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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE CARING PEOPLE CONSOL. LITIG.	No. 264, 2026 No. 268, 2026 Case Below: Court of Chancery of the State of Delaware, C.A. No. 2024-0125-DH

OPENING BRIEF OF APPELLANT/CROSS-APPELLEE SHALOM (STEVEN) EAST

McCarter & English, LLP

Sarah E. Delia (Bar No. 5833)
Renaissance Centre
405 North King Street, 8th Floor
Wilmington, Delaware 19801
(302) 984-6300
sdelia@mccarter.com

Attorneys for Appellant/Defendant and Counterclaim Plaintiff Below, Shalom (Steven) East

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NATURE OF PROCEEDINGS

This appeal follows from a breakdown of the relationship between Shalom (Steven) East, the founder of Caring People,[1] and Silver Oak, the private-equity investor that acquired a controlling interest in Caring People through a Purchase and Contribution Agreement ("PCA"). East asks this Court to reverse the portions of the post-trial decision issued by Magistrate Molina (later clarified by Magistrate Hume with respect to damages) holding him liable for breach of overbroad restrictive covenants and tortious interference, imposing $1.614 million in wholly unsubstantiated "lost profit" damages against East, and awarding Plaintiffs one-third of their attorneys' fees and expenses. East further challenges the trial court's refusal to award foreseeable federal tax penalties and interest he incurred after CP Holdco failed to make a contractually required distribution in April 2022 that was intended to cover his tax liability. The trial court's rulings cannot be reconciled with the governing agreements, the evidence at trial, or the trial court's own separate findings.

At the outset, the trial court *agreed* that the PCA's nationwide non-compete provision was broader than necessary because Caring People operated in only six states. However, instead of refusing to enforce the overbroad covenant as it should

[1] "Caring People" includes Caring People Holdco, LLC ("CP Holdco"), Caring People Management Services Company, LLC, Caring People FL Operating, LLC, Caring People NJ Operating, LLC, and Caring People NY Operating, LLC (otherwise collectively referred to herein as "Plaintiffs," "CP" or the "Company").

have—particularly in light of East's compliance for more than five years—the court improperly rewrote the covenant to cover the unidentified "geographic area in which the Plaintiffs do business" and held that East breached the newly fashioned restriction. It then proceeded to award wholly unproven damages, which constitutes a separate reversible error as described below. East challenges both the decision to blue-pencil the covenant and the resulting finding of liability, both of which are unsupported by the record. Notably, this unproven conclusion assumes that East acted against his own economic interest by sabotaging the entity in which he still owns more than 30% of the equity in order to support a competitor in which East has no direct or indirect economic interest.

The trial court similarly erred when it rewrote the PCA's non-solicitation provision and the corresponding non-solicitation provision in East's incentive unit agreement (the "East IUA"). The court agreed that the provision's prohibition against "encouraging" employees to leave was impermissibly broad, but it improperly severed that language, leaving a prohibition against hiring or soliciting employees for hire. However, the evidence showed that East did *not* hire or solicit either of the two Caring People employees who were alleged to have been wrongfully solicited, Jennifer Devine or Gail Feder. For the same reasons, the trial court's determination that East tortiously interfered with CP's contractual agreements with Devine and Feder must also be reversed.

Even to the extent East could properly be found to have breached any of the foregoing covenants (he cannot), as noted above, the trial court's damages ruling lacks any reasoned basis. The trial court *acknowledged* that Plaintiffs could not identify a *single* client or referral source supposedly diverted or quantify the lost revenue associated with any act by East (or Devine). It likewise noted multiple other causal factors contributing to Caring People's revenue decline. Yet the court *assumed* that one-half of Caring People's New York lost profits from the third quarter of 2023 through the second quarter of 2025 resulted from the alleged breaches. It therefore awarded Plaintiffs $2.152 million in damages and allocated seventy-five percent, or $1.614 million, to East. The damages figure and allocation to East were pulled from thin air. Indeed, the trial court rejected Plaintiffs' expert's damages analysis because it, too, assumed liability and causation and failed to account for significant other causal factors. But rather than enter judgment for East based on Plaintiffs' complete failure of proof as it should have, the trial court supplied the missing causation analysis itself without any reasoned explanation.

The trial court further erred by designating Plaintiffs as prevailing parties under the East IUA and the related incentive unit agreement for Devine (the "Devine IUA") and shifting one-third of Plaintiffs' fees and expenses to East and Devine jointly and severally. Setting aside the fact that the fee-shifting award assumes liability against East on the foregoing non-solicitation claims, the trial court's fee-

shifting determination was improper because the IUAs governed only a fraction of the claims at issue in the litigation, and Plaintiffs lost other claims and other substantial theories of recovery. Moreover, the damages award implicated a breach of the non-compete covenant in the PCA, which contains no fee-shifting provision. At a minimum, this ruling must be reversed. Further, should this Court reverse any of the findings of liability against East, East should be considered the prevailing party and awarded fees and expenses accordingly.

Finally, although the trial court determined that CP Holdco[2] failed to make a contractually-required distribution that was intended to cover East's tax liability, it refused to award East the penalties and interest assessed on his unpaid federal taxes, stating only and incorrectly that those charges were not recoverable as consequential damages. There can be no reasonable doubt that those amounts were the foreseeable result of the breach.

For the reasons set forth below, this Court should reverse the trial court's rulings that East breached Sections 9.1 and 9.2 of the PCA and Section 19 of the East IUA and tortiously interfered with CP's contractual agreements; vacate the lost-profit damages award and allocation; and vacate the award of attorneys' fees and expenses and designate East as the prevailing party under the East IUA. East also

[2] The trial court incorrectly named Silver Oak as the breaching party despite the fact that the claim was also asserted against CP Holdco and the obligation exists in the Holdco Agreement.

respectfully requests that the Court award him the federal tax penalties and interest incurred as a foreseeable result of CP Holdco's breach.

SUMMARY OF ARGUMENT

1. The trial court erred by blue penciling the overbroad non-compete covenant in Section 9.1 of the PCA and then finding that East breached the revised covenant despite Plaintiffs' failure of proof.

2. The trial court erred by blue penciling the overbroad non-solicitation covenants in Section 9.2 of the PCA and Section 19 of the East IUA and then finding that East breached the revised covenants despite Plaintiffs' failure of proof. The trial court further erred by finding that East tortiously interfered with Plaintiffs' contractual relationships based on the same unproven factual predicate on which it determined that East violated the foregoing non-solicitation provisions.

3. Setting aside the unsupported findings of breach, the trial court erred by assuming causation of CP's lost profits despite a host of undisputed intervening factors, and then crafting a resulting damages award and allocation that lacked any causal nexus whatsoever to East.

4. The trial court erred by awarding Plaintiffs one-third of their fees and expenses where the East IUA, which contains the relevant fee-shifting provision, governed a smaller fraction of the claims, Plaintiffs' damages recovery rests in part on the PCA, which contains no prevailing-party provision, and the trial court did not tie the shifted fees to work on claims covered by the East IUA.

5. The trial court erred by failing to award East the penalties and interest incurred as a foreseeable result of CP Holdco's breach of the tax distribution provision in Section 5.3 of CP Holdco's Amended and Restated Limited Liability Agreement (the "Holdco Agreement").

