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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

APPELLEES' ANSWERING BRIEF ON APPEAL

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NATURE OF PROCEEDINGS

Appellant/Plaintiff Below Payscale Inc.'s ("Payscale") appeal asserts meritless arguments to attempt to revive its properly dismissed Verified Amended Complaint (the "Complaint"). The Court of Chancery correctly dismissed the Complaint, and Payscale's arguments to the contrary misread Delaware law. For example, Payscale's Opening Brief ("Opening Brief" or "OB") repeatedly reiterates Payscale's incorrect assertion that because the Court of Chancery granted Payscale's motion to expedite, it should have denied the motion to dismiss filed by Defendants Erin Norman ("Ms. Norman") and BetterComp, Inc. ("BetterComp," and with Ms. Norman, "Defendants"). Payscale is wrong as a matter of black-letter Delaware law, as the standards for granting a motion to expedite and granting a motion to dismiss are ***not*** "effectively . . . the same." OB, 3, 16. Rather, the Rule 12(b)(6) standard requires that Payscale do more than meet the "low burden" of asserting a colorable, *i.e.*, non-frivolous, claim. A200:18-19.

Thus, it is immaterial that "the trial court reached the exact opposite conclusion" (OB, 3) when dismissing Payscale's Complaint as compared to its decision to grant Payscale's motion to expedite. Up against the higher burden required of Payscale on a motion to dismiss, Payscale's Complaint, relying on facially overbroad restrictive covenants and conclusory allegations, could not and did not survive dismissal. The Court of Chancery properly held that Payscale's

Complaint failed to state a claim upon which relief may be granted and properly dismissed the Complaint in its entirety.

First, because Payscale's noncompetition claim in Count I relies upon a facially unenforceable and unreasonable noncompetition covenant (the "Noncompete"), the claim was properly dismissed. Payscale's handwringing regarding the "context" surrounding Ms. Norman's employment and Payscale's enforcement of the Noncompete, and Payscale's unfounded claims that the Court of Chancery "ignored" allegations of the Complaint, are red herrings. The Noncompete is facially overbroad and unenforceable, as multiple Delaware cases have held. Thus, the Noncompete cannot be enforced, regardless of the allegations of breach. The Court of Chancery was correct to follow this well-reasoned precedent.

Second, Payscale's nonsolicitation and confidentiality claims in Count I were correctly dismissed as conclusory and insufficiently pled. The Court of Chancery was not required to accept Payscale's threadbare and conclusory allegations as true. Nor was the Court of Chancery required to make the logical leaps that Payscale requests under the guise of reasonable inferences. Dismissal of Payscale's nonsolicitation and confidentiality breach claims was proper.

Third, because Ms. Norman's agreements with Payscale's parent Sonic Topco, L.P., were found to be unenforceable, the Court of Chancery properly dismissed Payscale's tortious interference with contract claim against BetterComp.

Payscale's Opening Brief admits that the restrictive covenants and the tortious interference with contractual relations claim rise and fall together. *See* OB, 38. As the Court of Chancery correctly held, because Payscale's claim for breach of the restrictive covenants fails, its tortious interference claim also necessarily fails.

The Court of Chancery's dismissal of Payscale's Complaint should be affirmed.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly dismissed Payscale's non-competition claim under Rule 12(b)(6) because, consistent with myriad Court of Chancery cases, the Noncompete that Payscale sought to enforce against Ms. Norman is facially unreasonable and overbroad and was supported by "vanishingly small" consideration. It is therefore unenforceable.

2. Denied. The Court of Chancery correctly dismissed Payscale's claim for breach of the nonsolicitation and confidentiality provisions under Rule 12(b)(6) because the claim was premised upon conclusory allegations that the Court of Chancery need not take as true when evaluating a motion to dismiss.

3. Denied. The Court of Chancery correctly dismissed Payscale's tortious interference with contractual relations claim under Rule 12(b)(6) because the claim arose from a facially unenforceable contract.

STATEMENT OF FACTS

A. Ms. Norman's Employment with Payscale

Ms. Norman's relationship with Payscale started in 2016. A214 ¶ 16. At the time, Ms. Norman was employed by MarketPay, another company that offered insight into compensation data as Payscale did. *Id.* While Ms. Norman worked at MarketPay, it merged with Payscale with the combined company retaining the Payscale name. A216 ¶ 24. Through this merger Ms. Norman became an employee of Payscale. A221 ¶ 43. After the merger, however, Ms. Norman did not remain at Payscale. *Id.* ¶ 44. Ms. Norman once again became a Payscale employee in May 2021. A214 ¶ 16. However, Ms. Norman did not stay at Payscale for long. She left Payscale a few months later in September 2021. *Id.*

B. Ms. Norman Returns to Payscale, and Payscale Purports to Bind Ms. Norman to Unenforceable Obligations in Exchange for Valueless Units

A few months later in November of 2021, Ms. Norman again returned to working for Payscale. A221-22 ¶ 45. She remained at Payscale until December 1, 2023, when she voluntarily resigned. A235 ¶ 77. At that time, Ms. Norman was the Senior Director of Sales. A222 ¶ 48. In this role, Ms. Norman supervised a portion of the Enterprise Sales team, specifically the portion responsible for Payscale's Western United States territory. *Id.* Ms. Norman's most senior position at Payscale was Senior Director of Sales, which was not a C-suite level position. *Id.* Indeed, Ms. Norman never had responsibility for all of Payscale's customers or the entire

United States. At most, Ms. Norman oversaw Payscale's western region. *Id.* Indeed, Payscale's own Complaint alleges that Payscale has approximately 16,000 customers, but that Ms. Norman had, at most, responsibility for 4,000 of those customers. A218-19 ¶¶ 32, 34-35.

