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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**

WALGREENS BOOTS ALLIANCE, INC.'S ANSWERING BRIEF ON APPEAL

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NATURE OF PROCEEDINGS

This case is fundamentally about Plaintiffs' claim of coercion. The first sentence of Plaintiffs' Opening Brief could not be clearer: "This appeal involves claims that private equity firm Warburg coerced the plaintiffs . . . in connection with the Company's [CityMD-Summit] merger with VillageMD." Plaintiffs never argue – in the Complaint, below, or on appeal – that Walgreens was involved in any way with the supposed coercion between the Company's majority (Warburg) and minority (Plaintiffs) unitholders. This illustrates the fundamental problem with Plaintiffs' claim against Walgreens: Walgreens had no role in any alleged wrongdoing here. Walgreens was not a party to the Merger and did not negotiate its terms. It was not a party to the Company's LLC Agreement or the amendment of that agreement. It had no interest in how the Company's unitholders split the Merger proceeds. Instead, Walgreens was simply the majority owner of VillageMD, which bought the Company from Warburg and Plaintiffs.

The Complaint's sole claim against Walgreens is Count III, tortious interference with contract. The Court of Chancery dismissed this claim with prejudice for failure to allege an underlying breach of contract. This Court should affirm the lower court's well-reasoned opinion for all of the reasons set out in the WP Investors' Brief and VillageMD's Brief.

This Court should affirm the dismissal of the tortious interference claim against Walgreens for three additional, independent reasons.

First, the Complaint fails to allege an improper or unjustified act by Walgreens that interfered with the LLC Agreement. In their Opening Brief, Plaintiffs argue that Walgreens acted improperly by negotiating the Merger Agreement. But that has no grounding in the Complaint. Indeed, in their argument about Walgreens, Plaintiffs never once cite the Complaint. That is because Walgreens was not a party to the Merger Agreement, and the Complaint lacks any well-pleaded allegations that Walgreens was involved in negotiating the Merger. Conclusory assertions set out in an appellate brief cannot save Plaintiffs' case.

Second, Plaintiffs fail to adequately allege that Walgreens intended to interfere with the LLC Agreement. To the contrary, Plaintiffs admitted at oral argument below that Walgreens "didn't care" about how the Company's unitholders split the proceeds of the Merger. It is not reasonable to infer that Walgreens intended to interfere with an issue about which everyone agrees it did not care.

Finally, the Complaint asserts causation only in a purely conclusory manner. Plaintiffs' core theory is that its injury was caused by Warburg's alleged coercion. Plaintiffs have conceded below, and in their briefing on appeal, that Walgreens had

nothing to do with that alleged coercion – and therefore with any alleged resulting injury. That is fatal to their claim against Walgreens.

SUMMARY OF ARGUMENT

1. **Denied.** The Court of Chancery correctly dismissed Plaintiffs' breach of contract claim for the reasons stated in the WP Investors' Brief and VillageMD's Brief. Walgreens is not a Defendant as to Count I, but the Court of Chancery's reasoning that Plaintiffs failed to plead a breach of contract was the basis for its decision dismissing Plaintiffs' tortious interference claim against Walgreens (Count III).

2. **Denied.** The Court of Chancery correctly concluded that Plaintiffs failed to plead an underlying breach of contract, requiring dismissal of their tortious interference claim. The tortious interference claim fails for additional, independent reasons. Plaintiffs failed to adequately allege three required elements of the claim: an improper or unjustified act by Walgreens; intent by Walgreens to interfere with the LLC Agreement; and causation.

STATEMENT OF FACTS

In the interest of brevity, only the allegations relevant to the claim against Walgreens are addressed here. Further factual background is in the other Defendants' Briefs.

I. Allegations About the VillageMD/CityMD-Summit Merger.

In November 2021, VillageMD entered into a non-disclosure agreement with the Company. A0042 (¶ 46).[1] In January 2022, Warburg and the Company had preliminary discussions with VillageMD about a potential merger. A0043 (¶ 47). The Complaint does not allege that Walgreens had any involvement in these discussions.