STATEMENT OF FACTS

A. The Origin of CP

East started CP in 1998 as a small employment agency for nannies and housekeepers in Flushing, Queens, New York.[3] The Company grew into a home healthcare company, focusing on providing assistance with daily activities for individuals who lived at home.[4]

East possessed a unique sales prowess.[5] CP also owed "much of its success to Devine," who joined in 2007 as the Director of Business Development in the Long Island region and became known as the Company's top sales representative.[6]

In 2015, to set CP apart in the market and allow for even greater growth, East developed a technology platform, originally under the name Avior Life Sciences, LLC ("Avior"), later renamed CaringOnDemand ("COD").[7] COD was intended to simplify the relationships among home-care providers, caregivers, and patients, including by connecting patients who need supportive care services with caregivers and provider agencies.[8]

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[3] Exhibit A, March 10, 2026 Memorandum Opinion ("Op.") at 3.

[4] Op. at 3.

[5] Tr. Kornblum at 677-78 (A977-78).

[6] Op. at 5.

[7] Tr. East at 363-64 (A663-64); Op. at 4.

[8] Tr. East at 372 (A672); Op. at 4.

By 2016, CP was generating over $30 million in gross revenue and $4 million in annual profit.[9] This success came "despite stiff competition," with roughly 400,000 direct providers of home care services in the United States and "thousands" in New York and New Jersey.[10]

B. The Silver Oak Acquisition

In October 2016, East was connected with Silver Oak, "an experienced private equity firm."[11] The parties discussed a potential acquisition of CP. East pushed CP and COD as a packaged deal.[12] Ultimately, following "extensive due diligence," Silver Oak passed on the COD opportunity and chose to invest solely in CP.[13]

Through the PCA, East agreed to sell a controlling interest in CP to newly created entities formed by Silver Oak.[14] East retained rollover equity representing about a 40% ownership interest in the new entity formed for CP, which was valued at about $8.4 million.[15]

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[9] Op. at 6.

[10] *Id.*

[11] *Id.*at 8.

[12] *Id.* at 9.

[13] *Id.* at 9-10.

[14] Op. at 10.

[15] *Id.*

In the PCA, East agreed to several restrictive covenants binding his conduct until the later of five years after the signing of the PCA or two years after East's employment with CP ended.[16] Those restrictions included a non-compete and a non-solicitation covenant.[17] But East negotiated a carve-out for Avior/COD, which states in part that "nothing in this Section 9.1 [(the non-compete)] shall be deemed to prohibit or restrict the business activities of [Avior/COD] so long as [Avior/COD] is not engaged in a Restricted Business. For avoidance of doubt, the Parties agree that [Avior/COD's] business as of the First Closing is not a Restricted Business."[18]

At trial, a Silver Oak partner conceded his understanding that East had preserved his ability to develop through COD a platform that connects consumers (patients) with caregivers employed by a network of direct care providers.[19] Silver Oak knew that COD would not merely "be an outsourced arm for CP."[20] And it knew East planned for COD to "not just service [CP], but also to have broader market appeal; otherwise, why would [he] have it[?]"[21] The trial court found that

[16] A1859-60.

[17] Op. at 11; A1859-60.

[18] A1860.

[19] Tr. Gustafson at 784-85 (A1084-85).

[20] *Id.* at 789 (A1089).

[21] Tr. Gustafson at 782 (A1082).

"Silver Oak knew that East planned for COD to offer its technology services not just to CP but to other healthcare agencies."[22]

In addition to the PCA, at closing, East entered into the new entity's (CP Holdco) LLC agreement (the Holdco Agreement) and the East IUA.[23] Through the East IUA, East agreed to another non-solicitation covenant for the duration of and until two years after his ownership of incentive units granted therein.[24]

C. Early Post Closing Performance

In the initial post-closing period, including during COVID-19, CP "excelled under East's leadership."[25] East's strategies during this period led CP to have "some of [its] best months" under East's tenure as CEO.[26] Andrew Gustafson, Silver Oak's point person on the CP investment, testified that East "[is] a great entrepreneur. He's very smart. He's good at sourcing out" opportunities.[27] When it came to leading sales efforts, East was "better than [Gustafson]."[28] East was a "rainmaker."[29]

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[22] Op. at 20.

[23] *Id.* at 11; A1876-1937; A1938-46.

[24] Op. at 12; A1943.

[25] Op. at 15.

[26] *Id.*

[27] Tr. Gustafson at 739 (A1039).

[28] *Id.* at 740 (A1040).

[29] Tr. Kornblum at 677 (A977).

D. The ERTC Tax Credits

In late 2021, CP applied for employee retention tax credits ("ERTC") "to help employees with tax obligations."[30] Amerisa Kornblum, CP's Chief Financial Officer, explained that CP "planned to make tax distributions to shareholders," among other things.[31]

E. Silver Oak Hires Spero and CP's Business Declines

Despite strong revenue, by late 2021, the relationship between East and Silver Oak had devolved into "a bad marriage."[32] Following a contentious call, East offered to resign.[33] After Silver Oak accepted that offer, its executive search firm identified Anthony Spero as a candidate for the CEO position.[34] In April 2022, the CP Board offered Spero the CEO role, and he accepted.[35]

CP's performance under Spero declined notably. Spero generated no acquisition opportunities, failed to retain talent, failed to motivate or garner the trust of his subordinates, and generally ran sales "into the ground."[36] Gail Feder, who worked at CP for over a decade, testified that under Spero, "things changed, the

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[30] Op. at 15.

[31] *Id.* at 16.

[32] *Id.* at 23.

[33] *Id.*

[34] *Id.* at 23-24.

[35] A257.

[36] A257; *see also* Tr. Spero at 274-75 (A574-75).

culture changed."[37] A former employee, Jen Mojave, took accounts from two companies, Coterie and Atria, to a competitor; CP stopped servicing the Coterie accounts entirely.[38]

F. Silver Oak Intentionally Withholds Contractual Tax Distributions

In March 2023, eleven months after the deadline, CP decided to authorize the first tax distribution for 2021. As of March 2023, CP had a cash balance of $6.2 million.[39] However, CP decided to authorize only a partial tax distribution of $1.6 million (less than half of the principal amount owed) and use $4.5 million of CP's cash to pay down debt.[40] Silver Oak's Gustafson knew failure to make full tax distributions would cause East more "pain" than any other equity holder.[41]

G. Beacon/Polaris

Also in March 2023, Devine reached out to an affiliate of Beacon Eldercare ("Beacon"), a licensed home healthcare agency in New York, to request materials related to Beacon.[42] Devine put Beacon's owner, Yvonne Murphy, in touch with

[37] Tr. Feder at 1086 (A1386).

[38] Tr. Spero at 282-85 (A582-85).

[39] Tr. Gustafson at 796 (A1096).

[40] A1650.

[41] Tr. Gustafson at 803-04 (A1103-04).

[42] Op. at 26.

East.[43] Murphy met with East at CP's offices in Jericho on March 14.[44] DeLeo, from CP, was invited but did not attend.[45] Most interesting to East was Beacon's license to practice home health care in New York State.[46] Those licenses are "almost impossible" to get, and even the transfer of a license is a "long and arduous process."[47] East viewed Beacon's license as a future potential asset for Devine.[48] Devine, who for personal reasons could no longer work full- or even part-time, was intrigued by the possibility of eventually managing a home care company through the transferred license.[49]

In April 2023, East helped Devine and another individual, Eric Johnson, create Polaris, an LLC designed to receive the transferred license. Polaris entered into an asset purchase agreement and services agreement with Beacon.[50] Though the trial court reasoned that the deal would "not have happened" without East's assistance,[51] East doubted he spent more than three days total helping Devine and

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[43] *Id.*

[44] *Id.*

[45] A1653; Tr. East at 431 (A731).

