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IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLEES/CROSS APPELLANTS' ANSWERING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL

Dated: September 16, 2026

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NATURE OF PROCEEDINGS

Defendant Shalom (Steven) East ("East") appeals the trial court's findings that he breached numerous contractual provisions he agreed to when he sold his business for substantial remuneration: (i) the non-competition, non-solicitation, and confidentiality covenants in the Purchase and Contribution Agreement, dated March 20, 2017 (the "PCA"), (ii) Section 12.19 of the Holdco Amended and Restated LLC Agreement ("Holdco Agreement"), and (iii) his Incentive Units Agreement ("East IUA"). East also appeals the ruling denying him certain damages on his only successful counterclaim.

Defendant Jennifer Devine ("Devine," together with East, "Defendants") appeals the trial court's finding that she, like East, breached her Incentive Units Agreement ("Devine IUA," together with the East IUA, the "IUAs").

Defendants accepted valuable consideration for their promises not to compete with Plaintiffs ("Plaintiffs" or "Caring People"), then violated those promises immediately after leaving. East—Caring People's founder and former CEO—went further: while serving on Caring People's board of managers, he breached his agreements and fiduciary duties by helping form and develop businesses to compete directly with Caring People. In its post-trial Memorandum Opinion, dated March 10, 2026 (the "Opinion"), the trial court found that East and Devine's prohibited

competition harmed Plaintiffs and caused monetary damage, resolving most of the case in Plaintiffs' favor.

On appeal, East contends that the trial court erred by finding him in breach of his blue-penciled restrictive covenants and by miscalculating damages. Devine likewise argues that the trial court erred by finding the Devine IUA severable and enforceable and by awarding Plaintiffs damages attributable to her conduct.

Plaintiffs raise two issues on appeal: whether the trial court erred by granting Defendants' Motion for Clarification and reducing the damages award, and whether it erred by finding that East did not breach his fiduciary duties.

SUMMARY OF ARGUMENT

Plaintiffs' Answer to East's Summary of Argument

1. Denied. The trial court acted within its equitable discretion in blue-penciling the geographic scope of Section 9.1 of the PCA and enforcing it. East negotiated his covenants as the seller of his business, with counsel, and received more than $11.3 million in cash plus rollover equity valued at approximately $8.4 million—precisely the circumstances under which Delaware courts blue pencil restrictive covenants. The finding that East breached Section 9.1 is supported by the record and is not clearly erroneous.

2. Denied. The trial court properly enforced the non-solicitation provisions of the PCA and the East IUA, and its findings that East breached them and tortiously interfered with Devine and Gail Feder's ("Feder") employment agreements are amply supported by the trial record.

3. Denied. The lost profits award is reasonable, it is grounded in expert testimony and the record, and the 75%/25% allocation was a proper exercise of discretion reflecting East's oversized role. Delaware law does not require mathematical certainty once breach and injury are established.

4. Denied. The trial court correctly awarded prevailing-party fees under the East IUA and reasonably exercised its discretion in shifting one-third of Plaintiffs' fees and expenses in this intertwined, multi-claim litigation. East's

position, if adopted, would result in needlessly duplicative litigation where a party would have to split its actions by agreement rather than facts.

5. Denied. The trial court correctly declined to award East federal tax penalties and interest, which resulted from East's own failure to pay his personal taxes and were not the natural and foreseeable result of the breach of Section 5.3 of the Holdco Agreement.

Plaintiffs' Answer to Devine's Summary of Argument

1. Denied. The trial court correctly held that the Devine IUA was supported by adequate consideration. Devine takes issue with the fact that the trial court dispensed with Devine's argument in a single paragraph, but it did so because the Devine IUA is plainly enforceable under Delaware law.

2. Denied. The trial court did not blue pencil the Devine IUA, instead the trial court held that Devine simply breached a specific provision of it. The restrictive covenant within the Devine IUA was reasonable and enforceable and Devine breached it in her dealings with certain Caring People customers.

3. Denied. The trial court's award was reasonable and supported by the record, and the trial court rightfully determined that Devine caused harm to Plaintiffs and Plaintiffs deserved to be made whole as a result.

4. Denied. The trial court correctly held that the appropriate remedy for Devine failing to comply with her restrictive covenant was to reinstate it. Devine

began breaching her restrictive covenant nearly as soon as she left Caring People, therefore Caring People never obtained the benefit of its bargain.

Plaintiffs' Summary of Argument on Cross-Appeal

1. The trial court erred in granting Defendants' Motion for Clarification. The trial court found that Plaintiffs prevailed on the vast majority of their claims and as a result were entitled to $4.304 million in damages, a figure which is stated four times in the Opinion. However, in deciding the Motion for Clarification the trial court determined that a single sentence imparted ambiguity as to the issuing judge's intent for the damages award. As a result, the trial court saw it fit to halve Plaintiffs' award. The trial court granted the Motion for Clarification without a finding of clear error and such action merits reversal.

2. The trial court erred in two ways in finding that East's fiduciary duties were waived, and that, alternatively, the claim was bootstrapped to Plaintiffs' breach of contract claim. First, the PCA expressly preserves claims arising from the duty of loyalty and care. Second, the breach of fiduciary duty claim cannot be "bootstrapped" if it arises from separate conduct, actions, and damages from a breach of contract claim. East's breach of fiduciary duty arises from East building a competing business while on Caring People's board, and, as a result, Plaintiffs are entitled to disgorgement of East's ill-gotten profits.

STATEMENT OF FACTS[1]

A. Silver Oak Transaction

The Caring People business (the "CP Companies") was founded by East in 1998 and provides "licensed private duty nursing and home healthcare services throughout the United States." (A657; A1791.) On March 20, 2017, East, as Seller, and Silver Oak Services Partners ("Silver Oak"), as Buyer, entered into the PCA whereby Silver Oak paid $30 million to acquire a controlling interest in Caring People. (A312; A1791-92; A1808.) East received over $11.3 million in cash, over $9 million in debt repayment and escrow releases, and $8.4 million in rollover equity. (*See* B0085-86; A315-19.)

During negotiations, Silver Oak learned that East owned Avior Sciences, LLC ("Avior"), which he described as a "software development company" designed to "build applications and tools that will support and enhance Caring People services" for "back office" functions. (B0077; A309; A873.) Nothing indicated that Avior provided home care services; Silver Oak would not have proceeded otherwise. (A311.) Avior later became CaringOnDemand, LLC ("COD"). (A871-72.)

[1] In this brief, citations to "Op." refer to the Opinion attached as Exhibit A to the East Br., citations to "Letter Op." refer to the Letter Opinion attached as Exhibit B to the East Br., citations to "East Br." refer to East's Opening Brief on appeal, and citations to "Devine Br." refer to Devine's Opening Brief on appeal.

B. East's Post-PCA Roles

Following the PCA, East served as CEO of the CP Companies until May 2022, then became Chairman for a one-year term, receiving $500,000 annually. (B0093-94; A184; A325-29.) Under East's Employment Agreement, East agreed to inform the Caring People Board of "any new, or change in any existing, outside employment or business activities." (B0093-94; A327-28.) East resigned as Chairman effective April 28, 2023 and served on the Caring People Holdco Board from March 20, 2017 until his removal on February 12, 2024, when this lawsuit was filed. (*See* A184; B0149.)

C. East's Agreements

As part of the PCA, East executed several agreements and agreed to restrictive covenants in the PCA (A1785-875), the Holdco Agreement (A1876-937), and the East IUA (A1938-46), including non-competition (A1859), non-solicitation (A1860; A1943), non-disparagement (A1943), and nondisclosure covenants (A1930-31), all valid during East's employment and for two years thereafter. East also agreed he would be liable, without exculpation, for intentional misconduct, bad faith violation of the implied covenant, or any breach of the "Related Agreements." (A84; A1884; A1904.)

D. Devine's Agreements

Devine also executed the Devine IUA (A1947-55), binding her to the same non-solicitation, non-disparagement, and nondisclosure covenants as East, valid during employment and for two years after. (A1952.)

E. Defendants Commence a Course of Competitive Conduct

Starting in early 2023, during their Caring People employment and during East's Board tenure, East and Devine launched a secretive course of competitive conduct to acquire competitor assets and transform COD into a patient-facing competitive platform. As an initial step, East facilitated the creation of Polaris Care Services, LLC ("Polaris"), owned by Devine and Eric Johnson ("Johnson"), on April 4, 2023. (A186.) Devine and Johnson authorized the acquisition the day before. (*Id*.) East then led negotiations, conducted due diligence, paid legal fees, created email accounts, and facilitated Polaris' acquisition of a competing home health care license from Beacon Eldercare ("Beacon")—all without informing Silver Oak or CP. (*See* A79-84; A771-72; A774; A783-84; A791-92; B0130-41; B0145-48; B0055-59.) Indicative of East's role, he advised Devine and Johnson on April 27, 2023 that he had "spoke[n] with the sellers and feel we should move forward." (B0214.) The transaction was consummated later that same day. (B0168.) East later loaned Polaris $110,000 for its operations. (A439; A797.)

Shortly after Polaris acquired the Beacon assets, East, Devine, and Feder all resigned from Caring People—Feder claiming retirement, Devine claiming a lack of family time. (A505-08.) In May 2023, East urged the CP Board to retain Devine, knowing the Board was unaware he just facilitated Devine's acquisition of Beacon's competing license. (A343-44; A1050-51.) Gregory Barr ("Barr"), founder of Silver Oak, called it "duplicitous." (A343.)

On June 28-29, 2023, Feder and Devine received COD e-mail addresses, and East emailed them: "Hello Former CP Team new Beacon+Polaris+COD Team." (A1349-50; B0265; B0269.) East had taken the team from Caring People—including their business knowledge and industry contacts—and transferred them to COD to facilitate its expansion into home care services, coupled with the Beacon/Polaris assets he helped acquire, fund, and manage. (*See* B0547.) This conduct constituted intentional misconduct, breach of fiduciary duties, breach of contractual obligations, and tortious interference with Caring People's contracts.

