



IN THE SUPREME COURT OF THE STATE OF DELAWARE

PAYSCALE INC., Appellant/Plaintiff Below, v. ERIN NORMAN and BETTERCOMP, INC., Appellees/Defendants Below.	No. 297,2025 Court Below: The Court of Chancery of the State of Delaware, C.A. No. 2025-0118-BWD
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APPELLANT'S OPENING BRIEF

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Dated: August 26, 2025

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NATURE OF PROCEEDINGS

Appellant/Plaintiff-below Payscale Inc. (“Payscale”) brought the below action in the Court of Chancery against appellees/defendants-below Erin Norman (“Norman”) and BetterComp, Inc. (“BetterComp” together with Norman “Defendants”) for breach of restrictive covenants and tortious interference. Norman, a former senior-level Payscale sales director, is bound by two separate Incentive Equity Agreements (the “Agreements”) executed during her employment with Payscale. Under the Agreements, Norman was granted a significant amount of Profit Interest Units and, in exchange, agreed to post-employment noncompetition, nonsolicitation, and nondisclosure obligations. Since voluntarily resigning from her employment with Payscale, Norman breached and continues to breach these obligations, including through her current employment with BetterComp, a direct competitor of Payscale.

Because Payscale and BetterComp offer similar product and service solutions to the same target market, there is significant overlap in the customers they target. Further, Norman holds a senior, customer-facing sales position at BetterComp, just as she did for Payscale. Moreover, there is overlap between the states in Norman’s BetterComp and Payscale territories. In addition, her senior positions at Payscale gave her responsibility over and access to information beyond her assigned territories. As a result, each day Norman continues to work for BetterComp in

violation of the Agreements, Payscale risks losing valuable customers and business prospects to BetterComp, as well as the exposure of its confidential information.

Payscale filed its Verified Complaint for Injunctive Relief (the “Complaint”) and accompanying motions to expedite and for a temporary restraining order on January 31, 2025. A021 at Dkt. 1. Payscale sought to enjoin Norman from continuing to breach the Agreements’ restrictive covenants and stop BetterComp from tortiously interfering with the Agreements and Payscale’s prospective business relations. *Id.* During the February 13, 2025 teleconference on the motions, the trial court denied the motion for a temporary restraining order but granted the motion to expedite on the basis Payscale stated a colorable claim on all its counts. A200 at 51:18-24. When granting the motion to expedite the trial court noted Defendants previewed their arguments that the restrictive covenants were unenforceable against Norman. A201 at 52:10-15.

On March 14, 2025, Payscale filed its Verified Amended Complaint (the “Amended Complaint”) adding 33 additional paragraphs of detailed allegations. A012 at Dkt. 26. On March 21, 2025, Defendants moved to dismiss the Amended Complaint making essentially the same arguments espoused during the briefing and hearing on the motion to expedite. A010 at Dkt. 29. On June 9, 2025, the Court of Chancery issued its Memorandum Opinion Granting Motion to Dismiss (the “Opinion”), which is attached hereto as Exhibit “A.”

When issuing its decision, the trial court made a complete 180 from its ruling on Payscale’s motion to expedite. Despite Defendants re-articulating similar arguments and the Rule 12(b)(6) standard and colorable claim standard effectively being the same, the trial court reached the exact opposite conclusion. The trial court determined Payscale failed to state a claim on every count in the Amended Complaint even though Payscale added 33 paragraphs of detailed allegations to the Amended Complaint. These included additional details about Norman’s senior level role at Payscale; Norman being one of three key marketing personnel for Payscale; Sonic Topco’s organizational structure with Payscale and its subsidiaries being the only operative entities; and details about the issuance and value of the Profit Interest Units.

The trial Court could only reach this opposite determination by failing to apply the Court of Chancery Rule 12(b)(6) (“Rule 12(b)(6)”) standard and disregarding the well-pled allegations in the Amended Complaint. The trial court further erred by resolving factual disputes in favor of Defendants and drawing critical inferences in favor of Defendants. Instead of assessing whether Payscale satisfied the Rule 12(b)(6) standard, the trial court created strawman arguments ignoring Payscale’s targeted enforcement of the noncompetition provision and disregarded the actual risk Payscale faced by having a former senior marketing employee work for a direct competitor. The trial court also credited Defendants’ unsupported factual

representations downplaying Norman's role at Payscale and the consideration she received in exchange for the noncompetition provision. The trial court relied on this misguided reasoning to grant the motion to dismiss and find the noncompetition provision was facially invalid.

Had the trial court abided by the Rule 12(b)(6) standard and accepted all of the Amended Complaint's well-pled facts as true, it would have reached the same conclusion as it did on the motion to expedite. Specifically that Payscale sufficiently demonstrated that the noncompetition provision is enforceable because it is reasonable in scope and furthers Payscale's legitimate interests.

The trial court further erred in determining the Amended Complaint failed to state a claim for breach of the nonsolicitation provision and confidentiality provision as well as for tortious interference with the Agreements. The Amended Complaint sufficiently pleads enough facts to support both claims.

Accordingly, Payscale respectfully requests that the Supreme Court REVERSE the trial court's dismissal of Counts I and II of the Amended Complaint.¹

¹ The trial court also dismissed Count III of the Amended Complaint. Payscale is not seeking to appeal the dismissal of Count III.

SUMMARY OF ARGUMENT

1. When holding the noncompetition provision of the Agreements is facially invalid, the Court of Chancery erred by ignoring the Rule 12(b)(6) standard. The Court of Chancery improperly ignored the well-pled allegations, resolved factual disputes, and made inferences in favor of the Defendants. The Court of Chancery should have but failed to consider the scope of the noncompetition provision in the context of Norman’s employment with Payscale, taken the well-pled allegations in the Amended Complaint as true, and made inferences in Payscale’s favor. Applying the Rule 12(b)(6) standard, the Amended Complaint pleads the noncompetition provision is reasonable and should not have been dismissed.