[46] Op. at 27.

[47] *Id.*

[48] *Id.*

[49] A1653-54.

[50] Op. at 28.

[51] *Id.*

Johnson set up Polaris.[52] East has no ownership interest or management role in Polaris, and the evidence at trial demonstrated that Beacon and Polaris have made no efforts to take any CP clients or solicit CP referral sources.[53] Spero could not identify a single client that Beacon or Polaris has allegedly taken from CP.[54]

H. East Resigns as Chairman; Devine Resigns

On April 5, 2023, East provided notice that he would resign as Chairman, effective April 28, 2023.[55] Devine tendered her resignation shortly thereafter on May 1, 2023, with an end date of May 30, 2023.[56] That end date was eventually postponed, and Devine stayed through June 15 "in an effort to assist [CP] with the transition."[57] Devine felt that her work with CP "was taking too much from her personal life, and specifically from her children."[58] East did not encourage her resignation.[59]

Gail Feder also left CP a short time later.[60] Feder, a branch administrator who

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[52] A1654.

[53] A1655.

[54] *Id.*

[55] Op. at 29, 31.

[56] *Id.* at 31.

[57] *Id.*

[58] Op. at 31.

[59] A1672-73; *see also* Op. at 32.

[60] Op. at 33-34.

worked for CP for twelve years, was an "extremely valuable asset" to the Company.[61] Before her departure, Feder asked the CP board for more support in her role, but that support never came. The trial court noted that "[t]he lack of support pushed Feder to consider resignation and retirement."[62] Though Feder would later join Polaris, she testified that she ***did not have a new job lined up*** when she left CP.[63]

The departure of East, Devine, and Feder caused "serious impacts" at CP simply by virtue of their business prowess.[64] The trial court found that CP took "little to no efforts to bridge the gap in Long Island or generate additional revenue."[65] It further noted that "Spero confirmed that as of March 2024, Caring People devoted little to no effort to generate revenue from Devine's former accounts."[66] At least three large referral sources stopped entering staffing contracts, "causing a dip in revenue for CP."[67] Another major referral source, the Amsterdam, instituted a move-in freeze due to its bankruptcy and sale, "giving limited ability to bring on new

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[61] *Id.*

[62] *Id.*

[63] Op. at 35.

[64] *Id.*

[65] *Id.* at 36.

[66] *Id.* at 37.

[67] *Id.* at 38.

clients."[68]

Caring People's quarterly reports reflected declines in revenue and repeatedly identified sales-force turnover and soft sales performance as causes.[69] In its March 31, 2025, investor report, Silver Oak reported that CP's "decline in revenue was primarily driven by softer sales performance in the New York and Florida markets, ***which have been negatively impacted by the loss of sales representatives***.… Sales performance continues to be impacted by challenges in replacing sales representatives with equally productive new hires."[70] None of these quarterly investor reports attributed CP's decline to East, Devine, COD, or Beacon/Polaris.[71] Rather, the reports blamed CP's precipitous sales force loss, which declined from approximately 57 sales representatives (and internal CP personnel that generated sales revenue) at the end of 2023 to 18 at the end of 2024.[72] Certain representatives went to work for competitors.[73] Over the same time, new business generation fell by more than 24% from approximately $8.6 million in 2023

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[68] *Id.*

[69] Op. at 39.

[70] A1644; A1956-88 (emphasis added); *see also* Tr. Thompson at 1239 (A1539) (acknowledging that Silver Oak told investors that revenue declined due to "softer sales performance, which was impacted by turnover within the sales team").

[71] Op. at 39.

[72] *Id.* at 37; A259.

[73] *Id.* at 37-38.

to $6.5 million in 2024.[74] The trial court noted that "[w]ith such heavy turnover in the sales force, it comes as no surprise that Caring People profits and revenue suffered."[75]

The underlying lawsuit was filed in February 2024, while CP was devoting "absolutely no effort" to generating sales in Long Island.[76] Kornblum "wanted to show the lawyers" a made-for-litigation analysis of CP's revenue decline in New York, notwithstanding CP's lack of effort to market to Devine's prior accounts.[77]

I. The Trial Court's Opinion and Clarification

Trial took place over four days from January 20 through January 23, 2026. On March 10, 2026, Magistrate Molina issued the post-trial memorandum opinion. The trial court concluded the PCA non-compete's nationwide scope was overbroad but improperly blue penciled it to the geographic areas where CP did business. As narrowed, and despite the COD carve-out and a lack of any proven loss of business tied to East, the trial court found that East breached the provision through activities linked to Polaris/Beacon and COD. The trial court also severed and enforced portions of the PCA and IUA employee non-solicitation restrictions, finding that

[74] *Id.* at 38.

[75] *Id.*

[76] Op. at 37.

[77] Tr. Spero at 296 (A596); A1661.

East breached those provisions by soliciting Devine and Feder notwithstanding explanations to the contrary.

In terms of remedy, notwithstanding that the covenants had already been in place more than five years, the trial court reinstated the full two-year post-employment terms and also awarded damages, although it declined to adopt Plaintiffs' expert's full lost-profits model (approximately $12.4 million across New York and New Jersey through March 2027) due to causation concerns and competing factors affecting performance.[78] Instead, it awarded "half of [Plaintiffs'] New York lost profits" for Q3 2023 through Q2 2025 and allocated three-quarters to East and one-quarter to Devine, with prejudgment and post-judgment interest.[79]

Separately, the trial court found that CP Holdco breached Section 5.3 of the Holdco Agreement by failing to make a timely tax distribution to East. The trial court awarded East $355,533.00 in principal, plus prejudgment and post-judgment interest to offset his liability to Plaintiffs, but it declined to award the significant and readily foreseeable federal tax penalties or interest assessed against East as a result of the late payment.[80]

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[78] Op. at 73-75.

[79] *Id.* at 75-76.

[80] *Id.* at 78.

Citing the prevailing-party provisions in the East and Devine IUAs, the trial court awarded Plaintiffs one-third of their reasonable fees and expenses, and ordered East and Devine jointly and severally liable for that apportioned amount, but it made no effort to explain how it arrived at that percentage in light of the number of other claims for which fee shifting was unavailable.[81]

Following issuance of the memorandum opinion, East and Devine moved for clarification, arguing that the opinion's $4.304 million damages figure conflicted with the trial court's stated ruling to award half of the proffered lost profits amount for New York for Q3 2023–Q2 2025. In an April 23, 2026 letter opinion, Magistrate Hume recommended granting clarification, explaining that $4.304 million was the expert's full New York lost-profits assessment for Q3 2023–Q2 2025 and reflected a scrivener's error.[82] Magistrate Hume clarified that the intended award was one half of that amount and indicated that the memorandum opinion issued by Magistrate Molina would be withdrawn and reissued to reflect that correction.[83]

[81] *Id.* at 76-77.

[82] Exhibit B, April 23, 2026 Letter Opinion ("Ltr. Op.") at 2-5.

[83] Ltr. Op. at 4-5.

ARGUMENT

I. THE TRIAL COURT ERRED IN REWRITING THE PCA NON-COMPETE AND THEN FINDING EAST LIABLE FOR BREACH.

A. QUESTION PRESENTED

Did the trial court err by (i) rewriting a restrictive covenant's nationwide restriction after determining that it was broader than necessary to protect CP's business; and (ii) then finding a breach despite a lack of competitive conduct falling outside the COD carve-out? Preserved at A283-85; A1663-70.