Devine and Feder claimed at trial they do not "really" work for COD, but the evidence is overwhelming. Both have maintained COD e-mail addresses since June 2023 with defined roles (B0265; B0270.). Devine is identified as "Vice President of Business Development" on hundreds of business cards (B0319-20), and Feder as a Client Liaison. (A1438-39; B0291; B0353.) In late 2023, while East still served on the Caring People Holdco Board, he identified Feder as COD's "first human point

of contact when we onboard new clients." (A1423-24; B0326.) (emphasis added). Feder testified she presented Recipient of Care Agreements to patients on COD's behalf, after which patients scheduled visits through COD and paid COD. (A1425-26; JX194.)

On December 29, 2023, East and Devine appeared in a Senior Living Foresight video podcast as COD representatives, with Devine introducing herself as Vice President of Business Development—a marketing exercise to drive business for COD. (A816-17; B0321-22; B0336.) Devine drafted a 15-page 2024 Sales Plan for COD, identifying herself as Vice President of Business Development, reporting directly to East, while also having four direct reports. (A828; A871; B0480-84.) She received 1,000 COD business cards in November 2023 and needed 500 more by July 2024. (B0319-20; B0357-61.) A COD salary chart lists her with a $200,000 annual salary, marked "unpaid." (A819-22; B0479.)

Although Devine and Feder held themselves out as COD representatives, both claimed (implausibly) to be uncompensated. (*See* A1263; A1435.) Devine earned $350,000 in 2022 from Caring People yet claims no earned income since leaving, aside from one consulting opportunity. (A504; A1266.) Nonetheless, both comprise the "new Beacon+Polaris+COD Team," actively pursuing business, whether receiving conventional compensation or not. Feder admitted that "Polaris and COD do go hand in hand." (A1442.)

East claims he has no active role in Beacon or Polaris. (A828-29.) Even if true—and it is not—his actions still constitute a breach of his duties. Substantial evidence demonstrates East's ongoing leadership role.

East created Devine and Feder's email accounts (B0160-65), maintains "administrator" access to Polaris's e-mail system (B0230), designed its website (B0258-59), controls its bank accounts and credit cards (B0348-49), authorizes payment of Devine's attorney's fees from Polaris's accounts (B0354), communicates with patient family members about payments (B0231), and remains involved in personnel decisions (B0262-64; s*ee also* A829-32). He led negotiations with Yvonne Murphy, Beacon's prior owner, when post-transactional disputes arose (B0273-75), and told third parties that he "formed" Polaris as a "homecare management entity" to manage Beacon. (B0310.) His direct and ongoing involvement is clear, and any claimed deniability strains credulity.

F. The Team Works to Grow the Business

Trial testimony established that relationships with "referral sources"—assisted living facilities, senior living centers, hospitals, and nursing homes—are critical to home health care providers, and are developed and maintained by key employees like Devine and Feder. (A500-05.)

Even before resigning, they began leveraging those relationships for COD and Beacon/Polaris. As early as April 2023, East advised the team he was "launching a

COD campaign at the Residences," a Caring People referral source in its core New York market, suggesting it be staffed by Beacon caregivers. (B0160-61.) On June 6, 2023, days before Devine left Caring People, East emailed her from polariscareservices.com about competitive efforts at The Residences, saying "[w]e have Caregivers ready." (B0216-B0224; B0260-B0261.)

These activities continued in earnest. Within days of their departures, COD employee Bryan Flynn ("Flynn") forwarded COD's patient inquiries to Feder's phone and provider inquiries to Devine's phone. (A1436-37; B0270.) In October 2023, East asked the "team" to compile a list of "Nassau/Queens/NYC referral sources . . . to target with [COD's] campaign." (A810-12; B0313-14.) East thus continued targeting Caring People's core markets while still serving on the Board, using two former employees subject to ongoing restrictive covenants.

Devine and Feder also visited The Amsterdam, another key Caring People referral source, several times since November 2023 to develop business for Polaris and COD. (*See* A1368-69; B0312.) The Amsterdam is one of Caring People's biggest revenue sources, accounting for over $3.5 million in 2022 and 2023. (*See* A503; A522-25.) On February 8, 2024, Feder, East, Devine, and Flynn discussed "add[ing] Amsterdam to COD." (B0350-51.)

In February 2024, Caring People employees saw Feder's phone number, attributed to COD, at The Residences' reception desk, and later saw Devine and

Feder there. (A1120-21; A1130-31; B0342-44; B0372.) The Residences provides COD material in "welcome packets" advertising its services. (A1126-27; B0495.) Feder advised East and Devine she had "landed" another patient referral from the Residences. (A1140; B0353.)

Patient inquiries forwarded to info@caringondemand.com go to Feder. (A1437; B0316.) Feder confirmed that COD and Polaris shared information. (A1438.) East's company was thus collaborating with entities he created and maintained, in concert with former Caring People employees, to provide patient care in direct competition with Caring People.

COD also established contractual relationships with care providers, entering a Provider Agreement with Beacon/Polaris in or after April 2023 (B0152-53; B0232) and with TheKey, another competing provider, in September 2023 (B0277). East asked Devine to contact a former Caring People employee at TheKey to facilitate discussions. (A1353-54; B0276.) Devine and Feder met with TheKey in November 2023, and in May 2024 East exchanged e-mails with TheKey noting they were already collaborating in New York and New Jersey and aiming to expand nationally. (B0311; B0323-25; B0355.) COD frequently engaged TheKey to service patients in New Jersey, where Beacon was not licensed. (*See* A1428; A1448-49.)

Between April 2024 and April 2025, COD paid Beacon/Polaris approximately $1.1 million for patient care services—representing approximately $1.38 million in

gross patient payments after COD's 20% cut. (A189.) Since May 2025, COD has continued sending Polaris payments averaging over $100,000 per month. (A189; B0477.) Polaris had annual gross revenue of $2.1 million in 2024 and was on track for similar revenue in 2025. (A189; B0476.) Caring People would have earned this revenue had Devine and East worked for Caring People's interests instead of competing against them.

G. East Uses Caring People Resources and Discloses its Confidential Information

Dating back to 2022, after resigning as CEO, East frequently used Caring People data, resources, and personnel to build COD and prepare for competitive conduct. He shared Caring People confidential information with COD personnel for no legitimate reason, acknowledging at trial that he may have lost track of which "hat" he was wearing. (*See* A561; B0554.) All of this occurred while he was on the Board and owed Caring People fiduciary duties.

In June 2022, East forwarded Caring People correspondence with provider AlerisLife about "possible synerg[ies]" to Flynn, who was never a Caring People employee, without explanation. (A530-32; B0105-06; B0552-54.) East similarly shared Caring People spreadsheets with referral source data (B0107), a Caring People "Target List" (B0124), and Caring People email exchanges with other care agencies (B0127-28) outside the company.

East also forwarded confidential acquisition documents to Flynn without authorization. He forwarded documents for Project Appleseed, a potential Caring People acquisition under NDA, in violation of that NDA (A1060-61; B0116-18), and forwarded Flynn confidential diligence materials for Project Falcon. (B0108-12.)

East also used Caring People employees to expand COD's competitive conduct. In February 2023, weeks before he led the Beacon acquisition, East asked to meet with Devine and Feder "to discuss what [they] have done in Senior Living and how we can use their knowledge to further the COD workflow." (B00125.) Anthony Spero ("Spero"), then Caring People's CEO, had no idea East misappropriated Caring People employees to benefit COD. (A490-91.)

In March 2023, East used Feder and Devine to "cold call" referral sources in Arizona on behalf of COD. (B0143.) Earlier, in February 2023, East identified North Shore Towers as a "great target for COD" in Queens and asked to utilize Devine's knowledge. (B0126.) Spero was unaware of and would not have approved any of this. (A492-94.)

In October 2023, after losing Caring People email access, East sent Flynn, Feder, and Devine a chart of Caring People's "weekly admit[]" data by market and encouraged them to consider it for COD's "[Recipient of Care] acquisition" efforts without any legitimate purpose. (B0308; *see also* A490-97; A512-19; A532-36.)

H. The Caring People Companies' 2021 Tax Distributions and Employee Retention Tax Credits

In 2021, Caring People applied for employee retention tax credits ("ERTC") after working with its payroll company and independent firm Savant, and enlisting RSM's national office to confirm eligibility. (A961-62; B0087-88.)

Caring People determined, with RSM, to distribute cash as each payment came rather than distributing ahead of receiving cash, because the company may have had to borrow money otherwise, and distributions would need to be clawed back if cash was never received. (A963; A968; A1067-68.)

Caring People and Silver Oak determined remaining cash from each distribution should pay down Caring People's debt. (A966; A1065-66.) Three checks from New York were delayed due to fraud and a missing check; Caring People has recovered all but one. (A965-66). East is owed $177,375. (A973; B0478.)

I. Procedural Posture

Senior Magistrate Molina presided over trial from January 20 through 23, 2026 and issued the Opinion on March 10, 2026, holding (i) East liable for breach of Sections 9.1, 9.2, and 9.3 of the PCA, Section 12.19 of the Holdco Agreement Section 12.19, and Section 19 of the East IUA Section 19, and (ii) Devine liable for breach of Section 19 of the Devine IUA. The court did not find East liable for breach of fiduciary duties, finding those claims "bootstrapped" to the contract claims.

The trial court awarded Plaintiffs $4.304 million in damages, representing half of New York lost profits, with 75% attributed to East and 25% to Devine. The trial court also awarded 1/3 of Plaintiffs' attorneys' fees jointly and severally, plus pre- and post-judgment interest. The court found for East on his counterclaim for Silver Oak's breach of Holdco Agreement Section 5.3, awarding $355,533 to offset from East's damages.

East and Devine moved for clarification, arguing the $4.304 million award—stated four separate times in the Opinion—was a scrivener's error and the intended amount was $2.152 million. Magistrate Hume, ruling after Senior Magistrate Molina's retirement, granted the motion and reduced Plaintiffs' damages by over $2 million based on an alternative reading of two sentences.

ARGUMENT

I. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN BLUE PENCILING EAST'S RESTRICTIVE COVENANT

A. Question Presented

Whether the trial court erred by blue penciling East's restrictive covenant. (Op. at 51-55.)