Discussions between VillageMD, the Company, and Warburg restarted in July 2022, and VillageMD sent a non-binding letter of intent ("LOI") to the Company in August 2022. A0043–44 (¶¶ 47, 49). The Merger and Merger Agreement were then further negotiated over the following months. A0044 (¶ 50). The Complaint does not allege any facts showing Walgreens had anything to do with any of these negotiations. A0044–45 (¶¶ 50–53).

In November 2022, certain agreements ancillary to the Merger were finalized. A0044–45 (¶ 52). As the majority owner of VillageMD, Walgreens

[1] Citations to "A" refer to the Appendix to Plaintiffs-Appellants' Opening Brief on Appeal.

entered into certain of these ancillary agreements, including a support agreement to vote its VillageMD units in favor of the Merger. A0045 (¶ 52 n.4). Plaintiffs and the WP Investors were not parties to the support agreement. Additionally, Walgreens agreed to use its reasonable best efforts to take actions reasonably necessary, proper, or advisable to close the Merger. *Id.* Plaintiffs allege only that Walgreens entered into those ancillary agreements, nothing more.

In connection with the Merger, the Company's unitholders, including Plaintiffs, agreed to amend the LLC Agreement. The amendment process is detailed in the WP Investors' Brief. The Complaint does not allege that Walgreens was a party to the LLC Agreement or the amendment. Nor does the Complaint allege any facts suggesting that Walgreens played any role at all in the amendment process.

VillageMD, the Company, the Merger sub, and the holder representative executed the Merger Agreement on November 7, 2022. A0045 (¶ 53); A0584–1030. The Complaint does not allege that Walgreens signed the Merger Agreement.

II. Allegations About Walgreens.

The bulk of the Complaint is focused on other Defendants, not Walgreens. The body of the Complaint includes only a handful of allegations about Walgreens:

- "Walgreens should not have cared whether the Company's equity holders split the consideration fully *pro rata*, but [was] happy to facilitate Warburg's desire for non-ratable benefits." A0043–44 (¶ 49).

- "Walgreens . . . agreed to certain ancillary agreements . . . ." A0045 (¶ 52 n.4).

- "On March 28, 2024, . . . Walgreens filed a Form 10-Q in which it disclosed that it had taken a goodwill impairment charge on VillageMD of $12.4 billion."[2] A0051 (¶ 73). This charge was based on triggering events that had occurred in the three months ended February 29, 2024.

Indeed, the vast majority of the Complaint's limited references to Walgreens are in the Introduction and in the Counts, and merely assert the elements of a tortious interference claim in conclusory fashion:

- "Walgreens directly facilitated and aided Warburg's efforts to secure better consideration for itself in violation of the LLC Agreement." A0027 (¶ 4).

- "[T]he WP Investors and the Company . . . act[ed] with Warburg, Walgreens, and VillageMD to eliminate the Class's right to receive *pro rata* treatment, without offering or paying consideration to the Class." A0055–56 (¶ 90).

- "[Walgreens was] aware of the LLC Agreement and, specifically, [was] aware of the rights afforded to the Class in connection with the Merger to receive the same *pro rata* form and amount of consideration as the WP Investors." A0058 (¶ 103).

- "[Walgreens] intentionally and deliberately negotiated the terms of the Merger that allowed the WP Investors to receive nearly all of their consideration in cash and forced the Class to receive more than their *pro*

[2] The Complaint's reference to the $12.4 billion goodwill impairment charge refers to the non-cash impairment charge related to VillageMD goodwill. This resulted in a $5.8 billion charge attributable to Walgreens. *See* A0077.

rata share of the consideration in equity, without consideration to the Class." A0058 (¶ 104).