B. SCOPE OF REVIEW

A court's decision to exercise its equitable power to blue-pencil an overbroad restrictive covenant is reviewed for abuse of discretion. *See Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 485 (Del. 2024). "[P]ublic-policy considerations[, which are reviewed *de novo*,] may buttress a court's discretionary decision to exercise its blue-penciling power." *Id.* at 484-85. Whether the trial court correctly interpreted Section 9.1 and the COD carve-out presents a question of contract interpretation that this Court reviews *de novo*. *Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1115 (Del. 2022). The Court reviews factual findings for clear error, and a finding is clearly erroneous when it is unsupported by the record. *See Backer v. Palisades Growth Cap. II, LP*, 246 A.3d 81, 96 (Del. 2021).

C. MERITS OF ARGUMENT

The non-compete judgment should be reversed for two independent reasons. First, the trial court found that Section 9.1's nationwide restriction was geographically broader than necessary to protect CP's business, but nevertheless rewrote the covenant. The purported circumstances on which the court relied—East's sophistication, the sale-of-business context, and the consideration he received—did not cure the covenant's overbreadth or justify rescuing highly sophisticated Silver Oak from a restriction that exceeded the goodwill it acquired, particularly in light of East's compliance for more than five years. Second, even if the narrowed covenant were enforceable, the trial court did not apply the COD carve-out according to its terms. Instead, it based liability on East's activities with Polaris and Beacon without identifying activities undertaken outside COD's expressly preserved technology business.

1. The Trial Court Abused Its Discretion by Rewriting a Facially Overbroad Covenant Negotiated by a Sophisticated Counterparty.

"Delaware courts review non-compete and non-solicit agreements … 'to ensure that they are that they are (i) reasonable in geographic scope and temporal duration, (ii) advance legitimate economic interests of the party seeking enforcement, and (iii) survive a balancing of the equities.'" *Sunder Energy*, 332 A.3d at 485 (citing *Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.3d 674, 684 n.65 (Del.

2024)). It is well-established that a restrictive covenant must be tailored to the interest it purports to protect. In the sale-of-business context, that means the covenant may protect the goodwill actually acquired. *See, e.g.*, *Intertek Testing Servs. NA, Inc. v. Eastman*, 2023 WL 2544236, at *4 (Del. Ch. Mar. 16, 2023) (striking global non-compete where employer's business only served clients nationwide); *see also Rsch. & Trading Corp. v. Pfuhl*, 1992 WL 345465, at *12 (Del. Ch. Nov. 18, 1992) (noting "it is the employer's goodwill *in a particular market* which is entitled to protection" (emphasis added)). This is consistent with Delaware's strong public policy in favor of competition over the enforcement of non-competition agreements. *See Centurion Serv. Grp., LLC v. Wilensky*, 2023 WL 5624156, at *2 (Del. Ch. Aug. 31, 2023) ("Delaware courts have favored the public interest of competition in their review of noncompetition agreements.").

Here, Section 9.1 of the PCA purports to prevent East from participating, in virtually any capacity, in a substantially similar business to CP "anywhere in the United States" for the longer of (i) five years or (ii) two years after East ceases to be a CP employee.[84] The trial record established, and the trial court found, that CP operated only in New York, New Jersey, Connecticut, Massachusetts, Texas, and Florida.[85] Because CP is a licensed provider, its operations were narrower still: it

[84] A1859-60.

[85] Op. at 51.

could provide services only in the territories covered by its state licenses.[86] The trial court therefore correctly concluded that "[a] countrywide restriction is broader than necessary to protect [Caring People's] interests."[87] That finding rendered Section 9.1 unenforceable as written. *See HKA Global, LLC v. Beirise*, 2025 WL 3639811, at *6 (Del. Ch. Dec. 16, 2025) ("Delaware courts generally refuse to blue-pencil facially overbroad restrictive covenants, particularly where the defect is structural rather than clerical"). The remaining question was whether the circumstances surrounding the covenant justified the extraordinary equitable step of replacing the nationwide restriction with a different one. They did not.

Delaware courts possess discretion to narrow an overbroad restrictive covenant, but that authority is not an appropriate drafting aid whenever a covenantee imposes an unreasonable restraint. *See BluSky Restoration Contractors, LLC v. Robbins*, 2026 WL 599148, at *15 (Del. Ch. Mar. 4, 2026) (declining to blue-pencil restrictive covenants extending beyond the acquired business's competitive footprint because doing so would reward imprecise drafting and make the court a "safety net" for contractual overreach). Courts repeatedly decline to save overbroad covenants by rewriting them because doing so "eliminate[s] the goal requiring parties to draft restrictions specifically tailored to the parties' circumstances and legitimate business

[86] Tr. East at 361 (A661).

[87] Op. at 51.

interests" and "incentivize[s] future parties to compose restrictions without appropriate accuracy and precision, certain in the belief that the [c]ourt would be a safety net for any overreach." *Id.*; *Delaware Elevator, Inc. v. Williams*, 2011 WL 1005181, at *10 (Del. Ch. Mar. 16, 2011) ("[A] court should not save a facially invalid provision by rewriting it and enforcing only what the court deems reasonable. Doing so puts the employer in a no-lose position. If an employer knows that the court will enforce a reasonable covenant as a fallback, the employer has every reason to start with an overbroad provision."); *see also Kodiak*, 2022 WL 5240507, at *4 ("Where noncompete or nonsolicit covenants are unreasonable in part, Delaware courts are hesitant to 'blue pencil' such agreements to make them reasonable.").

That concern applies equally to negotiated sale-of-business covenants. In *Cleveland Integrity Services, LLC v. Byers*, the court applied the "additional latitude afforded in the context of a sale of a business" but declined to enforce or blue-pencil a two-year non-compete prohibiting the founders of a pipeline-inspection company from competing "anywhere in North America." 2025 WL 658369, at *10, *12 (Del. Ch. Feb. 28, 2025). The acquired business operated only in the United States, and the purchaser presented no evidence of concrete plans to expand internationally. *Id.* at *11. The court declined to rescue that geographic overreach through judicial reformation. *Id.* at *12.

The same result followed in other sale-of-business cases involving sophisticated parties, negotiated agreements, and substantial consideration. In *Intertek*, the court refused to rewrite a worldwide restriction because doing so would inequitably save a sophisticated purchaser from its own overreach. 2023 WL 2544236, at *5. In *Kodiak*, the court similarly declined to blue-pencil overbroad sale-of-business covenants despite a contractual judicial-reformation provision. 2022 WL 5240507, at *4 n.49, *13 n.108. And in *Weil Holdings II, LLC v. Alexander*, the court invalidated a non-compete entered into as part of an investment transaction because it restricted a podiatrist from practicing near offices across four states, including states where he had never treated a patient. 2025 WL 689191, at *5-6 (Del. Ch. Mar. 4, 2025).

The trial court nevertheless relied on the purported facts that East was sophisticated, was represented by counsel, specifically negotiated the covenant, and received substantial consideration to reform and enforce the covenant, while ignoring the undeniable sophistication of Silver Oak.[88] It further reasoned that refusing to reform the covenant would "relieve him of the consequences of his deal" and that the equities favored the enforcing party.[89] But the factors considered by the

[88] Op. at 54.

[89] *Id.* at 54-55.

trial court, even if true, should not be used as a basis to save an overbroad restrictive covenant in light of existing case law.

