EFiled: Sep 24 2026 04:58PM EDT
Filing ID 80728822
Case Number 260,2026

IN THE

Supreme Court of the State of Delaware

BILL LE CLAIR and JOSEPH POSPISIL, on behalf of themselves and all other similarly situated former stockholders of KNOWBE4, INC.,

Plaintiffs-Below,
Appellants,

v.

KNOWBE4, INC., SJOERD SJOUWERMAN, JEREMIAH DALY, STEPHEN SHANLEY, KEVIN KLAUSMEYER, SHRIKRISHNA VENKATARAMAN, GERHARD WATZINGER, KARA WILSON, KKR & CO. INC., KKR KNOWLEDGE INVESTORS L.P., ELEPHANT PARTNERS, ELEPHANT PARTNERS I, L.P., ELEPHANT PARTNERS II, L.P., ELEPHANT PARTNERS 2019 SPV-A, L.P., and ELEPHANT PARTNERS II-B, L.P.,

Defendants-Below,
Appellees.

No. 260, 2026

Court Below:
Court of Chancery of the State of Delaware,
C.A. No. 2024-1143-KSJM

PUBLIC VERSION FILED:
September 24, 2026

APPELLEES JEREMIAH DALY, ELEPHANT PARTNERS, ELEPHANT PARTNERS I, L.P., ELEPHANT PARTNERS II, L.P., ELEPHANT PARTNERS 2019 SPV-A, L.P., AND ELEPHANT PARTNERS II-B, L.P.'S ANSWERING BRIEF

ROSS ARONSTAM & MORITZ LLP

David E. Ross (Bar No. 5228)
Kevin A. Rudolph (Bar No. 7106)
Hercules Building
1313 North Market Street, Suite 1001
Wilmington, Delaware 19801
(302) 576-1600

Counsel for Defendants-Below, Appellees Jeremiah Daly, Elephant Partners, Elephant Partners I, L.P., Elephant Partners II, L.P., Elephant Partners 2019 SPV-A, L.P., and Elephant Partners II-B, L.P.

Of Counsel:

Colleen Smith
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, California 92130

J. Christian Word
Stephen T. Nasko (DE Bar No. 7634)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004

Jordan Cook
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626

Dated: September 9, 2026

TABLE OF CONTENTS

Page

TABLE OF CITATIONS iii

NATURE OF PROCEEDINGS 1

SUMMARY OF ARGUMENT 3

STATEMENT OF FACTS 5

A. KnowBe4, Its Capital Structure, and the Parties 5

B. Elephant and KKR Separately Invested in KnowBe4 6

C. Vista Initiated Contact Separately with Individual Board Members 7

D. The Board Empowered an Independent Special Committee and Implemented Full *MFW* Protections 9

E. Elephant, KKR, and Sjouwerman Pursued Divergent Rollover Strategies 10

F. Each Rollover Stockholder Cashed Out a Majority of Their Holdings in the Merger Under a Separately Negotiated Support Agreement 12

G. Procedural History 13

ARGUMENT 14

I. THE COURT OF CHANCERY CORRECTLY APPLIED *SHELDON* AND FOUND THAT PLAINTIFFS PLED ONLY PARALLEL ECONOMIC INTERESTS, NOT AN ACTUAL AGREEMENT 14

A. Question Presented 14

B. Scope of Review 14

C. Merits of Argument 14

1. The Rollover Stockholders' Agreements Do Not Support the Existence of a Control Group 16

2. The Timing of the Rollover, Down-Conversion, and Voting Agreements Does Not Indicate a Control Group.....20

3. There Were No Well-Pled Allegations of Coordination Between Elephant and KKR.....24

4. The Court Did Not Hold that "Perfect Unison" Is Required for a Control Group Finding.....26

5. Implementing *MFW* Protections Is the Opposite of a Presumption of Control—and Plaintiffs' Contrary Rule Would Chill Best Practices.....27

CONCLUSION.....30

TABLE OF CITATIONS

Page(s)

Cases

Anchorage Police & Fire Ret. Sys. v. Adolf,
2025 WL 1000153 (Del. Ch. Apr. 3, 2025).....*passim*

Corwin v. KKR Fin. Hldgs. LLC,
125 A.3d 304 (Del. 2015).....3

Dubroff v. Wren Hldgs., LLC,
2009 WL 1478697 (Del. Ch. May 22, 2009).....18

Frank v. Elgamal,
2012 WL 1096090 (Del. Ch. Mar. 30, 2012).....*passim*

Frank v. Mullen,
337 A.3d 824 (Del. Ch. 2025).....15, 20

Garfield v. BlackRock Mortg. Ventures, LLC,
2019 WL 7168004 (Del. Ch. Dec. 20, 2019).....15, 17, 25

In re Crimson Expl. Inc. S'holder Litig.,
2014 WL 5449419 (Del. Ch. Oct. 24, 2014).....20

In re Hansen Med., Inc. S'holders Litig.,
2018 WL 3025525 (Del. Ch. June 18, 2018).....*passim*

In re Pattern Energy Grp. Inc. S'holders Litig.,
2021 WL 1812674 (Del. Ch. May 6, 2021).....15

In re Tesla Motors, Inc. S'holder Litig.,
2022 WL 1237185 (Del. Ch. Apr. 27, 2022),
aff'd 298 A.3d 667 (Del. 2023).....27

In re Tilray, Inc. Reorg. Litig.,
2021 WL 2199123 (Del. Ch. June 1, 2021).....15

Kahn v. M & F Worldwide Corp.,
88 A.3d 635 (Del. 2014).....27

Lockton v. Rogers,
2022 WL 604011 (Del. Ch. Mar. 1, 2022) 15

MH Haberkorn 2006 Tr. v. Empire Resorts, Inc.,
C.A. No. 2020-0619-KSJM (Del. Ch. July 23, 2021)
(TRANSCRIPT) 28