- "Illustrating [Walgreens's] knowledge of the LLC Agreement's terms, [Walgreens] agreed that a condition to the Merger would be the coercive amendments of the LLC Agreement." *Id.*

- "[Walgreens's] intentional conduct [was a] significant factor[] causing the breach of the LLC Agreement. [Walgreens] knew that Warburg and the WP Investors' consent, as the Company's controllers, was required in order for VillageMD to be able to acquire the Company and [Walgreens] facilitated the diversion of consideration in order to complete the Merger." A0059 (¶ 105).

- "Walgreens . . . signed agreements committing it to vote its VillageMD equity in favor of the Merger and through which it provided VillageMD with the cash necessary to fund the Merger." *Id.*

- "As a direct and proximate result of [Walgreens's] intentional conduct, Plaintiffs and other Class members have suffered substantial harm in an amount to be proved at trial." A0059 (¶ 106).

III. Relevant Procedural History.

Plaintiffs filed the Complaint on May 16, 2024, and Defendants moved to dismiss. On April 30, 2025, after briefing and oral argument, the Court of Chancery granted the motions and dismissed the case with prejudice. Mem. Op. ("OP") at 29. The court dismissed the tortious interference claim against Walgreens because it dismissed the underlying breach of contract claim, which was a "necessary factor" for the claim against Walgreens. *Id.* at 25. The court did not reach Walgreens's additional arguments for dismissal. *See* A0080–87.

ARGUMENT

I. The Court of Chancery Properly Dismissed the Tortious Interference With Contract Claim Against Walgreens.

A. Question Presented.

Whether the Court of Chancery properly dismissed the tortious interference claim against Walgreens, where Plaintiffs failed to adequately plead an underlying breach of contract, and alleged no facts supporting a reasonable inference that (a) Walgreens's actions were improper or unjustified, (b) Walgreens intended to interfere with the LLC Agreement, or (c) Walgreens's actions were a significant factor in causing a breach. The question was raised below, *see* A1229–34, and considered by the Court of Chancery, OP at 24–25.

B. Standard and Scope of Review.

This Court reviews de novo the Court of Chancery's decision to dismiss for failure to state a claim under Court of Chancery Rule 12(b)(6). *Norton v. K-Sea Transp. Partners LP*, 67 A.3d 354, 359–60 (Del. 2013). On a motion to dismiss, Delaware courts do not "credit conclusory allegations that are not supported by specific facts, or draw unreasonable inferences in the plaintiff's favor." *Id.* at 360.

C. Merits of the Argument.

"The elements of tortious interference under Delaware law are well established." *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 n.7 (Del. 2005). To state a claim for tortious interference, Plaintiffs must

adequately plead: "(1) a contract; (2) about which defendants knew; and (3) an intentional and improper act that is a significant factor in causing the breach of such contract (4) without justification (5) which causes injury." *Mesirov v. Enbridge Energy Co.*, 2018 WL 4182204, at *16 (Del. Ch. Aug. 29, 2018). "Delaware courts follow Section 766 of the Restatement (Second) of Torts in assessing a tortious interference claim." *WaveDivision Holdings, LLC v. Highland Cap. Mgmt., LP*, 49 A.3d 1168, 1174 (Del. 2012); *Mesirov*, 2018 WL 4182204, at *16 ("Delaware is a Restatement (Second) of Torts jurisdiction.").

The Court of Chancery properly dismissed the tortious interference claim against Walgreens because Plaintiffs failed to adequately allege an underlying breach of contract. *See, e.g.*, *Aspen Advisors LLC v. United Artists Theatre Co.*, 861 A.2d 1251, 1266 (Del. 2004) (holding "there [can] be no viable claim for tortious interference" when the complaint "fail[s] to state a claim for breach of . . . contract"). This Court should affirm the dismissal of Count I's breach of contract claim for the reasons set out in the WP Investors' Brief and VillageMD's Brief. Plaintiffs do not dispute that this would also lead to affirming dismissal of Count III's tortious interference claim. Pls.' Opening Br. ("POB") 44–45.

