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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

APPELLANT'S REPLY BRIEF

K&L GATES LLP
Steven L. Caponi (No. 3484)
Megan E. Hunt (No. 6569)
600 N. King Street, Suite 901
Wilmington, DE 19801
Phone: (302) 416-7000
steven.caponi@klgates.com
megan.hunt@klgates.com

Counsel for Appellant/Plaintiff Below Payscale, Inc.

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INTRODUCTION[1]

In its Opening Brief, Payscale argues the Court of Chancery erred when dismissing Counts I and II of the Amended Complaint because it failed to consider the well-pled allegations in the Amended Complaint, made inferences in favor of Defendants, and resolved factual issues. The Answering Brief does nothing to counter this argument. Instead, Defendants reiterate their position taken at the lower court and, like the Court of Chancery, ignore the Rule 12(b)(6) standard. Defendants' arguments serve only to highlight the Court of Chancery's errors and establish that one must disregard the proper legal standard to justify the lower court's dismissal.

Despite Defendants' arguments to the contrary, had the Court applied the correct standard, accepted the Amended Complaint's well-pled facts as true and made all reasonable inferences in favor of Payscale, it would have determined the Non-Compete Provision is enforceable because it is reasonable in scope, supported by adequate consideration, and furthers Payscale's legitimate business interests. Additionally, the Court of Chancery would have determined the Amended

[1] Capitalized terms not defined herein shall have the meanings given in Appellant's Opening Brief ("Opening Brief" or "OB"). Dkt. 8. Citations to Appellee's Answering Brief on Appeal are "Answering Brief" or "AB."

Complaint pleads a claim for breach of the Nonsolicitation Provision and Confidentiality Provision and for tortious interference with the Agreements.

Accordingly, for the reasons set forth below and those set forth in the Opening Brief, Payscale respectfully requests that the Supreme Court REVERSE the trial court's dismissal of Counts I and II of the Amended Complaint.

ARGUMENT

I. THE AMENDED COMPLAINT PLEADS FACTS SUPPORTING THE ENFORCEABILITY OF THE NON-COMPETE PROVISION

A central dispute in this appeal, is whether the Court of Chancery erred in finding the Non-Compete Provision facially unenforceable under Delaware law. Payscale has advanced several arguments to support this ruling was incorrect. Specifically, the Court of Chancery failed to apply the appropriate Rule 12(b)(6) standard when it failed to consider the Amended Complaint's well-pled facts, and made inferences and resolved factual disputes in favor of Defendants. OB at 16-17.

Defendants make the same errors as the Court of Chancery by failing to accept as true the Amended Complaint's well-pled allegations and the context of the employment relationship between Norman and Payscale. Thus their arguments as to the unenforceability of the Non-Compete Provision fail. When the well-pled allegations in the Amended Complaint are viewed in the context of the relationship between Norman and Payscale, which is required on a motion to dismiss, the Amended Complaint adequately pled the Non-Compete Provision: is (i) reasonable in scope, (ii) supported by adequate consideration, and (iii) furthers Payscale's legitimate business interests.

Payscale also observed the Court of Chancery's decision on the motion to dismiss contradicts its ruling on Payscale's motion to expedite, despite Payscale's inclusion of 33 additional paragraphs of detailed allegations to the Amended

Complaint. *Id.* In their Answering Brief, Defendants elevate Payscale's observation into an argument and cite multiple cases outlining the difference between the Rule 12(b)(6) standard and colorable claim standard. AB at 15-16. Defendants did so to avoid addressing the merits of Payscale's argument. Payscale does not dispute the applicable standard. Rather, it referenced the Court reversing course on the sufficiency of the pleadings as an example of the Court failing to consider the new allegations in the Amended Complaint when dismissing Payscale's claims.