Patel v. Duncan,
2021 WL 4482157 (Del. Ch. Sept. 30, 2021),
aff'd, 277 A.3d 1257 (Del. 2022) 15, 27

Riskin v. Burns,
2020 WL 7973803 (Del. Ch. Dec. 31, 2020) 15

Sheldon v. Pinto Tech. Ventures, L.P.,
220 A.3d 245 (Del. 2019) .....*passim*

Silverberg v. Padda,
2019 WL 4566909 (Del. Ch. Sept. 19, 2019).....20, 23

van der Fluit v. Yates,
2017 WL 5953514 (Del. Ch. Nov. 30, 2017).....17, 18, 25, 26

NATURE OF PROCEEDINGS

Plaintiffs seek to revive a theory the Court of Chancery correctly rejected: that three independent KnowBe4, Inc. stockholders who separately rolled a minority of their equity into a take-private transaction constituted a "control group" under Delaware law. Dkt. 1, Ex. A ("Opinion" or "MTD Op."). They did not, and the allegations in the complaint fail to support Plaintiffs' theory.

The parties and the Court of Chancery all agree that *Sheldon v. Pinto Technology Ventures, L.P.*, 220 A.3d 245, 251-52 (Del. 2019), is the controlling authority for whether Elephant, KKR, and Sjoerd Sjouwerman constituted a control group. *See* MTD Op. at 20; Pls.' Opening Brief ("OB") at 45-46. Therefore, the question here is whether the Amended Complaint pleads more than parallel interests such that a control group was formed. The Court of Chancery correctly recognized that Plaintiffs' Amended Complaint pleads only parallel economic interests because Plaintiffs allege no facts showing that Elephant, KKR, and/or Sjouwerman communicated about acting together; that any alleged member contracted with or agreed to any action with another; or that would otherwise support a reasonable inference of an actual agreement to pursue a shared goal. The Opinion correctly applied this Court's decision in *Sheldon* and concluded: "Even viewing Plaintiffs' allegations holistically, Plaintiffs fail to support an inference of a legally significant agreement among the alleged group members." MTD Op. at 30.

Plaintiffs center their appeal on a 2012 Court of Chancery decision, *Frank v. Elgamal*, 2012 WL 1096090 (Del. Ch. Mar. 30, 2012), a decision the Court of Chancery expressly considered, MTD Op. at 29 & n.86, and one that is factually and legally distinguishable in every relevant respect. Plaintiffs' reading would make separate rollover and voting agreements automatically trigger a control group—a per se rule unsupported by this Court's decisions, that would collapse *Sheldon*'s "legally significant connection" requirement into parallel conduct and turn standard deal architecture into a fiduciary trap for every sponsor-backed take-private.

In their Opening Brief, Plaintiffs mischaracterize the record and the Court of Chancery's analysis. The Opinion correctly held that, viewed holistically or otherwise, Plaintiffs' allegations do not support a reasonable inference of a control group. Plaintiffs offer no basis to reverse that holding.

The Court of Chancery's dismissal should be affirmed.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly determined that Plaintiffs failed to plead facts supporting a reasonable inference that the proxy statement contained any material misrepresentation or omission rendering the stockholder vote uninformed. Because Defendants satisfied their burden under the standard in *Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304, 307 (Del. 2015), by demonstrating that the transaction (the "Merger") with Vista Equity Partners Management, LLC ("Vista") was approved by the holders of a fully informed, uncoerced majority of disinterested shares, the business judgment standard of review applies, and Plaintiffs cannot state a claim under that standard.[1]

2. Denied. The Court of Chancery correctly determined that Plaintiffs failed to plead facts supporting a control group under this Court's *Sheldon* standard, which requires Plaintiffs to plead facts establishing that Elephant, KKR, and Sjouwerman (the "Rollover Stockholders") were "connected in some legally significant way" in order "to work together toward a shared goal." 220 A.3d at 251-52. Plaintiffs point to certain contracts executed by the Rollover Stockholders—including rollover agreements and support agreements—and to down-conversions expressly permitted under the charter, but each one of the contracts Plaintiffs

[1] The Elephant Defendants join in the argument set forth in the KnowBe4 Appellees' answering brief ("KnowBe4 Br.").

highlight was signed separately. Indeed, each of the agreements runs from a stockholder to Vista or the Company, never from one stockholder to another, and was separately negotiated. As a result, the Court of Chancery found only a "mere concurrence of self-interest," which is insufficient to establish a legally significant connection. MTD Op. at 20-30; *see also Sheldon*, 220 A.3d at 252. Nor does *Frank v. Elgamal* help: unlike here, it involved founders and executives—two of whom sat on the board and served on the M&A committee that retained the financial advisor—who received unique buyer-conferred benefits, including continued post-closing employment agreements, in a transaction lacking *MFW*'s procedural protections and where the committee engaged in little, if any, negotiations. 2012 WL 1096090, at *2-3, *8, *10. Viewed holistically, the allegations do not contain any indicia of concerted action or agreement among the stockholders. Plaintiffs plead no communications among the three in which they agreed with one another to roll over, no exclusive negotiation rights, no joint negotiation, and no self-identification as a group; the record shows materially different rollover structures, non-uniform support agreements also signed by non-members of the alleged group, no allegations of historical or pre-existing ties among the three alleged group members, and a process driven by an independent Special Committee that did not include any members of the alleged group. That is not a control group. It is three independent stockholders responding to the same buyer's demand.

STATEMENT OF FACTS

A. KnowBe4, Its Capital Structure, and the Parties

KnowBe4, Inc. ("KnowBe4" or the "Company") is a Delaware corporation. A0048. Sjoerd Sjouwerman founded KnowBe4 in 2010 and served as its Chief Executive Officer and a director from inception. *Id.* Non-party Kevin Mitnick was Sjouwerman's business partner and a KnowBe4 stockholder. A0059-60.