In March 2022, over three months after she was re-hired by Payscale, Ms. Norman was offered a form incentive equity agreement by Sonic Topco, L.P. ("Sonic Topco"), Payscale's parent company. A228 ¶ 61. Through this Incentive Equity Agreement (the "2022 Agreement"), Ms. Norman was offered 175,000 Sonic Topco Profits Interest Units (the "Profit Interests"). *Id.* However, those Profit Interests were not immediately available to Ms. Norman. *Id.* Instead, they were subject to a vesting schedule, under which Ms. Norman was required to wait nearly a year for any Profit Interests to vest. *Id.*; A260 § 4(b). Specifically, the Profit Interests were divided into two buckets: 75% were characterized as "Profits Interest Service Units"; and 25% were characterized as "Profits Interest Performance Units". Ms. Norman received 25% of the Profits Interest Service Units on February 23, 2023. *Id.* The remaining 75% of the Profits Interest Service Units would vest on a monthly basis over the subsequent three years, until February 2026. *Id.* The Profits Interest Performance Units, for their part, would vest only if Sonic Topco was sold. *Id.* Further, even upon vesting, the Profit Interests could not be transferred or sold for monetary value. Instead, Ms. Norman would need to wait until Payscale was

sold or Payscale offered to repurchase the Profit Interests upon her separation. *Id.* Moreover, as of the date that Ms. Norman received the Profit Interests, their fair market value was explicitly stated—by Sonic Topco—to be $0.00. A228-29 ¶ 62; A277 ¶ 15. The Profit Interests were also subject to automatic voiding if Payscale determined in its sole discretion that Ms. Norman had violated any of the covenants discussed below. A267 § 8(e). Accordingly, in March 2022, Ms. Norman received a right to receive Profit Interests that were worth nothing at the time of contracting and may only become valuable (if they ever obtain value) should Payscale offer to repurchase the Profit Interests at some unknown future date.

In exchange for these speculative and conditional Profit Interests, Ms. Norman had to agree to a series of restrictive covenants. These covenants included the Noncompete, a non-solicitation covenant (the "Nonsolicit"), and confidentiality obligations (collectively, the "Restrictive Covenants"). Specifically, the Noncompete states:

> Noncompetition. During the Employment Period or Engagement Period, as applicable, and ending eighteen (18) months following the Separation Date (the "Protection Period"), Recipient covenants and agrees that following Recipient's termination of employment for any reason, he or she shall not engage in a Competitive Activity. The terms of this Section 8(a) shall not apply to any Recipient whose primary place of employment or primary residence is located in the State of California (or any other jurisdiction in which such terms are unlawful).

A266 § 8(a). Competitive Activity is defined as:

> "**Competitive Activity**" means, with respect to an Recipient, directly or indirectly, whether as principal, agent, partner, officer, director, stockholder, employee, consultant or otherwise, alone or in association with any other Person or entity, own, manage, operate, control, participate in, render services for, or in any other manner engage in, anywhere in the United States, any Competitive Business other than for or on behalf of the Partnership or any Subsidiary of the Partnership; provided that nothing herein shall prohibit such Recipient from (a) owning a passive interest of up to 2% of any class of securities of any corporation that is traded on a national securities exchange or (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.

A268 § 9. The definition of "Competitive Activity" does not explain what constitutes "strategic, advisory, technical, creative, or sales activity." Nor does it identify what is "an independent business line of such entity that is wholly unrelated to the business operated by the Partnership Group and the Confidential Information." Finally, Competitive Business is defined as the following:

> "**Competitive Business**" means any business conducted by the Partnership [*i.e.*, Sonic Topco] 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. In defining Competitive Business, the 2022 Agreement does not identify what lines of business are conducted by Sonic Topco or any of its subsidiaries. In fact, the 2022 Agreement fails to name Sonic Topco's subsidiaries or identify what sorts

of business in which those subsidiaries compete (or even define the term "Subsidiaries").

Similarly, the Nonsolicit states:

> Nonsolicitation. Recipient agrees that, during the Protection Period, Recipient shall not, and shall cause Recipient's Affiliates not to (or to otherwise assist any other Person to), directly or indirectly (i) induce or attempt to induce any employee, advisor or independent contractor of any member of the Partnership Group to leave the employ or engagement of the Partnership Group, or in any way interfere with the relationship between any member of the Partnership Group and any of their respective employees, advisors or independent contractors, or (ii) induce or attempt to induce any client, customer, supplier, vendor, licensor, lessor or other business relation of any member of the Partnership Group (or any prospective client, customer, supplier, vendor, licensor, lessor or other business relation with which any member of the Partnership Group has entertained discussions regarding a prospective business relationship) to cease or refrain from doing business with any member of the Partnership Group, or in any way interfere with the relationship (or prospective relationship) between any such client, customer, supplier, vendor, licensor, lessor or other business relation and any member of the Partnership Group (including, but subject to Section 7(a) above, making any negative statements or communications about any member of the Partnership Group or any of their respective equity holders, directors, officers, advisors or employees).

A266 § 8(b). The "Partnership Group" is defined in the 2022 Agreement as Sonic Topco and its direct or indirect subsidiaries. A268 § 9. Again, the 2022 Agreement fails to name Sonic Topco's subsidiaries or identify what sorts of business in which those subsidiaries compete.

On August 14, 2023, roughly five-and-a-half months after receiving a promotion, Ms. Norman executed a second Incentive Equity Agreement (the "2023

Agreement," and together with the 2022 Agreement, the "Agreements"). A228 ¶ 61. The 2023 Agreement contained identical restrictive covenants as the 2022 Agreement. A291 § 8(a)-(b). As with the Profit Interests awarded under the 2022 Agreement, the fair market value of the Profit Interests awarded under the 2023 Agreement was explicitly stated to be $0.00. A302 ¶ 5. Moreover, like the 2022 Agreement, the 2023 Agreement contains a provision providing for automatic forfeiture of all Profit Interests for no consideration if a restrictive covenant is violated. A292 § 8(e).

C. Ms. Norman Joins Korn Ferry, a Payscale Competitor

Despite being offered the Profit Interests, Ms. Norman realized that the best way to advance her career was not at Payscale. Accordingly, on December 1, 2023, Ms. Norman resigned from her position. A235 ¶ 77. By their terms, therefore, the Noncompete and Nonsolicit contained in the Agreements expired on June 1, 2025, eighteen months after Ms. Norman left Payscale, and nearly four months ***before*** the filing of this brief. A230 ¶ 64.

That same month, Ms. Norman accepted a position as a Client Director of Korn Ferry, who Payscale now alleges is a competitor. A235 ¶ 80. Payscale, however, took no action to enforce the Restrictive Covenants during Ms. Norman's employment with Korn Ferry, despite Payscale being aware of Ms. Norman's title with Korn Ferry after it was posted publicly on her LinkedIn profile. *Id*.