This Court should affirm the dismissal of Count III for three additional, independent reasons, each of which Walgreens properly raised below. *See* A0080–87.

1. The Complaint Does Not Adequately Allege Any Improper Or Unjustified Act By Walgreens.

Plaintiffs argue on appeal that Walgreens "acted without justification" because it "sought to acquire control of the Company through VillageMD and proposed to pay all-cash Merger consideration to the WP Investors to get Warburg's assent." POB 47. Plaintiffs also say that "[n]egotiating the LOI with Warburg to eliminate the tag-along right in the Merger allowed Walgreens and VillageMD to get favorable deal terms the LLC Agreement prohibited." *Id.* This argument fails on its own terms because the Complaint does not plead any such facts. Indeed, Plaintiffs' Opening Brief does not even ***cite*** the Complaint to support these assertions about Walgreens. *See* POB Section II(C) (never citing Complaint in argument regarding tortious interference claim).

Without any well-pleaded allegations on this point, Plaintiffs concoct new assertions that Walgreens was involved in negotiating the preliminary LOI, a tack they also tried below. Plaintiffs transparently add "Walgreens" to their Brief where it does not exist in the Complaint. *Compare, e.g.*, POB 45 ("Plaintiffs allege facts showing that *Walgreens and Village MD* . . . negotiated the LOI and Merger agreement with Warburg"), *and id.* at 47 ("Negotiating the LOI with Warburg to eliminate the tag-along right in the Merger allowed *Walgreens and VillageMD* to get favorable deal terms the LLC Agreement prohibited."), *with* A0044 (¶¶ 50–51) (alleging "[Company] Management and Warburg engaged in several rounds of

negotiations with *VillageMD* regarding the terms of the LOI") (emphases added); *see also* A1322–23 (Pls.' Omnibus Ct. Ch. Br. doing the same). In fact, Plaintiffs' Brief contradicts the Complaint, saying that "Walgreens . . . proposed to pay all-cash Merger consideration," POB 47, when the Complaint alleges it was Warburg that did so, A0029, A0043–44, A0050–51 (¶¶ 10, 49, 71).

Delaware law prohibits such attempts to rewrite the Complaint through briefing. *See, e.g.*, *Sheldon v. Pinto Tech. Ventures, LP*, 220 A.3d 245, 255 n.45 (Del. 2019) ("Briefs relating to a motion to dismiss are not part of the record and any attempt contained within such documents to plead new facts or expand those contained in the complaint will not be considered.") (quoting *Orman v. Cullman*, 794 A.2d 5, 28 n.59 (Del. Ch. 2002)). Despite Plaintiffs' assertion that the Complaint "allege[s] facts," the Brief cites none regarding Walgreens. POB 45.

This Court must reject Plaintiffs' briefing sleight of hand and hold them to the facts they actually alleged in their Complaint. Walgreens was not a party to the Merger Agreement, and so did not agree to any of the conditions to the Merger stated in that Agreement. *See* A0045 (¶ 53); *see also* A0584–1030. Nor does the Complaint allege any facts indicating that Walgreens had any involvement in the negotiation of the Merger Agreement – let alone the term in that Agreement that related to the amendment of the LLC Agreement. Instead, the Complaint baldly asserts that Walgreens "directly facilitated and aided Warburg's efforts to secure

better consideration for itself in violation of the LLC Agreement" by "negotiat[ing] the terms of the Merger" and "agree[ing] that a condition to the Merger would be the [purportedly] coercive amendments of the LLC Agreement." A0027, A0058–59 (¶¶ 4, 104–05). These allegations are "not supported by specific facts." *Norton*, 67 A.3d at 360. Delaware courts "do not . . . simply accept" such conclusory assertions. *Clinton v. Enter. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009).

