Plaintiffs ignore the plain terms of the LLC Agreement and argue instead that the Agreement "manifests the parties' intent to ensure that the Class B unitholders were treated the same as the Class A members in the transaction like the Merger." POB at 38–39. But as the Court of Chancery observed, the LLC Agreement sets forth specific provisions for amending the LLC Agreement to change those provisions, and there is no dispute that the requisite class vote was obtained. Mem. Op. at 16. To credit Plaintiffs' theory would require the Court to impermissibly read the detailed amendment provisions out of the LLC Agreement. *See Oxbow*, 202 A.3d at 507.

Third, Plaintiffs' argument that failure to assent to the Letter of Transmittal "would have triggered effective forfeitures for individual Class B members" is incoherent. POB at 39–40. The WP Investors did not threaten any "forfeiture" upon the Plaintiffs. Rather, rejecting the Amendment would have simply returned Plaintiffs to the status quo *ex ante*. Plaintiffs also complain that the Amendment constituted "economic duress" because they could not be assured of a better exit event at a later time—but this, too, is not a forfeiture. *Id*. Plaintiffs were not denied any contractual right or payment to which they were entitled. Instead, Plaintiffs and the other minority members were fully capable of rejecting the Amendment—and the Merger, by extension—and maintaining the status quo. *Cf. Nw. Cent. Pipeline Corp. v. Mesa Petroleum Co.*, 1985 WL 44696, at *4 (Del. Ch. Apr. 10, 1985) ("A forfeiture is generally understood as a deprivation of rights or property as a result of the nonperformance of some obligation or condition.").

Nor does the requirement to execute a Letter of Transmittal in connection with the Merger constitute a "forfeiture." POB at 39–40. As noted above, there is nothing unusual about the Letter of Transmittal, and unitholders would have been duly eligible to receive their Merger consideration as soon as they provided the equity to be exchanged in connection with the Merger. As explained in the Information Statement, [redacted]

[redacted], not "forfeited." *See supra* at 14. Plaintiffs also make passing references to the release of claims included in the Letter of Transmittal as supporting their allegations of coercion. POB at 35, 39, 42. But the Complaint is devoid of any allegations as to how any such releases were improper or wrongful, much less how they support a breach of the implied covenant.

In rejecting Plaintiffs' claims of coercion, the Court of Chancery correctly observed that "[t]here were two choices," neither of which imposed any "force" on Plaintiffs. Tr. at 59:17–20. Where, as here, shareholders have the freedom to choose between maintaining their current status and taking advantage of the new status offered by a proposed transaction, no claim for coercion can arise. *See In re Gen. Motors Class H S'holders Litig.*, 734 A.2d 611, 621 (Del. Ch. 1999); *In re Dell Techs. Inc. Class V S'holders Litig.*, 2020 WL 3096748, at *25 (Del. Ch. June 11, 2020) (explaining that "if stockholders can reject the transaction and maintain the status quo, then the transaction is not coercive" even if the status quo is "undesirable or unpleasant"). That Plaintiffs' stock consideration is worth less than they hoped

as a result of later events is an understandable basis for frustration, but it is not a basis for a post-hoc claim of coercion.[11]

b. *Plaintiffs' theory of "coercion" is unprecedented under Delaware law.*

Beyond lacking any factual support, Plaintiffs' coercion theory also finds no support in Delaware law. Every Delaware case cited by Plaintiffs involved facts reflecting an extra-contractual attempt to strong-arm or deceive an unwilling participant into approving a transaction. For example, in *Bakerman*, the Court of Chancery held that defendant's "threat to file a lawsuit against" plaintiff without a "good faith belief that a viable cause of action existed" constituted economic duress to support plaintiff's claim for breach of fiduciary duty. *Bakerman v. Sidney Frank*

[11] Plaintiffs have abandoned their arguments below that Class B unitholders were coerced because the Amendment's 20-day notice period was too short and because the Defendants did not make full material disclosures. *See generally* POB; *see also Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived."). The Court of Chancery correctly dismissed these arguments on the basis that they were not pleaded in the Complaint and observed that both arguments would fail in any event. Mem. Op. at 22–23. On the notice issue, while the LLC Agreement addresses notice to unitholders for a member meeting, it does not address notice for a vote by written consent. *Id*. Thus, once again, had the negotiating parties wanted to add such a protection, they could have done so. Regarding material disclosures, the Opinion held that this argument was foreclosed because the LLC Agreement's elimination of fiduciary duties meant that there was no "free-floating duty of disclosure" owed. *Id*. at 23. Moreover, the record is clear that the Information Statement disclosed all material information. *See supra* at 12–16.