Elephant Partners is a venture capital firm co-founded by Jeremiah Daly and non-party Andrew Hunt. A0057-58; A0062. Elephant Partners is affiliated with multiple investment funds, including Elephant Partners I, L.P., Elephant Partners II, L.P., Elephant Partners 2019 SPV-A, L.P., and Elephant Partners II-B, L.P. (the "Elephant Funds" and, together with Elephant Partners, "Elephant" and the "Elephant Defendants"). A0057-58. KKR & Co. Inc. ("KKR") is a global private equity and investment firm and its affiliate KKR Knowledge Investors L.P. ("KKR Fund") is the direct owner of KKR's KnowBe4 shares. A0057.

KnowBe4's seven-member board of directors (the "Board") comprised Sjouwerman; Elephant's Board designee Daly; KKR's Board designee Stephen Shanley; KKR senior advisor Kara Wilson; and independent directors Shrikrishna Venkataraman, Kevin Klausmeyer, and Gerhard Watzinger. A0048-57.

KnowBe4 adopted a dual-class structure in connection with its April 2021 initial public offering. A0067-68. Class A common stock carried one vote per share;

all pre-IPO stock converted into Class B stock, which carried ten votes per share. *Id.* The certificate of incorporation also gave holders the right to down-convert super-voting Class B stock into Class A common stock at the holders' election. A0670; *see also* A0142.

No individual stockholder held a majority of KnowBe4's voting power. As of the December 7, 2022 Record Date, Elephant owned 37.5% of the voting power, KKR owned 26.4%, and Sjouwerman owned approximately 4.2%. A0049, A0057-58.

B. Elephant and KKR Separately Invested in KnowBe4

Elephant was a "nascent" firm when it first invested in KnowBe4, its second-ever investment. A0062. By January 2016, certain Elephant Funds had invested approximately $8 million through a Series A-1 Preferred Stock financing, and Daly joined the Board in connection with that investment. *Id.* In February and March 2017, the Elephant Funds made two additional Series A-1 Preferred Stock investments totaling approximately $5.5 million. *Id.* In October 2017, they invested $2.5 million in a Series B Preferred Stock offering alongside new investor Goldman Sachs. A0062-63.

KKR did not invest in KnowBe4 until March 2019—more than three years after Elephant began investing—when it purchased approximately $31.6 million of Series C Preferred Stock. A0063. Shanley joined the Board in connection with that

investment. A0049. Three months later, KKR and Elephant invested $309.4 million in KnowBe4. A0063-64.

Certain investors in the then-private Company, including the Elephant Funds and KKR, entered into a standard stockholder agreement. A0064-65; *see also* A0998-1044. The amended and restated agreement gave them registration, information and inspection, board observer, future-issuance participation, and shared consent rights over specified corporate acts, including hiring, terminating, and compensating executive officers, strategic alternatives, and financing activities. A1003-1023 (§§ 2, 3.1-3.3, 4.1, 5.4). KKR and Elephant also signed a right of first refusal agreement with KnowBe4, giving each the option to purchase any shares KnowBe4 repurchased from an existing stockholder and the right to participate in any sale of KnowBe4 shares by an existing stockholder to a third party. A0064-65. Each separately purchased common stock under that agreement in December 2020. *See* A0065.

C. Vista Initiated Contact Separately with Individual Board Members

On March 5, 2021, Vista purchased $300 million of the Company's preferred shares from the Elephant Funds, KKR, and Goldman Sachs, becoming a KnowBe4 stockholder. A0067. Beginning in May 2022, Vista initiated discussions with KnowBe4 directors as part of its routine evaluation of its current investments. A0075-76; A0291-92. Vista met individually with Shanley on May 20 and

June 1, 2022. A0075-76; A0291. On June 8, Vista approached Daly separately; while discussing KnowBe4's business, it also asked whether the Company might pursue a sale. A0076; A0291. On June 16, Vista met with Daly, Shanley, and Sjouwerman at Vista's request as part of its routine evaluation of its investment; "the parties discussed KnowBe4's business and the industry generally, and a representative of Vista discussed potential opportunities for the company, including raising whether the company was potentially interested in pursuing a sale transaction." A0291; A0076. On June 22, Vista met with Daly and Sjouwerman in person to discuss KnowBe4's industry and Vista's investment. The proxy states that "representatives of Vista expressed their confidence in KnowBe4's business and indicated that if KnowBe4 were ever to be interested in a transaction, Vista would want to be included." A0292; A0076.

On June 22, Daly promptly informed KnowBe4's outside counsel, Wilson Sonsini Goodrich & Rosati, of the discussions to that point. A0292; MTD Op. at 6. Wilson Sonsini organized a June 28 special Board meeting at which Daly reported on those discussions. A0076-77; A0686-87.

The June 28, 2022 Board minutes confirm that "economic and other terms of a potential sale were not discussed" in these early meetings. A0686; *see also* A0292. Plaintiffs' own allegations show that, at that point, "there [wa]s no indication that …

Vista had taken any other concrete steps in furtherance of a potential takeover." A0078 (citing Am. Compl. ¶ 106).

D. The Board Empowered an Independent Special Committee and Implemented Full *MFW* Protections

The Board established an independent, fully empowered Special Committee of Watzinger, Klausmeyer, and Venkataraman by unanimous written consent on July 11, 2022. A0085; *see also* KnowBe4 Br., Statement of Facts § C.