Accordingly, Plaintiffs' argument that the "without justification" element of tortious interference is "fact-intensive" does not save them. POB 45–46. The key word is "fact"; Plaintiffs still must allege facts that make a finding in their favor reasonably conceivable. Absent such facts, as here, courts dismiss tortious interference claims for failure to adequately allege unjustified conduct. *See, e.g.*, *Ryan v. Buckeye Partners, LP*, 2022 WL 389827, at *15 (Del. Ch. Feb. 9, 2022), *aff'd*, 285 A.3d 459 (Del. 2022); *AM Gen. Holdings LLC ex rel. Ilshar Cap. LLC v. Renco Grp., Inc.*, 2013 WL 5863010, at *14 (Del. Ch. Oct. 31, 2013); *Himawan v. Cephalon, Inc.*, 2018 WL 6822708, at *10–11 (Del. Ch. Dec. 28, 2018), *aff'd*, 2025 WL 287772 (Del. Jan. 24, 2025).

The Complaint alleges facts regarding just one act by Walgreens in connection with the Merger: signing certain ancillary agreements. A0045 (¶ 52 n.4). But the fact that Walgreens entered into "ancillary agreements" does not state a claim for tortious interference. Plaintiffs' own description of the ancillary

agreements shows that (a) those agreements have nothing to do with the amendment to the LLC Agreement that is at the heart of Plaintiffs' theory, and (b) the agreements are standard and non-controversial terms for a transaction involving a majority-owned subsidiary, such as a support agreement for Walgreens to vote its VillageMD units in favor of the merger. *Id.* Plaintiffs' Brief adds nothing more, simply stating that "Walgreens negotiated and signed agreements ancillary to the Merger" which were "needed to give VillageMD the ability to close the Merger." POB 47. That does not "support a reasonable inference" that Walgreens acted improperly or unjustifiably. *McElrath v. Kalanick*, 224 A.3d 982, 994 (Del. 2020); *Kuroda v. SPJS Holdings, LLC*, 971 A.2d 872, 885 (Del. Ch. 2009) (dismissing tortious interference claim where the complaint "does not contain *factual* allegations").

A more fundamental flaw in Plaintiffs' tortious interference claim arises from Plaintiffs' failure to even argue – let alone plead – that Walgreens was involved in the allegedly coercive amendment to the LLC Agreement. *See Howland v. Kumar*, 2019 WL 2479738, at *5 (Del. Ch. June 13, 2019) (granting motion to dismiss for specific defendant where claim failed to include well-pleaded facts sufficient to suggest wrongdoing by that defendant). Coercion is the alleged impropriety at the heart of Plaintiffs' theory. But Plaintiffs never claim that Walgreens was involved in the supposed coercion: not in the Complaint, not in

their briefing below, and not in their Brief. *See, e.g.*, A0047–50 (¶¶ 61–70); A1183, A1202, A1214 (Pls.' Omnibus Ct. Ch. Br. alleging Warburg, the Class A unitholders, and the Company were responsible for the alleged coercion); A1322–23 (Walgreens's Ct. Ch. Reply Br. pointing this out); POB 2, 17–18, 35–36, 38 (alleging Warburg, the Class A unitholders, and the Company were responsible for the alleged coercion); *see also Roca v. E.I. du Pont de Nemours & Co.*, 842 A.2d 1238, 1241 (Del. 2004) ("Failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that claim on appeal.") (cleaned up). Plaintiffs' failure to argue coercion with respect to Walgreens before the Court of Chancery also waives that argument before this Court. *Manheim v. Ban*, 319 A.3d 268 (TABLE), 2024 WL 1716494, at *1 n.1 (Del. Apr. 22, 2024) (argument "never raised to the trial court" was waived and Court did "not address its merits"); Supr. Ct. R. 8.

Walgreens had no relationship with Plaintiffs, contractual or otherwise, and was entitled to act in its self-interest and to support a transaction independently negotiated and entered into by its majority-owned subsidiary. *See, e.g.*, *NAMA Holdings, LLC v. Related WMC LLC*, 2014 WL 6436647, at *26 (Del. Ch. Nov. 17, 2014). Without involvement in the alleged coercion, nothing Walgreens did or is purported to have done is wrongful. *See, e.g.*, *Ryan*, 2022 WL 389827, at *15

(dismissing tortious interference claim because "the only reasonable inference from the Complaint" was that the conduct was permissible).