Imp. Co., 2006 WL 3927242, at *16 (Del. Ch. Oct. 10, 2006). Likewise, in *Dieckman*, the court found a general partner breached the implied covenant where he affirmatively made false and misleading statements in a proxy statement. *Dieckman v. Regency GP LP*, 155 A.3d 358, 368 (Del. 2017). Here, similar conduct is simply missing from the Complaint.

Plaintiffs' reliance on *Delphi* is also unavailing. In *Delphi*, plaintiff sought a preliminary injunction claiming that the controlling stockholder breached his fiduciary duties by negotiating a merger that was conditioned on the minority approving a charter amendment that allowed a greater amount of merger consideration to flow to the controlling stockholders. *In re Delphi Fin. Gp. S'holder Litig.*, 2012 WL 729232, at *14–15 (Del. Ch. Mar. 6, 2012). The negotiated deal was structured to award the controlling stockholders a per share price almost $10 ***higher*** than other stockholders. *Id*. at *9. Former Vice Chancellor Glasscock held that plaintiffs demonstrated a reasonable likelihood of success for their claim of breach of fiduciary duty on these facts, *id*. at *21, but declined to reach plaintiffs' claim for breach of the implied covenant. *Id.* at *17.

Delphi is legally and factually distinguishable. First, and most fundamentally, *Delphi* was decided in the corporate context with attendant fiduciary duties. For that reason, the Court of Chancery held that Plaintiffs' reliance on *Delphi* was misplaced,

and that Plaintiffs were improperly seeking to hold Defendants liable for a breach of fiduciary duty even though the LLC Agreement expressly disclaimed fiduciary duties. Mem. Op. at 19–20.[12] Indeed, as former Vice Chancellor Glasscock himself later held in another case, "Delaware courts should be all the more hesitant to resort to the implied covenant" where the LLC agreement "eliminates fiduciary duties as part of a detailed contractual governance scheme." *Miller v. HCP & Co*., 2018 WL 656378, at *10 (Del. Ch. Feb. 1, 2018).

Delphi is also distinguishable because the controlling stockholder received a greater benefit than other stockholders, whereas here, Plaintiffs concede that the value of the Merger consideration received by all unitholders at closing was the same. Further, the plaintiffs in *Delphi* immediately challenged the proposed amendment by suing to enjoin the vote on the merger. By contrast, here, even though all of the facts they alleged were known to them at the time, Plaintiffs waited over a year after approving the Amendment and Merger and accepting the Merger consideration before filing their lawsuit. Such unexplained, lengthy delay undercuts

[12] For this same reason, the Court of Chancery did not, as Plaintiffs assert, fail to give effect to all the provisions of the LLC Agreement. POB at 32-33. Plaintiffs' authorities are inapposite because neither involved a claim for breach of the implied covenant. *Manti Hldgs., LLC v. Authentix Acq. Co., Inc.*, 261 A.3d 1199, 1208 (Del. 2021); *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228 (Del. 1997).

any suggestion that Plaintiffs were "coerced" in any respect. *See Standard Gen. L.P. v. Charney*, 2017 WL 6498063, at *17 (Del. Ch. Dec. 19, 2017) (holding that plaintiff's "acceptance of the benefits and protracted silence preclude[d] a finding of duress or coercion").

In the absence of any Delaware law supporting their theory, Plaintiffs travel far and wide for authorities dating back over 100 years and from other jurisdictions (including a foreign country), which they describe as "in accord" with their argument. POB at 41–42. None of those cases are apposite. For example, one of Plaintiffs' cases, *Industrial Representatives v. CP Clare Corp*., actually supports Defendants' position. In *Industrial Representatives*, the Seventh Circuit affirmed the lower court's ruling that plaintiff failed to state an implied covenant claim under Illinois law based on the defendant's termination of the contract where the agreement explicitly provided a procedure for termination and the defendant complied with that procedure. 74 F.3d 128, 130–32 (7th Cir. 1996).