B. Scope of Review

The trial court's decision to exercise its equitable power to blue pencil a restrictive covenant is reviewed for abuse of discretion. *See Sunder Energy, LLC v. Jackson*, 332 A.3d 472, 484 (Del. 2024).

C. Merits of Argument

The trial court determined that East's restrictive covenant in Section 9.1 of the PCA was overbroad but then properly exercised its discretion to blue pencil and reinstate it.

On appeal, East argues the trial court erred because blue penciling his covenant "exceeded the goodwill [Caring People] acquired." (East Br. at 22.) His self-serving arguments should not be countenanced given his blatantly competitive and disloyal conduct. The PCA, Holdco Agreement, and East IUA were specifically negotiated documents whose restrictive covenants were designed to protect Caring People's legitimate business interests. East knew what his agreements required and chose to disregard them for his own gain.

"Under Delaware law, a covenant not to compete must: (1) be reasonable in geographic scope and temporal duration, (2) advance a legitimate economic interest of the party seeking its enforcement, and (3) survive a balancing of the equities in order to be enforceable." *Lyons Ins. Agency, Inc. v. Wilson*, 2018 WL 4677606, at *5 (Del. Ch. Sept. 28, 2018). "[C]ovenants restricting future employment must be determined to be reasonably limited with respect to both geography and time; they must as well advance a legitimate economic interest of the employer." *Delaware Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, at *11 (Del. Ch. Oct. 23, 2002).

In *Sunder Energy*, a decision relied upon by East, this Court recognized that "Delaware courts have the discretionary power to blue pencil overbroad restrictive covenants to align a company's legitimate interests and an individual's right to be free from unreasonable restrictions on their livelihood." 332 A.3d at 486. Courts exercise that discretion "under circumstances that indicate an equality of bargaining power between the parties, such as where the language of the covenants was specifically negotiated, valuable consideration was exchanged for the restriction, or in the context of the sale of a business." *Id*.; *see also Labyrinth, Inc. v. Urich*, 2024 WL 295996, at *24 (Del. Ch. Jan. 26, 2024) ("A sale of a business typically does not involve disparate bargaining power; that is why it is well-established that 'covenants not to compete in the context of a business sale are subject to a 'less searching' inquiry.'"). Each of those factors favors blue penciling East's covenant.

East relies on the fact that he remained subject to the covenant during his employment, asserting "[t]here is simply no legitimate business or public policy interest that could justify applying the non-competition provision to bar East's conduct here." (East Br. at 27-28.) In other words, East believes he can unilaterally select which provisions of his agreements are enforceable; this Court should not sanction such behavior. East was a sophisticated party who negotiated his agreements and benefited greatly, receiving $11.3 million in cash and rollover equity of about 40% ownership valued at $8.4 million. (*See* Op. at 10.) He bears no resemblance to the salesman in *Sunder Energy*, who was never "involved in any negotiations, or discussions concerning the Covenants," was not represented by counsel, signed a separate DocuSign signature page barely an hour after receiving it on New Year's Eve, and received "minimal-to-no separate compensation." 332 A.3d at 48-89. East's attempts to minimize his conduct failed at trial and should fail here, where he has not shown the trial court abused its discretion. *Id*.

East relies on a slew of recent Delaware decisions declining to blue pencil, but each is factually inapposite. For example, relying on *HKA Global, LLC v. Beirise*, East argues that because the trial court found "[a] countrywide restriction is broader than necessary to protect [Caring People's] interests," "[t]hat finding rendered Section 9.1 unenforceable as written." (East Br. at 24); 2025 WL 3639811 (Del. Ch. Dec. 16, 2025). *HKA Global* declined to blue pencil the restrictive

covenant because the plaintiff's use of the term "Group Company" was plainly overbroad—including any entity in plaintiff's corporate umbrella—such that blue penciling would require the court "to draft a new agreement for the parties, which would involve an improper exercise of equitable discretion on these facts." 2025 WL 3639811, at *6 (Del. Ch. Dec. 16, 2025).

East's reliance is flawed because *HKA Global* involved a materially different covenant: the non-compete barred competition with "all or any portion of the business carried out by any Group Company," defined to include "***any of its direct or indirect parent or subsidiary entities***" across the United States. *Id.* at *4 (emphasis in original). Blue penciling that covenant would have required the court to decide which affiliated entities, business lines, and competitive activities remained covered—essentially drafting a new covenant. *Id.* at *6. Here, Section 9.1 of the PCA already identified the protected business interest and prohibited conduct; the trial court merely narrowed the geographic reach to the six states where Caring People operates. (*See* Op. at 54-55.) It did not recreate the parties' bargain.

The remainder of the cases East relies upon are equally distinguishable. *See, e.g., Delaware Elevator, Inc. v. Williams*, 2011 WL 1005181 (Del. Ch. Mar. 16, 2011) (analyzing non-compete under Maryland law).

In *BlueSky Restoration Contractors, LLC v. Robbins*, the Court of Chancery held a non-compete unenforceable based on its geographic and temporal

overbreadth—a ***worldwide*** five-year noncompete for a regional company. 2026 WL 599148, at *5 (Del. Ch. March 4, 2026). There the court declined to blue pencil because the "restrictions [were] overbroad in a variety of ways—geographically, temporally, and substantively." *Id*. at *5, 15. This stands in contrast to the trial court here, which solely limited the geographic scope of Section 9.1 while leaving the core agreement intact. (Op. at 55.)

Similarly, in *Cleveland Integrity Services, LLC v. Byers*, the court found a two-year non-compete unreasonable not because of its duration, but because that duration was coupled with a prohibition against competition anywhere in North America, which was "facially broader than necessary to protect [p]laintiff's U.S. business interests." 2025 WL 658369, at *10 (Del. Ch. Feb. 28, 2025). Here, the trial court considered *Cleveland* and *BlueSky* and still chose to blue pencil East's agreement because it saw "different incentives at work." (*See* Op. at 51-53.) Those findings should not be disturbed on appeal.

Dissatisfied with the trial court's treatment of *Cleveland* and *BlueSky*, East throws the kitchen sink at this Court, ignoring the factual dissimilarities in his cases and the discretion inherent in blue penciling. *See, e.g.*, *Intertek Testing Servs. NA, Inc. v. Eastman*, 2023 WL 2544236, at *4 (Del. Ch. Mar. 16, 2023) (holding that a covenant not to compete "anywhere in the world" was unreasonably broad and unenforceable when the business was merely nationwide); s*ee also Weil Holdings*

II, LLC, v. Alexander, 2025 WL 689191, at *5-7 (Del. Ch. Mar. 4, 2025) (holding a noncompete to be unenforceable because it contemplated a "potentially indefinite" period of time and declining to blue pencil the agreement where "doing so 'would require the court to craft an entirely new covenant to which neither side agreed.'").

Nearly all of East's cases turned on the fact that blue penciling would have required the court to draft an entirely new agreement. Not so here. The trial court found that Section 9.1 failed solely because of its geographic scope, and because the "equities weigh [] in favor of the enforcing party," it blue penciled the agreement. (*See* Op. at 54, n.299.)

Section 9.1 restricts East from directly or indirectly owning, operating, or participating in a competing business during his employment and within two years of his departure. As found at trial, East orchestrated COD's competitive efforts and was actively involved in Beacon/Polaris. (*See, e.g.*, Op. at 50 n. 288) ("East's conduct with Polaris and Beacon far exceed the originally contemplated business of Avior/COD and involved direct competition with Caring People."). Because Caring People does business in only six states—New York, New Jersey, Connecticut, Massachusetts, Texas, and Florida—the trial court found a country-wide restriction broader than necessary and blue-penciled Section 9.1 accordingly. (*See* Op. at 51.) It ultimately found East's blatantly competitive acts to be clear breaches of Section 9.1.

Although Section 9.1's geographic scope was overbroad, the trial court rightly noted that "the equities typically cautioning against blue-penciling are not present here" and declined to relieve East of his agreements given Delaware's strong policy favoring enforcement of contracts. (Op. at 50.) This Court should not disturb that sound exercise of discretion.

II. THE TRIAL COURT CORRECTLY HELD THAT THE INCENTIVE UNITS ISSUED TO DEVINE WERE ADEQUATE CONSIDERATION FOR DEVINE'S RESTRICTIVE COVENANTS

A. Question Presented

Whether the trial court erred by holding that the incentive units were adequate consideration that supported Devine's restrictive covenants in the Devine IUA. (Op. at 58-59.)

B. Scope of Review

The trial court's decision that consideration existed to support the restrictive covenants is a question of law, which this Court reviews *de novo*. *North Am. Fire Ultimate Holdings LP v. Doorly*, 2026 WL 274647, at *3 (Del. Feb. 3, 2026).

C. Merits of Argument

1. The Incentive Units Were Consideration at the Time of Contract Formation

The trial court correctly held that the incentive units granted to Devine were consideration supporting her restrictive covenants and that Devine's continued argument to the contrary was a "nonstarter." (Op. at 64.)

On appeal, Devine argues the trial court erred in failing to determine the value or adequacy of consideration. Devine misconstrues this Court's recent case law by conflating consideration for contract formation with the value of consideration in a balancing-of-the-equities analysis. Her arguments to the trial court were focused on

whether there existed adequate consideration at contract formation and she did not argue balancing-of-the-equities argument to the trial court as it relates to the value of the consideration versus the scope of the covenants themselves.

Devine latches onto the trial court's statement that in *North American Fire* this Court "reinforced that incentive units may be adequate consideration for a restrictive covenant." (Op. at 64.) She argues the word "may" matters and that this Court "held that incentive units 'may be' adequate consideration." (Devine Br. at 18.) But "may be"—and even "may"—which Devine presents as a direct quotation from North American Fire, appears nowhere in that opinion.

North American Fire did not assess the adequacy of consideration at formation; it addressed whether consideration is assessed at formation or at performance. It reinforced that consideration is measured at the time of contract formation and that contingent value—for example, a promise of equity in a company subject to vesting—is not illusory. *North Am. Fire*, 2026 WL 274647 at *3. No party there argued there was no consideration at formation, so the Court did not analyze that issue. *Id.* at *2, n.11. Distinguishing *NBTY, Inc. v. Vigliante*, 2015 WL 7694865, at *3 (N.Y. Supr. 2015), this Court noted that the New York court there appeared to have found covenants unenforceable for lack of consideration at formation because the only consideration was unexercised, expired stock options

that could never have value. In other words, no consideration was exchanged at formation. *Id.* at *3, n.18.