A. The Facts Pled in the Amended Complaint Support the Reasonableness of the Non-Compete Provision's Geographic Scope and Temporal Duration

Payscale explained in its Opening Brief how the Court incorrectly failed to consider the context of Norman's relationship with Payscale or the well-pled factual allegations in the Amended Complaint when finding the nationwide scope and 18-month duration of the Non-Compete Provision was facially improper. OB at 21-24. In the Answering Brief, Defendants claim "Payscale cites to no case law in support of its assertion that the Court of Chancery ignored the purported 'context' here." AB at 17. Defendants' argument misses the mark. The question is not what case law applies to this case, but rather the application of the case law to the specific facts alleged in the Amended Complaint. As a result, Defendants cite factually distinguishable cases. To the extent Defendants do focus on the merits, their argument regarding geographic scope suffers from the same deficiencies as the

Court of Chancery's Motion to Dismiss Opinion—it ignores the well-plead allegations.

For example, one issue on appeal is whether the nationwide geographic scope of the Non-Compete Provision covers a much larger geographic area than where Payscale's economic interests lie. On this issue, Defendants simply state a nationwide scope for the Non-Compete Provision is overbroad because "Ms. Norman's responsibilities were focused on the Western region." AB at 18-19. The argument ignores many of the Amended Complaint's well-pled allegations supporting a nationwide scope.

For example, Defendants fail to acknowledge the following facts: (i) Payscale does business throughout the U.S. and has approximately 16,000 nationwide customers (A213 ¶ 13; A218 ¶ 32); (ii) Norman was one of three key sales leaders for Payscale at the time of her departure (A223 ¶ 50); and (iii) Norman's role was not geographically limited to the west region, as she met regularly with her counterpart, Payscale's Senior Director of Sales for the East Region, with whom she exchanged reports on their respective Enterprise accounts and weekly team meeting agenda notes for the purpose of developing a cohesive nationwide marketing strategy (A223-28 ¶¶ 51-60).

Aside from meeting regularly with Payscale's top sales executives, the Amended Complaint also pleads: (i) Norman helped develop Payscale's national

marketing and competitive strategy; (ii) was consulted with respect to Payscale's sale-related decision-making; (iii) was responsible for identifying and contracting with a vast swath of the U.S. and Canadian markets; (iv) was exposed to Payscale's entire customer base; and (v) gained strategic insight into how Payscale's products were marketed and sold to its Enterprise customers regardless of where they were located. *Id.*

Defendants, like the Court of Chancery, ignore these well-pled allegations because if the allegations are credited, as they must be under the Rule 12(b)(6) standard, one cannot conclude a nationwide scope was so overly broad as to render the Non-Compete Provision unenforceable on its face. *See Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 535 (Del. 2011); *Kodiak Building Partners, LLC v. Adams*, 2022 WL 5240507, at *11 (Del. Ch. Oct. 6, 2022) ("The 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.").

Moreover, the Non-Compete Provision does not restrict Norman from working anywhere in the U.S. Instead, under the Non-Compete Provision, Norman can work in any geographic location as long as she is not working for a direct competitor of Payscale in a sales or other strategic role. *See* A268 § 9; A293 § 9 (defining "Competitive Activity" as engaging in any level of strategic, advisory, technical,

creative, or sales activity for a company in the same line of business as Payscale). Because the Non-Compete Provision only prohibits Norman from working for a *direct competitor* in a specific capacity, the nationwide limit is not overbroad, as it is limited by the business of the employee's new company. *See Lyons Ins. Agency, Inc. v. Wilson*, 2018 WL 4677606 at *5 (Del. Ch. Sept. 28, 2018). Both the Court of Chancery and Defendants fail to consider that Norman's ability to work anywhere in the U.S., provided she does not compete with Payscale, further limits the geographic scope of the Non-Compete Provision.

Finally, Defendants similarly ignore the facts when arguing the Non-Compete Provision's temporal scope is overbroad. Like the Court of Chancery, Defendants do not argue the 18-month duration of the Non-Compete Provision by itself is overbroad, but instead suggests it exacerbates the geographic overbreadth. AB at 19. The Answering Brief goes on to cite cases stating the geographic and temporal scope of restrictive covenants must be considered together. *Id.* Despite citing this case law, Defendants do not consider the relevant facts when evaluating the geographic and temporal scope of the Non-Compete Provision. Instead they merely cite cases finding a nationwide scope with a one-year duration is unreasonable. *Id.* Unlike the cases cited by Defendants, when considering the facts pled in the Amended Complaint, the nationwide scope with an 18-month duration is more than reasonable. As noted above, Payscale's interest is nationwide and Norman's responsibilities for Payscale

were nationwide. The Amended Complaint also pleads Norman worked with Enterprise customers and 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.*