Plaintiffs' other non-Delaware cases are equally unavailing, and only serve to illustrate the absence of any allegations here remotely constituting improper coercion. *See Alaska Packers' Ass'n v. Domenico*, 117 F. 99 (9th Cir. 1902) (finding contract amendment unenforceable where, upon arriving in a remote location, fisherman refused to perform the work for the season without an increase in wages);

Atlas Express Ltd. v. Kafco (*Imps. and Distribs. Ltd.*) 1 All ER 641 (Queens Bench Division, Commercial Court (England) 1989) (finding economic duress where importer had no choice other than to agree to amended contract to pay higher delivery price because importer reasonably believed it was too late to arrange alternative delivery); *Mkt. St. Assocs. L.P. v. Frey*, 941 F.2d 588 (7th Cir. 1991) (holding genuine issue of material fact existed whether party acted in bad faith by failing to remind other party of provision in negotiated contract for their own benefit and reasoning that "deliberate advantage of an oversight by your contract partner…is not exploitation…it is sharp dealing");[13] *Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Serv. Co.*, 584 P.2d 15 (Alaska 1978) (finding genuine issue of material fact existed as to whether plaintiff's agreement to reduced settlement of debts owed under a contract constituted economic duress where plaintiff was facing bankruptcy due to defendant's unilateral cancellation of that contract).

Finally, Plaintiffs' reliance on an illustration in the Restatement (Second) of Contracts is also unavailing. POB at 37–38. To start, Section 175 and 176 relate to when a contract is voidable and Plaintiffs confirmed at oral argument that they were

[13] Plaintiffs' reliance on *Frey* for the proposition that "[c]ontracting parties are entitled to trust that their counterparties will cooperate and perform as-promised" (POB at 27) does nothing to advance their case. As described above, the Contracting Defendants did "cooperate and perform as-promised" under the LLC Agreement by proposing an Amendment that complied fully with the contract.

not arguing that the Merger or Amendment was void or unenforceable. Tr. at 66:22–67:3. Further, Plaintiffs' approval of the Amendment bears no similarity to the example presented in the illustration, in which a party partially excavates a cellar, and leaves the other party with "no reasonable alternative" other than to enter into a new contract to excavate a cellar in a second building. POB at 38. Unlike the client in the illustration, who had "no reasonable alternative" other than to sign the second contract under duress, Plaintiffs here could have rejected the Amendment and continued with the status quo.

* * * * *

Ultimately, as the Court of Chancery found, Defendants' actions—specifically, proposing an Amendment to the LLC Agreement that required a class vote in order to provide a different mix of consideration in the Merger—complied with the provisions of the LLC Agreement. Plaintiffs agreed to that Amendment freely, and solely on the basis that they preferred to take the Merger consideration rather than to remain in the status quo *ex ante*. Plaintiffs cannot now maintain a claim against Defendants for breach of the implied covenant because "remorse has set in" (Mem. Op. at 24) and they would have preferred to choose differently over a year later. *See Winshall v. Viacom Int'l, Inc.*, 55 A.3d 629, 636–37 (Del. Ch. 2011) ("[T]he implied covenant is not a license to rewrite contractual language just because

the plaintiff failed to negotiate for protections that, in hindsight, would have made the contract a better deal.").

II. THE COURT OF CHANCERY CORRECTLY HELD THAT PLAINTIFFS DO NOT STATE A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS.

A. Questions Presented

Whether the Court of Chancery correctly held that Plaintiffs did not state a claim for tortious interference with contractual relations against Warburg, where Plaintiffs did not state any underlying breach of contract. This issue was preserved below, *see* A1229–A1234 (Answering Br. at 48–53), and addressed by the Court of Chancery, *see* Mem. Op. at 24–25.

B. Scope of Review

This Court reviews *de novo* a decision to grant a motion to dismiss under Court of Chancery Rule 12(b)(6). *Olenik*, 208 A.3d at 714. Rule 12(b)(6) requires dismissal where the plaintiff cannot recover under any "reasonably conceivable set of circumstances susceptible of proof" based on the complaint's well-pleaded facts. *Sheldon*, 220 A.3d at 251 n.16. The Court need "not blindly accept as true all allegations," and may only draw inferences in the plaintiff's failure where "they are reasonable." *Dunlap*, 878 A.2d at 439 (cleaned up). Courts also "need not credit an allegation that is unambiguously contradicted by the documents integral to the Complaint's allegations." *Teamsters Loc. 677 Health Servs.*, 2023 WL 1370852, at *20.

