



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAJA VENKATESH,

Plaintiff-Below Appellant,

v.

PRASAD GUNDUMOGULA,

Defendant-Below Appellee.

No. 181, 2026

Court Below: Court of Chancery
of the State of Delaware
C.A. No. 2025-1216-MTZ

APPELLANT'S REPLY BRIEF

OF COUNSEL:

KATTEN MUCHIN
ROSENMAN LLP

Brian L. Muldrew
Thomas Artaki
50 Rockefeller Plaza
New York, NY 10020
(212) 940-8800
brian.muldrew@katten.com
thomas.artaki@katten.com

Michael J. Lohnes
525 W. Monroe Street, Suite 1900
Chicago, IL 60661
Telephone: (312) 902-5200
michael.lohnes@katten.com

KLEHR HARRISON HARVEY
BRANZBURG LLP
David S. Eagle (Bar No. 3387)
919 N. Market Street, Suite 1000
Wilmington, DE 19801
(302) 552-5508
deagle@klehr.com

Counsel for Appellant Raja Venkatesh

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INTRODUCTION¹

The dismissal of Plaintiff's fiduciary duty claim should be reversed. As set out in Plaintiff's Opening Brief, the Chancery Court incorrectly found that two provisions of the Registration Rights Agreement (the RRA), which concerned Mondee's obligations to register its common shares, "expressly addressed" an entirely separate obligation – to remove restrictive legends that Defendant unlawfully maintained on Plaintiff's Shares – and, therefore, preempted Plaintiff's claim under *Nemec v. Shrader*, 991 A.2d 1120 (Del. 2010). Defendant's Answering Brief ("AB") confirms that was erroneous.

First, Defendant does not meaningfully defend the Chancery Court's RRA analysis. Instead, Defendant introduces an RRA provision nowhere relied upon in the Order that, like the provisions the Chancery Court did rely upon, is expressly limited to Mondee's **registration** obligations. Unable to point to any contractual provision creating (let alone "expressly addressing") the rights and obligations underlying Plaintiff's claim, Defendant argues that the RRA must govern non-registration obligations, such as the removal of wrongful legends, because it would otherwise be superfluous since Plaintiff became an RRA party after his Shares were registered. But Defendant overlooks that the RRA creates continuing registration

¹ All capitalized undefined terms have the same meaning as in Plaintiff's Opening Brief ("OB").

obligations beyond the initial post-IPO registration, foreclosing his argument.

Second, Defendant fails to explain why, even if the RRA “expressly addressed” a legend removal obligation, that should preempt Plaintiff’s claim. In fact, Defendant apparently agrees with Plaintiff – and disagrees with the Chancery Court – that a fiduciary duty claim premised on independent rights can survive despite a contract conferring those same rights. Defendant claims, however, that Plaintiff did not have any independent right to sell his Shares because he only received them through contract. That argument, if accepted, would preclude all stockholder fiduciary duty claims given that every stockholder receives shares through contract. Defendant’s other arguments, which invent new and unrecognized exceptions to bedrock Delaware common and statutory law recognizing stockholders’ fundamental right to sell their shares, similarly fail.

Third, Defendant does not credibly defend the Chancery Court’s decision to take judicial notice of the New York Complaints, arguing only that the Chancery Court did so only to “observe” Plaintiff’s prior contractual interpretation. Defendant provides no authority permitting such “observations,” particularly where, as here, the judicial notice appeared critical to the Chancery Court’s ultimate decision that the RRA preempted Plaintiff’s fiduciary duty claim.

Finally, while the Chancery Court did not review the adequacy of Plaintiff’s factual allegations as to Defendant’s involvement in the restriction of Plaintiff’s

Shares, this Court can and should, in the interest of judicial efficiency, decide that issue now. The Complaint's allegations overwhelmingly establish Defendant's orchestration of the scheme to restrict Mondee stockholders' shares, including Plaintiff's, and more than satisfy Delaware's minimal pleading standard.

Accordingly, for the reasons set forth in the Opening Brief and below, the Order should be reversed.

ARGUMENT

I. THE CHANCERY COURT ERRED IN DETERMINING THAT THE RRA “EXPRESSLY ADDRESSED” AN OBLIGATION TO REMOVE THE RESTRICTIVE LEGENDS.