At a July 14 meeting, Morgan Stanley advised the Special Committee to determine whether Vista would ask stockholders to roll over shares. A0294; *see also* A0093. The Special Committee authorized Morgan Stanley to tell Vista that any transaction involving a rollover by significant stockholders would require *MFW* protections. A0294. Vista said that day it "would be open to exploratory conversations regarding a potential acquisition," but "would not expect to condition any … transaction on any stockholder rolling a specific amount of equity." *Id.* Morgan Stanley and Vista discussed no terms or valuation. *Id.*

Because KKR's intentions were unknown, the Special Committee authorized Morgan Stanley to determine whether KKR envisioned itself as a potential buyer. A0099; A0295. On July 21, Morgan Stanley met with Shanley, who confirmed that KKR would not pursue an acquisition but was open to rolling over equity. A0099. On July 28, the Special Committee authorized an update to KKR's and Elephant's outside counsel but determined that neither KKR nor its designee would participate

in the sale process. A0102; A0296. The Special Committee also required any contact between Elephant or KKR and the prospective buyer to be chaperoned. *See* A0136; A0302.

Vista and the Special Committee continued to negotiate price throughout September. A0127-32. On September 28, Vista raised its offer to $24.60, conditioned on a rollover of "at least $675MM" from the Rollover Stockholders. A0132-33; A0304. The parties continued to negotiate over price, and Vista accepted the Special Committee's counteroffer of $24.90 contingent on Sjouwerman, KKR, and Elephant collectively rolling over $682 million of equity. A0136; A0305.

E. Elephant, KKR, and Sjouwerman Pursued Divergent Rollover Strategies

The Special Committee authorized discussions of potential rollovers with Sjouwerman, KKR, and Elephant, who each had different rollover amounts in mind. A0122. Sjouwerman said he would roll over roughly half his holdings. A0123. Shanley said KKR would sell and reinvest at least $200 million. *Id.* Daly said Elephant would sell only 20 million shares. *Id.* Elephant, KKR, and Sjouwerman also pursued materially different rollover strategies:

- *First*, the Special Committee discussed a sale with KKR without Elephant or Sjouwerman. A0095, A0134.
- *Second*, the Special Committee and Morgan Stanley negotiated separately with each rollover participant. On September 13, "representatives of Morgan Stanley held *separate* meetings with Messrs. Shanley and Daly" about their respective percentages. A0301

(emphasis added); *see also* A0123. The Amended Complaint alleges that Sjouwerman "likely" discussed his rollover with Morgan Stanley and Vista alone on September 9, 2022. *See* A0123; *see also* A0301.

- *Third*, KKR requested and received rollover due-diligence materials, while Elephant did not. A0099; A0128; A0726.

- *Fourth*, Elephant, through Daly, independently sought permission to contact Vista to "inform Elephant's decision regarding whether or not to roll some or all of its equity," while KKR did not. A0862; A0129.

- *Fifth*, Elephant's fixed-percentage sale-and-residual-rollover strategy never changed. *See* A0123. KKR instead planned to sell all its KnowBe4 holdings and reinvest a fixed amount through a new fund; Plaintiffs allege KKR's potential rollover changed from $150-$200 million, A0099, to $200 million, A0123, and then to $300 million, A0138. Plaintiffs do not allege any Elephant role in those negotiations. *See* A0134, A0138.

The Elephant Funds, KKR, and Sjouwerman also did not coordinate their Class B-to-Class A conversions. In fact, Vista proposed the conversion. A0137. The October 10, 2022 Special Committee minutes record: "Vista proposed that it would down-convert all of its shares of Class B Common Stock and that the rollover stockholders would down-convert that portion of their shares of Class B Common Stock that they would be rolling over in a Potential Transaction." A1050; *see also* A0307. The Special Committee considered and became "comfortable" with Vista's proposal. A0138; A1050.

F. Each Rollover Stockholder Cashed Out a Majority of Their Holdings in the Merger Under a Separately Negotiated Support Agreement

The Elephant Funds rolled over 17,069,823 shares (46.047%), KKR Fund rolled over 12,048,193 shares (46.133%), and Sjouwerman rolled over 2,189,121 shares (48.636%) in the transaction with Vista. A0048-49, A0057-58, A0141; A0393, A0399.

Before the Merger, KnowBe4 executed five separate support agreements—with Elephant Funds, Vista, Sjouwerman, KKR, and non-party Mitnick. A0140-41, A0143; *see also* A1083-1109; A1111-37. Each was individually negotiated, and one contained unique terms. *Compare* A1083 (Elephant Support Agreement dated Oct. 11, 2022) *with* A0143 (Mitnick Support Agreement dated Dec. 8, 2022). For example, the KKR Support Agreement included a side letter and Section 2.1(c), which allowed KKR to reduce its rollover shares upon specified events; neither appeared in the Elephant Support Agreement. *Compare* A1083, A1085-86 (Elephant Support Agreement) *with* A1111, A1113-14 (KKR Support Agreement). The KKR Support Agreement also gave KKR "sole discretion … to reduce the number of Rollover Shares that are contributed in the Exchange," A1114, while the Elephant Support Agreement contained no such right, *see* A1085.

Mitnick, not alleged to be a control-group member, also signed a support agreement, but was obligated only to vote for the Merger. A0143. He did not roll

over his shares and had already down-converted two million Class B shares in 2022. *Id.* On December 1, Vista, KKR, Elephant, and Sjouwerman down-converted their shares. A0142.

On January 31, 2023, stockholders overwhelmingly approved the Merger. A0882; A0145-46; *see also* KnowBe4 Br., Statement of Facts § D. The Merger closed on February 1, 2023. A0145.

G. Procedural History

On November 7, 2024, Plaintiffs Bill Le Clair and Joseph Pospisil filed suit. A0001. On March 10, 2025, Plaintiffs filed the Verified Amended Class Action Complaint (the "Amended Complaint"). A0012-13. Briefing ended September 8, 2025, and the Court of Chancery heard argument on January 12, 2026. A0027-29, A0037. On May 27, 2026, the Court of Chancery granted Defendants' motions to dismiss, including as to Count I because the Amended Complaint failed to allege a control group. MTD Op. at 30, 48.