In *Kodiak*, for example, the court acknowledged that the defendant "qualifies . . . as a 'sophisticated' 'senior executive'" and that "[he] received '[a]pproximately [$]900,000' in exchange for his . . . interests" in his business. 2022 WL 5240507, at *13. Yet, "[i]n spite of all of that," the court concluded that the restrictive covenants at issue were "more restrictive than [plaintiff]'s legitimate interests justify [and i]t would be inequitable to enforce such unreasonable covenants against [defendant]." *Id.* Likewise, *Intertek* treated the sophistication of the enforcing party as a reason *against* reformation. 2023 WL 2544236, at *5 ("In my view, revising the non-compete to save Intertek—a sophisticated party—from its overreach would be inequitable.").

Moreover, by the time of the challenged conduct, East had already honored the fixed, sale-based restriction the parties negotiated. Section 9.1 bound him until the later of five years after the March 20, 2017 closing (through March 2022) or two years after his employment ended. East remained subject to the covenant throughout a full five-year period, which would have been the entire duration of the covenant had East not stayed on board with CP.[90] Against that backdrop, declining to reform the nationwide restriction would not have relieved East of the bargain he made.

[90] *See* A284.

There is simply no legitimate business or public policy interest that could justify applying the non-competition provision to bar East's conduct here. *See Sunder Energy*, 332 A.3d at 487 (noting concern for the "use of judicial resources and the principles of comity raised when a Delaware court is asked to blue pencil unambiguous contract provisions crafted between parties with no ongoing dealings in Delaware" and that "Delaware is a contractarian state that holds parties' freedom of contract in high regard").

The trial court also found that "Caring People's history and documented plan for future expansion further weighs in favor of blue penciling."[91] But this makes no sense. CP's history of expansion or hope of future growth does not supply a present protectable interest in markets it had not entered. *See Intertek*, 2023 WL 2544236, at *4. Otherwise, virtually any business could justify a nationwide restraint by expressing an aspiration to expand nationwide.

Finally, Section 9.5 of the PCA (the severability provision) also does not justify the trial court's decision to blue pencil the non-compete provision. A severability provision may indicate the parties' preference if a court properly exercises its equitable discretion, but it does not compel a court to create an enforceable covenant. Otherwise, boilerplate would convert judicial discretion into a contractual entitlement and eliminate the discipline Delaware law imposes on the

[91] Op. at 54 n.299.

drafting of reasonable restraints. *See Sunder Energy*, 332 A.3d at 486, 490; *Cleveland Integrity*, 2025 WL 658369, at *9, *12; *Duda, III v. APB Holdco, LLC*, C.A. No. 2025-0953-NAC (Del. Ch. June 24, 2026) (ORDER) (A2001) ("This Court has addressed at length its concerns with taking up the blue pencil and rewriting unenforceable restrictive covenants, even if the contract terms expressly contemplate blue-penciling.").

2. Even If the Covenant Were Enforceable, the Trial Court's Finding that East's Conduct Constituted a Breach was Clearly Erroneous.

Even if Section 9.1 could be enforced in a narrowed form, Plaintiffs still had to prove that East engaged in conduct prohibited by the covenant and outside the parties' express COD carve-out. They did not.[92] Instead, the trial court read into the carve-out a limitation that does not appear in the PCA and made a generalized finding of breach without distinguishing protected COD activities from prohibited participation in a licensed home-care provider. It disposed of the carve-out in a single footnote.[93]

Section 9.1 provides that "nothing in this Section 9.1 shall be deemed to prohibit or restrict the business activities" of COD so long as COD "is not engaged

[92] A1668-71.

[93] Op. at 50.

in a Restricted Business."[94] It further confirms, "[f]or avoidance of doubt," that COD's business as of closing was not a Restricted Business.[95] The parties thus expressly preserved East's ability to continue developing COD unless COD itself entered CP's licensed home-care business.

COD's activities were consistent with that model. COD did not hold a license to provide home-care services or employ caregivers to deliver regulated care.[96] It remained a technology company. As CP's former COO explained, COD was a "TECH company," while CP and COD offered "completely different services."[97] The same distinction applied to COD's relationship with Polaris and Beacon. Beacon held the home-care license. Polaris was formed to manage Beacon's limited operations while seeking a transfer of that license. COD supplied the technology platform and entered a provider agreement with Polaris similar to the provider agreement COD previously had with CP. That arrangement did not transform COD into Beacon or Polaris, much less establish that COD itself became a licensed provider.

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[94] A1859.

[95] *Id.*

[96] A281.

[97] *Id.*

The trial court did not find otherwise. It did not find that COD obtained a license, employed caregivers, or began providing regulated home-care services. Instead, it held that, "even accounting for the carve out," East's "activities with Polaris and Beacon" breached Section 9.1 because they "far exceed[ed] the originally contemplated business of Avior/COD and involved direct competition with CP."[98] However, Section 9.1 does not limit COD to the precise products, customers, or developmental stage it had reached at closing. It protects COD's "business activities" unless COD "is . . . engaged in a Restricted Business."[99] Evidence that COD expanded its platform, added provider relationships, or sought patients for providers within its network therefore did not establish that COD crossed the contractual line. Nor was direct economic competition enough to defeat the carve-out. Silver Oak knew COD was intended to serve home-care agencies other than CP.[100] Any successful COD provider relationship could therefore affect CP competitively. If assisting another provider automatically placed COD and East outside the carveout, the exception would preserve little or nothing of the broader-market platform Silver Oak investigated and agreed East could retain.

[98] Op. at 50–51 & n.288.

[99] A1859.

[100] Tr. Gustafson at 782-83, 789 (A1082-83; A1089).

The evidence concerning East's separate relationship with Polaris and Beacon likewise did not establish that he owned, managed, or worked for either entity. East had no ownership interest or management role in Polaris; Devine and Johnson were its members and equal owners.[101] Nor was East compensated by Polaris or Beacon.[102] East's testimony was that he provided limited, informal assistance to Devine and Johnson while Polaris maintained Beacon's operations pending a possible license transfer.[103]

Even crediting the trial court's view of East's evidence and testimony, Plaintiffs still had to identify the prohibited capacity in which East supposedly joined, operated, controlled, advised, or otherwise participated in Polaris or Beacon's licensed business, and distinguish that conduct from his work on behalf of COD.[104] The trial court did not perform that analysis. It instead treated evidence of collaboration among COD, Polaris, and Beacon as sufficient without determining whether the particular activities attributed to East were protected COD activities or prohibited participation in a licensed provider.[105] The trial court's construction of the carve-out should therefore be reviewed *de novo*, and its factual finding that East

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[101] A1654.

[102] A1670.

[103] A1670-71.

[104] A1859.

[105] Op. at 39-43, 50 & n.288.

breached Section 9.1 should be reversed as clearly erroneous. At minimum, the judgment should be vacated and remanded for application of the carve-out's actual terms.

II. THE TRIAL COURT ERRED IN ENFORCING THE NON-SOLICITATION PROVISIONS AND THEN FINDING EAST LIABLE FOR BREACH AND TORTIOUS INTERFERENCE.

A. QUESTION PRESENTED

Did the trial court err in enforcing the PCA's and East IUA's non-solicitation provisions despite determining that their restrictions on "diverting," "persuading," and "encouraging" were overbroad and finding that East breached the provisions and tortiously interfered with contractual relations where both employees at issue gave alternative reasons for their departures and Plaintiffs did not present compelling evidence falling within the remaining bounds of the non-solicitation provisions? Preserved at A1671-73.