As shown in Plaintiff’s Opening Brief, the Chancery Court erroneously interpreted the RRA as “expressly addressing” an obligation by Mondee to remove the Restrictive Legends from Plaintiff’s shares, such that Plaintiff’s fiduciary duty claim was preempted by the RRA under *Nemec*, 991 A.2d at 1129. In reality, no such obligation is found in the RRA, express or otherwise.²

In finding that the RRA “expressly addressed” the removal of restrictive legends, the Chancery Court relied on two provisions of the RRA: (1) Section 2.1.1, titled “Filing” (*i.e.*, of the Registration Statement); and (2) Section 3.1.16, which required Mondee to, “in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Holders, consistent with the terms of this Agreement, *in connection with such Registration.*”³ (A10-11 (citing A139 at § 2.1.1), A145-46 at § 3.1.16.) As the Opening Brief shows, those provisions, by their express terms, simply address

² Defendant does not dispute that, other than an inapplicable lock-up provision (which expired months before Plaintiff received his shares), the RRA nowhere mentions the restriction of Mondee shares, let alone the removal of restrictive legends. (*See* OB at 12-13, 26-27.)

³ All emphasis in this Reply Brief is added.

Mondee’s obligation to register Mondee’s shares for resale with the SEC. (OB at 23-27.)

Defendant does not seriously defend the Chancery Court’s RRA analysis. (See AB at 14-18.) Indeed, Defendant does not address Section 2.1.1 beyond simply citing it (*see id.* at 15), tacitly conceding that it did not create any obligation to remove the Restrictive Legends.⁴ And, Defendant does not engage with Section 3.1.16 other than to selectively quote it – as did the Court below – by omitting critical conditional language providing that Mondee was obligated to cooperate “in connection with [the] **Registration**” of the Shares. (A145-46 at § 3.1.16; AB at 15-16.)

Tacitly conceding that neither Section 2.1 nor Section 3.1.16 create, let alone “explicitly address,” an obligation to remove the Restrictive Legends, Defendant introduces an RRA provision nowhere mentioned in the Order. Specifically, Defendant relies on Section 3.1, which provides: “***In connection with any Shelf [Registration]*** ... the Company shall use its commercially reasonable efforts ***to effect such Registration*** to permit the sale of such Registrable Securities ...” (A144 at § 3.1; *see* AB at 15.) In enumerating what Mondee was specifically required to do in this regard, Article 3 contains 16 provisions that further ***the registration*** of

⁴ Nor could he. Section 2.1.1 simply addresses Mondee’s obligation to file “a Shelf Registration on Form S-1.” (A139 at § 2.1.1.)

Mondee shares with the SEC. (*See, e.g.*, A144 at § 3.1.1 (“prepare and file ... a Registration Statement”).) Defendant, tellingly, does not cite any of these provisions (other than Section 3.1.16), let alone explain what they have to do with removing restrictive legends.

Unable to point to any RRA provision “explicitly addressing” an obligation to remove restrictive legends, Defendant argues that such obligation must exist, and the RRA cannot relate only to the registration of shares, because otherwise the RRA would be superfluous since Plaintiff received his Shares after they were already registered. (AB at 16.) That argument reveals Defendant’s misunderstanding of the RRA.

Numerous RRA provisions address Mondee’s continuing obligation to maintain an active Shelf Registration after the shares’ initial registration. For example, Section 2.1.1 required Mondee to “maintain a Shelf ... and shall prepare and file with the Commission such amendments, *including post-effective amendments, and supplements* as may be necessary to keep a Shelf continuously effective ...” (A139 at § 2.1.1; *see* A144 at § 3.1.2 (requiring Mondee to “prepare and file such amendments and post-effective amendments to the Registration Statement” requested by persons holding at least 5% of shares).) Section 2.1.2, in turn, requires that, “[i]f any Shelf ceases to be effective under the Securities Act for any reason *at any time* while Registrable Securities are still outstanding, the

Company shall ... cause such Shelf to again become effective ...” (A139 at § 2.1.2.)