The Court of Chancery and Defendants failed to consider the contract length for Enterprise customers when considering the reasonableness of the temporal duration of the Non-Compete Provision. By ignoring the contract length of Enterprise customers, both the Court of Chancery and Defendants fail to acknowledge that if Payscale loses an Enterprise customer 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 Del. Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, at *14 (Del. Ch. Oct. 23, 2002) (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). Defendants and the Court of Chancery erred in not considering the well-pled facts, as well as the context of Norman's

employment, when concluding the scope of the Non-Compete Provision was overbroad.

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

In the Opening Brief, Payscale argues the Court of Chancery erred by holding the value of the PIUs was inadequate consideration for the Non-Compete Provision. OB at 25-27. Defendants counter by arguing the Court of Chancery properly concluded the value of the PIUs was "vanishingly small" and could not support a restrictive covenant with an 18-month duration and nationwide scope. AB at 21-22.

Defendants' arguments ignore the fact the Court of Chancery impermissibly resolved issues of fact on a Rule 12(b)(6) motion to conclude the value of the PIUs is "vanishingly small." As stated in the Opening Brief, the Amended Complaint alleges many reasons why the PIUs have inherent value. A228-29 ¶ 62; OB at 25. Some of the reasons alleged are that the units allow the employee to receive the benefit of any increase in value the company recognizes at the time of an event, provide tax advantages for recipients, and provide the right to own the equity. *Id.* The Court of Chancery and Defendants ignored the obvious—and clearly alleged—value of PIUs. Despite being provided no evidence regarding the value of the PIUs at the time of the Amended Complaint, the Court of Chancery determined the PIUs had the same value as they did at the time they were issued, i.e. $0. The Court of Chancery did not consider that equity inherently has upside value and never

determined the value of that upside. Instead, the Court of Chancery simply assumed a face value for the PIUs to rule in favor of Defendants without allowing the parties to engage in discovery on this factual issue. The value of the PIUs was clearly a determination of fact that should not have been resolved on a motion to dismiss. *See Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001) ("[On] a motion to dismiss [. . .] the Court of Chancery may not resolve material factual disputes[.]").

Defendants try to get around this factual issue by relying primarily on the Court of Chancery case, *N. Am. Fire Ultimate Holdings, LP v. Doorly*, 2025 WL 736624 (Del. Ch. Mar. 7, 2025). As Payscale argued before the Court of Chancery, *Doorly* is distinguishable.

First, in *Doorly* the defendant employee was terminated for cause, resulting in the automatic forfeiture of incentive units. *Doorly*, 2025 WL 736624 at *2. Because the units were forfeited, the sole consideration for the restrictive covenants was eliminated, and the agreement was deemed unenforceable. *Id.* at 3. Norman, however, did not automatically forfeit her vested PIUs when she separated from Payscale and 49,218 PIUs remain validly outstanding to this day. A228 ¶ 61. Defendants' contention that Norman's vested PIUs are non-existent because they could be cancelled under Section 8(e) of the Agreements ignores the Agreements' plain language and Amended Complaint's alleged facts. OB at 20. Section 8(e) provides that "the Partnership shall be permitted to retroactively treat [Norman's]

prior Separation as though [Norman] had been terminated for Cause for purposes of this Agreement," thereby triggering an automatic cancellation of the PIUs. A267 § 8(e); A292 § 8(e). The Amended Complaint, however, does not allege an exercise of Section 8(e)'s remedies and, in fact, alleges the opposite—that Norman still holds 49,218 PIUs. A228 ¶ 61. The PIUs remain adequate consideration for the Restrictive Covenants.

Second, unlike in *Doorly*, the Agreements are supported by additional consideration as alleged in the Amended Complaint. A228-30 ¶¶ 61, 63. This additional consideration includes a signing bonus, a salary increase, and access to Payscale's confidential information in consideration for the Non-Compete Provision. A229-30 ¶ 63. The Amended Complaint further alleges the Agreements were specifically executed "in connection with Norman's hiring and promotion." A228 ¶ 61.