B. SCOPE OF REVIEW

A court's decision to exercise its equitable power to blue-pencil an overbroad restrictive covenant is reviewed for abuse of discretion. *See Sunder Energy*, 332 A.3d at 485. "[P]ublic-policy considerations[, which are reviewed *de novo*,] may buttress a court's discretionary decision to exercise its blue-penciling power." *Id*. at 484-85. Whether the trial court correctly interpreted Sections 9.2 and 9.5 presents a question of contract interpretation that this Court reviews *de novo*. *Baldwin*, 283 A.3d at 1115. The Court reviews factual findings for clear error, and a finding is clearly erroneous when it is unsupported by the record. *See Backer*, 246 A.3d at 96.

C. MERITS OF ARGUMENT

1. The Trial Court Erred by Salvaging and Enforcing a Facially Overbroad Non-Solicitation Covenant.

The trial court correctly recognized that a covenant barring East from merely encouraging employees to leave CP swept too broadly. But after improperly severing the offending language, the court improperly found a breach of the narrower "for hire" provision based on conduct that amounted, at most, to encouragement and later collaboration.

Section 9.2(a) contains two distinct prohibitions. Subsection (a)(i) bars East from "hir[ing], offer[ing] to hire, solicit[ing] for hire or attempt[ing] to do any of the foregoing."[106] Subsection (a)(ii) separately bars him from "divert[ing], entic[ing] away," or "persuad[ing] or encourag[ing]" an employee to leave CP, accept employment with a third party, or engage in restricted activity.[107] The two provisions address different conduct: subsection (a)(i) requires an affirmative effort to obtain an employee's services, while subsection (a)(ii) reaches influence over the employee's departure or later choices. The trial court held that subsection (a)(ii) was "the step too far" because a general prohibition on encouraging employees to leave captures conduct unrelated to unfair competition.[108] It therefore enforced only

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[106] A1860.

[107] *Id*. The East IUA includes a similar restriction. *See* A1943.

[108] Op. at 56.

subsection (a)(i), and enforced Section 19 of the East IUA "to the same extent and for the same reasons."[109]

Similar to its treatment of the non-compete provision and for the same public policy reasons, the trial court should not have rewarded Silver Oak's contractual overreach. Recent Delaware decisions only underscore the point. In *HKA Global*, the court held that a prohibition on "encouraging" an employee to leave was facially overbroad because it "restrict[ed] speech and conduct unrelated to unfair competition and advances no legitimate business interest." 2025 WL 3639811, at *5-6. The court then declined to excise the offending language, explaining that "Delaware courts generally refuse to blue-pencil facially overbroad restrictive covenants, particularly where the defect is structural rather than clerical," as is the case here. *Id.* at *6.

Similarly, the court in *BluSky*, refused to enforce a non-solicitation provision containing language "prohibiting 'an attempt to induce' an employee from terminating its relationship with BluSky and its Affiliates." 2026 WL 599148, at *6. The court found that such bans are "'fatally overbroad' because they capture noncompetitive conduct." *Id.* (citing *BankUnited, N.A. v. Shulick*, 2026 WL 21637, at *9 (Del. Ch. Jan. 2, 2026)). *BluSky* is particularly instructive because it arose from a sale of a business for "tens of millions" of dollars. *Id.* at *5. The court

[109] Op. at 56-58.

nevertheless held the non-solicitation provisions unenforceable, explaining that the amount paid does not control and that there is no bright-line purchase price that makes an unreasonable restriction reasonable. *Id.* at *7. It also declined to blue-pencil the restrictions because doing so would encourage imprecise drafting and make the court a "safety net" for contractual overreach. *Id.* at *15.

Here, the trial court broke from this line of cases favoring competition over the enforcement of restrictive covenants because it believed Section 9.5 of the "PCA compels me to segregate and separately enforce the enforceable portion of Section 9.2."[110] But, as discussed *supra*, a severability provision may indicate the parties' preference if a court properly exercises its equitable discretion, but it does not compel a court to create an enforceable covenant. *See Sunder Energy*, 332 A.3d at 486, 490; *Cleveland Integrity*, 2025 WL 658369, at *9, *12. Because the trial court treated the severability clause in PCA Section 9.5 as a command instead of exercising the equitable discretion Delaware law requires, and because the defect was substantive rather than clerical, the findings of liability under PCA Section 9.2 and Section 19 of the East IUA should be reversed.

[110] *Id.* at 56.

2. Even If the Reformed Covenant Were Enforceable, the Trial Court's Finding That East Solicited Devine and Feder Should be Reversed.

Under the surviving language, the dispositive question was narrow: whether East affirmatively sought to hire Devine or Feder for employment—whether for himself, COD, Polaris, or another identified venture. The question was not whether he assisted a venture with which either woman later became associated, collaborated with them after they left CP, or encouraged their decisions to leave. Those broader forms of conduct fall within subsection (a)(ii), which the trial court had already held ***unenforceable***.

In finding a breach by East, the trial court identified no request, invitation, or offer by East to Devine or Feder. Instead, it reasoned that he "played a large role in [the women's] departures and new business ventures" and concluded that he solicited them to join the "Polaris+Beacon+COD Team."[111] Based on the same reasoning, the trial court also found that East tortiously interfered with Plaintiffs' contracts with Devine and Feder.[112] But playing a role in an employee's departure corresponds to "diverting," "enticing," "persuading," or "encouraging" the employee to leave—the conduct addressed by subsection (a)(ii). And assisting a business in which a former employee later participates does not, without more,

[111] *Id.* at 56.

[112] *Id.* at 58.

establish an earlier solicitation "for hire." By treating those categories as interchangeable, the court effectively enforced the provision it had declared unenforceable.

Cleveland Integrity illustrates the distinction. That case involved similar language separately prohibiting solicitation "for hire" and "encourag[ing]" an employee to leave. 2025 WL 658369, at 2. In defining the relief available under the "for hire" restriction, the court explained that involvement in a competing business, standing alone, was not solicitation and that the conduct of a competitor's employees could not be attributed to the defendant merely because they worked for that competitor. *Id.* at *17. Here, too, evidence of competitive collaboration may prove association, assistance, or encouragement; it does not itself prove that East asked either woman to accept employment with the team.

Indeed, the contemporaneous evidence concerning Devine affirmatively undermines any inference that East sought to hire her away. To the contrary, East urged CP's board to retain her.[113] He also advocated that CP provide her sufficient equity to remain.[114] Devine's testimony was consistent with that documentary record. She testified that her decision to leave CP was driven by increasing demands

[113] A1672; Op. at 32-33.

[114] Tr. East at 446-48 (A746-48); Tr. Barr at 117-18 (A417-18).

in her personal life, principally involving her children—in other words, not East.[115] Feder likewise testified that East did not encourage her departure.[116] Discovery likewise produced no communication in which East asked either woman to work for him or COD, no offer letter, no agreed compensation, and no payment from East or COD.

The documents relied upon by the trial court—including COD email addresses and business cards, references to a team, a podcast introduction, a proposed sales structure, and a pro forma salary model—show association or contemplated roles, but they do not identify an affirmative request by East that Devine or Feder accept employment.[117]

Plaintiffs bore the burden of proving a breach of the narrower provision the trial court chose to enforce. They could not satisfy that burden by treating later association, assistance, or encouragement as solicitation for hire. The trial court's findings under PCA Section 9.2(a)(i) and Section 19 of the East IUA should therefore be reversed, along with the determination that East tortiously interfered with contractual relationships.