These provisions provide shareholders, including Plaintiff, meaningful, ongoing rights. For example, the SEC is authorized to “issue a stop order suspending the effectiveness of the registration statement” if, for example, it finds “*at any time* that the registration statement includes any untrue statement of a material fact.” 15 U.S.C. § 77h(d). An SEC stop order would be rescinded only after the registration statement “has been amended” to resolve the deficiency. *Id.* Accordingly, in the event the SEC issues a stop order on Mondee’s registration, Sections 2.1.1 and 2.1.2 would require Mondee to file an amendment to the Registration Statement as necessary for Plaintiff’s Shares to regain registered status. In other words, by becoming a party to the RRA, Plaintiff was granted rights furthering the *continuing registration* of his Shares.

Finally, Defendant argues that, regardless of the actual RRA provisions, the RRA can be interpreted as creating an obligation to remove the Restrictive Legends because its “overarching purpose” was to “facilitate the resale of the Shares.” (AB at 17). While the registration of shares undoubtedly relates to stockholders’ ability to sell, the purpose of the *Registration Rights Agreement* was to ensure that Mondee registers the shares – not to prevent Mondee from taking actions interfering with the

sale of *already registered* shares.⁵ Regardless, such purported inferential obligations come nowhere close to *Nemec*'s requirement that an obligation be "expressly addressed" by a contract to preempt a fiduciary duty claim. 991 A.2d at 1129.

Accordingly, the RRA does not "expressly address" Mondee's obligation to remove the Restrictive Legends from the Shares, and therefore the Chancery Court's decision to dismiss Plaintiff's claim as being duplicative of his rights under that agreement was erroneous and is grounds for reversal.

⁵ The Opening Brief pointed out that cases involving compliance with registration rights agreements center on companies' failure to file registration statements. (*See* OB at 25.) Defendant, in response, does not identify a single case in which any court found that a company breached such agreement by interfering with a stockholder's ability to sell already registered shares. (*See* AB at 17 n.8.)

II. THE CHANCERY COURT ERRED IN DETERMINING PLAINTIFF’S CLAIM IS PRECLUDED BY THE RRA *EVEN IF* HIS CLAIM ARISES FROM INDEPENDENT FIDUCIARY DUTY PRINCIPLES.

In his Opening Brief, Plaintiff demonstrated that, even if the RRA “expressly addressed” Defendant’s duty not to prevent Plaintiff from selling his Shares (it does not), the Chancery Court’s Order should still be reversed because it is premised on an erroneous legal holding that, under *Nemec* and its progeny, Plaintiff’s claim cannot survive even though it arises from (i) independent rights under Delaware common and statutory law, and (ii) Defendant’s efforts to employ a broad and improper scheme implicating duties independent of (and well beyond) the RRA. (See OB at 28-39.) Defendant’s Opposition actually confirms the Court’s error.

A. Plaintiff’s Right to Sell Does Not Arise Solely from Contract.

Defendant appears to agree with Plaintiff – and, in effect, disagree with the Chancery Court – that, for a fiduciary duty claim to be preempted by contract, the relevant contractual rights and obligations must provide the *sole* basis for claim. (Contrast OB at 23-26 with Order at A10.) In particular, Defendant acknowledges that *Nemec*’s reasoning for dismissing the plaintiff’s claim – that directors caused the company to breach a stock rights plan – was that the claimed right was “solely a creature of contract.” (AB at 23-24 (quoting *Nemec*, 991 A.2d at 1129); see OB at

29-31.)⁶ Accordingly, Plaintiff understands Defendant’s argument is that Plaintiff’s claim is preempted because it is grounded *solely* in the RRA and the Redemption Agreement. (See AB at 19-22.) Those arguments fail.

First, Defendant argues that Plaintiff’s right to sell his Shares must be grounded in the RRA and the Redemption Agreement because, had Plaintiff never become party to them, he would never have received the Shares. (See AB at 22-23.)⁷ But every purchase or sale of securities is effected through a contract. See 15 U.S.C. § 78c(13) (Securities Exchange Act of 1934 defining the terms “buy” and “purchase” to include “any contract to buy, purchase, or otherwise acquire” a security). If the law precluded stockholders from asserting fiduciary duty claims simply because they gained stockholder status through a contract, then no stockholder could ever bring such a claim. That cannot be so. See *Quadrant*

⁶ Likewise, Defendant agrees that, in *Grayson v. Imagination Station, Inc.*, 2010 WL 3221951 (Del. Ch. Aug. 16, 2010), the reason for dismissal was that the claim “completely hinge[d]” on a contractual breach. (AB at 25.) And, Defendant acknowledges that, in *Borsody v. Gibson*, 2025 WL 1650395 (Del. Ch. June 11, 2025), the claim was dismissed because the sole issue was “[w]hether [defendants] should have caused the [c]ompany to honor [p]laintiff’s stock options” pursuant to a stock option agreement. (AB at 24.)