Plaintiffs appeal on two grounds. This brief addresses only whether the Court of Chancery correctly rejected the control-group claim.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY APPLIED *SHELDON* AND FOUND THAT PLAINTIFFS PLED ONLY PARALLEL ECONOMIC INTERESTS, NOT AN ACTUAL AGREEMENT

A. Question Presented

Whether the Court of Chancery correctly applied this Court's decision in *Sheldon v. Pinto Technology Ventures, L.P.*, 220 A.3d 245 (Del. 2019), in holding that Plaintiffs' transaction-specific allegations—separate rollovers, support agreements, down-conversions, pre-negotiation meetings with Vista, and the *MFW* process facts—reflect parallel economic interests rather than a legally significant connection among Elephant, KKR, and Sjouwerman sufficient to render them a group. The question was raised below, A1223-1240, and considered by the Court of Chancery, MTD Op. at 20-30.

B. Scope of Review

This Court reviews de novo whether the allegations in the operative complaint make a control group reasonably conceivable. *Sheldon*, 220 A.3d at 250-51. This Court "must accept all well-pled allegations as true and draw reasonable inferences in favor of the" nonmovant, but "need not accept conclusory allegations as true, nor should inferences be drawn unless they are truly reasonable." *Id*. at 251.

C. Merits of Argument

The Court of Chancery's decision should be affirmed. The parties agree it applied the correct standard under *Sheldon*: individual stockholders must be

connected in a legally significant way—such as by contract, common ownership, agreement, or other arrangement—to work toward a shared goal to be considered a group acting in concert. Plaintiffs' asserted connections cannot satisfy that standard. Individually and holistically, they reflect no more than a mere concurrence of self-interest, not the actual agreement *Sheldon* requires.

Plaintiffs insist that, despite *Sheldon*'s clear application, the Court of Chancery should have found the facts here are analogous to another Court of Chancery decision, *Frank v. Elgamal*—decided seven years before *Sheldon*—and that this Court should reverse on that basis. OB at 46 n.207 (citing *Frank* and alleging the trial court there found a control group without considering historic ties). But *Frank* is distinguishable from this case.[2]

---

[2] *See, e.g.*, *Frank v. Mullen*, 337 A.3d 824, 842 n.179 (Del. Ch. 2025) (citing *Sheldon* as the governing standard); *Anchorage Police & Fire Ret. Sys. v. Adolf*, 2025 WL 1000153, at *16 (Del. Ch. Apr. 3, 2025) (same); *Lockton v. Rogers*, 2022 WL 604011, at *14 (Del. Ch. Mar. 1, 2022) (same); *Patel v. Duncan*, 2021 WL 4482157, at *11 (Del. Ch. Sept. 30, 2021) (same), *aff'd*, 277 A.3d 1257 (Del. 2022) (TABLE); *In re Tilray, Inc. Reorg. Litig.*, 2021 WL 2199123, at *10 (Del. Ch. June 1, 2021) (same); *In re Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674, at *41 (Del. Ch. May 6, 2021) (same); *Riskin v. Burns*, 2020 WL 7973803, at *17 (Del. Ch. Dec. 31, 2020) (same); *Garfield v. BlackRock Mortg. Ventures, LLC*, 2019 WL 7168004, at *8-9 (Del. Ch. Dec. 20, 2019) (same). Plaintiffs claim that the Court of Chancery's ruling "contradicts multiple precedents without acknowledgment or explanation." OB at 45. The Court of Chancery issued a thorough Memorandum Opinion that canvassed control group case law—including *Frank*, MTD Op. at 29—and held the allegations in the Amended Complaint were insufficient to infer the existence of a control group. *Id.* at 30.

Plaintiffs identify five purported errors in the Opinion. OB at 49-52. Each misconstrues the Opinion or ignores the precedent on which the Court of Chancery rightly relied. None of Plaintiffs' arguments warrants overturning the Court of Chancery's decision.

1. The Rollover Stockholders' Agreements Do Not Support the Existence of a Control Group

The Court of Chancery correctly held that "a decision to roll over is a quintessential example of parallel economic interests," and, as such, "does not independently establish a legally significant connection required for a control group." MTD Op. at 25. In support of its finding, the Court explicitly considered and relied on *Hansen*, which held that "based on various allegations, including entering into a voting agreement and a stock purchase agreement, 'each of these factors alone, or perhaps even less than all these factors together, would be insufficient to allege a control group existed.'" *Id.* at 25 n.72.

Plaintiffs argue that the Court of Chancery ignored the analysis in *Hansen* (despite citing to it), which held that "technically separate agreements" can "evidence an agreement between the [control group members]." OB at 50 (citing *In re Hansen Med., Inc. S'holders Litig.*, 2018 WL 3025525, at *6-8 (Del. Ch. June 18, 2018)). That is wrong. The Court of Chancery distinguished *Hansen* and explained why it did not merit a finding of a control group here. MTD Op. at 28-29. Indeed, in *Hansen*, the plaintiff specifically alleged a number of other factors

evidencing control, including (1) voting agreements on top of a twenty-one-year co-investing history among the alleged control group; (2) self-designation as a "group" in historical SEC filings; (3) exclusive participation rights in the private placement; and (4) exclusive negotiating access, such that "the [members of the control group], but only the [members of the control group]" could negotiate directly with the buyer. *Hansen*, 2018 WL 3025525, at *7; *see also Garfield*, 2019 WL 7168004, at *10 ("Management treated BlackRock and HC Partners as a collective unit whose opinion was more of a priority than the Board's"). None of those plus factors are pled here.