D. Ms. Norman Joins BetterComp

By October 2024, Ms. Norman left Korn Ferry for BetterComp. A236 ¶ 82. Once again, Ms. Norman did not hide her new position at BetterComp, but publicly disclosed it on her LinkedIn. *Id.* BetterComp is in the same industry as Payscale and was founded by former Payscale employees. *Id.* ¶ 84. Indeed, BetterComp's founder, Alan Miegel, previously held the same position at Payscale as Ms. Norman, Senior Director Enterprise Sales. *Id.* Further, several other former Payscale employees serve as BetterComp executives. *Id.*

E. Payscale's Court of Chancery Litigation Against Ms. Norman and BetterComp is Filed and Dismissed

As with her employment with Korn Ferry, Payscale did not initially act once it learned of Ms. Norman's employment at BetterComp. It was not until November 22, 2024, that Payscale sent Ms. Norman a cease-and-desist letter regarding her Restrictive Covenants. A239-40 ¶¶ 98-99. In the months that followed, counsel for both Payscale and Ms. Norman's communicated about Ms. Norman's role at BetterComp. A240-44 ¶¶ 100-120.

These communications were ultimately unsuccessful in resolving the dispute, and Payscale filed its Court of Chancery litigation on January 31, 2025—fourteen months after Ms. Norman resigned from Payscale. A021, Dkt. 1. Payscale's initial complaint asserted three claims: breach of contract against Ms. Norman; tortious interference with contractual relations against BetterComp; and tortious interference

with prospective business relations against both Defendants. A023-A057. Defendants moved to dismiss the Complaint on February 26, 2025. A015, Dkt. 18.

Rather than respond to the motion to dismiss, Payscale amended its initial complaint on March 14, 2025. A012, Dkt. 26. On March 21, 2025, Defendants filed their renewed motion to dismiss. A010, Dkt. 29. After hearing argument on the motion to dismiss, the Court of Chancery issued its Memorandum Opinion Granting Motion to Dismiss on June 9, 2025. A001-02, Dkt. 52. In dismissing the entirety of Payscale's Complaint, the Court of Chancery hinged its decision on the facial overbreadth of the Noncompete that Payscale purported to enforce against Ms. Norman, and the insufficiency of Payscale's allegations undergirding Counts I and III. *See generally* OB, Ex. A.

As to the portion of Count I relating to the Noncompete, the Court of Chancery found that: (i) the Noncompete was overbroad in geographic and temporal scope (*id.* at 10-11); (ii) the consideration Ms. Norman received (assuming there was consideration at all) was "vanishingly small" in comparison to the Noncompete's nationwide geographic scope (*id.* at 13); and (iii) the Noncompete was broader than necessary to protect Payscale's legitimate business interests (*id.* at 14-16). The Court of Chancery also declined to exercise its discretion and blue-pencil the Noncompete, because "the Amended Complaint does not allege any facts that conceivably could warrant blue penciling." *Id.* at 17.

Turning to the remainder of Count I, the Court of Chancery dismissed Payscale's claims for breach of the Nonsolicit and the Agreements' confidentiality provisions because Payscale's "conclusory allegations, unsupported by any additional pled facts, fail to state a claim for breach" of the Nonsolicit and confidentiality provisions. *Id.* at 18. And because "[t]he parties' briefing concede[d] that Count II turns on the enforceability of a contract, and therefore rises or falls on Count I," then Count II was necessarily dismissed following the dismissal of Count I. *Id.* at 19. Finally, the Court of Chancery dismissed Count III because Payscale's Complaint failed to adequately plead the claim, and instead relied upon insufficient, conclusory allegations that the Court of Chancery was not required to accept as true. *See id.* at 19-21. This appeal followed the Court of Chancery's dismissal.[1]

[1] Of note, Payscale does not appeal the Court of Chancery's dismissal of Count III. *See* OB, 4 n.1.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY HELD THAT THE NONCOMPETE WAS UNENFORCEABLE

A. Question Presented

Did the Court of Chancery correctly conclude that Payscale's claim for breach of the Noncompete should be dismissed under Court of Chancery Rule 12(b)(6) because the nationwide Noncompete that Payscale sought to enforce against Ms. Norman was facially overbroad and supported by "vanishingly small" consideration, and is, therefore, unenforceable? OB, Ex. A at 10-16.

B. Scope of Review

This Court "review[s] the Court of Chancery's dismissal of a claim under Rule 12(b)(6) *de novo*." *Caspian Alpha Long Credit Fund, L.P. v. GS Mezzanine Partners 2006, L.P.*, 93 A.3d 1203, 1205 (Del. 2014).

C. Merits of Argument

The Noncompete is an unreasonable restraint on Ms. Norman's ability to work rendering it unenforceable because it is too broad in its prohibited conduct, and the Court of Chancery correctly determined that the noncompete is unenforceable. Payscale's fixation on the Court of Chancery's earlier decision to grant Payscale's motion to expedite, finding that Payscale's claims were "colorable," is inapposite. A200:18-19. Indeed, the motion to dismiss and motion to expedite standards are distinct and cannot be characterized as "effectively the same." *See In re BioClinica,*

Inc. Shareholder Litig., 2013 WL 5631233, at *4 n.46 (Del. Ch. Oct. 16, 2013) (finding that "[t]he standard for a motion to expedite is 'colorability' and the standard for a motion to dismiss under Rule 12(b)(6) is 'reasonable conceivability,'" and that the latter is a "higher" pleading burden).

While pleading a colorable claim requires only that the claim be "essentially non-frivolous," a motion to dismiss is governed by the "reasonable conceivability" standard. *Reserves Dev. Corp. v. Wilmington Trust Co.*, 2008 WL 4951057, at *2 (Del. Ch. Nov. 7, 2008); *Cottle v. Carr*, 1988 WL 10415, at *3 (Del. Ch. Feb. 9, 1988). To be reasonably conceivable, a claim must demonstrate a possibility of recovery. *See Gracey v. Albawardi*, 2024 WL 5116368, at *4 (Del. Ch. Dec. 13, 2024), *aff'd*, 2025 WL 1950017 (Del. July 16, 2025) (citation omitted). Because these standards are distinct, the Court of Chancery has granted motions to expedite and subsequently granted motions to dismiss. *See, e.g.*, *Intertek Testing Servs. NA, Inc. v. Eastman*, 2023 WL 2544236 (Del. Ch. Mar. 16, 2023) (granting motion to dismiss plaintiff's complaint that was previously expedited); *Dent v. Ramtron Int'l Corp.*, 2014 WL 2931180 (Del. Ch. June 30, 2014) (same); *In re Om Grp., Inc. Stockholders Litig.*, 2016 WL 5929951 (Del. Ch. Oct. 12, 2016) (same). And although the Court of Chancery was required to draw reasonable inferences in Payscale's favor, it was ***not*** required to accept Payscale's "'strained interpretations'"

of its allegations. *Gracey*, 2024 WL 5116368, at *4 (quoting *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).