C. Merits of Argument

"A claim for tortious interference with business relations requires: '(1) a contract, (2) about which defendant knew and (3) an intentional act that is a significant factor in causing the breach of such contract (4) without justification (5) which causes injury.'" Mem. Op. at 25 (citing *Aspen Advisors*).

As a threshold matter, and as the Court of Chancery held, Plaintiffs' tortious interference claim fails because Plaintiffs have not "sufficiently alleged a breach of any express or implied term of the LLC Agreement." *Id*. (citing *Allied Cap. Corp. v. GC-Sun Hldgs., L.P.*, 910 A.2d 1020, 1036 (Del. Ch. 2006)). That holding should be affirmed.

This Court may also affirm dismissal of Plaintiffs' claim for tortious inference against Warburg for additional reasons. ***First***, Plaintiffs do not plead that Warburg took any intentional acts that were a significant factor in causing any breach of the LLC Agreement. For a claim of tortious interference, an act is intentional where the acting party knows that interference is a "necessary consequence of his action." *NAMA Hldgs., LLC v. Related WMC LLC*, 2014 WL 6436647, at *28 (Del. Ch. Nov. 17, 2014) (*citing* Restatement (Second) of Torts § 8A (1965)). The Complaint does not allege that Warburg knew that its actions would have the "necessary consequence" of breaching the LLC Agreement. To the contrary, Plaintiffs plead

that Warburg was aware of the terms of the LLC Agreement, which necessarily includes the amendment provisions, and structured the Merger ***to comply with*** the contractual amendment mechanism. A0042, A0047 (¶¶ 45, 61). Moreover, the Complaint contains no allegations that Warburg opposed or attempted to prevent the Company from seeking the requisite unitholder votes for the Amendment or the Merger.

Plaintiffs also do not plead that Warburg acted without justification. *See, e.g.*, *Bhole, Inc. v. Shore Invs., Inc.*, 67 A.3d 444, 453 (Del. 2013) (a party's interference is unjustified when they act "maliciously or in bad faith"). As Plaintiffs concede, Warburg is protected by the limited affiliate privilege. POB at 45 n.140. The limited affiliate privilege protects a corporate parent's interference with its subsidiary's contractual relations when that interference is "in the good faith pursuit of [the subsidiaries'] profit-making activities." *New Enter. Assocs. 14, L.P. v. Rich*, 292 A.3d 112, 143 (Del. Ch. 2023). Therefore, to hold Warburg liable for tortious interference, Plaintiffs must show that Warburg was motivated "maliciously or in bad faith." *Bhole, Inc.*, 67 A.3d at 453.

Plaintiffs do not meet that extraordinarily high bar. The only allegation in support of this element is that Warburg "sought to exit its funds' existing Company investment" because "at least one of the WP Investors was nearing the end of its

scheduled life and needed to return capital to investors." POB at 15. Generic allegations such as this are met with "marked skepticism" in Delaware because courts are "reluctant to find a liquidity-based conflict absent the presence of additional circumstantial indicators of conflict." *Larkin v. Shah*, 2016 WL 4485447, at *16 (Del. Ch. Aug. 25, 2016); *see also Chen v. Howard-Anderson*, 87 A.3d 648, 670 (Del. Ch. 2014) ("Delaware law presumes that investors act to maximize the value of their own investments"). Plaintiffs have not pleaded any such additional indicators.

Without pleading an underlying breach, intentional interference causing any breach, or lack of justification, Plaintiffs' tortious interference claim was properly dismissed.

III. THE COURT OF CHANCERY CORRECTLY HELD THAT PLAINTIFFS DO NOT STATE A CLAIM FOR UNJUST ENRICHMENT.

A. Questions Presented

Whether the Court of Chancery correctly held that Plaintiffs did not sufficiently state a claim for unjust enrichment against Warburg given the existence of the LLC Agreement. This issue was preserved below, *see* A1234–A1235 (Answering Br. at 53–54), and addressed by the Court of Chancery, *see* Mem. Op. at 26–27.