Plaintiffs' fallback—that the Court of Chancery's rule "invites control group members to evade a control finding merely by signing separate contracts," OB at 50—confuses form with substance. The Opinion held that the mere existence of "KnowBe4's investors' rights agreement with KKR and Elephant is not enough" and "Plaintiffs only allege the agreement's existence," not that "the two worked in tandem to negotiate the agreement." MTD Op. at 24. The Court of Chancery held the pleadings only showed that parallel agreements were entered into individually rather than as a coordinated effort, which is not enough. *Id.*; *see also Adolf*, 2025 WL 1000153, at *17-19 (no control group despite parallel interests plus an interim investors agreement); *van der Fluit v. Yates*, 2017 WL 5953514, at *6-7 (Del. Ch. Nov. 30, 2017) (no control group despite investor rights and tender/support

agreements); *Dubroff v. Wren Hldgs., LLC*, 2009 WL 1478697, at *3-5 (Del. Ch. May 22, 2009) (no control group despite shared written consent approving the transaction).

Plaintiffs also argue that, in addition to failing to consider *Hansen*, the Court of Chancery failed to consider that the group members in *Frank* also signed separate agreements and were still found to be a control group. OB at 47-48 (citing *Frank*, 2012 WL 1096090, at *6, *8). But *Hansen* itself confirms that *Frank* "did not set out the sole and conclusive arrangement of facts necessary to find adequate allegations that a control group existed," 2018 WL 3025525, at *8, and that *Frank* does not displace this Court's holding that alleged members must be "connected in some legally significant way … to work together toward a shared goal," with "some indication of an actual agreement." *Sheldon*, 220 A.3d at 251-52. In fact, post-*Sheldon*, Delaware courts have declined to find the existence of a control group even on materially stronger facts. *See Adolf*, 2025 WL 1000153, at *17-19 (dismissing control-group claim despite a contemplated half-equity rollover under a buyer support agreement, overlapping directorships, and personal ties). Plaintiffs dismiss *Adolf* because only one alleged member there rolled over equity. OB at 48. But *Adolf* turned on the absence of "horizontal ties among group members," not on the number of rollovers, and the *Adolf* plaintiffs pled far more than Plaintiffs do—a written post-closing governance agreement, an anchor investor since founding, years

of shared board service, and personal friendship—yet still failed. *Adolf*, 2025 WL 1000153, at *17-18. Here, the three alleged members never contracted with one another at all regarding the Merger.

Frank is distinguishable from this case for several reasons. First, in *Frank*, the members of the alleged control group were founders and executives, two of whom sat on the board and served on the M&A committee that retained the transaction's financial advisor. 2012 WL 1096090, at *2-3. Here, the alleged members are two outside financial sponsors with board designees, plus the founder-CEO, and the process was driven by an independent Special Committee that did not include any Rollover Stockholders. MTD Op. at 5-7. Second, in *Frank*, continued employment was a member-specific benefit conferred by the buyer—a private quid pro quo giving each recipient reason to favor deal consummation over price. 2012 WL 1096090, at *8.[3] Here there are no allegations of continuing post-closing employment agreements for any alleged control group member. *See* OB at 47. Third, *Frank* involved no non-waivable majority-of-the-minority condition, 2012 WL 1096090, at *10, and it involved a special committee that allegedly

[3] Plaintiffs argue that "employment agreements were not essential to *Frank*'s control group holding," OB at 47 n.211, but that is a mischaracterization of *Hansen*'s reading of *Frank*. In *Hansen*, the court stated that the *Frank* court "considered all the factors, the Voting Agreement, Exchange Agreements, *and Employment Agreements*, together in light of the broader picture." 2018 WL 3025525, at *6 (emphasis added).

"engaged in little, if any, negotiations," *id.* at *2. Here, by contrast, *MFW*'s dual protections were implemented as conditions precedent to the transaction, MTD Op. at 27-28, and the Special Committee held twenty-nine meetings, contacted sixteen bidders, and extracted a nearly $1.00 per share increase. *See* KnowBe4 Br., Statement of Facts §§ C-D.

If, as Plaintiffs suggest, *Frank* were the applicable standard, it would reduce *Sheldon*'s requirement of "some indication of an actual agreement" to mere parallel conduct. 220 A.3d at 252; *see also Mullen*, 337 A.3d at 842 (confirming Delaware law requires "more than an alignment of interests" and instead demands some indication of an actual agreement); *In re Crimson Expl. Inc. S'holder Litig.*, 2014 WL 5449419, at *15 (Del. Ch. Oct. 24, 2014) (same); *Silverberg v. Padda*, 2019 WL 4566909, at *7 (Del. Ch. Sept. 19, 2019) (holding it is improper to conflate "acts of consensus with the act of forming a group").

2. The Timing of the Rollover, Down-Conversion, and Voting Agreements Does Not Indicate a Control Group

The Court of Chancery also held that the "concurrent timing of a decision to roll over is typically driven by the deal itself, not the group members." MTD Op. at 25. Once again, Plaintiffs claim that the Court of Chancery ignored *Frank* and *Hansen* in reaching this ruling because, in their view, the court overlooked that "rollover participation was baked into Vista's offers, rather than typical rollovers secured *after* price negotiations as an acquiror seeks deal financing." OB at 50.

But Plaintiffs' premise that rollover participation was "baked into Vista's offers," OB at 50, is refuted by the documents incorporated into the Amended Complaint. At the outset of the sale process, on July 14, 2022, Vista told Morgan Stanley that while it "would likely be open to exploratory discussions regarding certain stockholders of KnowBe4 rolling their equity interests," it "would not expect to condition any … transaction on any stockholder rolling a specific amount of equity." A0294. A few days later, Morgan Stanley confirmed to the Special Committee that Vista was "open to considering a potential rollover" but that "a proposal from Vista would not be dependent on anyone rolling their equity." A0720. A rollover raised and considered by the Company's independent Special Committee and not demanded as a condition by the buyer at the outset is the opposite of a coordinated plan by Elephant, KKR, and Sjouwerman. *See Adolf*, 2025 WL 1000153, at *15, *24 (dismissing a control-group claim against a private-equity holder, its board designees, and management where the buyer itself "insisted on [the sponsor's] equity rollover" and an independent special committee "worked to finalize the deal contracts") (quotation omitted); *Hansen*, 2018 WL 3025525, at *12 (holding that a buyer's decision to condition its deal on an equity rollover reflected only "a not-uncommon agreement to reduce its cash outlay by having the major investors … rollover their stock," and was not "nefarious" activity); *see also* MTD Op. at 25 ("decision to roll over is typically driven by the deal itself").