Rather, in evaluating a Rule 12(b)(6) motion to dismiss, the Court of Chancery was required to "(i) accept[] all ***well-pled*** factual allegations as true, (ii) accept[] even vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draw[] all reasonable inferences in favor of the non-moving party, and (iv) only dismiss[] a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances." *FMLS Hldg. Co. v. Integris BioServices, LLC*, 2023 WL 7297238, at *5 (Del. Ch. Oct. 30, 2023) (emphasis added). Contradicting Payscale's argument on appeal, "the court must '***ignore conclusory allegations that lack specific supporting factual allegations***.'" *Id.* (emphasis added) (citation omitted). The Court of Chancery did precisely that. Dismissal of Payscale's Noncompete claim should be affirmed.

1. The Noncompete is Unenforceable

Restrictive covenants are unique under Delaware law, as they are provisions that Delaware courts do not "mechanically" enforce. *See FP UC Holdings, LLC v. Hamilton*, 2020 WL 1492783, at *6 (Del. Ch. Mar. 27, 2020). It is long-established that they must be "closely scrutinized as restrictive of trade." *Faw, Casson & Co. v. Cranston*, 375 A.2d 463, 466 (Del. Ch. 1977). Indeed, this Court recently affirmed that all restrictive covenants are subject to a reasonableness review

determining whether the provisions should be enforced. *See Cantor Fitzgerald, L.P. v. Ainslie,* 312 A.3d 674, 684 n.65 (Del. 2024). This requires that the reviewing court evaluate whether the restrictive covenants on their face "(1) [are] 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." *FP UC*, 2020 WL 1492783, at *6. Therefore, the reviewing court must assess whether the restrictive covenant ***as a whole*** is a reasonable restraint on trade, and a plaintiff cannot save an otherwise unreasonable restrictive covenant by seeking to enforce only a subset of the restriction. *See Hub Grp., Inc. v. Knoll*, 2024 WL 3453863, at *12 (Del. Ch. July 18, 2024), *appeal refused*, 2024 WL 4343006 (Del. Sept. 30, 2024).

Payscale's Opening Brief makes much of the numerous allegations that Payscale added to the Complaint in its amendment, concluding without support that these allegations render the Noncompete enforceable. OB, 17. But this misconstrues the Court of Chancery's opinion and ignores the focus of the reasonableness analysis applicable to restrictive covenants. Indeed, Payscale cites to no case law in support of its assertion that the Court of Chancery ignored the purported "context" here. Rather, Payscale merely lists a handful of allegations and concludes without support that these allegations, in the context of Ms. Norman's employment, demonstrate the reasonableness of the Noncompete. OB, 22-23. Not

so. Payscale's arguments in its Opening Brief do not alter the overbreadth of the plain language of the Noncompete, as the Court of Chancery correctly held. The same result should follow here, and dismissal of Payscale's Noncompete claim should be affirmed.

a. The Court of Chancery correctly held that the Noncompete is geographically and temporally overbroad

To be enforceable under Delaware law, a restrictive covenant must be reasonable in both geographic and temporal scope. As the Court of Chancery held, several aspects of the eighteen-month, nationwide Noncompete at issue here render it unreasonable. And contrary to Payscale's assertion otherwise, the Court of Chancery did ***not*** "ignore[] the well-pled allegations, resolve[] factual disputes, and ma[ke] inferences in favor of" Ms. Norman. OB, 5. Rather, the Court of Chancery applied the appropriate and searching analysis required when analyzing the enforceability of an expansive employee noncompete.

"If [an] employer overreaches by imposing an obviously overbroad geographic restriction on its employee's ability to seek employment after separation, [the Court of Chancery] will readily decline to enforce the restriction." *See FP UC*, 2020 WL 1492783, at *6. This is particularly true where, as here, a former employer is seeking to enforce a nationwide noncompete. *See id.* at *7 ("To be sure, this court has enforced non-competes with a nationwide scope, but only in

instances where the competing party agrees, in connection with the sale of a business, to stand down from competing in the relevant industry . . . anywhere . . . for a stated period of time after the sale."). In finding the geographic scope unreasonable, the Court of Chancery properly based its analysis on the fact that the noncompete at issue arises from the employment context. *See* OB, Ex. A at 10-11. As Payscale alleged, Ms. Norman's responsibilities were focused on the Western region. *See* A222 ¶ 48. Accordingly, the national scope of the Noncompete "covers a geographic area much larger than that where the plaintiff's economic interests lie." *Eastman*, 2023 WL 2544236, at *5 (dismissing complaint seeking to enforce noncompetition provision for geographic overbreadth). And Payscale's recitation of its allegations regarding the scope of Ms. Norman's employment with Payscale are inapposite. *See* OB, 22-23. Cobbling together multiple disparate allegations, including allegations regarding BetterComp's business, does not demonstrate that the nationwide geographic scope of the Noncompete is reasonable.