The Court of Chancery once again made a factual determination by adopting Defendants' argument that, because the Agreements were executed months after Norman's respective hiring and promotion, they were not additional consideration for the Non-Compete Provision. Ex. A at 13 n.4. The Court of Chancery's decision, however, fails to consider that it takes time to get the paperwork together and it could take a few months after the hiring or promotion to issue the PIUs. Defendants argue in a footnote this fact should not be considered because it was not presented to the

trial court in the first instance. AB at 23 n.2. For the reasons discussed in Section II.B *infra*, Defendants' argument should be disregarded because it was placed in a footnote and not the body of the Answering Brief. Even if the Court were to consider Defendants' argument, this fact was raised to the trial court during the motion to dismiss hearing. A477 at 33:1-2 ("Sometimes it takes awhile to get paperwork put together.").

As with the value of the PIUs the Court of Chancery should not have ruled on the factual issue of whether the Non-Compete Provision was also supported by additional consideration in the form of a promotion or raise. *See 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"). In fact, if the Court was going to resolve the issue it should have been resolved by making all inferences 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 Non-Compete Provision was not supported by adequate consideration.

C. The Amended Complaint Pleads Facts to Support the Non-Compete Provision Protects Payscale's Legitimate Business Interests

Payscale argues the Court of Chancery erred in deciding the Non-Compete Provision protects more than Payscale's legitimate business interests. OB at 28-32.

Defendants criticize the Opening Brief by stating Payscale asks this Court to interpret the Non-Compete Provision "in a way that contradicts well-settled Delaware law." AB at 24. Ironically it is Defendants who are asking the Court to interpret the Non-Compete Provision without considering the context of Norman's employment with Payscale, thus contradicting well-settled Delaware law. *See Hub Grp., Inc. v. Knoll*, 2024 WL 3453863, at *8 (Del. Ch. July 18, 2024) ("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.").

Without engaging with the facts as pled in the Amended Complaint, Defendants argue the Non-Compete Provision "is not tailored to Ms. Norman's role at Payscale." AB at 24. To support this argument, Defendants simply adopt the Court of Chancery's analysis finding the Non-Compete Provision "bars [Norman] from engaging in any (unidentified) business of Sonic Topco, Payscale, or any of Sonic Topco's (unnamed) subsidiaries." *Id.* at 24-25. Defendants claim Payscale acknowledged the Non-Compete Provision is overbroad because the Opening Brief states Payscale is not trying to enforce the outer reach of the Non-Compete Provision. AB at 26. Defendants misconstrue Payscale's position.

Payscale was not acknowledging the Non-Compete Provision is overbroad compared to Payscale's economic interest regarding Norman. Payscale was arguing the Court of Chancery's interpretation of the Non-Compete Provision applies to the

outer reaches and ignores how the language of the Non-Compete Provision should be applied to the facts present in this case. *See Knoll*, 2024 WL 3453863, at *8.

As noted in the Opening Brief, contrary to the conclusions of Defendants and the Court of Chancery, under the Non-Compete Provision Norman can 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. The Non-Compete Provision protects Payscale's legitimate business interests in not having a senior level executive work for a direct competitor of Payscale. Defendants adopt the Court of Chancery's assumption that Norman did not know what lines of business are covered by the Non-Compete Provision. Norman's subjective knowledge of Payscale's business is a fact issue that should not be determined on a motion to dismiss. *See Bradley*, 58 A.3d 445.

Furthermore, the Amended Complaint adequately pleads Norman was aware of Payscale's business and the structure of Sonic Topco. Specifically, 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. Payscale is the only subsidiary of Sonic Topco that is an operating entity and 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.

As noted in the Opening Brief, and Section I.A *supra*, the Amended Complaint alleges Norman was one of three key sales leaders at Payscale, was part of high-level strategic decisions, and was involved in creating some of Payscale's most sensitive information. The Amended Complaint also pleads that before joining Payscale Norman held senior sales positions at MarketPay from 2008 until its merger with Payscale in 2016 and worked at Payfactors from 2016 until its acquisition by Payscale in 2021. A221 ¶ 43. Finally, the Amended Complaint also pleads Norman was well-aware of the type of business that would give rise to Competitive Activity. Based on these well-pled facts it is ridiculous to argue Norman was unaware of Payscale's lines of business and what business was subject to the Non-Compete Provision.