The record also demonstrates that alleged group members pursued materially different rollover amounts and strategies, negotiated separately with Morgan Stanley and the Special Committee, *see supra* Statement of Facts § E—none of which suggests an actual agreement to act in concert. The timeline further undermines any inference of a group agreement. KKR's willingness to roll over surfaced in July, months before any bid. A0099. Months later, on September 13, Morgan Stanley held "separate meetings with Messrs. Shanley and Daly" to discuss their respective rollover percentages. A0301. And Vista did not propose an aggregate rollover figure until September 28, conditioning a $24.60 offer on "at least $675MM … from Elephant/KKR/[Sjouwerman]," and revised it to $682 million the next day. A0132-33; A0304-05. Plaintiffs allege KKR increased its rollover amount on October 10. A0138. The Elephant and KKR Support Agreements were executed on October 11, A1083, A1111, while Mitnick's Support Agreement was not signed until December 8, A0143. Plaintiffs collapse a months-long, deal-driven process into a single moment and ask this Court to infer agreement from the compression. *See* OB at 50-51.

Neither *Frank* nor *Hansen*—which, again, the Court of Chancery explicitly considered along with the facts above in reaching its decision—changes the result. In *Frank*, the plaintiffs alleged not only that the group entered into agreements simultaneously, but also that the group members "acted together" to attain unique

benefits for themselves at the expense of other stockholders. 2012 WL 1096090, at *8 & n.57. And in *Hansen*, the plaintiffs alleged that, in addition to entering into agreements at the same time, there was an extensive, twenty-one-year history of coordinated investment strategy in at least seven different companies, and that the alleged group had the ability to control the terms of the contemplated transaction. 2018 WL 3025525, at *7. There are no such allegations of "acting together" in connection with entering into the relevant agreements here. In fact, the documentary record suggests the opposite, leading the Court of Chancery to its well-reasoned decision that the timing of the deal—rather than unalleged coordination—was the reason for entering into agreements at the same time. MTD Op. at 25; *see also Silverberg*, 2019 WL 4566909, at *7 (dismissing control-group claim where alleged group members merely approved the same transactions, holding that such parallel conduct "conflates acts of consensus with the act of forming a group").

Plaintiffs' remaining assertion—that the down-conversions "only make sense as a singular control group acting in concert," OB at 51—does not square with the pleadings. First, Vista proposed the conversion. A0137. Second, non-members of the alleged group also converted and signed support agreements. A0142-43. Third, *Sheldon* itself forecloses the argument, as even converting stock "for the purpose of 'unjustly diluting the economic and voting interests'" of plaintiffs did not establish a legally significant connection. 220 A.3d at 253 (quotation omitted).

3. There Were No Well-Pled Allegations of Coordination Between Elephant and KKR

Plaintiffs contend the trial court drew an impermissible defendant-friendly inference in finding no "coordinated strategy" between Elephant and KKR despite both rolling over similar percentages of stock.[4] OB at 50-51. Plaintiffs' arguments suffer from two separate defects. First, Plaintiffs claim that the mere fact that Elephant and KKR rolled over similar percentages of stock means the Court of Chancery's decision finding no coordination on that point was wrong, but Plaintiffs cite no authority holding that similar rollover percentages evidence coordination. Second, Plaintiffs' argument ignores that the Court, as required by Delaware law, considered the totality of the allegations (including documents incorporated by reference) and concluded that the pleadings supported, at most, parallel interests. MTD Op. at 30; *see also id.* at 25-26 (noting that "documents incorporated by reference into the Amended Complaint reflect that Elephant maintained a fixed share commitment and KKR varied its rollover amount"). In particular, the Court evaluated the Elephant Support Agreement, which provided that Elephant would sell 20,000,000 shares and retain 17,069,823, and the KKR Support Agreement, which gave KKR the "sole discretion … to reduce the number of Rollover Shares that are

[4] Plaintiffs treat Sjouwerman as an afterthought here and elsewhere. Tellingly, they omit him entirely from the "coordinated strategy" argument. *See* OB at 50.

contributed in the Exchange." MTD Op. at 26 n.73; A1114. Indeed, Plaintiffs allege that KKR's figure fluctuated throughout the process through separate negotiations between KKR and Vista, while Elephant's remained constant. A0099, A0123, A0138. Two parties who had agreed on a common rollover strategy would not paper asymmetrical rights and engage in separate—and different—negotiations.

Plaintiffs' cited authority does not warrant a different result. *See* OB at 51 n.225. For example, in *Garfield*, the plaintiff alleged acts that led the court to conclude the group "acted as a 'collective unit,'" including management's grant of preferential review and exclusive input. 2019 WL 7168004, at *10. Nothing comparable is pled here. *Frank* and *Hansen* involved additional coordination allegations that are absent here and thus do not support a finding of a control group. *Frank*, 2012 WL 1096090, at *8 n.57 (inferring a control group from members' contemporaneous execution of voting, exchange, and executive employment agreements, viewed against the "broader picture"); *Hansen*, 2018 WL 3025525, at *7 (inferring a control group from members' separate stock purchase agreements and voting agreements/proxies, a twenty-one-year coordinated investing history, plus a transaction-specific "Key Stockholder" role). Nor can third-party perceptions of the Rollover Stockholders—including Morgan Stanley's treatment of them, OB at 49—substitute for the horizontal agreement and legally significant connection *Sheldon* demands. 220 A.3d at 251-52; *see also van der Fluit*, 2017 WL 5953514,

at *6 (holding that control group inquiry focuses on "meaningful connections" and "managerial control" between alleged members of the control group).