2. The Court of Chancery erred by finding the Amended Complaint failed to state a claim for breach of the nonsolicitation and confidentiality provisions. The facts pled in the Amended Complaint, when taken in their totality, sufficiently plead a claim for breach of the nonsolicitation provision and confidentiality provision through Norman’s employment with BetterComp, a direct competitor to Payscale.

3. The Court of Chancery erred by finding the Amended Complaint failed to state a claim for tortious interference with contractual relations by BetterComp. The Court of Chancery solely dismissed this claim on the basis Payscale failed to plead a breach of the restrictive covenants in the Agreements. Because Payscale adequately pled a claim for breach of the restrictive covenants in the Agreements,

the Court of Chancery should have also found the Amended Complaint sufficiently pled a claim for tortious interference with the Agreements by BetterComp.

STATEMENT OF FACTS

A. Payscale's Business

Payscale provides high-quality compensation data, software, and services to customers across the United States. Payscale is a leader in the compensation data and software solutions market and is a wholly owned subsidiary of Sonic Topco, a Delaware limited partnership. A213-14 ¶ 14; A214 ¶ 15; A218 ¶¶ 30-31. In May 2019 Sonic Topco was formed as the holding company for Payscale. A216 ¶ 26. Sonic Topco does not conduct any business or have any employees. A213-14 ¶ 14. Its sole function is and has always been to hold the equity of Payscale. Payscale and its subsidiaries are the only operating entities under Sonic Topco. *Id.* Payscale's subsidiaries are all entities Payscale acquired or with which Payscale merged, such as Payfactors and MarketPay. Each subsidiary conducts the same line of business as Payscale. A216 ¶¶ 24, 25; A217-18 ¶¶ 28, 29; A230-31 ¶ 67; A309-10.

Payscale does business throughout the United States and has employees in approximately 44 states and 16,000 customers across the country. A213 ¶ 13; A218 ¶ 32. Many of Payscale's customers operate nationwide or, at least, beyond the borders of the state in which they are headquartered. A220 ¶ 41. Indeed, because Payscale's products are used to manage employee compensation, Payscale's customers use Payscale's products in any state in which they have employees. *Id.* ¶ 41. Several of Payscale's customers also operate internationally. *Id.*

One of Payscale's primary direct competitors is BetterComp, a California corporation that, like Payscale, offers compensation market pricing software services and products to customers nationwide. A214 ¶ 17; A226 ¶ 58. BetterComp was co-founded by former Payscale executives. A236 ¶ 84. BetterComp has a history of poaching Payscale employees to gain access to Payscale's Confidential Information, benefit from the good will the employees develop on Payscale's behalf, and otherwise obtain an improper competitive advantage over Payscale. A246 ¶ 133. As a result of BetterComp's tactics, roughly one-third of its employees are former Payscale employees, like Norman. *Id.*

B. Norman's Employment at Payscale

Norman is domiciled in Florida and was employed by Payscale from approximately May 2021 to September 2021, and again from November 2021 to December 2023. A214 ¶ 16. Before joining Payscale, Norman held senior sales positions at MarketPay from 2008 until its merger with Payscale in 2016. A221 ¶ 43. She then worked at Payfactors from 2016 until its acquisition by Payscale in 2021. *Id.* Norman's most recent positions at Payscale were Director of Sales (November 29, 2021 – February 26, 2023) and Senior Director of Sales (February 26, 2023 – December 1, 2023). A221-22 ¶ 45; A235 ¶ 77.

As Senior Director of Sales, Norman was one of Payscale's three most senior sales leaders. A222-23 ¶ 49. Her gross annual income was \$468,946.73. A222 ¶

47. At the time of her voluntary separation, Norman supervised approximately 17 direct reports and reported to the Senior Vice President of Revenue who, in turn, reported to the Chief Operating Officer. A222-23 ¶¶ 48, 49, 50. Norman’s job duties included overseeing the Enterprise Sales teams for the West region and working with the other senior sales leaders to develop and execute sales strategies. This included working with other go-to-market teams to identify opportunities to gain efficiencies across Payscale and driving sales teams to achieve annual sales revenue. A223-24 ¶¶ 51, 52, 53; A226-27 ¶ 59.

Norman was integral in developing Payscale’s marketing strategy and was consulted about Payscale’s sales-related decision-making. She often participated in meetings with Payscale’s other top executives, including Payscale’s Chief Revenue Officer, Senior Vice President of Revenue, Vice President of Sales, and Vice President of Solutions Consulting to discuss sales, marketing, and product development strategies. A223 ¶ 51; A224 ¶ 54. Norman also advanced Payscale’s nationwide sales efforts by directly and indirectly soliciting customers and potential customers with over 1,200 or more employees (referred to as “Enterprise” entities). A219 ¶ 35; A228-29 ¶ 62. She strategized with the Chief Revenue Officer to ensure Payscale hit sales targets, as well as with the other sales leaders to inform pricing and packaging of Payscale’s products. A223-24 ¶ 53. Norman was intimately familiar with other Confidential Information including: (i) Payscale’s customer

pricing models; (ii) specific Payscale products and services customers purchased; (iii) Payscale sales employees' compensation plans and quota structures; (iv) how Payscale's sales teams are organized, including internal job descriptions and expectations for various sales roles and responsibilities; and (v) informing Payscale's product road map and product implementation process. A226-27 ¶ 59; A245-46 ¶ 129.