Unlike Defendants' and the Court of Chancery'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. Both Defendants and the Court of Chancery chose to ignore that 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, the Non-Compete Provision is not overbroad and only serves to protect Payscale's legitimate business interests.

II. THE AMENDED COMPLAINT PLEADS A BREACH OF THE NONSOLICITATION AND CONFIDENTIALITY PROVISIONS

Another focus on appeal is Payscale's argument that the Court of Chancery erred in determining the Amended Complaint fails to state a claim for breach of the Agreements' Nonsolicitation and Confidentiality Provisions. OB at 33-37. Defendants claim the Court of Chancery properly dismissed Payscale's breach of the Nonsolicitation Provision and/or Confidentiality Provision for two reasons. First, Defendants agree with the Court of Chancery that the Amended Complaint did not plead specific facts in support of the claim. AB at 29-35. Second, the Nonsolicitation Provision is overbroad and unenforceable. AB at 35 n.5. Both arguments fail.

A. The Amended Complaint Pleads Sufficient Facts to Support a Breach of the Nonsolicitation and Confidentiality Provisions

The crux of Defendants' first argument is the Amended Complaint fails to plead specific facts to support a breach of the Nosolicitation and Confidentiality Provisions and requires the Court to make unreasonable inferences. AB at 29-31. Defendants' arguments, like the Motion to Dismiss Opinion, fail to engage with the Amended Complaint's allegations and merely label them as conclusory. When the allegations are taken in their totality with the reasonable inferences made in Payscale's favor, the Amended Complaint pleads a breach of the Nonsolicitation and

Confidentiality Provisions. *See NACCO Indus., Inc. v. Applica Inc*., 997 A.2d 1, 17 (Del. Ch. 2009).

The Amended Complaint pleads Payscale has approximately 16,000 customers with 3,100 being Enterprise customers. A218 ¶ 32; A219 ¶¶ 34, 35. Norman was one of three most senior sales leaders at Payscale. A222-23 ¶ 49. In this role, Norman oversaw the Enterprise Sales teams for the West region and worked with the other senior sales leaders to develop sales strategies for all of Payscale's Enterprise customers. A226-27 ¶ 59. In this role, 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. She was also involved in marketing strategy to gain a competitive advantage over BetterComp. A225-26 ¶ 57. The Amended Complaint pleads that in October 2024, Norman was hired by BetterComp, Payscale's direct competitor, where she holds a senior-level sales position, manages a sales team, is involved in sales strategy, and solicits Enterprise customers. A236-38 ¶¶ 84, 88. Finally, the Amended Complaint pleads since December 2024, Payscale has lost at least five Enterprise customers to BetterComp, and believes several more Enterprise customers have left Payscale for BetterComp. A245 ¶ 128.

As established by these allegations, Payscale is asserting a former senior sales executive who was responsible for Payscale's Enterprise customers and strategy for

marketing to these customers, was hired by a direct competitor, and two months later five of Payscale's Enterprise customers signed with this competitor. The inference Payscale is asking the Court to draw is that Norman used the knowledge she gained at Payscale and the goodwill she developed on Payscale's behalf to solicit Enterprise customers for BetterComp. This inference is more than reasonable because Norman had access to Payscale's Enterprise customers, knew Payscale's marketing strategy for these customers, and developed relationships with these customers. Furthermore, a mere two months after Norman was hired by BetterComp at least five Payscale Enterprise customers were lost to BetterComp.

Defendants cite cases supporting many propositions but fail to identify how this inference is anything but reasonable, how these facts are not specific, and how these facts involve multiple logical leaps. AB at 30-32. In a footnote Defendants argue the Amended Complaint fails to link Norman to the five Enterprise customers lost to BetterComp. AB at 31 n. 4. For the reasons discussed in Section II.B *infra*, this argument should be disregarded as it is in a footnote and not the body of the brief. Even if this Court were to consider the argument, the Amended Complaint pleads Norman had knowledge of all of Payscale's Enterprise customers and the marketing strategy for each customer. A225 ¶ 56. Furthermore, none of the above facts were pled upon information and belief, making Defendants' argument that the facts were properly discounted by the Court of Chancery inapplicable. As noted in

the Opening Brief, on a Rule 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.