Next, as the Court of Chancery noted, rather than tempering the geographic overbreadth of the Noncompete, the temporal scope exacerbates it. *See* OB, Ex. A at 10. The geographic and temporal scope of a restrictive covenant must be considered together when evaluating reasonableness. *See Del. Elevator, Inc. v. Williams*, 2011 WL 1005181, at *8 (Del. Ch. Mar. 16, 2011) ("All else equal, a

longer restrictive covenant will be more reasonable if geographically tempered, and a restrictive covenant covering a broader area will be more reasonable if temporally tailored."). Older Delaware cases finding a one-year duration to be reasonable involved narrower, targeted geographic scopes. *See All Pro Maids, Inc. v. Layton*, 2004 WL 1878784, at *5 (Del. Ch. Aug. 9, 2004), *aff'd*, 880 A.2d 1047 (Del. 2005) (finding one year to be reasonable because the restricted area was specific zip codes where the majority of plaintiff's clients were located); *but see, e.g.*, *FP UC*, 2020 WL 1492783, at *8 (holding non-compete with national scope and duration of one-year duration was unreasonable); *Hub Grp.*, 2024 WL 3453863, at *13 (same). Here, the Noncompete applies to Ms. Norman nationally for 18 months, without regard for Ms. Norman's actual responsibilities at Payscale. Therefore, as the Court of Chancery correctly observed, the temporal scope of the Noncompete does not temper the untethered national geographic scope, and in context, is unreasonable.

b. The Noncompete was not supported by adequate—or indeed, any—consideration to support the scope of activity prohibited

Insufficiency of consideration also played a key role in the Court of Chancery's decision to find the Noncompete unreasonably broad in scope. Although adequacy of consideration is not typically reviewed prior to enforcing a contract, restrictive covenants are once again unique. For a restrictive covenant to be reasonable, it must be supported not just by some consideration, but adequate

consideration. *See FP UC*, 2020 WL 1492783, at *6 (stating that "the court should take notice of the consideration an employee received in exchange for her promise not to compete before determining whether the non-compete is reasonable" and collecting cases to support same).

The Court of Chancery has previously found that when a restrictive covenant is supported by valueless equity interests, it is not a reasonable restriction. *See, e.g.*, *id.* at *7 (finding that equity interests provided as consideration for restrictive covenant was "token consideration" that did not justify enforcing the restriction); *N. Am. Fire Ultimate Holdings, LP v. Doorly*, 2025 WL 736624, at *5 (Del. Ch. Mar. 7, 2025) (holding that grant of equity interests as consideration for restrictive covenants was inadequate because the equity grant agreement permitted the cancellation of the interests for no value); *Sapp v. Casey Emp. Servs., Inc.*, 1989 WL 133628, at *5 (Del. Ch. Nov. 3, 1989), *aff'd*, 593 A.2d 589 (Del. 1991) (holding that payment of $25,000 bonus to key employees to ensure retention after sale of business was inadequate consideration to support covenant not to compete). Indeed, the Court of Chancery has recently held that where the grant of an equity interest is the sole consideration for a restrictive covenant, the termination of that equity interest eliminates any consideration received for the restrictive covenant, rendering it unenforceable. *See Doorly*, 2025 WL 736624, at *5. Section 8(e) of both Agreements provides that, upon a breach of the Restrictive Covenants, "all Profits

Interest Units . . . shall automatically be cancelled without payment of any consideration[.]" A267 § 8(e); A292 § 8(e). Accordingly, just as in *Doorly*, Ms. Norman's Profit Interests, the sole consideration for the Noncompete, were cancelled by operation of the plain terms of Section 8(e).

While the Court of Chancery declined to hold that there was ***no*** consideration, as it could have, the court still found that "it nevertheless is not reasonably conceivable that the consideration exchanged—vanishingly small compared to that received for the sale of a business—could support an eighteen-month, nationwide prohibition on work in almost any role for any company engaged in business that Topco or its subsidiaries were conducting, or had even proposed to conduct, as of Norman's departure." OB, Ex. A at 13. This is consistent with the precedents set in *FP UC* and *Doorly* that an employer may not offer ephemeral equity interests to support restrictive covenants. Despite this, Payscale once more accuses the Court of Chancery of ignoring the inherent value of the Profits Interests Units and supposed "other valuable consideration received by [Ms.] Norman." OB, 25. Not so.

Payscale's disagreement with the Court of Chancery's conclusions does not mean they were made in error. *First*, the Court of Chancery properly concluded that if there was an inherent value in the Profit Interest Units, it was "vanishingly small." OB, Ex. A at 13. Crucially, Payscale's Opening Brief ***admits*** that: (i) there was "no

evidence in the record of what the value of the [Profit Interests] were at the time of the Amended Complaint" (*id.* at 26); and (ii) there was no evidence in the record for the Court to determine the growth of the Profit Interests. (*id.*). What Payscale's Complaint ***does*** allege is that the Profit Interests were valued at $0 at the time Ms. Norman executed the Agreements. A228-29 ¶ 62. Therefore, the Court of Chancery properly held that the value of the consideration supporting the Noncompete was insufficient.

Second, the Court of Chancery did in fact consider the purported "other valuable consideration received by Ms. Norman" in its consideration analysis. Payscale tries to argue—despite the fact that the Agreements make no reference to this whatsoever—that the first Agreement was executed in consideration for Ms. Norman's hiring (despite being executed three and a half months after she was hired), and the second Agreement was executed in consideration for Ms. Norman's promotion (despite the fact that she was promoted five months before it was executed). OB, 26-27.[2] But the Court of Chancery properly noted the timing, taking

[2] Payscale also makes several new factual allegations relating to consideration in its Opening Brief that are found nowhere in the Complaint. *See* OB, 27 (stating that Profit Interests are not approved until "the next compensation committee meeting, which can take a few months after the hiring or promotion," and "it can take time to get the [Profit Interests] paperwork together"). This Court should give these new allegations no weight whatsoever. *See Price v. Boulos*, 2022 WL 3222340, at *2 (Del. Aug. 9, 2022) (citing *Del. Elec. Coop. v. Duphily*, 703 A.2d 1202, 1206 (Del. 1997)) ("As a preliminary matter, to the extent that Price cites to '[f]acts not

account of the facts that "[Ms.] Norman was hired on November 29, 2021, but the First Incentive Equity Agreement was executed more than three months later, on March 14, 2022. Similarly, [Ms.] Norman was promoted on February 26, 2023, but the Second Incentive Equity Agreement was signed more than five months later, on August 14, 2023." OB, Ex. A at 13 n.4. Thus, the Court of Chancery correctly found that the significant time lapse between Ms. Norman's execution of the Restrictive Covenants, and the fact that the Agreements are silent regarding this supposed additional consideration, precludes Payscale's argument.

c. The Noncompete goes beyond protecting Payscale's legitimate economic interests

Payscale's Opening Brief bolsters the Court of Chancery's ruling that the Noncompete goes beyond Payscale's legitimate economic interests and asks this Court to interpret the Noncompete in a way that contradicts well-settled Delaware law. The Court of Chancery correctly held that the Noncompete seeks to prohibit conduct far in excess of Payscale's protectable legitimate business interests and therefore, is unenforceable. The Noncompete is not tailored to Ms. Norman's role at Payscale. Instead, it bars her from engaging in any (unidentified) business of Sonic Topco, Payscale, or any of Sonic Topco's (unnamed) subsidiaries as of

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incorporated into the original complaint,' this Court will not consider evidence not presented to the trial court in the first instance."); *Clark v. Clark*, 2012 WL 6597798, at *2 (Del. Dec. 17, 2012) ("We will not consider on appeal any evidence that was not included in the trial court record below.").