⁷ The Chancery Court’s Order does not mention the Redemption Agreement, underscoring that such agreement does not address an obligations to remove restrictive legends. (See A158-62.) Defendant cites an acknowledgement in the agreement that Plaintiff’s Shares would be “considered restricted securities” that could not be sold “unless pursuant to an effective registration statement.” (A159 at § 5). But again, the Shares *were registered* when Plaintiff received them, such that this is irrelevant to Plaintiff’s right (or even ability) to sell.

Structured Prods. Co. v. Vertin, 102 A.3d 155, 177-78 (Del. Ch. 2014) (ownership of stock required to maintain claim for breach of fiduciary duty).⁸

Second, Defendant contends that Plaintiff did not hold any independent right under Delaware law to sell his Shares. That is wrong. Under bedrock Delaware common and statutory law, all stockholders have a general right to sell their shares, by virtue of their basic ownership rights. (See OB at 34-35; AB at 27-28.)⁹ According to Defendant, any such right is irrelevant here because a stockholder’s fundamental right to sell “*may* be contractually or statutorily restricted,” and, here, Plaintiff “accepted certain contractual limitations, including restrictions on the sale of Plaintiff’s Shares (*e.g.*, the Lock-Up).” (AB at 27-28.)

⁸ Defendant also argues that Plaintiff would have been unable to remove the lock-up had he not signed the RRA Joinder (AB at 22-23), but Plaintiff was not relying on the RRA for that purpose since the lock-up expired months before Plaintiff received his Shares. (A136; A149 at § 5.1.1.)

⁹ Defendant does not dispute that stockholders have a “general” right to sell their stock. (AB at 27 n.20.) Instead, Defendant argues that Plaintiff’s right to sell is separate from “a member of the public who purchase[d] shares in the open market” (AB at 28 n.23.) But the cases he cites do not support such distinction, and simply stand for the unremarkable propositions that “[s]hareholders in a widely traded corporation ... are generally free to sell their stock on any terms that they wish without interference from the corporation,” *Polaroid Corp. v. Disney*, 862 F.2d 987, 999 (3d Cir. 1988), and that this right may be restricted by a valid “lockup agreement,” *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 764 (2023), or other valid restriction preventing their resale, *United States v. Yeaman*, 194 F.3d 442, 455 (3d Cir. 1999). Here, it is undisputed that Plaintiff *was* a shareholder of a public corporation (*i.e.*, Mondee was listed on Nasdaq) (A18-19 ¶19) and that no lockup or any other valid restriction applied to the Shares (A34 ¶ 58).

But Plaintiff ***did not*** accept any such contractual limitations. Indeed, the lock-up expired months before Plaintiff received the Shares such that, as of April 2024 when Plaintiff received the Shares, Plaintiff’s common-law right to sell remained “inherent in [his] ownership.” *See CentrifryHealth, Inc.*, 2019 WL 1810947, at *10 (Del. Ch. Apr. 25, 2019). Defendant points to no reason for (and certainly no law requiring) eliminating a stockholder’s inherent right to sell simply because, under some alternative circumstances, a contractual limitation “may” have applied (but did not).¹⁰ In all events, the erroneous lock-up legend was only one of the three Restrictive Legends, and Defendant makes no claim that the other two legends – *i.e.*, erroneously indicating that the Shares were (i) “control securities” and (ii) unregistered – were “contractual” and must be viewed under that framework.

Finally, while Defendant does not dispute that he owed Plaintiff a fiduciary duty not to unfairly discriminate against him with respect to the salability of Mondee stock – and that he had no legitimate reason to do so (OB at 35-36) – he argues that this is irrelevant because Delaware law disallows claims premised on fiduciaries undertaking contractual obligations in a disloyal manner to stockholders. (AB at 28-

¹⁰ Defendant recognizes that the key question, here, is “whether the plaintiff could bring an independent cause of action for breach of fiduciary duty if the parties had not signed a contract.” (AB at 22 (quoting *Metro Storage Int’l LLC v. Harron*, 275 A.3d 810, 858 (Del. Ch. 2022).) From the moment he received his unlawfully encumbered Shares, Plaintiff could bring this claim irrespective of any contract he signed.