Notably, Norman participated in strategy discussions with Payscale's top executives aimed at gaining a strategic advantage over BetterComp specifically. A225-26 ¶ 57. Norman was privy to reports and surveys analyzing how Payscale is perceived in the market and against direct competitors, including BetterComp. A226 ¶ 58. She was intimately involved with the process of identifying what drives prospective customers to choose BetterComp over Payscale. *Id.*

Although Norman was primarily responsible for Payscale's West region, comprising 29 U.S. states and 11 Canadian provinces, the scope of her work extended beyond that region. A220 ¶ 38; A226-27 ¶ 59. She was exposed to Payscale's entire customer base—not just Payscale's customers in the West region—and gained strategic insight into how Payscale's products were marketed and sold to its Enterprise customers. A225 ¶ 56. Norman also met regularly with Payscale's Senior Sales Director for the East region to discuss the deals in progress, customers and prospective customers, pricing and competition strategies. They also discussed

Payscale's lost customers in the East and West regions to collaboratively develop strategies for better customer retention. A226-27 ¶ 59. Norman and Payscale's Senior Director of Sales for the East Region also regularly exchanged reports on their respective Enterprise accounts, and shared weekly team meeting agenda notes with one another. *Id.* Additionally, Payscale's Senior Vice President of Revenue organized bi-weekly calls that included Norman and the Senior Sales Director for the East Region to discuss growth, expansion, and renewal activity. A227-28 ¶ 60. Evidencing the importance of coordinating these meetings, Payscale's Senior Vice President of Revenue stated that Payscale's cross-functional departments must be aligned and interconnected to support Payscale's success. *Id.*

C. Norman's Obligations to Payscale Under the Agreements

On March 14, 2022, and August 14, 2023, in connection with Norman's hiring and promotion, respectively, Norman entered into the Agreements, which included a noncompetition (the "Non-Compete Provision"), non-solicitation (the "Non-Solicitation Provision"), and confidentiality clauses (collectively, the "Restrictive Covenants"). A209 ¶ 3; A257-308; A311-17. Pursuant to the Agreements, in exchange for her promise to abide by the Restrictive Covenants, Norman received 175,000 Profits Interest Units ("PIUs"). A229-30 ¶ 63; A257-308. She also received other good and valuable consideration, including her signing bonus, salary, raise, and access to Payscale's confidential information. *Id.*

Pursuant to the Restrictive Covenants, Norman agreed for a period of 18-months after her separation from employment with Payscale (the “Protection Period”), that she would not work for a competitor of Payscale within the United States or solicit or attempt to solicit Payscale’s customers or prospective customers. A229-30 ¶ 63; A266 § 8(a)-(b); A291 § 8(a)-(b). Norman also agreed not to disclose Payscale’s Confidential Information during or after her employment. A232-33 ¶ 70; A263-65 § 7; A288-90 § 7. Under the Agreements, the Protection Period is extended for a period equal to the amount of time Norman breaches the Restrictive Covenants. A234-35 ¶ 76; A267 § 8(d); A292 § 8(d).

The Restrictive Covenants contained in the Agreements apply to the “Partnership Group,” which is defined as “the Partnership [Sonic Topco] together with any direct or indirect Subsidiaries of the Partnership.” A231-32 ¶ 69; A268 § 9; A293 § 9. Payscale is the only direct subsidiary of Sonic Topco that is an operating entity. A231-32 ¶ 69. Sonic Topco’s indirect subsidiaries are the direct subsidiaries of Payscale, all of which conduct the same line of business as Payscale. A230-32 ¶¶ 67, 69. Payscale has four subsidiaries, two of which Norman worked at prior to their acquisition by Payscale. A214 ¶ 16; A231-32 ¶ 69; A310.

Pursuant to the Agreements, Norman acknowledged that “a breach or threatened breach of any of the terms set forth in the Agreement may result in an irreparable and continuing harm to the Partnership Group for which there may be no

adequate remedy at law” and that the Partnership Group will “be entitled to seek injunctive and other equitable relief in order to prevent a breach of the Agreement or to enforce its provisions, in addition to any other remedies available to [Payscale].”

A233 ¶ 72; A266 § 8(c); A291 § 8(c). Norman further agreed that Payscale, as Sonic Topco’s subsidiary “is an express third-party beneficiary hereof and will have the right to enforce all of [her] obligations to the Partnership Group under this Agreement...” A233 ¶ 73; A266 § 8(c); A291 § 8(c). Additionally, Norman acknowledged “the potential harm to [Payscale] of the non-enforcement of [the Agreement] outweighs any potential harm to [Norman] of its enforcement by injunction or otherwise,” and that “each and every restraint imposed by [the] Agreement is reasonable with respect to subject matter, time period and geographical area.” A234 ¶ 75; A267 § 8(d); A292 § 8(d).

D. Defendants’ Breach of the Agreements

In or around October 2024, Norman began working for BetterComp as Sales Director² in breach of the Agreements. A236 ¶ 82. The Sales Director role is a senior-level sales position. A237-38 ¶ 88. Norman’s job duties in that role include managing a sales team, being involved in sales strategy, and directly and indirectly soliciting customers and potential customers with 1,000 or more employees. *Id.*

² At some point after Payscale filed this action, BetterComp changed Norman’s title. A212 ¶ 9.

Norman's work also involves pitching and selling BetterComp's flagship service, which directly competes with MarketPay, and to a lesser extent, Payscale's Payfactors product, to the same customers and prospective customers she dealt with or about whom she gleaned Confidential Information while at Payscale. A238 ¶ 89; A246 ¶¶ 130-31. Norman's Sales Director duties overlap significantly with her job duties as Payscale's Senior Director of Sales. *Id.*

Payscale has lost and will continue to lose profits, income, and valuable business opportunities as a direct result of Norman's continued violations of the Agreements. A247 ¶ 136. For example, since December 2024, shortly after Norman began working for BetterComp, Payscale lost at least five Enterprise customers to BetterComp, and believes that several more Enterprise customers left Payscale for BetterComp. A245 ¶ 128. Enterprise customers typically maintain long-term relationships, exhibit high renewal rates, and generally do not move to a new vendor frequently. *Id.*

E. The Court of Chancery Litigation

Payscale filed its Complaint and accompanying motions to expedite the proceedings and for a temporary restraining order on January 31, 2025. A021 at Dkt. 1. After briefing Payscale's motions to expedite and for a temporary restraining order, the Court of Chancery held a telephonic conference on the motions on February 13, 2025. A015-16 at Dkt. 17. During the conference on the motions, the

Court of Chancery denied the motion for a temporary restraining order because Payscale failed to demonstrate irreparable harm and the balance of the equities favored Defendants. A201-04 at 52:16 – 55:11. The Court of Chancery, however, granted Payscale’s motion to expedite finding Payscale met its burden on demonstrating a colorable claim on all three counts in the Complaint. A200 at 51:18-24. When granting the motion to expedite the Court of Chancery specifically noted “[w]hile the defendants have offered a cogent preview of their argument that the clauses at issue should not be enforced against Norman at this very early stage of the proceedings, the movant’s burden is colorable claim and, in my view, the plaintiff has met that burden here.” A201 at 52:10-15.