December 1, 2023, or any business "proposed to be conducted" by Sonic Topco, Payscale, or any of Sonic Topco's (unnamed) subsidiaries as of December 1, 2023, unless Ms. Norman's work would not involve "any level of strategic, advisory, technical, creative, or sales activity," or is undertaken "exclusively in connection with an independent business line of such entity that is wholly unrelated to the business operated by the Sonic Topco, Payscale, or any of Sonic Topco's (unnamed) subsidiaries.[3]

As written, this expansive restriction does not bar Ms. Norman just from a sales role, but from a panoply of (undefined) employment roles covering nearly any possible activity an employee could engage in, regardless of whether those activities have any relationship with her prior role with Payscale. That is broader than Payscale's legitimate business interests, and renders the Noncompete unenforceable. *See, e.g.*, *FP UC*, 2020 WL 1492783, at *7 (finding noncompete overbroad because of "failure to define precisely what Fast Pace's 'business' is"); *Hub Grp.*, 2024 WL 3453863, at *10-11 (despite containing purportedly limiting language, noncompete still exceeds legitimate business interests of employer).

[3] Payscale does not try to identify what might (or might not) constitute "strategic, advisory, technical, creative, or sales activity." Nor does it try to parse what constitutes an "independent business line … that is wholly unrelated" to Sonic Topco's or Payscale's business.

And Payscale knows that, as written, the Noncompete cannot be enforced. Payscale's Opening Brief actually admits that there is an "outer reach[] of the provision" that "Payscale is not trying to enforce." OB, 28. This admission makes clear that the Noncompete is ***not*** narrowly tailored and reaches beyond Payscale's legitimate economic interests, which, under well-settled Delaware case law, renders the Noncompete unenforceable. *See, e.g.*, *Norton v. Cameron*, 1998 WL 118198, at *11 (Del. Ch. Mar. 5, 1998); *Kodiak Bldg. Partners, LLC v. Adams*, 2022 WL 5240507, at *9 (Del. Ch. Oct. 6, 2022). Accordingly, it is of no moment what Payscale seeks to enforce. The terms of the Noncompete that purport to bind Ms. Norman control here—not Payscale's interpretation or intended enforcement. *See Hub Grp.*, 2024 WL 3453863, at *12 ("An analog of that [overbreadth] problem is illustrated here: a non-compete so complex and difficult to parse that a broad range of conduct may be prohibited, ***but the entity can propose a reading that saves the provision from a finding of overbreadth***. This is with respect to a contract provided by the company without negotiation, and imposed as a condition of future employment. The obvious mal-incentive, and the equitable principles embodied in the doctrine of *contra proferentem*, weigh against such an interpretation here, I find.") (emphasis added).

Payscale's attempts to narrowly interpret and clarify the inherent vagueness of the Noncompete fail. *See, e.g.*, *Hub Grp.*, 2024 WL 3453863, at *10;

Del. Express, 2002 WL 31458243, at *12; *Norton*, 1998 WL 118198, at *3. Payscale's Opening Brief concludes without support that "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." OB, 31-32. This after-the-fact attempt at narrowly interpreting the scope of the Noncompete cannot escape the breadth of its plain terms. The Court of Chancery properly considered this vagueness in evaluating the reasonableness of the Noncompete, and correctly held that the Noncompete was overbroad as a result.

Finally, the Noncompete bars Ms. Norman not only from competition (in all of its forms) with Payscale, but also with Sonic Topco and all of its subsidiaries as well. As the Court of Chancery correctly held, this independently renders the Noncompete overbroad. *See* OB, Ex. A at 15 ("The Noncompete does not describe the lines of business in which any of those entities operate, rendering the provision unreasonably vague."); *see also Hub Grp.*, 2024 WL 3453863, at *9 (finding overbreadth when business conducted by all entities under corporate umbrella was undefined); *Centurion Serv. Grp., LLC v. Wilensky*, 2023 WL 5624156, at *4 (Del. Ch. Aug. 31, 2023) (finding noncompete overbroad because business of company was undefined); *FP UC*, 2020 WL 1492783, at *7 (same). Payscale cannot credibly argue that the "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." OB, 29-30. Other than citing to conclusory allegations, Payscale offers no support for this assertion and cites to no case law justifying its position. Additionally, as noted in Section II.C. herein, in deciding a motion to dismiss, the Court of Chancery was not required to make the logical leap that because Ms. Norman was allegedly involved in strategic meetings and initiatives while at Payscale, she necessarily knew what business Sonic Topco and all of its subsidiaries was engaged in or intended to engage in. *See, e.g.*, *Crispo v. Musk*, 2022 WL 6693660, at *15 (Del. Ch. Oct. 11, 2022); *Erisman v. Zaitsev*, 2021 WL 6134034, at *17 (Del. Ch. Dec. 29, 2021) (rejecting an allegation as conclusory and giving it "no weight" where the allegation "stands untethered to any supporting facts"); *Khanna v. McMinn*, 2006 WL 1388744, at *29 (Del. Ch. May 9, 2006).

The Court of Chancery correctly held that the Noncompete is overbroad and unenforceable. This Court should affirm its well-reasoned decision.

II. THE COURT OF CHANCERY CORRECTLY REJECTED PAYSCALE'S CONCLUSORY ALLEGATIONS OF BREACH OF THE NONSOLICITATION AND CONFIDENTIALITY PROVISIONS

A. Question Presented

Whether the Court of Chancery correctly dismissed Payscale's claim for breach of the Nonsolicit and confidentiality provisions under Rule 12(b)(6) because the claim was premised upon conclusory allegations that the Court of Chancery need not accept as true at the motion to dismiss stage? OB, Ex. A at 18.