4. The Court Did Not Hold that "Perfect Unison" Is Required for a Control Group Finding

Plaintiffs next attack the Opinion for apparently requiring that the group members act in "perfect 'unison'" before finding coordination. OB at 51. The Court of Chancery did no such thing. Not only did the Court not use the word "perfect" anywhere in its decision, but it also cited *van der Fluit* where the plaintiffs likewise alleged no facts about the alleged group members' personal or working relationships, such that no "meaningful connections" existed between alleged control-group members. 2017 WL 5953514, at *6. Plaintiffs also contend that *van der Fluit* only analyzed a "general—rather than transaction-specific—control group," but that is incorrect. *See* OB at 51. Indeed, the *van der Fluit* court evaluated transaction-specific allegations that the co-founders entered into tender and support agreements, exchanged unvested stock options, and accepted employment with the acquiror post-closing—yet still found no control group. 2017 WL 5953514, at *6-7.

The parallel to *van der Fluit* is instructive. Plaintiffs here allege no facts about any personal or working relationship between Elephant and KKR or KKR and Sjouwerman, and only conclusory allegations about Elephant and Sjouwerman. Elephant and KKR are unaffiliated sponsors that compete for investment opportunities; their initial investments came more than three years apart; they made

four separate and independent investments compared with a single joint one; and they are not alleged to have coordinated their exercise of their right of first refusal. MTD Op. at 23-26. The only pled connection between Sjouwerman and Elephant is that he "got along so well" with its founders, A0062, and the Amended Complaint pleads no historical ties between KKR and Sjouwerman at all. Delaware courts require extensive and longstanding entanglement—crossing paths is "insufficient to show [a] 'long history of cooperation and coordination.'" *Patel*, 2021 WL 4482157, at *12 (quotation omitted). Indeed, the only time Plaintiffs address historical connections is to say they are unnecessary. *See* OB at 46 n.207.

5. Implementing *MFW* Protections Is the Opposite of a Presumption of Control—and Plaintiffs' Contrary Rule Would Chill Best Practices

Plaintiffs contend that because the Board adopted prophylactic *MFW* protections, Defendants conceded controller status. OB at 49; *see also id.* at 51-52. The Court of Chancery correctly rejected that inversion of Delaware's incentives. MTD Op. at 28. That logic would penalize the very protections that *MFW* itself calls "optimal[]" for minority stockholders. *See Kahn v. M & F Worldwide Corp.*, 88 A.3d 635, 643-44 (Del. 2014); *see also In re Tesla Motors, Inc. S'holder Litig.*, 2022 WL 1237185, at *33 & n.397 (Del. Ch. Apr. 27, 2022) (describing a majority-of-the-minority vote as "laudable" and noting that parties forgoing it do so at their own peril), *aff'd*, 298 A.3d 667 (Del. 2023). Consistent with that rationale, the Court

of Chancery held that "[d]eeming the decision to adopt *MFW* protections as a concession concerning the existence of a conflicted controller would disincentivize their use." MTD Op. at 28. Plaintiffs' claim that the Court reached its ruling "without citing any record support," OB at 52, is simply wrong. *See* MTD Op. at 27 nn.78-80 (citing the Amended Complaint and Plaintiffs' Answering Brief below).

Plaintiffs next argue that the Court did not "attempt to square its reasoning with the contrary ruling in *MH Haberkorn*." OB at 52 & n.229 (citing *MH Haberkorn 2006 Tr. v. Empire Resorts, Inc.*, C.A. No. 2020-0619-KSJM (Del. Ch. July 23, 2021) (TRANSCRIPT)). This too is incorrect. The Court of Chancery explicitly cited this case in its decision; indeed, it spent a whole paragraph discussing the *MH Haberkorn* bench ruling. MTD Op. at 30. That the Court of Chancery did not invoke the decision on the discrete question of *MFW* protections reflects that *MH Haberkorn* is distinguishable, not that the court overlooked it. Indeed, *MH Haberkorn* involved plus factors absent here: for example, the plaintiff there explicitly alleged that one member of the alleged control group recruited two others to effectuate a merger, the members formed a joint venture, and two members of the group negotiated against the special committee in connection with that transaction. MTD Op. at 30 & nn.90-95 (citing *MH Haberkorn*, C.A. No. 2020-0619-KSJM, at 47-48). Here no member recruited another or formed a joint venture, and the

Special Committee controlled the sale process. *See* MTD Op. at 6-16. The Opinion correctly distinguished the facts in *MH Haberkorn* from the facts here.

CONCLUSION

For the foregoing reasons, the Elephant Defendants request that the Court affirm the Court of Chancery's judgment.

ROSS ARONSTAM & MORITZ LLP

/s/ David E. Ross
David E. Ross (Bar No. 5228)
Kevin A. Rudolph (Bar No. 7106)
Hercules Building
1313 North Market Street, Suite 1001
Wilmington, Delaware 19801
(302) 576-1600

Counsel for Defendants-Below, Appellees Jeremiah Daly, Elephant Partners, Elephant Partners I, L.P., Elephant Partners II, L.P., Elephant Partners 2019 SPV-A, L.P., and Elephant Partners II-B, L.P.

Of Counsel:

Colleen Smith
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, California 92130

J. Christian Word
Stephen T. Nasko (Bar No. 7634)
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004

Jordan Cook
LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626

Dated: September 9, 2026

PUBLIC VERSION FILED:
September 24, 2026