30.) But Defendant’s argument is premised on the incorrect assumption that the sole source of Plaintiff’s claim is contractual.¹¹ Far from it, Plaintiff’s claim is premised on Defendant’s unfair and discriminatory use of extra-contractual means to prevent Plaintiff from selling his Shares. (OB at 35-36.)

B. Plaintiff’s Claim Also Survives Because it is Premised on Defendant’s Improper Use of Discretion Conferred Under the RRA.

Plaintiff’s claim also survives for the independent reason that, under Delaware law, where a contract permits a fiduciary discretion in carrying out the company’s contractual obligations, plaintiffs may assert fiduciary duty claims premised on the improper use of that discretion. (*See* OB at 37-38.) Insofar as RRA Section 3.1.16 (which required Mondee to, “in good faith, cooperate reasonably with” Plaintiff) is the contractual provision underlying the Chancery Court’s Order, that provision confers discretion upon Mondee and its fiduciaries upon which Plaintiff’s claim can be premised. (*See id.* at 38-39.)

Defendant contends that Plaintiff’s discretion argument was waived because it was not raised below. (AB at 31.) That is wrong. A plaintiff may not “raise an

¹¹ Indeed, Defendant relies upon *Mckenzie v. Bdo USA, P.C.*, 2026 WL 191010, at *7 (Del. Ch. Jan. 26, 2026) (cited AB at 29), wherein the plaintiff, unlike here, “ha[d] not identified a duty that was breached” and was simply “alleging that the contractual breach was disloyal.” *Id.* at *7. Defendant also cites to *Nemec*, 991 A.2d 1120, *Blue Chip Cap. Fund II Ltd. P’ship v. Tubergen*, 906 A.2d 827 (Del. Ch. 2006), and *Borsody*, 2025 WL 1650395, which also involved claims premised solely on contractual breaches. (*See* OB at 38 n.16; AB at 29-30.)

entirely new theory of his case, but when the argument is merely an additional reason in support of a proposition urged below, there is no acceptable reason why in the interest of a speedy end to litigation the argument should not be considered.” *Origis USA LLC v. Great Am. Ins. Co.*, 345 A.3d 936, 954 n.78 (Del. 2025). Plaintiff’s discretion argument is, at most, an “additional reason” for why Plaintiff’s fiduciary duty claim falls outside the “primacy of contract” doctrine – an argument heavily briefed before the Chancery Court. (OB at 28-38.)¹² Moreover, the only reason Plaintiff did not present this additional reason in opposing Defendant’s motion is because Defendant’s opening brief *never raised Section 3.1.16* as a basis for dismissal. (See A62-¹³

Finally, while Defendant concedes that Section 3.1.16 “grants Mondee discretion [] in the manner of achieving” the sale of Plaintiff’s Shares, Defendant argues that this provision does not grant discretion “in whether to permit resale at all.” (AB at 32.) But to the extent Section 3.1.16 required Mondee’s cooperation “in support[ing] Plaintiff in selling his shares,” as the Order incorrectly found (see A10), that provision does not specify any specific result. Indeed, there are a

¹² Indeed, Plaintiff’s primary case supporting his discretion argument, *Ban v. Manheim*, 339 A.3d 41 (Del. Ch. 2025), was cited in his Opposition. (Compare OB at 37-38 with A233.)

¹³ At most, Defendant’s moving brief cited, in a footnote, paragraphs of Plaintiff’s New York Complaints that, in turn, cited Section 3.1.16.

multitude of ways in which a fiduciary could go about supporting or affecting a stockholder's ability to sell his shares – some proper and others, as here, plainly improper.¹⁴

¹⁴ For example, if Defendant had contacted Continental to request the Restrictive Legends' removal but was unsuccessful in persuading Continental to do so, Defendant would not have breached Section 3.1.16.