B. Scope of Review

This Court "review[s] the Court of Chancery's dismissal of a claim under Rule 12(b)(6) *de novo*." *Caspian Alpha Long Credit Fund*, 93 A.3d at 1205.

C. Merits of Argument

Payscale's Opening Brief asserts that the Court of Chancery erred in dismissing Payscale's Nonsolicit and confidentiality claims because it "overlook[ed] the multitude of additional facts pled in the [] Complaint" (OB, 34) and did not make reasonable inferences in Payscale's favor (*id.* at 36-37). But what Payscale fails to grasp is the distinction between a reasonable inference and an unreasonable one. As a result, Payscale's request to overturn the dismissal of Payscale's Nonsolicit and confidentiality claims should be refused.

While the Court of Chancery was required to make ***reasonable*** inferences in Payscale's favor at the motion to dismiss stage, it was ***not*** required to credit the unsupported logical leaps that Payscale has requested. *See Crispo*, 2022 WL

6693660, at *15 ("Plaintiff's theory does not coalesce in any logical fashion here. Rather, Plaintiff's arguments for controller status would require the court to make multiple logical leaps, as well as ignore the reality playing out in real time."). Relatedly, it is well-settled under Delaware law that conclusory allegations in a complaint need not be accepted as true by a trial court on a motion to dismiss. *See, e.g.*, *FMLS Hldg. Co.*, 2023 WL 7297238, at *5; *Crispo*, 2022 WL 6693660, at *2; *Erisman*, 2021 WL 6134034, at *7. And make no mistake, Payscale's allegations are conclusory. *See Neurvana Med., LLC v. Balt USA, LLC*, 2020 WL 949917, at *22 (Del. Ch. Feb. 27, 2020) (claims are non-conclusory when supported by specific factual allegations). Payscale's Complaint does not identify a single customer who Ms. Norman supposedly wrongfully solicited, and Payscale's Complaint does not identify any confidential information that Ms. Norman either has in her possession, or has wrongfully used or disclosed. Payscale's threadbare allegations—which are not supported by accompanying specific facts—were properly discounted by the Court of Chancery, do not give rise to inferences in Payscale's favor, and do not tell the story that Payscale claims.

The allegations that Payscale claims the Court of Chancery "overlook[ed]" (OB, 34-36) when deciding Ms. Norman's motion to dismiss do not connect Ms. Norman to the harms Payscale claims it has suffered from Ms. Norman's supposed Nonsolicit and confidentiality breaches. These allegations are scattered assertions

about Ms. Norman's employment with Payscale, her new employment with BetterComp, alleged similarities between Payscale and BetterComp, and conclusions regarding Ms. Norman's alleged misuse of Payscale's confidential information. *See* A222-23 ¶¶ 48-49; A223-24 ¶¶ 51-53; A225 ¶ 56; A226 ¶ 58; A225-26 ¶ 57; A237-38 ¶ 88; A246 ¶ 130-32; A249 ¶ 143-44; A245 ¶ 128.[4]

None of Payscale's allegations include specific supporting facts that bridge the gap between Ms. Norman's experiences at Payscale and her new employment at BetterComp. Indeed, notably absent from this list are ***any*** supporting factual allegations of conduct by Ms. Norman or BetterComp—even allegations "on information and belief"—demonstrating coordination between the two. Payscale's argument that the Court of Chancery was required to rule that its allegations were non-conclusory despite this absence goes beyond the scope of asking for

[4] While Payscale does allege that five Enterprise customers have left Payscale for BetterComp, A245 ¶ 128, Payscale alleges nothing linking ***Ms. Norman*** to those customers. Payscale does not allege (because it cannot) that Ms. Norman actually solicited those customers, that Ms. Norman knew confidential information about those customers, or even that Ms. Norman had responsibility for those customers while employed by Payscale. It simply asks the Court to make the assumption that since Ms. Norman is employed by BetterComp, and those customers joined BetterComp, Ms. Norman must have been involved. Payscale is wrong. *See, e.g.*, *Erisman*, 2021 WL 6134034, at *17 (allegation is given "no weight" where it "stands untethered to any supporting facts"); *Khanna*, 2006 WL 1388744, at *29 (a court is "not required to accept every strained interpretation of the allegations proposed by the plaintiff").

"reasonable" inferences and enters the territory of rewriting Payscale's Complaint to add allegations not pled.

Stated another way, in seeking reversal, Payscale is asking the Court to agree that the Court of Chancery was required to make multiple logical leaps to save Payscale from its own pleading failures. The Court of Chancery was not required to make these leaps, properly declined to do so, and this Court should not accept Payscale's invitation to do so now. *See, e.g.*, *Neurvana*, 2020 WL 949917, at *22 (holding plaintiff made only conclusory allegations of breach of confidentiality provision where complaint lacked well-pleaded facts regarding use of confidential information); *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A.3d 245, 251 (Del. 2019) (a court "need not accept conclusory allegations as true, nor should inferences be drawn ***unless they are truly reasonable***") (emphasis added); *Khanna*, 2006 WL 1388744, at *29 (stating that the court is "not ... required to accept as true conclusory allegations without specific supporting factual allegations" and that the Court must "accept only those reasonable inferences that logically flow from the face of the complaint and is not required to accept every strained interpretation of the allegations proposed by the plaintiff.").

Payscale's allegations accusing Ms. Norman of breaching her Nonsolicit and confidentiality obligations were properly rejected as conclusory because the allegations lack specific factual support. *See, e.g.*, A246 ¶¶ 130-33; A249 ¶¶ 143-

44. Because these allegations merely ***conclude*** that Ms. Norman is engaging in some form of conduct—*i.e.*, using, disclosing, and/or soliciting—without any supporting facts specifically identifying anything Ms. Norman used or disclosed, or who or how she solicited, the Court of Chancery correctly discounted these allegations as conclusory. *See* OB, Ex. A at 18 ("These conclusory allegations, unsupported by any additional pled facts, fail to state a claim for breach of either provision."); *see also, e.g.*, *Erisman*, 2021 WL 6134034, at *17 (rejecting an allegation as conclusory and giving it "no weight" where the allegation "stands untethered to any supporting facts"); *Khanna*, 2006 WL 1388744, at *29 (same).