But the incentive units Devine received for her covenants are not like the inherently valueless expired options in *Vigliante*. Devine does not argue that her units could not vest (and, as discussed below, not all have been forfeited). Rather, they are exactly the type of contingent value, i.e. a promise of equity subject to vesting, that this Court held is not illusory. *North Am. Fire*, 2026 WL 274647, at *3. That contingent rights have value is not unique to *North American Fire* and for decades this Court has recognized that even wholly contingent rights have value. *See, e.g.*, *Addy v. Short*, 89 A.2d 136, 140 (Del. 1952). The trial record confirms the point: Andrew Gustafson, the Silver Oak partner who led the Caring People transaction, testified that incentive units of the kind granted to Devine carry "a very significant value," explaining that in a comparable Silver Oak deal, the incentive unitholders "made $20 million plus." (A1072-73.) Like the units in *North American Fire*, the units here were subject to a vesting schedule (A1947) and Devine undisputedly retains rights to 25% of her total Units, her Class B units. (Devine Br. at 19.) If Devine truly thought these rights valueless, she could offer to pledge them back, which she has not.

This Court in *Payscale Inc. v. Norman* reemphasized that "[c]onsideration plays two roles in the analysis of restrictive covenants: first, the court may inquire

whether consideration was exchanged such that a contract was formed; and second, consideration informs the balance of equities as the court assesses the reasonableness of the restrictive covenants." 2026 WL 774876, at *6 (Del. Mar. 19, 2026). This Court clarified that "[t]he contract-formation analysis of consideration turns on whether some consideration was exchanged at the time of contracting, not whether that consideration was 'adequate' to support the accompanying restriction." *Id.* It described *North American Fire* as "holding that consideration for a restrictive covenant is reviewed at the time of contracting and that 'somewhat contingent' consideration, which does not hold value at the time a party seeks to enforce the contract, still constitutes consideration." *Id.* "Adequacy of consideration" remains relevant only to balancing the equities. *Id.* So long as some consideration exists, its adequacy bears only on enforcement, not formation.

That principle is neither new nor unique to the restrictive-covenant context. As this Court has explained, "we limit our inquiry into consideration to its existence and not whether it is fair or adequate," and there is "no additional requirement of . . . equivalence in the values exchanged." *Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 764 (Del. 2022); *Moscowitz v. Theory Ent. LLC*, 2020 WL 6304899, at *16 (Del. Ch. Oct. 28, 2020) ("Even if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain. Absent fraud or unconscionability, the adequacy of consideration is not a proper

subject for judicial scrutiny.") Devine's contention that her units were worth zero dollars, which again is incorrect given their contingent value, is therefore, at most, "a quibble over the adequacy of consideration, not its existence." *White Marble LLC v. Chen*, 2025 WL 4636558, at *16 (Del. Ch. Oct. 31, 2025).

Devine conflates these issues just as the defendant did in *Payscale*. She argues that "the trial court erred in failing to make any determination on the value or adequacy of the consideration," yet also that "the trial court should have determined whether the specific units issued to Devine supplied the non-illusory value Delaware law requires." (Devine Br. at 18.) Devine argues the court can "weigh the adequacy of consideration in the equities balance," yet later that "zero-value units cannot constitute consideration." (*Id.* at 20.) One is a contract-formation issue and one a balance-of-the-equities issue, but Devine draws no distinction.

To the extent Devine argues there was no consideration at contract formation, this argument fails. Delaware law has long held that contingent rights have value. *See Addy*, 89 A.2d at 140. Devine cannot challenge formation simply because the units' value was contingent, and she does not argue that receiving anything under the grants was impossible—only "improbable." As *Payscale* clarifies, adequacy is irrelevant to contract formation as long as there is some consideration. 2026 WL 774876, at *6. The argument that consideration is inadequate because the units were worth zero dollars at issuance and may never be valuable goes to balancing the

equities on enforcement, which Devine did not raise below in her challenges to the units' value.

Devine relies on a single snippet of testimony taken out of context that the units were valued at zero at closing, but this does not have the effect she desires. Gustafson explained why a zero valuation at closing is unremarkable. Incentive units are not like buying stock that has value on the day you buy it, but rather, by design they begin at zero and derive their worth from the holder's opportunity "to then earn very significant proceeds" as the company grows. (A1072-73.) Gustafson further testified that the restrictive covenants were obtained "in recognition of the value of those potential incentive units," and that Devine, as Caring People's top salesperson, "received a substantial allocation," ranking among the company's "highest incentive unitholders." (A1074-76.) Furthermore, not all of Devine's units have been forfeited. Caring People's CFO, Amerisa Kornblum, confirmed that Devine's Class B units vested during her Caring People employment (A1030), and Devine undisputedly retains those units. (Devine Br. at 19.) No testimony established that her units could not be exercised on a sale of the company, but only that it may have been improbable. These points go to the balance of the equities regarding the adequacy of consideration, not to contract formation, and as explained below, any such argument has been waived.

2. Devine Has Waived A Balance of the Equities Argument Regarding the Adequacy of the Consideration

Devine's argument that the trial court erred in failing to determine the value or adequacy of consideration goes to the balancing of the equities at time of enforcement, not contract formation. Devine did not advance this below and put all of her focus on the adequacy of consideration at contract formation. In the pre- and post-trial briefing she cites as preserving the issue, with regard to consideration, Devine argued only adequacy of consideration for contract formation. (A0155) (arguing "the IUA lacks consideration."); (A1769) ("The IUA is unenforceable under Delaware law as it lacks consideration . . .") On a separate page she does not cite in her brief, Devine argued in pre-trial briefing that a balance of the equities supported her because she "was a devoted employee" and "would never encourage any referral source to redirect, cease, or decrease their business from Caring People . . . [n]or has she ever encouraged a client to leave Caring People." (A0159.) The unchallenged factual findings of the trial court regarding Devine's conduct demonstrate that not to be the case. But Devine never argued that, even if a valid contract existed, the court should refuse to enforce the covenants on a balancing of the equities because the value of the consideration did not support their scope. Because Devine did not present that issue below, it is waived. *See* Del. Supr. Ct. R. 8. And the interests of justice do not support consideration of this issue despite the waiver.

Further, even if the adequacy of the consideration was considered, and even putting aside the trial court's factual findings regarding Devine's pervasive misconduct, the record supports that the consideration is adequate in a balancing of the equities at the time of enforcement for the reasons explained above, among others, that the units have the potential for significant value and Devine retains a significant portion of those units.

III. THE TRIAL COURT PROPERLY FOUND THE IUAs ENFORCEABLE AND SEVERABLE

A. Question Presented

Whether the trial court erred by (i) finding Defendants liable for a subsection of the IUAs, and (ii) reinstating Devine's restrictive covenant. (Op. at 55-56, 58, 63-65, 71.)

B. Scope of Review

The trial court's decision to exercise its equitable power to blue pencil a restrictive covenant is reviewed for abuse of discretion. *See Sunder Energy*, 332 A.3d at 485. Questions of law and of contract interpretation are reviewed *de novo* and "[t]his Court will not disturb the trial court's 'factual findings unless they are clearly erroneous.'" *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 266-67 (Del. 2022).

"Whether or not an equitable remedy exists or is applied using the correct standards is an issue of law and reviewed *de novo*, but determinations of fact and application of those facts to the correct legal standards are reviewed for an abuse of discretion." *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 341 (Del. 2013) (cleaned up).

C. Merits of Argument

The trial court determined that Defendants were liable for breaching Section 19 of the IUAs and reinstated the restrictive covenants.

Defendants argue the trial court erred in holding they breached only a subsection of Section 19 rather than the entire provision. East argues the court erred in relying on the severability clause in Section 9.5 of the PCA to segregate and enforce the enforceable portions of Section 9.2, and therefore erred in enforcing Section 19 of the IUA. (East Br. at 28-29, 37.) Devine argues the court erred in "blue-penciling" her IUA because "the equitable considerations that might support blue penciling were" "absent," and further erred in reinstating her covenant. (Devine Br. at 23.)

Both arguments miss the point: the IUAs were enforceable contracts with provisions Defendants breached.

1. Defendants Breached The Restrictive Covenants

Despite Defendants' best efforts to downplay their role with Beacon/Polaris, the trial court saw through their self-serving stories and held them accountable for their actions. Defendants' continued efforts to re-spin their actions should be ignored.

Section 19(b) of the Devine IUA barred Devine from:

> solicit[ing], divert[ing], entic[ing] away, or in any other manner persuad[ing] or encourage[ing] (or attempt[ing] to do any of the foregoing) (i) any actual or prospective customer, supplier or referral source of a CP Company to become a customer, supplier or referral source of any third party that competes with the business of any CP Company or is engaged in the business of providing licensed private duty nursing or home healthcare services and other related services in the United States or (ii) any customer, supplier, referral source,

> licensee, licensor, consultant or other business relation of a CP Company during the Restriction Period to cease doing or materially reduce its business with a CP Company.

(A1952.) The "Restricted Period" only applied for two years after Devine left her employment. As found by the trial court, "[t]he trial evidence of Devine's actions in connection and on behalf of Polaris, Beacon, and COD supports that she, more likely than not, breached this provision." (Op. at 63.)

Section 19(a) of the East IUA barred East from

> Hir[ing], offer[ing] to hire, solicit[ing] for hire (or attempt to do any of the foregoing) … or (ii) divert, entice away, or in any other manner persuade or encourage any Person who is an officer or employee of a CP Company to terminate such Person's employment with a CP Company[.]

(A1943.) As found by the trial court, "Plaintiffs demonstrated that he, more likely than not, solicited Devine and Feder to join the 'Polaris+Beacon+COD' Team." (Op. at 56.)

Nevertheless, Defendants argue that because the trial court found a subsection of each IUA to be overbroad, it should have found the entire section of the IUA unenforceable. Defendants are mistaken.

a. The Devine IUA

The trial court found the first part of Devine's restrictive covenant to be overbroad and declined to blue pencil it because the "scope [of the provision] is far too broad to meet the needs of the employers and the considerations for blue-

penciling it are much less convincing given Devine's position in the transaction." (Op. at 64.)