On February 26, 2025, Defendants moved to dismiss the Complaint. A015 at Dkt. 18. In response, Payscale filed its Amended Complaint on March 14, 2025 adding detailed allegations related to Norman’s role and duties at Payscale, Sonic Topco’s organizational structure, and structure of the PIUs among others. A012 at Dkt. 26. Payscale added 33 additional paragraphs of allegations to the Amended Complaint. *Compare* A023-57 with A207-55. On March 21, 2025, Defendants filed a motion to dismiss the Amended Complaint. A010 at Dkt. 29. On June 9, 2025, the Court of Chancery issued its Memorandum Opinion Granting Motion to Dismiss. *See* Ex. A.

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN DETERMINING THE NON-COMPETE PROVISION IS UNENFORCEABLE

A. Question Presented

Whether the Court of Chancery erred in dismissing Plaintiff's claim for breach of the Non-Compete Provision by holding it to be facially unenforceable. A383-A403; Ex. A at 8-18.

B. Scope of Review

This Court reviews a trial court's grant of a motion to dismiss *de novo*. *Flood v. Synutra Int'l, Inc.*, 195 A.3d 754, 757 n.7 (Del. 2018).

C. Merits of Argument

The Court of Chancery dismissed Payscale's claim for breach of the Non-Compete Provision by determining the provision was facially unenforceable. Ex. A. at 19. The Court of Chancery's determination that the provision was facially unenforceable was a complete 180-degree turnaround from the ruling on Payscale's motion to expedite.

When Defendants moved to dismiss the Amended Complaint, they articulated practically the same exact arguments the Court of Chancery noted were previewed during the hearing and briefing on the motion to expedite. A201 at 52:10-15; *see A256-A303*. Despite Defendants re-articulating similar arguments and the Rule 12(b)(6) standard and colorable claim standard effectively being the same, the Court

of Chancery reached the exact opposite determination. The Court of Chancery determined the Non-Compete Provision facially unenforceable even though Payscale added 33 paragraphs of detailed allegations to the Amended Complaint, including additional details about Norman's senior level role at Payscale; Norman being one of three key marketing personnel for Payscale; Sonic Topco's organizational structure with Payscale and its subsidiaries being the only operative entities; and details about the issuance and value of the PIUs. *See* A213-14 ¶ 14; A216 ¶¶ 24-26; A217-18 ¶¶ 28, 29; A219 ¶ 35; A222-24 ¶¶ 47-54; A225-27 ¶¶ 57-59; A227-30 ¶¶ 60, 62, 63; A245-46 ¶ 129.

Despite additional detailed allegations directly relating to the Agreements and the effect of the Non-Compete Provision, the same arguments the Court rejected on a motion to expedite were deemed enough to grant dismissal under Rule 12(b)(6). In doing so the Court of Chancery made several reversible errors. Specifically, in opposition to the case law the Court of Chancery ignored the context of the employment relationship when evaluating the reasonableness of the Non-Compete Provision. The Court also did not abide by the motion to dismiss standard under Rule 12(b)(6) when ignoring well-pled allegations in the Amended Complaint and resolving factual disputes against Plaintiff and then drawing inferences in favor of the Defendants.

If the context of the employment relationship and the well-pled allegations in the Amended Complaint are considered, Payscale adequately pled the Non-Compete Provision is reasonable and should survive a motion to dismiss.

1. The Amended Complaint Pleads the Non-Compete Provision is Enforceable Under Delaware Law and Survives a Rule 12(b)(6) Motion

When considering a motion to dismiss under Court of Chancery Rule 12(b)(6), the Court must “(1) accept all well pleaded factual allegations as true, (2) accept even vague allegations as ‘well pleaded’ if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party.” *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 535 (Del. 2011). “[T]he governing pleading standard in Delaware to survive a motion to dismiss is reasonable ‘conceivability.’” *Id.* at 537. “The reasonable conceivability standard asks whether there is a possibility of recovery.” *Garfield v. BlackRock Mortg. Ventures, LLC*, 2019 WL 7168004, at *7 (Del. Ch. Dec. 20, 2019). Dismissal is inappropriate “unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.” *Cent. Mortg.*, 27 A.3d at 535. A motion to dismiss shall be denied if even just “one conceivable set of facts could possibly merit granting the plaintiff relief.” *In re Primedia Inc. Derivative Litig.*, 910 A.2d 248, 256 (Del. Ch. 2006).

“The complaint ordinarily defines the universe of facts from which the trial court may draw in ruling on a motion to dismiss.” *Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001); *see also In re Santa Fe Pacific Corp. S’holder Litig.*, 669 A.2d 59, 68 (Del. 1995) (“Generally, matters outside the pleadings should not be considered in ruling on a motion to dismiss”). The Court will not resolve factual disputes when deciding a Rule 12(b)(6) motion. *See e.g., Doe 30’s Mother v. Bradley*, 58 A.3d 429, 445 (Del. Super. 2012) (noting Delaware courts “will not adjudicate contested issues of fact on a motion to dismiss”); *Townson*, 780 A.2d at 1082 (“[On] a motion to dismiss [. . .] the Court of Chancery may not resolve material factual disputes[.]”); *Windy City Invs. Holdings., LLC v. Teachers Ins. & Annuity Ass’n of Am.*, 2019 WL 2339932, at *10 (Del. Ch. May 31, 2019) (“[Defendant’s] efforts to refute [plaintiff’s] version of the facts are not appropriate at the motion to dismiss stage, where [plaintiff] has pled its allegations adequately.”).