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[115] A1672; Tr. Devine at 935-36 (A1235-36).

[116] A1672-73; Tr. Feder at 1090 (A1390).

[117] Op. at 39-45.

III. THE TRIAL COURT'S LOST-PROFIT AWARD RESTS ON AN UNSUPPORTED CAUSATION ALLOCATION.

A. QUESTION PRESENTED

Did the trial court err by awarding one-half of Plaintiffs' New York lost profits where Plaintiffs could not identify or quantify any revenue lost from any diverted client or referral source, ample evidence points to other causal factors, and no expert or other quantitative evidence supported attributing fifty percent of CP's decline to East? Even assuming East could be held liable, the trial court's damages award should be vacated, as it rests on unproven assumptions and is contrary to Delaware law. Preserved at A1676-78.

B. SCOPE OF REVIEW

The issue of proximate cause is reviewed for clear error. *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 275 (Del. 2022). This Court reviews an award of damages for abuse of discretion, but will review embedded legal issues *de novo*. *Holifield v. XRI Investment Holdings, LLC*, 304 A.3d 896, 937 (Del. 2023).

C. MERITS OF ARGUMENT

1. Plaintiffs Offered Only Correlation and Narrative, Not Causation Tied to a Specific Breach by East.

"For an award of monetary relief, it is Plaintiffs' burden to prove damages by a preponderance of the evidence." *Sorrento Therapeutics, Inc. v. Mack*, 2025 WL 2172268, at *7 (Del. Ch. July 31, 2025). Assuming that Plaintiffs proved breach by

East (they have not), they produced no evidence of damages attributable to him. The trial court improperly "assum[ed] that significant loss was from the breaching conduct," despite noting "concerns about causation."[118] There is no record evidence that East personally solicited business from CP referral sources or caused any third party to solicit CP's customers or referral sources.[119] Plaintiffs cannot say which (if any) clients East (or Devine) allegedly took, how many, or what revenue they generated, and they relied on multi-layer hearsay from referral-source employees with no direct witness testimony from those sources.[120] Indeed, the trial court acknowledged this glaring "deficiency."[121]

"[A] failure to 'connect[] the dots between the harms' suffered and 'the causes of action' proves fatal to a plaintiff seeking a damages judgment." *Winklevoss Cap. Fund, LLC v. Shaw*, 2024 WL 3888757, at *9 (Del. Ch. Aug. 21, 2024) (quotation omitted). In this case, the trial court lacked any "basis to make a responsible estimate of damages." *Red Sail Easter Ltd. Partners, LP v. Radio City Music Hall Prods., Inc*., 1992 WL 251380, at *7 (Del. Ch. Sept. 29, 1992).

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[118] Op. at 74-75 & n.354.

[119] *See* A1673.

[120] A1676-78.

[121] Op. at 75 n.353.

2. The Record – Including that Cited by the Trial Court – Identifies Multiple Independent, Alternative Causes.

Setting aside the glaring dearth of causal evidence, the trial record establishes multiple plausible, non-East factors for CP's financial decline. The trial court excluded New Jersey figures from the damages award because Plaintiffs' causation showing there was purportedly "weaker,"[122] but the *same alternative-cause evidence infected New York.* The trial court expressly acknowledged the "non-negligible level of other disruption to the business and mitigates against the inevitable loss with two rainmakers; even absent competition, the departures of East and Devine would likely lead to a loss in CP's revenue."[123] It noted that CP's own quarterly reports attributed declines to "turnover with the sales team," "loss of sales representatives," "wage pressure and overall tight labor markets," and other market events.[124] Plaintiffs' own executive testimony acknowledged that the departure of Devine, a top producer who resigned for personal reasons, would alone cause a revenue hit even absent competition.[125] The trial court found CP "devoted little to no effort" to generate revenue from Devine's former accounts and still received "a decent amount" with "absolutely no effort," demonstrating mitigation failures and alternative

[122] Op. at 75 n.354.

[123] *Id.*

[124] *Id.* at 74; A1956-1988.

[125] A1677.

explanations for loss unrelated to competition.[126] Multiple clients explicitly cited dissatisfaction with CP.[127]

The trial court noted that "at least three large referral sources stopped entering staffing contracts, causing a dip in revenue for Caring People," and that "[a]nother major referral source, the Amsterdam, instituted a move-in freeze due to its bankruptcy and sale, giving limited ability to bring on new clients."[128] It expressly noted in a footnote that Plaintiffs' expert "failed to address the Amsterdam's bankruptcy, competition from other Caring People employees who left to work for competitors during this time, or the cancellation of staffing contracts."[129] This evidence defeats Plaintiffs' suggestion of harm, and yet the trial court gave it only short shrift.

3. Plaintiffs' Lost-Profits Model Assumes Causation and Does Not Isolate East's Conduct.

Plaintiffs admitted they do not know how many customers, if any, Beacon or Polaris (to the extent East was involved) took from CP, whether those entities serviced former CP clients, or the magnitude of any associated revenue impact.[130]

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[126] Op. at 36-37.

[127] *See* A1642; A1673.

[128] Op. at 38.

[129] *Id.* at 74 n.349.

[130] A1677.

Accordingly, Plaintiffs' expert did not prove causation; he expressly "assumed" it.[131] He further used industry yardsticks based on national CMS data rather than state-specific data, did not analyze key revenue drivers (e.g., average revenue per client, length of stay), and applied a subjective "recovery factor" without industry benchmarks or a mitigation plan. He did not allocate damages among actors or between Devine and East and conceded many factors could affect referrals, including occupancy, morbidity, and staffing ability.[132] At his deposition, the expert conceded that if the court found Defendants liable only for improperly diverting revenue from Plaintiffs for a handful of clients, damages would be substantially less than the $12+ million in lost profits in his report, though he could not quantify how much.[133] In sum, Plaintiffs' methodology cannot establish either but-for or proximate causation. A trial court cannot substitute for missing causal apportionment where the plaintiffs' own documents and expert concede pervasive non-defendant causes.

4. No Evidence Supported the Trial Court's Allocation or Apportionment.

Despite having found Plaintiffs' model unreliable on causation, the trial court nonetheless awarded 50% of New York losses, without an evidentiary basis

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[131] Op. at 73.

[132] *Id.* at 73-74; A1676-78.

[133] *Id.* at 74.

quantifying what portion was more likely than not caused by East's breaches during Q3 2023–Q2 2025. It limited damages to Q3 2023–Q2 2025 because Plaintiffs "should have had mitigation efforts well under way,"[134] not because Plaintiffs proved breach-caused losses in that exact window by a preponderance of the evidence. This framing confirms the award is policy-driven, not evidence-driven, and fails the requirement that Plaintiffs prove that the particular losses awarded were more likely than not caused by East's breach. "[W]hen acting as the fact finder, [a trial court] may not set damages based on mere speculation or conjecture where a plaintiff fails to adequately prove damages." *Sorrento*, 2025 WL 2172268, at *7 (quoting *Beard Rsch., Inc. v. Kates*, 8 A.3d 573, 613 (Del. Ch. 2010) (internal quotation marks omitted), *aff'd sub nom. ASDI, Inc. v. Beard Rsch., Inc.*, 11 A.3d 749 (Del. 2010)). Under these circumstances, in the event of breach (there is none) nominal damages would be the only legally supportable monetary remedy. At a minimum, as in *Bako*, this Court should reverse the damages award with instructions to "set forth the basis for its damages calculations … based upon the evidence already submitted." 288 A.3d at 279.