The second part of Devine's non-solicit barred "Devine from encouraging 'any customer, supplier, referral source, licensee, licensor, consultant or other business relation of a CP Company during the Restriction Period to cease doing or materially reduce its business with a CP Company.'" (Op. at 64-65.) The trial court found this provision reasonable and found that Devine breached it, at a minimum, through her contacts with the Amsterdam and the Residences. (Op. at 65.)

Devine argues that the trial court erred in finding this provision reasonable. (Devine Br. at 23.) But, as noted above, "a covenant not to compete must: (1) be reasonable in geographic scope and temporal duration, (2) advance a legitimate economic interest of the party seeking its enforcement, and (3) survive a balancing of the equities in order to be enforceable." *Lyons Ins.*, 2018 WL 4677606, at *5-6.

As an initial matter, Devine waived this argument as she only argued that the IUA "suffer[ed] from overbroad and unreasonable temporal and geographic scope" but did not argue against factor 2 or 3 in her post-trial brief. (*See* A1770-71.)

Devine's covenant is simple: for two years she was barred from "solicit[ing], divert[ing], entic[ing] away, or in any other manner persuad[ing] or encourage[ing]" "any customer, supplier, referral source, licensee, licensor, consultant or other business relation … to cease doing or materially reduce its business with a CP

Company." (A1952). Nothing about it is overbroad, and Delaware courts routinely uphold two-year covenants. *See, e.g., Weichert Co. of Pennsylvania v. Young*, 2007 WL 4372823, at *3 (Del. Ch. Dec. 7, 2007) ("Covenants of two-years' duration are consistently held to be reasonable.").

As found by the trial court, Caring People operates in only six states, therefore "any customer, supplier, referral source, licensee, licensor, consultant or other business relation" is limited to those six states. The fact that the restrictive covenant itself does not state a geographic limit does not mean it is inherently overbroad. *See, e.g., Weichert,* 2007 WL 4372823, at *4 ("[T]he reasonableness of a covenant's scope is not determined by reference to physical distances, but by reference to the area in which a covenantee has an interest the covenants are designed to protect."). As a result, Section 19(b)(ii)'s restrictive covenant is reasonable in both geographic and temporal scope.

Next, Devine argues the covenant does not "advance a legitimate economic interest because it included vague terms that could drastically change the scope of the restrictive covenant." (Devine Br. at 25.) Her contention that Caring People's referral sources are unknown and constantly changing ignores her years at Caring People and her knowledge of the industry. Devine began as Director of Business Development in the Long Island region, where she "educate[d] people about what Caring People does and … br[ought] on business," was promoted to Regional

Director of Business Development, and became Caring People's highest-earning salesperson. (Op. at 5, 31.) Devine thus knows exactly what referral sources and customers her covenant protects. (*See, e.g., id.* at 42) (the team "also took aim at the Residences, another Caring People referral source"). Devine's claim that she cannot know the covenant's confines rings especially hollow because she reached out to Caring People to ask about her covenants' terms (*see* Op. at 32), and because in October 2023 East sent her, as part of the "Polaris+Beacon+COD team," a chart of Caring People's "Weekly Admits ***by region and referral source***." (Op. at 42.) A legitimate business interest "'include[s] protection of employer goodwill[] and protection of employer confidential information from misuse.'" *Payscale Inc.*, 2026 WL 774876, at *7 (quoting *Kan-Di-Ki, LLC v. Suer*, 2015 WL 4503210, at *20 (Del. Ch. July 22, 2015)).

Last, Devine argues that the equities favor her and downplays her role. But as *All Pro Maids, Inc. v. Layton* held, Caring People "has an interest in the goodwill created by its sales representatives and other employees, which is vulnerable to misappropriation if the employer's former employees are allowed to solicit its customers shortly after changing jobs." 2004 WL 1878784, at *5 (Del. Ch. Aug. 9, 2004) (quoting *Research & Trading Corp. v. Pfuhl*, 1992 WL 345465, at *12 (Del. Ch. Nov. 18, 1992)). Not enforcing the IUA would deprive Caring People of its bargain. After the IUA expires, Devine may pursue any client, but because she

received valuable consideration (*see* Section II, *supra*), Caring People is entitled to the benefit it bargained for. Devine faces no real harm from enforcement—by her own testimony she has worked for free since leaving—whereas Caring People lost real business from her conduct. (*See* A1287; A503; A522-25; B049-B0075.)

b. The East IUA

East relies on the same arguments concerning his non-competition provision, (*see* East Br. at 36), which fail for the reasons discussed *supra*. Relying on *HKA Global*, he also argues that courts' general dislike for restrictions barring "encouraging" employees to leave applies here. *Id*. But that ignores the trial court's express finding that PCA Section 9.2(a)(i)—and thus East IUA Section 19(a)(i)—is "not nearly so broad" and "far narrower than 'encouraging' employees to leave[.]" (Op. at 56.) Section (a)(i) concerns direct employment measures, which the court rightly held was "direct solicitation within the Plaintiffs' legitimate business interests to restrict." (*Id.*)

2. The Trial Court Did Not Blue Pencil the IUAs

Devine argues that the trial court erred by "blue-penciling" her IUA, but that premise is wrong. The trial court did not blue pencil the Devine IUA or the East IUA. East at least recognizes this fact and instead focuses on the trial court's reliance on the severability clause in Section 9.5 of the PCA, which also fails. (*See* East Br. at 37.)

Section 19 of each IUA contains subsections (a) and (b), further divided into provisions (i) and (ii). The trial court found subsection (a) inapplicable as to Devine, and subsection (b) inapplicable as to East, and therefore did not analyze it. For Devine, the trial court found Section 19(b)(ii) distinct and enforceable, concluding that Plaintiffs proved Devine violated it. (*See* Op. at 65.) The trial court therefore did not blue pencil Devine's agreement.

The trial court's treatment of Section 19(b)(i) confirms this: it found that provision overbroad and separately determined the relevant considerations did not justify blue penciling it. (*See* Op. at 64.) It likewise found Section 9.2(a)(ii) of the PCA overbroad and declined to enforce it. (Op. at 56.) Because the trial court did not blue pencil the Devine IUA, this Court need not reach that issue.

That same flaw defeats Devine's related argument that the trial court granted unrequested relief. Plaintiffs pleaded and pursued a breach of the Devine IUA, including the same non-solicit language the court enforced, and the court simply found liability under the enforceable subsections Devine and East actually violated. Count VIII of the Amended Complaint alleged Breach of the IUA against Devine, and Count VII alleged Breach of the IUA against East. The Amended Complaint alleged that Devine breached the Devine IUA because she was prohibited "from directly or indirectly soliciting, enticing, diverting or persuading any actual or prospective customer, supplier or referral source of the CP Companies to do business

with any person or entity that competes with the CP Companies, or provides similar services, ***or from ceasing to do business with, or materially reducing their business with, the CP Companies***." (B0033 (emphasis added); *see also* B0032 (alleging breach of Section 19(a)(i) of the East IUA).)

The trial court found Devine breached only Section 19(b)(ii) of the Devine IUA, and likewise found East liable only under Section 9.2(a)(i) of the PCA, noting that as to Section 9.2(b), "[t]he record does not reflect that East violated this portion of Section 9.2." (Op. at 56 n.304.) The court did not reform the IUAs; it merely found Devine liable only under Section 19(b)(ii) and East liable only under Section 19(a)(i). Devine is correct that Caring People "elect[ed] to stand on its enforceability as written"—and the court found Devine breached Section 19(b)(ii), and East Section 19(a)(i), as written. There is no error.

East separately argues that the trial court erred in relying on the PCA's severability clause, contending the court "treated the severability clause" "as a command instead of exercising the equitable discretion Delaware law requires[.]" (East Br. at 37, 56.) But that argument does little to address enforcement of the IUA, and it ignores that the trial court used both: as discussed *supra*, it expressly invoked its equitable discretion in deciding whether to blue pencil Section 9.1, finding the PCA a specifically negotiated document that included a reasonableness and severability provision. (*See* Op. at 53-55.) The court recognized those provisions

are uncompelling on their own but expressly found that "the agreement was not uneven and this Cout's mandate to review covenants for reasonableness compels it to consider the equities at issue." (Op. at 54.) East's displeasure that the equities weighed against him is no basis to find clear error. As found at trial, East "lacked credibility; the weight of the documentary evidence showed he played a large role in [Devine and Feder's] departures and new business ventures." (Op. at 56.)

3. The Trial Court Properly Reinstated the Restrictive Covenants.[2]

Devine asks this Court not only to excuse her conduct, but also to reverse the trial court's remedy for her breach of the non-solicit provision: reinstatement of the covenant for a two-year period. (*See* Devine Br. at 38-39.)

Devine first contends the covenant enforced against her was "not the bargain Plaintiffs drafted or sought to enforce." (*Id.* at 38.) That is wrong. As explained above, the trial court did not rewrite any part of her agreement; it found only that Plaintiffs proved a breach of Devine IUA Section 19(b)(ii). Caring People bargained for Devine's non-solicit obligation, and because she began breaching it almost immediately after resigning, Plaintiffs never received the benefit of their bargain.

[2] East does not argue against reinstatement and therefore has waived any argument regarding the trial court's remedy for East's breaches of his restrictive covenants. *Rova v. E.I. du Pont de Nemours and Co.*, 842 A.2d 1238, 1242 (Del. 2004) ("The 'failure of a party appellant to present and argue a legal issue in the text of an opening brief constitutes a waiver of that claim on appeal.'").

Devine next argues that, because she chose to leave her salaried position, reinstating the non-solicit "materially burdens a former employee." (*Id.* at 39.) That is a red herring. Devine voluntarily left a well-paid position Caring People actively sought to keep her at (*See* Op. at 31-33), then chose to work for ventures competing directly with her former employer. (*See id.* at 44.) Devine remained free to pursue other work; what she could not do was immediately compete against Caring People in violation of the non-solicit. Nor can she minimize the burden of enforcement when she began breaching the covenant almost as soon as she left. Devine left Caring People in June 2023, with documentary evidence demonstrating her solicitation beginning no later than November 2023. Plaintiffs are entitled to the benefit of their bargain.