B. Scope of Review

This Court reviews *de novo* a decision to grant a motion to dismiss under Court of Chancery Rule 12(b)(6). *Olenik*, 208 A.3d at 714. Rule 12(b)(6) requires dismissal where the plaintiff cannot recover under any "reasonably conceivable set of circumstances susceptible of proof" based on the complaint's well-pleaded facts. *Sheldon*, 220 A.3d at 251 n.16. The Court need "not blindly accept as true all allegations," and may only draw inferences in the plaintiff's failure where "they are reasonable." *Dunlap*, 878 A.2d at 439 (cleaned up). Courts also "need not credit an allegation that is unambiguously contradicted by the documents integral to the Complaint's allegations." *Teamsters Loc. 677 Health Servs.*, 2023 WL 1370852, at *20.

C. Merits of Argument

The Court of Chancery properly dismissed Plaintiffs' claim for unjust enrichment against Warburg and this Court should do the same.

"The elements of this claim are: '(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment, [and] (4) the absence of justification . . . .'" Mem. Op. at 26 (citing *Jackson Nat'l Life Ins. Co. v. Kennedy*, 741 A.2d 377, 393 (Del. Ch. 1999)). Unjust enrichment is "a theory of recovery to remedy the absence of a formal contract." *MidCap Funding X Tr. v. Graebel Cos., Inc.*, 2020 WL 2095899, at *17 (Del. Ch. Apr. 30, 2020) (internal citations omitted). Delaware courts have consistently held that "where a contract exists 'no person can be sued for breach of contract who has not contracted either in person or by an agent', and . . . that 'the doctrine of unjust enrichment cannot be used to circumvent this principle merely by substituting one person or debtor for another.'" *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 59 (Del. Ch. 2012) (internal citations omitted).

As the Court of Chancery held, Plaintiffs' "claim arises from the LLC Agreement and concerns the elimination of the tag-along right through a class vote required by the LLC Agreement." Mem. Op. at 26. Warburg is not a party to the contract at issue, and Plaintiffs should not be permitted to use a claim for unjust enrichment to extend the obligations of the LLC Agreement to a nonparty. *Id.*

Plaintiffs' only response is the conclusory statement that their unjust enrichment claim "does not depend on any breach of the LLC Agreement." POB at 50. But that remarkable assertion cannot be squared with the Complaint's allegations. The core of Plaintiffs' unjust enrichment claim is the allegation that Warburg devised an "enrichment scheme" that "was intended to eliminate Plaintiffs' and other Class members' rights" in violation of the LLC Agreement. A0060 (¶¶ 110–12).

Plaintiffs further make the general statement that their "equitable claims against Warburg are viable" because "Warburg did not sign the LLC Agreement except on the WP Investors' behalf." POB at 50. In support, Plaintiffs inexplicably cite the very portion of *Vichi* that clearly holds that "unjust enrichment cannot be used to circumvent basic contract principles recognizing that a person *not a party to a contract* cannot be held liable to it." *Vichi*, 62 A.3d at 59 (Del. Ch. 2012) (cleaned up) (emphasis in original). As the Court of Chancery held, the LLC Agreement "governs the matters at hand" and unjust enrichment cannot "be used to extend the obligations of the LLC Agreement to Warburg, which is not a contractual party." Mem. Op. at 27 (citing *Vichi*).

In a last-ditch effort to salvage this claim, Plaintiffs argue that they "may" be able to satisfy the "without justification" element of unjust enrichment. POB at 50

(internal citations omitted). Not so. The Complaint pleads no wrongdoing. *See In re Lear Corp. S'holder Litig.*, 967 A.2d 640, 657 n.73 (Del. Ch. 2008). As set forth above, merely negotiating the Amendment and Merger was permissible under the LLC Agreement and there was no coercion. *See supra* at 20–39. Instead, Plaintiffs are seeking impermissibly to rewrite the agreement through a claim for unjust enrichment. *See MidCap Funding X Tr.,* 2020 WL 2095899, at *18 (Courts will not permit a plaintiff to use an unjust enrichment claim "to rewrite a comprehensive contract governing the entirety of the parties' relevant relationship after finding disappointment in the resulting agreement.").

CONCLUSION

For the foregoing reasons, the WP Defendants respectfully request that this Court affirm the Court of Chancery's decision dismissing the Complaint with prejudice.

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August 14, 2025

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2025, copies of the foregoing document were served electronically via File & Serve*Xpress* upon the following counsel of record.

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