2. The Complaint Does Not Adequately Allege Intent By Walgreens To Interfere With the LLC Agreement.

Plaintiffs concede that Walgreens had no motive to interfere with the LLC Agreement. The Complaint says: "Walgreens should not have cared whether the Company's equity holders split the consideration fully *pro rata*." A0043–44 (¶ 49). Plaintiffs reiterated this during oral argument below: "[Walgreens] probably didn't care about how [the Merger proceeds were] allocated on the other side of the transaction." POB Ex. C. 76:5–7.

This concession is fatal. Intent to interfere with the LLC Agreement's allocation of merger proceeds cannot be reasonably inferred where Plaintiffs themselves admit that Walgreens "didn't care" about that issue.

Even without Plaintiffs' concession, the Complaint does not allege facts showing that Walgreens had knowledge about the *specific terms of the amendment* to the LLC Agreement, which is required to state a claim for tortious interference. *Yu v. GSM Nation, LLC*, 2018 WL 2272708, at *22 (Del. Super. Apr. 24, 2018) (complaint must plead facts showing "why or how" defendant "knew or should have known"); *see also Arcelik, A.S. v. E.I. DuPont de Nemours & Co.*, 619 F. Supp. 3d 473, 489 (D. Del. 2022) (requiring knowledge of the specific contract

provision in question for tortious interference claim), *aff'd*, 2023 WL 3862506 (3d Cir. June 7, 2023).

In their Brief, Plaintiffs argue that "Walgreens presumably commenced due diligence" on the LLC Agreement – a prerequisite for Walgreens knowing about Plaintiffs' contractual rights. POB 16. But this assertion does not support Walgreens's knowledge. The mere fact that "the Company signed a non-disclosure agreement *with VillageMD*," *id.* (emphasis added), does not support a "reasonable inference" that *Walgreens* then conducted due diligence. *See id.*; *McElrath*, 224 A.3d at 994. To the contrary, it is rank speculation unsupported by any allegations set out in the Complaint. *See Kuroda*, 971 A.2d at 884.

Nor do Plaintiffs' unpled assertions show Walgreens's knowledge. As discussed above, their Brief makes up entirely new assertions that Walgreens was involved in negotiating the LOI to "get favorable deal terms the LLC Agreement prohibited." *Compare, e.g.*, POB 47 ("Negotiating the LOI with Warburg to eliminate the tag-along right in the Merger allowed *Walgreens and VillageMD* to get favorable deal terms the LLC Agreement prohibited."), *with* A0044 (¶¶ 50–51) (alleging "[Company] Management and Warburg engaged in several rounds of negotiations with *VillageMD* regarding the terms of the LOI") (emphases added). These allegations are not in the Complaint and therefore, for the reasons discussed above, this Court should not consider them. *See Sheldon*, 220 A.3d at 255 n.45.

Without any allegations that Walgreens intended to interfere with the LLC Agreement, Plaintiffs' Complaint fails to state a claim.

At most, there is a reasonable inference that Walgreens, as a majority owner of VillageMD, had a business interest in the Merger to the extent that the Merger was expected to be accretive for VillageMD. Having a business interest in the success and growth of a majority-owned subsidiary is not tortious. *See BV Advisory Partners, LLC v. Quantum Computing Inc.*, 2024 WL 2723119, at *15–16 (Del. Ch. May 28, 2024); *NAMA Holdings*, 2014 WL 6436647, at *26 ("[A] parent corporation can [only] be held liable for tortiously interfering with its subsidiaries' contracts when a plaintiff proves that the parent was not pursuing in good faith the legitimate profit seeking activities of the affiliated enterprises.") (quoting *Allied Cap. Corp. v. GC-Sun Holdings, LP*, 910 A.2d 1020, 1039 (Del. Ch. 2006)). There is no suggestion that Walgreens was aware that any alleged contractual breach was "a necessary consequence" of any action taken to advance the Merger, which would be necessary to establish intent to interfere. *BV Advisory*, 2024 WL 2723119, at *15 (quotation marks omitted).