III. THE CHANCERY COURT IMPROPERLY TOOK JUDICIAL NOTICE OF THE NEW YORK COMPLAINTS.

The Chancery Court improperly took judicial notice of arguments and contract interpretations in Plaintiff's New York Complaints, for purposes of determining the scope of Mondee's contractual obligations to Plaintiff under the RRA, and ultimately determined that those obligations preempt Plaintiff's claim. As shown in the Opening Brief, the Chancery Court's decision contravened well-established Delaware case law that courts may not take judicial notice of allegations made in foreign courts for their truth. (OB at 40-44; *see* A11.)

In response, Defendant contends that the Chancery Court was permitted to do so because Delaware Rule of Evidence 202(d)(1)(B) permits courts to take judicial notice of foreign-court filings "to 'understand the nature and grounds for rulings' made in the court where they were filed." (AB at 33 (quoting *In re Rural Metro Corp. S'holders Litig.*, 2013 WL 6634009, at *9 (Del. Ch. Dec. 17, 2013)).)¹⁵ But ***no rulings*** were ever made on any of Plaintiff's contract claims because neither New York court ever reviewed them. (*See* A173-91); *Venkatesh v. Mondee Holdings*,

¹⁵ *Rural Metro* confirms that courts may not "take judicial notice of [a foreign filing] for the truth of its contents." 2013 WL 6634009, at *9. The other cases Defendant cites are inapposite. The Court in *Baca v. Insight Enters., Inc.*, 2010 WL 2219715 (Del. Ch. June 3, 2010) took judicial notice of a plaintiff's prior derivative action in determining whether that plaintiff could enforce his subsequent books-and-records demand. And, the Court in *Aequitas Sols., Inc. v. Anderson*, 2012 WL 2903324 (Del. Ch. July 10, 2012) took judicial notice of facts in a sworn declaration, *id.* at 3 n.17, and not, as here, a complaint's alleged contract interpretation.

Inc., 2024 WL 3904592, at *1 (S.D.N.Y. Aug. 21, 2024).

Unable to point to any recognized basis for taking judicial notice of the New York Complaints, Defendant argues that the Chancery Court was entitled to do so to guard against Plaintiff’s “artful pleading” by “deliberately excis[ing] any reference” to the RRA from his Complaint. (AB at 34-35.) Plaintiff does not cite a single authority supporting this position.¹⁶ Regardless, Defendant’s accusation of “artful pleading” is wrong. Defendant ignores that it is a well-accepted practice in New York to “plead alternative, inconsistent theories” for relief. (OB at 42 n.12 (quoting *Kerzhner v. G4S Gov’t Sols., Inc.*, 138 A.D.3d 564, 565 (N.Y. 1st Dep’t 2016)).) Moreover, in New York, Plaintiff asserted claims against both Mondee and Gundumogula, while here, Plaintiff is *only* asserting a claim against Defendant, who was not an RRA party. As such, the Complaint did not need to reference the RRA because it is not relevant to Plaintiff’s sole *fiduciary duty* claim. It is Defendant who is relying upon the RRA for his defense.

Defendant also argues that “a party’s own prior characterization of a contract

¹⁶ Defendant confusingly cites *In re Cyan, Inc. S’holders Litig.*, 2017 WL 1956955 (Del. Ch. May 11, 2017), wherein the Court took judicial notice of a company’s certificate of incorporation in reviewing whether an exculpation of liability clause applied to the alleged conduct. *Id.* at *8, 18. That is a unique basis for judicial notice not present here. See *Abbott v. N. Shores Bd. of Governors, Inc.*, 2020 WL 1490880, at *4 (Del. Ch. Mar. 27, 2020) (court may review certificate of incorporation because it “provides the framework for the action of its directors”), *aff’d*, 248 A.3d 104 (Del. 2021). The *Cyan* Court did *not* do so to guard against artful pleading.

is a proper subject for judicial notice” (AB at 35-36), but cites no authority supporting this position absent some independent, accepted reason for doing so – for example, in determining whether a party is judicially estopped from advancing a different interpretation, an assertion Defendant does not make.¹⁷ (See AB at 35 n.32 (disclaiming any judicial estoppel argument).)