“Under Delaware law, a covenant not to compete must: (1) be reasonable in geographic scope and temporal duration, (2) advance a legitimate economic interest of the party seeking its enforcement, and (3) survive a balancing of the equities in order to be enforceable.” *Lyons Ins. Agency, Inc. v. Wilson*, 2018 WL 4677606, at *5 (Del. Ch. Sept. 28, 2018).

The Non-Compete Provision prohibits Norman from engaging in Competitive Activity for 18 months following her termination of employment with Payscale.

A266 § 8(a); A291 § 8(a). “Competitive Activity” is defined as “own[ing], manag[ing], operat[ing, control[ling], participat[ing] in, render[ing] services for, or in any other manner engag[ing] in, anywhere in the United States, any Competitive Business.” A268 § 9; A293 § 9. This definition further states that it does not prevent a Recipient from

(b) being employed or engaged by an entity where such work (i) would not involve any level of strategic, advisory, technical, creative, or sales activity or (ii) is exclusively in connection with an independent business line of such entity that is wholly unrelated to the business operated by the Partnership Group and the Confidential Information.

Id.

Section 9 also defines “Competitive Business” as “any business conducted by the Partnership or any of its Subsidiaries as of such Recipient’s Separation Date or any business proposed to be conducted by the Partnership or any of its Subsidiaries as evidenced by a written business plan in effect prior to such Recipient’s Separation Date.” *Id.*

Under the plain terms of the Non-Compete Provision, taken as a whole, Norman is prohibited for up to 18 months from working in a strategic, advisory, technical, creative, or sales activity for an employer in the United States who is in the same line of business as Payscale, i.e. a direct competitor like BetterComp. When the plain language of the Non-Compete Provision is reviewed in the context of the employment relationship between Norman and Payscale, the Amended

Complaint pleads the Non-Compete Provision is (i) reasonable in both geographic and temporal scope and (ii) further Payscale’s legitimate business interests.

2. The Non-Compete Provision’s Geographic Scope and Temporal Duration is Reasonable

“To determine the reasonableness of the Non-Compete, the Court must read the contractual language as a whole, in the context of the employment relationship.”

Hub Grp., Inc. v. Knoll, 2024 WL 3453863, at *8 (Del. Ch. July 18, 2024). Under Delaware law, “[t]he reasonableness of a covenant’s scope is not determined by reference to physical distances, but by reference to the area in which a covenantee has an interest the covenants are designed to protect.” *Kodiak Building Partners, LLC v. Adams*, 2022 WL 5240507, at *11 (Del. Ch. Oct. 6, 2022). “Reasonableness of duration must be determined based upon the nature of the employee’s position and the context of a particular industry.” *Del. Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, at *14 (Del. Ch. Oct. 23, 2002).

The Court of Chancery admits the 18-month duration of the Non-Compete Provision is not unreasonable by itself but becomes unreasonable when combined with a nationwide geographic scope. Ex. A at 10. Determining the nationwide scope of the Non-Compete Provision was overbroad, the Court did not consider the context of Norman’s relationship with Payscale or the well-pled factual allegations justifying a nationwide scope and the consideration in support thereof.

a. The Amended Complaint Alleges Facts to Support the Scope of the Non-Compete Provision

The Amended Complaint clearly states Payscale does business throughout the United States and has approximately 16,000 nationwide customers. A213 ¶ 13; A218 ¶ 32. The Amended Complaint further alleges Norman was the Senior Director of Sales at Payscale with a base salary of \$174,998.98/year, taking home \$468,946.73 in gross income in 2023 when including commissions. A 222 ¶ 47. Norman reported directly to the Senior Vice President of Revenue, who oversaw all Payscale's sales activity, and reported to the Chief Operating Officer. A222-23 ¶ 49. The Amended Complaint further alleges that at the time of Norman's departure, Payscale's three key sales leaders were (1) the Senior Vice President of Revenue, (2) the Senior Director of Sales for the East Region, and (3) Norman, the Senior Director of Sales for the West Region. A223 ¶ 50.

Further, as detailed in the Amended Complaint, Norman was part of high-level strategic decisions and was involved in creating some of Payscale's most sensitive information. For example, the Amended Complaint pleads: (i) Norman met regularly with Payscale's top executives; (ii) helped develop Payscale's marketing and competitive strategy; (iii) was consulted with respect to Payscale's sale-related decision-making; (iv) was responsible for identifying and contracting with a vast swath of the U.S. and Canadian markets; (v) was exposed to Payscale's entire

customer base; and (vi) gained strategic insight into how Payscale's products were marketed and sold to its Enterprise customers regardless of where they were located. A223-28 ¶¶ 51-60. Far from being geographically limited, Norman met regularly with her counterpart, Payscale's Senior Director of Sales for the East Region. *Id.* The two exchanged reports on their respective Enterprise accounts and shared weekly team meeting agenda notes. *Id.* These are just some of the responsibilities Norman had at Payscale, with many more detailed in the Amended Complaint. *See generally* A207-255.

Similar to Norman's role at Payscale, BetterComp also offers services and products to its customers nationwide. A214 ¶ 17. BetterComp also sells to Enterprise customers, which operate nationally and not just within the state in which they are headquartered. A225 ¶ 56; A226-27 ¶ 59. Enterprise customers are considered high value, as the average contract length of Enterprise customers in the compensation data and analytics industry is three years. A219 ¶¶ 35, 36. Because of this average length it is difficult to re-sign Enterprise customers once they have contracted with a competitor in the industry. *Id.* ¶ 36. Moreover, since 2018 Payscale has renewed contracts with only 283 former Enterprise customers. *Id.*

On a Rule 12(b)(6) motion the Court must take these well-pled allegations as true. When doing so the Amended Complaint pleads Norman held a senior level position at Payscale and her responsibilities for Payscale were nationwide. Norman's

seniority and knowledge of Payscale’s business for enterprise customers present all over the country justifies the nationwide scope. *See Wal-Mart Stores, Inc. v. Mullany*, C.A. No. 6040-VCL, Tr. at 69, 70 (Del. Ch. Dec. 15, 2010) (TRANSCRIPT) (“If noncompetes apply effectively anywhere, they apply to the senior, big dog, alpha male and female individuals who are actually running the corporation, and have knowledge of its strategies and tactics and deepest secrets.”).