B. The Nonsolicitation Provision is Enforceable

In a footnote in the Answering Brief, Defendants argue "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." AB at 35 n.5. This argument should be disregarded as waived because the argument is in a footnote and not the body of the brief. *See e.g.*, Supr. Ct. R. 14(b)(vi)(A)(3) ("The merits of any argument that is not raised in the body of the opening brief shall be deemed waived and will not be considered by the Court on appeal"); Supr. Ct. R. 14(d)(iv) ("Footnotes shall not be used for argument ordinarily included in the body of a brief."); *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1264 (Del. 2012) ("Arguments in footnotes do not constitute raising an issue in the 'body' of the opening brief."); *Lum v. State*, 101 A. 3d 970, 972 (Del. 2014) ("The Court's rules governing what is expected in briefs are not mere technicalities; they help to ensure fairness by giving the other party a fair opportunity to respond to a fully formed argument, prevent litigants from circumventing page length restrictions, and maximize scarce judicial resources.").

Even if this Court were to consider the argument on the merits it should be rejected. Defendants argue the Nonsolicitation Provision is overbroad because it has no geographic limitation and does not serve Payscale's legitimate business interest. AB at 35 n.5. Delaware Courts have held a restrictive covenant may be enforced "without express territorial scope." *Older*, 2002 WL 31458243 at *13. Delaware Courts have also held in the case of non-solicitation provisions an express territorial scope is unnecessary as the provision is already limited to specific customers. *See Kan-Di-Ki, LLC v. Suer*, 2015 WL 4503210 (Del. Ch. July 22, 2015).

The purpose of the Non-Solicitation Provision is to further Payscale's legitimate interest in not allowing a senior director-level employee who has access to Payscale's business plan, operations, pricing, marketing, customers, etc., to use the knowledge gained through his/her employment to solicit Payscale's customers for a direct competitor. *See All Pro Maids, Inc. v. Layton*, 2004 WL 1878784, at *5 (Del. Ch. Aug. 9, 2004) (holding "[a]n employer has an interest in the goodwill created by its sales representatives and other employees, which is vulnerable to misappropriation if the employer's former employees are allowed to solicit its customers shortly after changing jobs"). The geographic location of non-Payscale customers is irrelevant to this legitimate purpose as it only applies to Payscale's customers, and Norman would be free to solicit non-Payscale customers worldwide. As described in Section I.A *supra*, the Amended Complaint adequately pleads that

Norman was one of the three key senior sales leaders for Payscale, was intimately involved in Payscale's sales business strategy, and had knowledge of all of Payscale's customers.

Finally, Defendants make the same arguments regarding the Nonsolicitation Provision as they do for the Non-Compete Provision. For the same reasons addressed in Sections I.C.3 of the Opening Brief and Sections I.C *supra*, the Amended Complaint pleads that the temporal scope of the Non-Solicitation Provision is reasonable, and the Non-Solicitation Provision only protects the legitimate interests of Payscale and its subsidiaries as the only operating entities of Sonic Topco. Thus, the Amended Complaint pleads the Non-Solicitation Provision is enforceable.

III. THE AMENDED COMPLAINT STATES A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

Defendants and Payscale both agree whether the Court of Chancery's ruling to dismiss Payscale's tortious interference with contractual relations claim should be affirmed or remanded turns on the enforceability of the Restrictive Covenants. AB at 37; OB at 38-39. 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 and in the Opening Brief, the Court of Chancery's ruling on the breach of the Restrictive Covenant claim and the tortious interference with contractual relations claim should be reversed.

Dated: October 10, 2025

K&L GATES LLP

/s/ Steven L. Caponi

Steven L. Caponi (No. 3484)
Megan E. Hunt (No. 6569)
600 N. King Street, Suite 901
Wilmington, DE 19801
Phone: (302) 416-7000
steven.caponi@klgates.com
megan.hunt@klgates.com

Counsel for Appellant/Plaintiff Below Payscale, Inc.