Finally, Defendant contends that, even if judicial notice of the New York Complaint was improper, it was “inessential to the Order” and does not constitute reversible error. (AB at 36.) While Defendant focuses on the Order’s “single sentence” discussion of the New York Complaints (*id.*), Defendant omits that the Chancery Court’s analysis of the RRA’s actual terms occupies only two sentences. (See A10.) The New York Complaints’ allegations appear fundamental to the Chancery Court’s analysis of the RRA,¹⁸ and it is simply not possible to assume that the Chancery Court would have reached the same conclusion had it not improperly reviewed them. See *Lebanon Cnty. Emps’ Ret. Fund v. Collis*, 311 A.3d 773, 802,

¹⁷ None of Defendant’s cited cases (AB at 36) related to contract interpretation or otherwise have any relevance. See *In re Dissolution of T&S Hardwoods KD, LLC*, 2023 WL 334674, at *39, n.15 (Del. Ch. Jan. 20, 2023) (judicial notice of previously filed action in determining whether to issue stay favoring other action); *Rural Metro*, 2013 WL 6634009, at *3, *9 (judicial notice of declaration concerning company’s “historical financial performance and practices”).

¹⁸ Indeed, at oral argument, Defendant’s counsel argued that Plaintiff’s prior contract claims were “relevant to the Court’s evaluation” of the RRA (A253:21-A254:14), and the Chancery Court examined those prior claims when discussing Section 3.1.16 (A285:5-9).

n.200 (Del. 2023) (reversing based on “misapplication of judicial notice”).

IV. THE COMPLAINT ALLEGES SUFFICIENT INVOLVEMENT BY DEFENDANT IN THE RESTRICTION OF PLAINTIFF’S SHARES.

As the Opening Brief demonstrates, the Complaint sufficiently alleges Defendant’s involvement in – indeed, his singular responsibility for orchestrating – the scheme to maintain unlawful restrictive legends on Plaintiff’s (and other stockholders’) shares, as necessary to plead a fiduciary duty claim against Defendant.

In response, Defendant essentially argues that, at the pleading stage and before Plaintiff has taken any discovery, Plaintiff’s claim cannot proceed unless he provides “smoking gun” evidence of Defendant’s instruction that the Restrictive Legends be maintained specifically on Plaintiff’s Shares. (*See* AB at 37-42.) But “[t]he pleading standards governing the motion to dismiss stage of a proceeding in Delaware [] are minimal.” *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 536 (Del. 2011), and “all that is required is that the Defendants have notice of the claims against them.” *BrandRep, LLC v. Ruskey*, 2019 WL 117768, at *5 (Del. Ch. Jan. 7, 2019) (citation omitted). Plaintiff’s well-pled allegations are more than enough to put Defendant on notice of Plaintiff’s claims. (OB at 45-48.)

Critically, Defendant does not dispute that the Complaint pleads (i) in detail the contours of the scheme to restrict Mondee shares through the use of restrictive legends; (ii) that Defendant orchestrated that scheme; (iii) Defendant’s ability to control the scheme as the sole person with authority to decide whether to remove the

restrictive legends; and (iv) Defendant's knowledge that Plaintiff's Shares were encumbered, including through Plaintiff's two separate requests to Defendant and Defendant's personal outreach to Plaintiff in response to a demand letter from Plaintiff's counsel. (*See* OB at 46-48; A36-37 ¶¶ 36-53, 64-65.)

Defendant claims, however, that Plaintiff's allegations as to Defendant's motivation for conducting the scheme does not survive scrutiny, arguing that Defendant's agreement to remove restrictive legends from three stockholders' shares (out of the seven stockholders alleged in the Complaint, including Plaintiff) undermines the alleged motivation. (*See* OB at 46-47; AB at 40.)¹⁹ But Plaintiff ignores the Complaint's express allegations that Defendant had to (unwillingly) acquiesce to those three stockholders' demands (Vajid Jafri (Legacy Mondee's prior CEO and Chairman), Dale Okuno (a wealthy investor), and Tim Turner (Legacy Mondee's co-founder)) because Defendant did not believe those three powerful individuals would acquiesce to his scheme – in contrast to Vikas Prabhakar and Sanjay Kopalkar, who, like Plaintiff, were Mondee employees inferior to Defendant in the corporate hierarchy. (A25-28, A30-31 ¶¶ 42, 46, 47, 51-52.) Regardless, as the Complaint alleges, Defendant actively attempted to prevent Mr. Jafri and Mr. Okuno from selling. (A28-29 ¶¶ 47-48; A30-31 ¶¶ 50-51; OB at 16-17.)

Further, Defendant argues that the Secondary Offering (through which

¹⁹ Defendant points to no authority requiring Plaintiff to plead his motive.