The trial court further erred by allocating damages unequally against East, supposedly to "account for East's oversized role in the competitive conduct,"[135]

[134] *Id.* at 75.

[135] *Id.* at 75-76.

despite no evidence linking East to any particular loss. This, too, requires a reasoned explanation that is entirely lacking from the trial court's opinion.

IV. THE FEE AND EXPENSE AWARD CANNOT STAND.

A. QUESTION PRESENTED

Did the trial court err by shifting one-third of Plaintiffs' fees and expenses to East under the East IUA where that agreement governed only a portion of the claims, Plaintiffs' damages recovery rested in part on the PCA, which contains no prevailing-party provision, and the trial court did not tie the shifted fees and expenses to work on claims covered by the East IUA? Preserved at A1679-80.

B. SCOPE OF REVIEW

This Court reviews an award of damages for abuse of discretion, but reviews the interpretation of a contractual fee-shifting provision *de novo*. *Holifield*, 304 A.3d at 937.

C. MERITS OF ARGUMENT

1. Reversal of the Erroneous IUA Breach Finding Eliminates the Contractual Predicate for Fee Shifting.

Section 18 of the East IUA awards costs and reasonable attorneys' fees to the prevailing party in an action "to interpret or enforce any of the provisions of" the IUA.[136] The trial court treated Plaintiffs as prevailing parties because it found that East breached Section 19 of the East IUA.[137] As discussed in Section II *supra*, however, that finding rests on the unsupported conclusion that he solicited Devine

[136] A1943.

[137] Op. at 68-69, 76-77.

and Feder away from CP to a competitor. If that finding is reversed, Plaintiffs no longer have a merits victory under the East IUA and the contractual predicate for the award disappears. Further, if this Court were to determine that reversal is proper, East would be the prevailing party under Section 18 of the East IUA, and thus would himself be entitled to an award of reasonable attorneys' fees and expenses, as sought below.

2. The Trial Court Did Not Limit the Award to Fees and Expenses Incurred Litigating the IUA Claims.

Even assuming Plaintiffs prevailed on the single IUA claim against East, the fee provision did not provide a basis for fee shifting for any other claim. Plaintiffs asserted *eleven* counts, some of which were asserted against East and Devine together: (i) breach of the PCA's non-compete covenant against East; (ii) breach of the PCA's non-solicitation covenant against East; (iii) breach of the PCA's confidentiality covenant against East; (iv) breach of the confidentiality covenant in the Holdco Agreement against East; (v) breach of the Devine Business Protection Agreement; (vi) breach of the implied covenant of good faith and fair dealing against East and Devine; (vii) breach of the East IUA; (viii) breach of the Devine IUA; (ix) breach of fiduciary duty against East; (x) tortious interference in connection with CP's contracts with Devine and Feder against East; and (xi) tortious interference with those same contracts against COD. East and COD asserted multiple

counterclaims. The trial court itself described the overall outcome as a "mixed bag" and declined to award costs under Court of Chancery Rule 54(d).[138]

The trial court nevertheless shifted one-third of Plaintiffs' *total* fees and expenses ($1,430,646.79), without making any attempt to identify which fees and expenses related to "interpret[ation] or enforce[ment]" of the East (or Devine) IUA.[139] It did not explain why one-third corresponded to IUA work, distinguish work on the PCA non-compete and confidentiality claims, or exclude work on unsuccessful claims and the counterclaims. Because Delaware courts will not expand fee awards beyond what a contractual fee-shifting provision provides, the trial court was required to determine that the shifted work was incurred to "interpret or enforce" the East IUA. *Bako*, 288 A.3d at 282 (holding that fee shifting must be determined under the language of each agreement and that plaintiff was entitled to fees in connection with only those claims arising under the employment agreements because it prevailed on all claims involving its rights under those agreements). The opinion contains no such analysis. A broad percentage of the entire action cannot substitute for findings connecting the award to the relevant fee-shifting provision. Accordingly, the trial court abused its discretion in shifting one-third of Plaintiffs' total fees and expenses to East.

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[138] Op. at 77 n.356.

[139] *Id.* at 76-77.

V. THE TRIAL COURT ERRED IN DENYING EAST THE TAX PENALTIES AND INTEREST FLOWING FROM THE BREACH OF THE HOLDCO AGREEMENT.

A. QUESTION PRESENTED

Having found that Silver Oak breached Section 5.3 of the Holdco Agreement by failing timely and fully to provide East with a distribution intended to fund the taxes generated by CP's income allocations, did the trial court err by characterizing the resulting federal failure-to-pay penalties and interest as unrecoverable consequential damages? Preserved at A1682-84.

B. SCOPE OF REVIEW

Factual findings, including proximate cause, are reviewed for clear error. *Bako*, 288 A.3d at 275. This Court reviews an award of damages for abuse of discretion, but will review embedded legal issues *de novo*. *Holifield*, 304 A.3d at 937.

C. MERITS OF ARGUMENT

The trial court found that Silver Oak breached Section 5.3 "by failing to timely and fully pay to East the April 10, 2022 distribution."[140] As a result, the trial court awarded the $355,533 principal balance it found remained due at trial. However, it improperly disposed of the penalties and interest assessed on East's unpaid federal taxes in one sentence, explaining that "[t]he latter two are not appropriately

[140] *Id.* at 65-66.

attributed to Silver Oak's breach as consequential damages."[141] As of January 5, 2026, East had incurred $364,193.81 in late-payment penalties and $511,591.63 in interest on his federal taxes alone.[142] The trial court erred by failing to award these losses as damages.

A nonbreaching party is entitled to recover "damages that arise naturally from the breach or that were reasonably foreseeable at the time the contract was made." *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 146 (Del. 2009). The trial court found that Section 5.3 "requires Caring People to distribute to members cash sufficient to cover their tax liability arising from income allocations."[143] Given the purpose and timing requirement of Section 5.3—to fund members' tax liabilities when due—IRS penalties for underpayment and statutory interest for late payment are the *direct, ordinary, and foreseeable result* of failing to provide the contractually required funds when due. This Court should reverse the judgment of the trial court and remand with instructions to include in East's damages award the IRS late-payment penalties and interest proven on the existing record as foreseeable.

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[141] *Id.* at 78.

[142] A1684.

[143] Op. at 65-66.

CONCLUSION

For the foregoing reasons, East respectfully requests that this Court reverse the foregoing rulings of the trial court.

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MCCARTER & ENGLISH, LLP

/s/ *Sarah E. Delia*

Sarah E. Delia (Bar No. 5833)
Renaissance Centre
405 North King Street, 8th Floor
Wilmington, Delaware 19801
(302) 984-6300
sdelia@mccarter.com

Attorneys for Appellant/Defendant and Counterclaim Plaintiff Below, Shalom (Steven) East

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2026, true and correct copies of the foregoing **Opening Brief of Appellant/Cross-Appellee Shalom (Steven) East** were served on the following individuals via File & ServeXpress:

Joseph B. Cicero
Ryan Lindsay
Chipman Brown Cicero & Cole, LLP
Hercules Plaza
1313 N. Market St., Suite 5400
Wilmington, DE 19801

Alexandra G. Lancey
Troutman Pepper Locke LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75021

Periann Doko
Berger McDermott LLP
1105 N. Market St., Suite 1100
Wilmington, DE 19801

/s/ *Sarah E. Delia*
Sarah E. Delia (Bar No. 5833)

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