Furthermore, because of the average contract length for Enterprise customers, if Payscale loses one to a competitor it must wait at least three years before realistically attempting to re-sign that customer. This fact, combined with Norman’s senior-level status and knowledge of Payscale’s Enterprise customers, makes the Non-Compete Provision’s 18-month duration more than reasonable to protect Payscale’s valid economic interests. *See Older*, 2002 WL 31458243 at *14 (holding a non-compete provision with a two-year duration reasonable because of the key role held by the employee with intimate knowledge of Delaware Express’ business operations and the price elasticity of charter bus market).

The Court of Chancery erred in not considering these facts and the context of Norman’s employment when determining the scope of the Non-Compete Provision was overbroad. When considered, the Amended Complaint pleads facts sufficient to support the reasonableness of both the geographic and temporal scope of the Non-Compete Provision.

b. The Amended Complaint Pleads the Non-Compete Provision was Supported by Adequate Consideration

Instead, of considering the context of Norman’s relationship and the facts alleged in the Amended Complaint, the Court determined the nationwide scope was overbroad because Payscale only provided minimal consideration to Norman. Ex. A at 11. The Court determined the PIUs Norman received in exchange for the Non-Compete Provision had some value but not enough to support an 18-month, nationwide prohibition. *Id.* at 12-13. The Court took the allegation in the Amended Complaint that the PIUs are issued at the approximate value of Payscale making their value at the time of issuance \$0. *Id.* The Court ignored the allegations in the Amended Complaint about the inherent value of the PIUs and the other valuable consideration received by Norman.

The Amended Complaint alleges PIUs are a customary equity incentive for partnerships and LLCs. A228-29 ¶ 62. The units allow the employee to receive the benefit of any increase in value the company recognizes at the time of an event, typically a sale. *Id.* This provides significant tax advantages for recipients because it allows the recipient to avoid paying taxes on the full value of the PIU upfront, which value was significant. *Id.* It also incentivizes the employee to contribute to growing the value of the company, which is the general purpose of equity-based compensation. *Id.* When a person receives a PIU they receive the right to own the equity, which has

inherent value. Equally important, they had the right to enjoy the upside. The Court erred in ignoring this obvious value of the PIUs.

Instead, the Court agreed with Defendants that the PIUs Norman received had minimal value, despite no evidence in the record of what the value of the PIUs were at the time of the Amended Complaint. There was also no evidence in the record for the Court to determine the growth of the PIUs. Under the Court's theory all equity incentives (stock or otherwise) lacks consideration for a non-compete provision. When a person buys a lottery ticket it has no value the date it is issued, however, a person still pays face value to buy the ownership position and inherent value of potentially cashing out. Even if the Court only considers the value at the time of issuance every form of equity will only be valued at market price. The upside to the equity, however, has value and the Court of Chancery never determined what the value of that upside was. Thus, the value of the PIUs is a determination of fact that cannot be resolved on a motion to dismiss. *See Townson*, 780 A.2d at 1082 ("[On] a motion to dismiss [. . .] the Court of Chancery may not resolve material factual disputes[.]").

The Court also ignores the fact that the Amended Complaint alleges the PIUs were not the only consideration Norman received for the Non-Compete Provision. *See N. Am. Fire Ultimate Holdings, LP v. Doorly*, 2025 WL 736624, at *3 (Del. Ch. Mar. 7, 2025) (holding new consideration supporting restrictive covenants "may

include a beneficial change in an employee’s status, like a bonus or promotion”). The Amended Complaint alleges Norman also received a signing bonus, a salary, a raise, and access to Payscale’s confidential information in consideration for the Non-Compete Provision. A229-30 ¶ 63. In a footnote the Court dismisses out of hand this additional consideration by stating the Defendants point out the Incentive Equity Agreements were executed months after Norman’s respective hiring and promotion. Ex. A at 13 n.4. The Amended Complaint, however, alleges the Agreements were specifically executed “in connection with Norman’s hiring and promotion.” A228 ¶ 61. PIUs are not approved until the next compensation committee meeting, which can take a few months after the hiring or promotion. The PIUs are then subsequently issued, and it can take time to get the paperwork together. Thus, the fact the PIUs were not executed on the same day does not change the fact they were executed in connection with Norman’s initial employment and promotion.

Whether the Incentive Equity Agreements were supported by the consideration of a promotion or raise is an issue of fact that cannot be resolved at the motion to dismiss stage. *See Bradley*, 58 A.3d at 445 (noting Delaware courts “will not adjudicate contested issues of fact on a motion to dismiss”). Additionally, at the motion to dismiss stage all inferences are resolved in favor of Payscale. *See Cent. Mortg.*, 27 A.3d at 535 (holding on a motion to dismiss a Court must “draw all reasonable inferences in favor of the non-moving party”). Thus, the Court of

Chancery erred in determining the consideration was minimal and the geographic and temporal scope of the Non-Compete Provision was overbroad.

3. The Non-Compete Provision Protects Payscale’s Legitimate Business Interests

When determining the enforceability of restrictive covenants, “[l]egitimate interests’ recognized by Delaware law include protection of employer goodwill, and protection of employer confidential information from misuse.” *Kan-Di-Ki, LLC v. Suer*, 2015 WL 4503210, at * (Del. Ch. July 22, 2015). The Court of Chancery determined the Non-Compete Provision is broader than necessary to protect Payscale’s legitimate business interests because “for an eighteen-month period, Norman is prohibited from working anywhere in the country, in almost any role, for any company engaged in business that Topco or its subsidiaries were conducting or had proposed to conduct as of Norman’s departure.” Ex. A at 10, 14-16. The Court’s reading of the Non-Compete Provision applies to the outer reaches of the provision, which Payscale is not trying to enforce, and ignores how the language of the Non-Compete Provision is interpreted when viewed in the context of Norman’s actual relationship with Payscale and the facts alleged in the Amended Complaint.