IV. THE TRIAL COURT PROPERLY FOUND DEFENDANTS BREACHED THEIR RESTRICTIVE COVENANTS AND CAUSED PLAINTIFFS' LOST PROFITS

A. Questions Presented

Whether the trial court erred in finding Defendants' restrictive covenant violations caused Plaintiffs' lost profits. (Op. at 75.)

B. Scope of Review

This Court reviews factual findings for clear error. *Bäcker v. Palisades Growth Cap. II, LP*, 246 A.3d 81, 96 (Del. 2021).

C. Merits Of Argument

Defendants concocted a scheme to compete with Plaintiffs while both were still employed at Caring People. The record is replete with evidence that they solicited Caring People referral sources throughout New York through COD marketing and serviced patients through Beacon and Polaris. Defendants' arguments that they did not compete or solicit Caring People's employees, customers, and referral sources contradict overwhelming evidence. The court below correctly held that Defendants solicited key referral sources, violated their covenants, and caused Plaintiffs' lost profits, and those findings should be upheld.

1. East Violated Sections 9.1 of the PCA

Section 9.1 of the PCA bars East from "directly or indirectly own[ing], hav[ing] an interest in, operat[ing], join[ing], control[ing], or participat[ing] in, or

be[ing] connected with as an officer, employee, director . . .” of a substantially similar business to Caring People for two years following the end of East’s employment with Caring People. (A1859.) The trial court correctly found that East violated this restrictive covenant through his actions with Polaris and Beacon, and through COD. (Op. at 55.)

East orchestrated a competing home healthcare enterprise while still a Caring People board member. He conducted due diligence on Beacon (B0130-38); facilitated the creation of Polaris (with Devine and Johnson as members) to acquire Beacon’s home healthcare license and other assets (B0564); paid the legal fees; drafted the letter of intent (B0155-59); and loaned $110,000 for Polaris’ operations. (B0568-70.) East created Polaris email addresses for himself, Devine, and Feder (B0160-65); emailed Beacon patients about payments (B0231); announced staffing decisions (B0262-64); controlled bank accounts and credit cards (B0348-49; B0574-75); dictated website content (B0258-59); and led negotiations with Beacon’s former owner when disputes arose (B0273-75). East then used COD as an intermediary to directly compete with Caring People by having Polaris, using Beacon’s home healthcare license, service patients. Trial testimony and exhibits extensively document this scheme, and East’s attempts to explain them away were rightfully dismissed by the trial court as self-serving and unconvincing. The record established that East violated Section 9.1 of the PCA.

To the extent East argues these actions fall within Section 9.1's carve-out for Avior, that argument fails. The trial court dismissed the Avior "carve-out" argument in a footnote because it is absurd. (*See* Op. at 50 n.288 ("I reject East's arguments that his activities are within the Avior/COD carve out. East's conduct with Polaris and Beacon far exceed the originally contemplated business of Avior/COD and involved direct competition with Caring People.").) COD directly contracts with and markets to patients, who receive care and pay COD. (*See, e.g.* Op. at 44-45.) East even identified COD as a home healthcare company in Small Business Administration loan documents. (B0362; B0369.) The Avior carve-out contemplated only back-end technical development, which East's conduct far exceeded.

2. East Violated Section 9.2 of the PCA and Section 19 of the East IUA

Section 9.2 of the PCA bars East from "hir[ing], offer[ing] to hire, solicit[ing] for hire or attempt[ing] to do any of the foregoing[.]" (A1860.) Section 19 of the East IUA restricts the same activity. (A1943.) The trial court correctly found that East violated these restrictive covenants by soliciting Devine and Feder to cease their Caring People employment. (*See* Op. at 56, 58.)

East facilitated the creation of Polaris, of which Devine is a 50% owner. (B0130-38.) He gave Devine and Feder Polaris email addresses in April 2023, when all three were salaried Caring People employees. (B0160-65.) Both Devine and

Feder had COD email addresses by June 2023. (B0265.) East purchased a work laptop for Feder. (B0271.) By mid-2024, Devine had over 1,000 business cards identifying her as Vice President of Business Development. (B0319-320; B0357-61.) Devine authored a COD sales plan, listing the same title; and the internal organization chart shows her reporting directly to East. (B0480-84.) Dozens of exhibits show Devine and Feder engaging in competitive activity.

Both Devine and Feder began competitive activity shortly before their departures, which accelerated immediately after. The record plainly shows East facilitating all of this and thereby soliciting Devine and Feder's professional services. These actions violate Section 9.2 of the PCA and Section 19 of the East IUA, and constitute tortious interference with Devine and Feder's agreements with Caring People. There is no basis for reversing these findings.

3. East Violated Section 9.3 of the PCA and Section 12.19 of the Holdco Agreement

Section 9.3 of the PCA restricts East from disclosing confidential information, including "all non-public information regarding the Business," to those outside Caring People. (A1860-61.) Section 12.19 of the Holdco Agreement imposes the same restriction. (A1930-31.) The trial court correctly found that East improperly shared three documents in violation of these confidentiality provisions. (Op. at 57.)

In 2022, East shared internal diligence materials about two potential Caring People acquisitions with Bryan Flynn, COD's Chief Operating Officer. (B0108-18.)

Flynn had no reason to have that confidential information. East also forwarded Caring People patient admittance data to Devine and Feder in October 2023, after they left Caring People and began working for COD. (B0308.) The trial court correctly disregarded as "self-serving" and "unpersuasive" East's testimony downplaying these disclosures. (Op. at 57.) The record thus supports finding that East breached both Section 9.3 of the PCA and Section 12.19 of the Holdco Agreement.

4. Devine Violated Section 19 of the Devine IUA

Section 19(b)(ii) of the Devine IUA restricts Devine from encouraging "any customer, supplier, referral source . . ." of Caring People to "cease doing or materially reduce its business" with Caring People for two years following the end of her employment. (A1952.) The trial court correctly found that Devine violated this restriction "through, *at least*, her contacts with the Amsterdam and the Residences." (Op. at 65.)

Dozens of trial exhibits show Devine soliciting the Amsterdam, the Residences, and other Caring People referral sources on behalf of COD, Polaris, or both—coordinating care for patients at those facilities, providing COD marketing materials, and visiting for marketing events. (*See, e.g.,* B0312; B0316-17; B0323-24; B0330-33; B0372; B0342-44; B0350-53; B0495.) Beyond that direct-solicitation evidence, Devine is COD's Vice President of Business Development

(*see, e.g.,* B0319-320), and the record established that COD contracted with dozens of patients at Caring People referral sources. (*See, e.g.,* A1441-46.) The trial court had ample basis to find that Devine violated Section 19 of the Devine IUA.

V. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN AWARDING DAMAGES

A. Question Presented

Whether the trial court erred in awarding $4.304 million in damages, with 75% attributable to East and 25% attributable to Devine. (Op. at 75-76.)

B. Scope of Review

This Court reviews decisions on damages awards for abuse of discretion. *Holifield v. XRI Invest. Hldgs. LLC*, 304 A.3d 896, 937 (Del. 2023).

C. Merits Of Argument

The trial court's $4.304 million damages award resulted from a measured application of the "reasonable estimate" framework under Delaware law. Delaware courts understand that "[t]he law does not require certainty in the award of damages where a wrong has been proven and injury established. Responsible estimates that lack mathematical certainty are permissible so long as the court has a basis to make a responsible estimate of damages." *Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Prods., Inc.*, 1992 WL 251380, at *7 (Del. Ch. Sept. 29, 1992). The court evaluated Plaintiffs' damages expert, weighed competing causation explanations, and exercised its discretion to fashion an award grounded in the evidence.

1. The Expert Testimony Provided a Sound Analytical Foundation for the Trial Court's Damages Award

The trial court accepted Joseph Thompson ("Thompson") as an expert in the field of lost profits without objection from Defendants. Thompson's qualifications were similarly undisputed. Though Thompson acknowledged that he assumed liability and causation in his report, he testified that the evidence at trial demonstrated "likely competition" from Defendants. (A1503; B0049-75.) Importantly, the trial court agreed and found both Defendants liable for the reasons described *supra*.

Thompson employed two recognized methodologies—the "yardstick" and "but-for" methods—measuring the home healthcare industry's growth rate using publicly available Center for Medicare and Medicaid Services (CMS) benchmark data and comparing it to Caring People's revenue before and after Defendants' departures. (B0394-96.) He found (1) excess attrition (exceeding 90%) of Caring People's referral sources and (2) a significant decline in New York and New Jersey revenue almost immediately after Defendants' departures and competitive activities. (B0397-99.) Thompson calculated Plaintiffs' lost profits of $12.4 million, broken out as follows:

- $4.304 million, New York, Q3 2023-Q2 2025
- $3.980 million, New York, Q3 2025-Q1 2027
- $2.322 million, New Jersey, Q3 2023-Q2 2025

- $1.377 million, New Jersey, Q3 2025-Q1 2027

(B0410.)

The trial court ultimately awarded $4.304 million in lost profits, with 75% attributable to East and 25% attributable to Devine.[3] The trial court hesitated in awarding the full $12.4 million, believing that causation for New Jersey lost profits was lacking and that other causation factors for New York lost profits should be given more weight in light of the trial testimony. (Op. at 73-75.) This is a reasonable exercise of judicial discretion where the court fashioned an appropriate remedy in light of all the evidence before it.

Defendants claim the award is unsupported because no breach was established, alternative causation factors supersede their competition and solicitation, and the lost-profits calculations are not tied specifically to East's or Devine's conduct. (East Br. at 41-47; Devine Br. at 32-37.) Each argument fails. First, East and Devine unquestionably breached their covenants, as discussed *supra*. Their arguments rest largely on the premise that liability is unsupported, which is plainly incorrect. The trial court properly found Defendants not credible in testifying that they did not compete or solicit, and their attempts to escape liability ring hollow against the overwhelming evidence.

[3] The dollar amount was later reduced to $2.152 million following a different magistrate judge's memorandum letter on Defendants' Motion for Clarification, which as described *infra*, is a reversible abuse of discretion.