So, Plaintiffs' unsupported allegations asserting Walgreens's "knowledge," *e.g.*, A0047, A0058 (¶¶ 61, 103–04), are inherently "threadbare" and insufficient to state a claim. *Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *30 (Del. Ch. Jan. 26, 2024). Regardless, "[k]nowledge of the contract itself is insufficient to establish a

tortious interference claim; the actor must also intend to interfere." *BV Advisory*, 2024 WL 2723119, at *15 (quoting *NAMA Holdings*, 2014 WL 6436647, at *28); RESTATEMENT (SECOND) OF TORTS § 766 cmt. i (1979) (knowledge of both the contract and the fact that the defendant is interfering with the performance of the contract is required for liability under intentional interference with the performance of a contract). Plaintiffs' failure to plead intent to interfere – and concession that Walgreens had no such intent – requires affirmance of the dismissal below.

3. The Complaint Fails To Plead Causation By Walgreens.

Finally, Plaintiffs did not adequately allege that any action by Walgreens was a "significant factor in causing the [alleged] breach of contract." *WaveDivision*, 49 A.3d at 1174. Plaintiffs do not seriously argue this point in their Brief, saying only: "Plaintiffs allege facts showing that Walgreens and VillageMD knew of the LLC Agreement and negotiated the LOI and Merger Agreement with Warburg to avoid and coercively eliminate the tag-along right, causing Plaintiffs and the Class B unitholders the same significant harm." POB 45. Plaintiffs do not cite the Complaint on this point, because the Complaint does not allege any such facts about Walgreens.

Indeed, the only allegation in the Complaint that purports to explain how Walgreens was a "significant factor" in causing Plaintiffs' injury is Paragraph 105 (A0059):

> Walgreens'[s] and VillageMD's intentional conduct were significant factors causing the breach of the LLC Agreement. [Walgreens] knew that Warburg and the WP Investors' consent, as the Company's controllers, was required in order for VillageMD to be able to acquire the Company and [it] facilitated the diversion of consideration in order to complete the Merger. [Walgreens] also signed agreements committing it to vote its VillageMD equity in favor of the Merger and through which it provided VillageMD with the cash necessary to fund the Merger. That cash was then improperly diverted to the WP Investors.

At most, then, the Complaint alleges that Walgreens knew the basic terms of the Merger Agreement, and that Walgreens made the business decision to support and fund VillageMD's transaction (*i.e.*, by voting its VillageMD equity in favor and providing cash to VillageMD). While this paragraph of the Complaint contains a lot of words, the allegation that Walgreens "facilitated the diversion of consideration" amounts to the same unsupported assertion made in other parts of the Complaint about "facilitating" the amendment to the LLC Agreement.

Plaintiffs allege no facts as to how Walgreens supposedly "facilitated" anything. Given that Walgreens was not a party to, and was not involved with, the LLC Agreement amendment that lies at the crux of Plaintiffs' claims, the Complaint is "devoid of any *factual* allegations that lead to a reasonable inference" that Walgreens's conduct was a "significant factor" in causing anything. *See Kuroda*, 971 A.2d at 885; *Yu*, 2018 WL 2272708, at *22 (dismissing tortious interference claim). Here, too, the fundamental flaw in Plaintiffs' Complaint

dooms their claim: Walgreens was not involved with any supposed coercion and therefore did not cause any breach of contract.

CONCLUSION

For the reasons above, as well as those in the WP Investors' Brief and VillageMD's Brief, Walgreens respectfully requests that the Court affirm the Court of Chancery's judgment dismissing the Complaint with prejudice.

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