The Court deems the Non-Compete Provision overbroad because it does not protect only Payscale’s interests but also applies to Sonic Topco and all of its unnamed subsidiaries. Ex. A at 15. The Court erred, as the Amended Complaint alleges facts demonstrating this language still only applies to Payscale’s interests—

a fact known to Norman. The Agreements define “Partnership” as Sonic Topco. A258; A283. The Amended Complaint alleges Sonic Topco is a holding company for Payscale and does not conduct any business or have any employees. A213-14 ¶ 14. The Amended Complaint further alleges Payscale is the only subsidiary of Sonic Topco that is an operating entity. A230-31 ¶ 67. Furthermore, Sonic Topco’s indirect subsidiaries include the direct subsidiaries of Payscale, and include Payfactors Group, LLC, MarketPay Associates, LLC, Agora Solutions, Inc., and CURO Compensation Limited. A231-32 ¶ 69. The Amended Complaint further alleges all of Payscale’s subsidiaries conduct the same line of business as Payscale—namely, compensation data, software, and services. A230-31 ¶ 67.

Since Payscale and its subsidiaries are the only operating entities within Sonic Topco and are in the same line of business, the scope of “Competitive Business” is effectively limited to Payscale. Thus, the Non-Compete Provision solely protects Payscale’s legitimate business interests and no one else. The Court further erred in inferring Norman would not have knowledge of this structure. The Amended Complaint states Norman was well-aware of the type of business that would give rise to Competitive Activity. A230-31 ¶ 67. Additionally, the Amended Complaint alleges Norman was one of three key sales leaders at Payscale and was part of high-level strategic decisions and was involved in creating some of Payscale’s most sensitive information. These allegations in the Amended Complaint allow for the

reasonable inference that Norman was well aware of Sonic Topco’s structure and the business of Payscale and its subsidiaries. *See Cent. Mortg.*, 27 A.3d at 535 (holding on a motion to dismiss a Court must “draw all reasonable inferences in favor of the non-moving party”).

Additionally, the Non-Compete Provision is not overbroad because “Competitive Business” clearly limits the restriction to the business conducted at “such Recipient’s Separation Date or any business proposed to be conducted by the Partnership or any of its Subsidiaries as evidenced by a written business plan in effect prior to such Recipient’s Separation Date.” A268 § 9; A293 § 9. The plain language covers Payscale’s business during Norman’s employment and any proposed business that was evidenced in a written business plan prior to Norman’s separation. As detailed in Section I.C.2.a *supra* and in the Amended Complaint, Norman was one of the three key senior sales leaders at Payscale and was intimately involved in Payscale’s sales business strategy, therefore, she was fully aware of the current and prospective business of Payscale and its subsidiaries prior to her termination.

The Court of Chancery also argues the Non-Compete Provision’s nationwide scope is compounded by the unlimited geographic scope of the Nonsolicitation Provision which makes it difficult to conceive how Norman could work as a salesperson in Sonic Topco’s or its subsidiaries line of business. Ex. A at 14. The

Court of Chancery never ruled the Nonsolicitation Provision is overbroad. Regardless the Nonsolicitation Provision does not have the affect the Court fears. As noted above, both the breadth of the Non-Compete Provision and the Nonsolicitation Provision are limited to Payscale's and its subsidiaries' line of business.

Additionally, the geographic location of non-Payscale customers is irrelevant to this legitimate purpose as it only applies to Payscale's customers. Norman remained free to solicit non-Payscale customers worldwide.

Unlike the Court's focus on the outer reaches of the Non-Compete Provision, when viewed in context of Norman's relationship with Payscale there was no uncertainty about where Norman could or could not work. Norman could work in any role for a company located anywhere in the United States (and worldwide) as long as the company was not in the same line of business as Payscale, i.e. a direct competitor. Norman chose to work for BetterComp whose only product directly competes with Payscale's MarketPay product, thus a direct competitor. A238 ¶ 89. Norman was fully aware BetterComp was a direct competitor as the Amended Complaint alleges Norman was involved in strategy discussions with Payscale's top executives aimed specifically at gaining a competitive advantage over BetterComp. *See* A225-26 ¶ 57. This is the exact situation the Non-Compete Provision was designed to address. Therefore, when the language of the Non-Compete Provision is viewed in the context of Norman's employment with Payscale and what Payscale is

trying to enforce, the Non-Compete Provision is not overbroad and only serves to protect Payscale's legitimate business interests.

II. THE COURT OF CHANCERY INCORRECTLY DETERMINED THE AMENDED COMPLAINT FAILED TO STATE A CLAIM FOR BREACH OF THE NONSOLICITATION OR CONFIDENTIALITY PROVISIONS

A. Question Presented

Whether the Court of Chancery erred in dismissing Payscale’s claim for breach of the Nonsolicitation or Confidentiality Provisions by holding the Amended Complaint failed to state a claim on which relief could be granted. A403-A406; Ex. A at 18-19.

B. Scope of Review

This Court reviews a trial court’s grant of a motion to dismiss *de novo*. *Flood v. Synutra Int’l, Inc.*, 195 A.3d 754, 757 n.7 (Del. 2018).