Second, Defendants ignore that the trial court already accounted for alternative causes. The CMS data Thompson used already accounts for patient morbidity, facility closures, patients choosing other providers, and other profit-decline factors, yet still yielded $12.4 million in lost profits *even with those factors*. (*See* A1472-74.) Exercising its discretion, the trial court believed additional factors—including the Amsterdam bankruptcy and Caring People staff turnover—warranted further reduction, which was appropriate given that Thompson did not opine on causation. The $4.304 million award is a "reasonable estimate" based on the evidence. *See Red Sail*, 1992 WL 251380, at *7.

Last, East and Devine's arguments regarding the specificity of damages calculations are unsupported in Delaware law. Defendants competed with Caring People in soliciting clients from existing referral sources, establishing liability. "[O]nce a breach of duty is established, uncertainties in awarding damages are generally resolved against the wrongdoer." *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 859-60 (Del. Ch. 2022).

2. The 75%/25% Allocation is Warranted

Both East and Devine also contend that there is no support for the 75%/25% allocation between them in the record. This argument also fails. The trial court indicated in its factual findings that East played an "oversized role" in the conduct at issue, thus warranting the 75%/25% allocation. (Op. at 75-76.)

Both are liable for breaching their covenants. But East orchestrated the creation of Polaris and its acquisition of Beacon's license and assets, loaned Polaris $110,000, solicited Devine and Feder's professional services, and is CEO of COD—the vehicle for much of the competitive conduct. (*See* Op. at 25-30.) He also directed Devine and Feder to compile target lists of Caring People's referral sources and forwarded confidential Caring People information outside the company. (*See id.* at 19, 42-43.) His conduct violated five covenants across the PCA, Holdco Agreement, and East IUA, and constituted tortious interference with Plaintiffs' agreements. The record thus supports finding East primarily responsible for Plaintiffs' damages, making the 75% allocation appropriate.

Devine, in turn, solicited numerous Caring People referral sources through her work at COD and Polaris, including Plaintiffs' two largest New York referral sources—visiting patient facilities, providing COD marketing materials, and coordinating patient care. (*See* Op. at 40-45.) The trial court found these actions violated Section 19 of the IUA and caused injury, but properly found East's actions violated additional covenants and caused more harm. (*See id.* at 75-76.) The 25% allocation to Devine is therefore appropriate.

To the extent Defendants argue the 75%/25% allocation is not mathematically calculated in the record, Delaware requires no such calculation. Only a "reasonable estimate" is required, and "the law does not require certainty in the award of

damages" once injury and causation are established. *Concord Steel, Inc. v. Wilmington Steel Processing Co., Inc.*, 2009 WL 3161643, at *16 (Del. Ch. Sept. 30, 2009). The trial court reviewed the record and determined the allocation was appropriate. And, as noted, East and Devine are the "wrongdoers," and "uncertainties in awarding damages are generally resolved against the wrongdoer." *Metro Storage*, 275 A.3d at 859-60.

VI. THE TRIAL COURT PROPERLY SHIFTED FEES AND EXPENSES

A. Question Presented

Whether the trial court properly shifted one-third of Plaintiffs' fees and expenses to East.[4] (Op. at 76-77.)

B. Scope of Review

This Court reviews the interpretation of a contractual fee-shifting provision *de novo* but reviews the amount and allocation of attorneys' fees for abuse of discretion. *Bako*, 288 A.3d at 266-67.

C. Merits of Argument

1. Plaintiffs Are The Prevailing Parties Under the East IUA

The trial court correctly held that East breached Section 19 of the East IUA and awarded Plaintiffs prevailing-party fees under the East IUA's fee-shifting provision. (Op. at 76.) The trial court expressly found that Plaintiffs "are entitled to recovery as prevailing parties under the East IUA," and then exercised its discretion to shift a portion of their reasonable fees and expenses. *(Id*. at 76-77.)

East cannot erase Plaintiffs' prevailing-party status by rearguing liability. Unless this Court reverses the East IUA breach finding, the predicate for fee shifting

[4] Devine has not argued that the expense and fee award by the trial court was erroneous, therefore, she has waived any appeal of the expenses and fees awarded to Plaintiffs against her. *See Rova*, 842 A.2d at 1242.

remains intact. Even if this Court modifies aspects of the merits ruling, Plaintiffs still prevailed on the IUA claim by obtaining relief that materially altered the parties' legal relationship. *See SIGA Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1138 (Del. 2015).

East's fallback contention that reversal of the IUA breach finding would entitle him to prevailing-party fees under Section 18 is likewise unavailing. Even then, East would not be the prevailing party on the IUA claims unless he obtained affirmative relief under the East IUA that materially altered the parties' legal relationship on those claims. Mere defeat of a single claim in a multi-claim, multi-agreement action does not confer prevailing-party status, particularly where the overall outcome—including the damages award and covenant enforcement—favors Plaintiffs. *See id.*

2. The East IUA Provides a Valid Contractual Basis 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 East IUA. (A1943.) The trial court properly applied that provision to Plaintiffs' successful East IUA non-solicitation claim and awarded fees on that contract-specific basis. (Op. at 76.)

East relies on *Bako Pathology LP v. Bakotic*, 288 A.3d 252, 282 (Del. 2022), for the proposition that fee shifting must be determined under each agreement's

language and limited to claims arising under the agreements on which a party prevailed. *Bako* supports Plaintiffs, not East. The trial court did exactly what *Bako* requires: it identified the East IUA as the fee-shifting agreement, determined that Plaintiffs prevailed on the East IUA non-solicitation claim, and awarded fees on that contract-specific basis. Unlike the *Bako* plaintiff, who sought fees across multiple agreements with differing provisions, Plaintiffs sought fees only under the East IUA's prevailing-party clause, and the trial court awarded them solely on that basis. (Op. at 76-77.)

East's related contention—that the PCA has no fee-shifting provision, so fees tied to any PCA-based recovery are impermissible—mischaracterizes the award. The trial court shifted fees under the East IUA, not the PCA. That some of Plaintiffs' recovery also rests on PCA claims no more invalidates the East IUA fee award than the presence of non-fee-shifting claims in any multi-contract case bars recovery under an agreement that does provide for fees. The inquiry is whether Plaintiffs prevailed on the East IUA claim and whether the shifted fees bear a reasonable relationship to East IUA-related work—both of which the trial court found. (Op. at 76-77.)

3. The One-Third Allocation Was a Reasonable Exercise of Discretion

East contends the trial court impermissibly shifted fees for Plaintiffs' PCA and tort claims and failed to segregate IUA-specific fees, cataloging the counts to

suggest the East IUA governed only a fraction of the case. Not so. Recognizing a "mixed bag," multi-claim litigation, the trial court declined to shift fees "in full" and instead shifted one-third of Plaintiffs' reasonable fees and expenses, expressly because the IUAs were "only a portion of this much larger case" and the IUA claims shared the same nucleus of facts as the others. (Op. at 77.) That one-third award was a reasonable exercise of discretion where the East IUA's non-solicitation provision was central to the factual narrative underlying all claims.

Delaware courts recognize that in complex multi-claim litigation it is often impractical to allocate fees with surgical precision among claims sharing a common factual predicate, and a percentage-based approach is permissible where the claims are sufficiently intertwined. *See Neem Int'l CV v. Vadim Shulman*, 2026 WL 2199211, at *4 (Del. Ch. Jul. 30, 2026) (awarding plaintiffs one-third of their attorneys' fees upon winning some, but not all, claims because "the plaintiffs' fees cannot be cleanly segregated claim by claim"). Here, the East IUA non-solicitation claim arose from the same nucleus of facts as the PCA non-compete, tortious interference, and other claims—namely, East's recruitment of Devine and Feder and his involvement in the Polaris+Beacon+COD enterprise. Because the same discovery, depositions, and trial preparation served all of these claims, a clean allocation to IUA-specific work was neither feasible nor required.

The one-third figure reflects a conservative apportionment given the mixed outcome, and that many counts arose from the identical factual narrative as the East IUA non-solicitation claim only confirms the claims were inextricably intertwined. East's demand for surgical precision ignores the realities of complex commercial litigation. Nor does the denial of costs under Court of Chancery Rule 54(d) undermine the fee award: Rule 54(d) addresses the separate question of awarding costs to a prevailing party under the court rules, not a court's authority to shift fees under a contractual provision. The court's recognition of a "mixed bag" on Rule 54(d) is consistent with shifting only one-third, rather than all, of Plaintiffs' fees and constitutes the same measured judgment. If this Court affirms the IUA breach finding (which it should), the one-third allocation is within the trial court's discretion and should not be disturbed.

4. East Waived Any Granular Precision Challenge

The court directed Plaintiffs to proceed under Rule 88 if the parties could not agree on the amount owed, reinforcing a reasoned, record-based approach. (Op. at 77.) East offered no workable alternative allocation supported by specific record cites and line-item objections. Having failed to develop a concrete segregation model below, he should not now get a remand for an atomized re-billing exercise. *See First Hartford Realty Corp. v. Food Ventures N.A., Inc.*, 2026 WL 2583880, at *7 (Del. Sup. Aug. 31, 2026) ("A party opposing a fee request must identify the

challenged entries with some specificity and explain why those charges fall outside the scope of the award."). In any event, the one-third apportionment already discounts for non-IUA work and any partial lack of success. (Op. at 77.)

5. Any Limited Remand Should Address Only Administration, Not Fee Entitlement

Should this Court adjust any merits ruling that bears on the East IUA judgment, the appropriate remedy would be a limited remand to permit the trial court to recalibrate the percentage consistent with its existing framework, not vacatur of all fees. Otherwise, affirmance in full is warranted based on the trial court's reasonable exercise of discretion.

VII. THE TRIAL COURT PROPERLY DECLINED TO AWARD EAST THE TAX PENALTIES AND INTEREST HE CLAIMS RESULTED FROM THE BREACH OF THE HOLDCO AGREEMENT

A. Question Presented

Whether the trial court erred in exercising its discretion in declining to award East additional damages for federal tax penalties and interest beyond the $355,533 principal balance it awarded for Silver Oak's breach of Section 5.3, where East failed to establish that those charges were the natural and foreseeable result of the breach rather than the product of his own failure to pay his personal tax obligations. (Op. at 78.)