Defendant earned \$16,594,040) (A38-39 ¶ 72) is irrelevant since it occurred four months before Plaintiff personally directed his removal request to Defendant. (AB at 40.) But Defendant ignores that the scheme began months before the Secondary Offering and continued well after it. (A23-31 ¶¶ 36-52.) Indeed, following the Secondary Offering, Defendant continued to (i) be Mondee’s largest stockholder, having his wealth tied to Mondee’s stock performance (A39 ¶ 74), and (ii) refuse other stockholders’ requests that restrictive legends be removed (A25-28 ¶¶ 41-46).

Finally, Defendant argues that “Plaintiff’s suggestion that Gundumogula must have been responsible for restricting Plaintiff’s Shares simply because he held authority over Mondee’s stock transactions generally is contrary to Delaware law.” (AB at 40-41.) But that is not Plaintiff’s position. The Complaint alleges in detail Defendant’s *actual* decision-making authority over the maintenance of restrictive legends. (OB at 45-48; *supra* at 25-26.) “[A]t this stage [Plaintiff] has created a reasonable inference that [Defendant] used his control” in breaching his duties to Plaintiff by unlawfully preventing him from selling his Shares. *Bay Ctr. Apartments Owner, LLC v. Emery Bay PKI, LLC*, 2009 WL 1124451, at *10 (Del. Ch. Apr. 20, 2009) (plaintiff established “reasonable inference” at pleading stage that defendant

“used his control” in breaching duties).²⁰

As Defendant recognizes (*see* AB at 37), Supreme Court Rule 8 permits this Court to resolve an issue not ruled upon by a lower court “in the interests of judicial economy [where] the issue was ‘fairly presented to the trial court.’” *Standard Distrib. Co. Through Pennsylvania Mfrs. Ass’n Ins. Co. v. Nally*, 630 A.2d 640, 647 (Del. 1993) (quoting Rule 8) (ruling on issue lower court declined to review); *see Bank of New York Mellon v. Commerzbank Cap. Funding Tr. II*, 65 A.3d 539, 553 (Del. 2013) (same). The sufficiency of Plaintiff’s allegations to sustain his claim is a legal matter that was fully briefed and argued below. (A70-73, A214-20, A256:22-258:13, A269:9-270:10; A290:1-293:9.) Judicial economy would be served by deciding this issue now instead of requiring further Chancery Court proceedings that would inevitably delay this case’s progression.²¹ *See Telxon Corp. v. Meyerson*, 802 A.2d 257, 263 (Del. 2002) (fiduciary claim’s sufficiency “not addressed by the trial court ... was fairly presented to that court and thus properly a subject of appeal”).

²⁰ *Parseghian v. Frequency Therapeutics, Inc.*, 2022 WL 2208899 (Del. Ch. June 21, 2022) (cited AB at 39) bears no resemblance to this case. There, the complaint had alleged “no supporting facts” concerning the defendant’s alleged interference with the plaintiffs’ stock transfers, and did not even allege that the defendant “even knew of the Plaintiffs’ existence.” *Id.* at *1, 6. That is not here, where Plaintiff alleges in detail Defendant’s scheme and direct communications with Plaintiff concerning the Shares.

²¹ That is particularly so because, given Justice Zurn’s appointment to the Supreme Court, this case, if remanded, will be assigned to a new judicial officer who would need to review the pleadings and motion arguments anew.

CONCLUSION

For the foregoing reasons, the Chancery Court's decision should be reversed.

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Respectfully submitted,

KLEHR HARRISON HARVEY
BRANZBURG LLP

OF COUNSEL:

KATTEN MUCHIN
ROSENMAN LLP

Brian L. Muldrew
Thomas Artaki
50 Rockefeller Plaza
New York, NY 10020
(212) 940-8800
brian.muldrew@katten.com
thomas.artaki@katten.com

Michael J. Lohnes
525 W. Monroe Street, Suite 1900
Chicago, IL 60661
Telephone: (312) 902-5200
michael.lohnes@katten.com

/s/ David S. Eagle
David S. Eagle (Bar No. 3387)
919 N. Market Street, Suite 1000
Wilmington, DE 19801
(302) 552-5508
deagle@klehr.com

Counsel for Appellant Raja Venkatesh