Indeed, Payscale's Opening Brief fails to acknowledge that its Complaint in large part relies upon allegations of conduct by Ms. Norman and BetterComp that are asserted only on information and belief. *See* A237, ¶ 87; A238, ¶ 91; A23 ¶ 96; A245 ¶ 128; A246 ¶¶ 131-32; A247 ¶¶ 134-36; A249 ¶¶ 143-44. The Court of Chancery properly discounted these allegations. *See, e.g.*, *Christiana Realty Associates, LLC v. Christiana Town Ctr., LLC*, 2024 WL 2753330, at *7 n.51 (Del. Ch. May 30, 2024), *report and recommendation adopted*, (Del. Ch. 2024) ("This Court has doubted the strength of allegations made "'upon information and belief.'"); *Sweeney v. Sweeney*, 2021 WL 5858688, at *4 (Del. Ch. Nov. 30, 2021), *report and recommendation adopted*, (Del. Ch. 2021) (dismissing claims where "the

only allegations that may support actual exertion are conclusory and 'upon information and belief' which this Court does not need to accept as true.").

The cases cited by Payscale do not change this reality. Unlike Payscale's Complaint, those cases involved complaints that included detailed allegations of breach that were supported by specific facts. As a result, reasonable inferences linking these allegations together were properly made by the court at the motion to dismiss stage. In *NACCO Indus., Inc. v. Applica Inc.*, the court specifically noted that it was persuaded by the receipt of "timely and accurate tips from . . . insiders" affiliated with the defendant. 997 A.2d 1, 16 (Del. Ch. 2009). Taken as a whole, these tips persuaded the court that the "allegations support a pleading stage inference of a ***pattern of contacts***" between the defendant and certain third-parties. *Id.* at 17 (emphasis added). No such allegations exist here, and no conduct by Ms. Norman other than commencing a new role at BetterComp—let along conduct establishing a "pattern"—has been pled. For the same reasons, Payscale's reliance upon *Genuine Parts Co. v. Essendant Inc.* is misplaced. *See* 2019 WL 4257160 (Del. Ch. Sept. 9, 2019). In *Genuine Parts*, the court followed *NACCO* and declined to dismiss a complaint that alleged a pattern of behavior and supported this pattern with specific factual allegations that created a timeline of breaching conduct. *See id.* at *10. The allegations in *Genuine Parts* set forth multiple specific events that culminated in the allegedly breaching conduct—including actual alleged communications between the

defendant and relevant third parties supporting the claim of wrongful solicitation. *See id.* at *10–11. No such communications are alleged here.

The Court of Chancery got it right when it dismissed Payscale's skeletal allegations. The Court of Chancery correctly declined to conclude that Ms. Norman's acceptance of employment with BetterComp created a reasonable inference that Ms. Norman was in breach of her Nonsolicit and confidentiality obligations solely because of the alleged similarities between BetterComp's and Payscale's businesses. Payscale's conclusory allegations were properly disposed of at the motion to dismiss phase, and the Court of Chancery's dismissal of Payscale's Nonsolicit and confidentiality claim should be affirmed.[5]

[5] Alternatively, even if this Court was somehow to find that Payscale adequately pled a breach of the Nonsolicit, the Nonsolicit – like the Noncompete – is overbroad and unenforceable. The Nonsolicit has no geographic limitation, and Payscale has no legitimate business interest in preventing Ms. Norman from soliciting entities in areas beyond where she provided services to Payscale. Perhaps more importantly, Payscale alleges in the Complaint that it has approximately 16,000 customers. A218 ¶ 32. But it also specifically alleges that Ms. Norman had responsibility for, at most, 4,000 of those customers. A219 ¶¶ 34-35. And Sonic Topco and its affiliates may have thousands of other customers with whom Ms. Norman had no contact. Yet the Nonsolicit bars Ms. Norman from solicitation of ***any*** of those customers, even though she had responsibility for only a small fraction of them and she likely does not even know who those customers even are. Payscale does not have a legitimate business interest in such a sweeping prohibition. Defendants made each of these arguments (and others) regarding the enforceability of the Nonsolicit to the Court of Chancery. *See* A354-58; A432-39; *see also* OB, Ex. A at 14 ("First, the overbreadth of the Noncompete's nationwide scope is compounded by the unlimited geographic scope of the Nonsolicitation Provision. It is difficult to conceive how Norman could work as a salesperson in Topco's or its subsidiaries' lines of business anywhere in

III. THE COURT OF CHANCERY CORRECTLY DISMISSED PAYSCALE'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM, WHICH RELIED UPON AN UNENFORCEABLE AGREEMENT

A. Question Presented

Whether the Court of Chancery correctly dismissed Payscale's claim for tortious interference with contractual relations under Rule 12(b)(6) because the claim was premised upon an unenforceable agreement? OB, Ex. A at 19.

B. Scope of Review

This Court "review[s] the Court of Chancery's dismissal of a claim under Rule 12(b)(6) *de novo*." *Caspian Alpha Long Credit Fund*, 93 A.3d at 1205.

C. Merits of Argument

To state a claim for tortious interference with 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) (emphasis omitted) (citation omitted). Payscale's tortious interference with contract

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the world and be certain not to run afoul of the Nonsolicitation Provision's broad prohibition on soliciting even prospective clients, given the difficulty in knowing who those unnamed prospective clients might be."). Accordingly, this Court may consider these arguments on appeal, and may affirm on this alternate ground. *See Howard v. Howard*, 2009 WL 1122116, at *2 n.11 (Del. Apr. 28, 2009) ("This Court may affirm a trial court's ruling on grounds different from those relied upon by the trial court.").

claim rises and falls with the enforceability of the Restrictive Covenants. *See* OB, 38; *see also* OB, Ex. A at 19. For the same reasons articulated in Section I.C. *supra*, the Restrictive Covenants that Payscale seeks to enforce against Ms. Norman are not enforceable. Without an enforceable agreement, Payscale's tortious interference with contract claim necessarily fails. Thus, because the Restrictive Covenant claims against Ms. Norman were properly dismissed, so too must the tortious interference claim be dismissed.

Payscale's Opening Brief does not dispute this conclusion. The Court of Chancery's dismissal of Payscale's tortious interference with contract claim should be affirmed.

CONCLUSION

Appellees respectfully request that the Court affirm the Court of Chancery's dismissal of Payscale's Complaint.

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