C. Merits of Argument

In the Opinion, the Court of Chancery held the Amended Complaint fails to adequately allege Norman breached the Nonsolicitation Provision and/or Confidentiality Provision of the Agreements. Ex. A at 18. Specifically, the Opinion states the Amended Complaint’s allegations “Norman breached . . . Section 8(b)(ii), which prohibits the solicitation of Payscale’s customers or prospective customers,” and “is using Payscale’s confidential information to solicit prospective customers to enter into contracts with BetterComp instead of with Payscale” are conclusory allegations, unsupported by additional pled facts, and fail to state a claim for breach of either provision. *Id.* Once again, this determination is the exact opposite of what

the Court of Chancery held when granting Payscale’s motion to expedite, finding the Complaint stated a colorable claim on all its counts. A200 at 51:13-17. The Court of Chancery overlooks the multitude of additional facts pled in the Amended Complaint supporting an inference—which must be drawn in Plaintiff’s favor at the pleading stage—that Norman breached the Nonsolicitaion Provision and/or Confidentiality Provision. The Amended Complaint pleads much more than a conclusory allegation of Norman’s breach. In support of its claim for breach of the Nonsolicitation and Confidentiality Provisions, the Amended Complaint alleges:

- Norman was one of the most senior sales leaders at Payscale. A222-23 ¶¶ 48-49.
- Norman participated in meetings with Payscale’s top executives, helped develop Payscale’s marketing strategy, and was directly involved in soliciting, developing relationships, and developing good will with existing and prospective Payscale customers. A223-24 ¶¶ 51-53.
- Norman was exposed to Payscale’s entire Enterprise customer base, including strategic insight into how Payscale’s products were marketed and sold to its Enterprise customers. A225 ¶ 56.
- Norman was privy to and played a role in creating Payscale’s confidential information, including, customer pricing models; the specific Payscale products and services customers purchased; Payscale sales employees’

compensation plans and quota structures; how Payscale's sales teams are organized, including internal job descriptions and expectations for various sales roles and responsibilities; and informing Payscale's product road map, and product implementation process. A226 ¶ 58.

- Norman was specifically involved in strategy discussions with Payscale's top executives aimed at gaining a competitive advantage over BetterComp. A225-26 ¶ 57.
- Norman now works for BetterComp, a Payscale competitor, where she holds a senior-level sales position, manages a sales team, is involved in sales strategy, and solicits Enterprise customers. A237-38 ¶ 88.
- Norman's work at BetterComp involves pitching and selling BetterComp's flagship service, which directly competes with Payscale's products. A246 ¶ 130.
- There is significant overlap in the types of prospective customers that Payscale and BetterComp target, including customers about which Norman gained sensitive information while at Payscale. *Id.* ¶¶ 130-131.
- Norman is using Payscale's confidential information to solicit prospective customers to enter into contracts with BetterComp instead of with Payscale. *Id.* ¶ 132.

- Norman is soliciting Customers, inducing Customers to cease or refrain from doing business with Payscale, and/or interfering with Payscale's business relations with Customers. A249 ¶ 143.
- Norman is using and/or disclosing Payscale's Confidential Information, including to solicit Customers and compete with Payscale. *Id.* ¶ 144.
- Since shortly after Norman began working for BetterComp, Payscale has lost at least five Enterprise customers to BetterComp, and believes that several more Enterprise customers have left Payscale for BetterComp. A245 ¶ 128.

In analyzing Payscale's breach of contract claim at the pleading stage, the Court must consider the totality of the allegations above, with the inferences they support drawn in Payscale's favor. *See NACCO Indus., Inc. v. Applica Inc.*, 997 A.2d 1, 17 (Del. Ch. 2009) (denying motion to dismiss claim for breach of nonsolicitation provision: "I recognize that each of the allegations in the Complaint, when viewed separately and in isolation, can be minimized [. . .] My task at the pleadings stage, however, is not to weigh competing inferences but rather to draw reasonable inferences in favor of the plaintiff."); *Genuine Parts Co. v. Essendant Inc.*, 2019 WL 4257160, at *10 (Del. Ch. Sept. 9, 2019) (denying motion to dismiss claim for breach of nonsolicitation provision: "I am satisfied [plaintiff] has adequately alleged enough in total from which I can infer that [defendant], at least indirectly, encouraged or facilitated a proposal with respect to a competing

transaction.”). Taken in totality, the allegations of the Amended Complaint more than adequately plead facts supporting a conceivable claim for Norman’s breach of the Nonsolicitation Provision and Confidentiality Provision of the Agreements. On a 12(b)(6) motion, the Court cannot ignore these well-pled facts and must take them as true, thus the Court erred in holding the Amended Complaint failed to state a claim. *See Cent. Mortg.*, 27 A.3d at 535.

III. THE COURT OF CHANCERY INCORRECTLY HELD THE AMENDED COMPLAINT FAILED TO STATE A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

A. Question Presented

Whether the Court of Chancery erred by dismissing Count II of the Amended Complaint by holding the Amended Complaint failed to state a claim for tortious interference with contractual relations. A407-08; Ex. A at 19.

B. Scope of Review

This Court reviews a trial court's grant of a motion to dismiss *de novo*. *Flood v. Synutra Int'l, Inc.*, 195 A.3d 754, 757 n.7 (Del. 2018).

C. Merits of Argument

The Court of Chancery dismissed Payscale's claim against BetterComp for tortious interference with contractual relations because the Amended Complaint failed to state a claim. Ex. A at 19. To state a claim for tortious interference with a contract, a plaintiff must allege "(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." *Bhole, Inc. v. Shore Invs., Inc.*, 67 A.3d 444, 453 (Del. 2013). The Court of Chancery noted the parties' briefing conceded that whether there is a claim for tortious interference with the Agreements turns on the enforceability of the Restrictive Covenants. Ex. A at 19. The Court solely dismissed the tortious interference with contractual relations claim because the Court dismissed the claim for breach of the Restrictive Covenants. *Id.* For the

reasons outlined in Sections I and II *supra*, the Court erred in dismissing Count I of the Amended Complaint for breach of the Restrictive Covenants. Therefore, the Court also erred in dismissing Count II of the Amended Complaint for tortious interference with contractual relations.

CONCLUSION

For the reasons addressed herein, the Court of Chancery's judgment on the breach of the Restrictive Covenant claim and the tortious interference with contractual relations claim should be reversed.

Dated: August 26, 2025

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