B. Scope of Review

The trial court's determination of the scope of recoverable damages is reviewed for abuse of discretion. *Holifield v. XRI Invest. Hldgs., LLC*, 304 A.3d 896, 937 (Del. 2023). Factual findings underlying the damages determination, including proximate cause, are reviewed for clear error. *Bako*, 288 A.3d at 275.

C. Merits of Argument

1. The Trial Court Correctly Characterized the Tax Penalties and Interest as Consequential Damages Not Attributable to Silver Oak's Breach

East asks this Court to reverse the determination that IRS late-payment penalties and interest are "not appropriately attributed to Silver Oak's breach as consequential damages." (Op. at 78.) The ruling was sound. Although the trial

court found that Silver Oak breached Section 5.3 of the Holdco Agreement by failing to timely and fully pay the April 10, 2022 tax distribution (Op. at 65–66), it correctly distinguished the principal owed under that provision—$355,533—from the separate penalties and interest that accrued on East's *personal* federal tax account because of his own failure to satisfy his individual tax obligations.

East's argument conflates two distinct concepts. Section 5.3 required distributing cash to cover members' tax liability; the breach was the failure to make that distribution when due; and the direct damages (the money that should have been distributed) were awarded in full. But the penalties and interest were assessed against East individually for *his* failure to pay *his* personal taxes on time. East, not the Company, was the taxpayer obligated to file and pay, and—having received $11.3 million in cash at closing and equity valued at approximately $8.4 million—he had the means to pay regardless of the distribution timing. (*See* A968; A1068.)

The penalties and interest are consequential damages because they arose not from the breach itself, but from a downstream consequence that depended on East's independent decision not to pay his taxes. Delaware law distinguishes general damages—those arising "naturally from the breach"—from consequential damages, which "do not flow directly and immediately from the act of the [breaching] party" and depend on the relationship between the parties. *Pharm. Prod. Dev., Inc. v. TVM Life Science Ventures VI, L.P.*, 2011 WL 549163, at *6 (Del. Ch. Feb. 16, 2011).

The IRS penalties did not flow inexorably from the missed distribution; they flowed from East's separate failure to satisfy his personal tax obligations. Had East paid using other available funds, which the Company offered to facilitate through an interest-free loan he declined, no penalties or interest would have accrued. (*See* A1069; A1335.)

East's refusal of an interest-free loan designed to bridge the gap while the ERTC payments were processed underscores the intervening nature of his own choices. Caring People gave East a mechanism to avoid the very penalties he now seeks to recover; his refusal to accept it, or to pay from his substantial personal resources, breaks the chain of proximate causation. *See* Restatement (Second) Contracts § 350(1) ("[D]amages are not recoverable for loss that the injured party could have avoided without undue risk, burden or humiliation.").

Moreover, the delay resulted from extraordinary circumstances that affected all equity holders pro rata: the ERTC checks from New York were lost, stolen, or misappropriated by third parties. (A965.) East was not singled out. Other equity holders, including Johnson, also incurred penalties and interest from the delayed distributions but paid their taxes and bore those costs. (A1563-64.) That other members faced the same situation yet managed their obligations differently confirms East's penalties were a product of his own financial decisions, not an inevitable result of the breach.

East's reliance on the purpose and timing of Section 5.3 does not salvage his argument. Section 5.3 is designed to help fund members' tax liabilities, but it does not guarantee that no member will ever incur a penalty if a distribution is late; it establishes a distribution obligation, not an insurance policy against all downstream tax consequences. The trial court was well within its discretion to conclude the penalties and interest were too attenuated from the breach to be recoverable.

2. Even If This Court Were to Find Error, Any Such Error Was Harmless in Light of the Offset Structure

Even assuming, *arguendo*, that the trial court erred by declining to award East the tax penalties and interest, that error would be harmless and does not warrant reversal.

The trial court structured its judgment so that East's counterclaim recovery ($355,533 in principal, plus pre-judgment and post-judgment interest) would "offset the amount East owes the Plaintiffs." (Op. at 79.) The Plaintiffs were awarded $2.152 million in damages (as clarified), of which three quarters, or $1.614 million, was allocated to East. (*See* Letter Op.) Adding the claimed penalties ($364,193.81) and interest ($511,591.63) to East's counterclaim recovery would increase his offset from approximately $355,533 to approximately $1,231,318 (before interest adjustments on either side). East would still owe Plaintiffs a net judgment of approximately $383,000—more once the interest accruing on Plaintiffs' substantially larger award is counted. The penalties and interest, even if awarded,

would not eliminate East's net liability; they would merely reduce the judgment against him. East remains a net debtor under any scenario.

An error that does not affect the outcome is no basis for reversal. Delaware courts routinely decline to reverse where there is no "error so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity" to any party. *Realty Enterprises, LLC v. Patterson-Woods*, 11 A.3d 228, at *4 (Del. 2010); *see also* Supr. Ct. R. 8. Because East remains liable for a net amount regardless, no substantial injustice results.

Nor does East argue, nor could he, that the denied penalties and interest would give him a net recovery or alter the prevailing-party determination. Plaintiffs' designation as prevailing parties, and the attendant fee-shifting, would remain undisturbed even if the offset increased. Any reversal here would produce only a modest mathematical adjustment to the net judgment, which is precisely the kind of inconsequential error that does not warrant appellate intervention.

VIII. THE TRIAL COURT ERRED IN ISSUING ITS LETTER DECISION ON DEFENDANTS' MOTION FOR CLARIFICATION

A. Question Presented

Whether the trial court erred in adopting Defendants' proposed corrections listed in their Motion for Clarification. (A1778-82; B0680-87).

B. Scope of Review

This Court reviews decisions on motions for clarification for abuse of discretion. *Richards v. Copes-Vulcan, Inc*., 213 A.3d 1196, 1199-1200 (Del. 2019).

C. Merits Of Argument

East and Devine submitted their Motion for Clarification, which Magistrate Hume granted, based on their interpretation of the following language:

> The Plaintiffs have established that the Defendants competed and solicited primarily within New York and that Caring People's profits declined significantly in response. Because that decline cannot be solely contributed to the Defendants, I will only award the Plaintiffs half of their New York lost profits. I will also limit the recovery from Q3 2023 through Q2 2025, after which time the Plaintiffs should have had mitigation efforts well under way. The Plaintiffs are therefore entitled to $4.304 million.

(Op. at 75.) This language awards Plaintiffs $4.304 million in damages. Magistrate Hume reduced this award by 50%, however, based on an adoption of East and Devine's advocacy of a separate interpretation of the language as warranting only half of this amount. Such a decision ignores the fact that the trial court's original

language plausibly awards $4.304 million, and does not constitute the clear error required for granting of Rule 59(f) motions in the Delaware Chancery Court.

1. The Standard for Rule 59(f) Motions Was Not Met

Chancery Court Rule 59(f) permits post-trial clarification only in narrow circumstances. A motion may be granted only where the court "misapprehended the law or the facts so that the outcome of the decision would be affected." *Doft & Co. v. Travelocity.com Inc.*, 2004 WL 1366994, at *1 (Del. Ch. June 10, 2004). Delaware law confines clarification to "inadvertent errors." *Ng v. Heng Sang Realty Corp.*, 2004 WL 1192091, at *1 (Del. Ch. May 20, 2004). The standard is corrective—designed to fix clerical misstatements or obvious inconsistencies—not to let a disappointed party isolate phrases and propose a more favorable reading under the guise of alleged misapprehension.

The Opinion cannot reasonably be read as the Court having "misapprehended" anything regarding damages. The 79-page Opinion demonstrates thorough analysis of the events and evidence presented in the four-day trial that addressed each factual issue with care. The Opinion specified the precise dollar amount of damages, totaling $4.304 million in four different places. (Op. at 1, 75, 76, 79.) The Opinion detailed the trial court's thoughts on Thompson's damages analysis, reviewed the data, and awarded $4.304 million as half of New York damages.

Neither East nor Devine identifies any point where the trial court misunderstood the facts—confusing markets, referral sources, or clients—or misunderstood or misquoted Thompson's damages calculations, or misapplied damages law. Instead, they base their entire argument on an overly literal reading of the word "half," ignoring the Opinion's surrounding context. That competing interpretation is mere advocacy and identifies no actual error or "misapprehension." The Motion for Clarification should have been denied, and Magistrate Hume's grant of it was an abuse of discretion warranting reversal.

2. The $4.304 Million Award Was Intentional, Not an Error

There is no clear error in the $4.304 million award, because the court plainly selected the first segment of New York damages from Thompson's report. Thompson calculated damages in the New York and New Jersey markets across two time periods each. For New York, he calculated $4.304 million from Q3 2023 (shortly after East and Devine left) to Q2 2025 (when discovery closed), and $3.980 million from Q3 2025 to Q1 2027 (an anticipated sale). (B0411.) Damages for each market were thus split into two roughly equivalent 7-8 quarter periods, not one undifferentiated number. Plaintiffs argued post-trial that, if the court had reservations about the full $12.4 million, it could award segments of Thompson's lost profits. (A1744.) The Opinion found this segmented approach "much more palatable" than the full $12.4 million and awarded "the Plaintiffs half of their New

York lost profits." (Op. at 75.) In doing so, the court wrote the figure it felt represented that one-half award: $4.304 million. *Id*.

The court's own rationale confirms its understanding of the report and what $4.304 million represented. It excluded damages past Q2 2025 because "after [that] time the Plaintiffs should have had mitigation efforts well under way." (Op. at 75.) That tracks Thompson's report, which applied a 50% reduction post-Q2 2025 because "Caring People is able to mitigate a portion of its losses" after that point. (B0403-04.) Concluding that anticipated mitigation did not warrant damages after Q2 2025, the court awarded only the first half of Thompson's time frame: $4.304 million.

The court confirmed $4.304 million as its intended award by stating it four separate times. (Op. at 1, 75, 76, 79.) A scrivener's error does not repeat identically four times across a 79-page Opinion. The court also allocated 75% to East and 25% to Devine—individual liabilities of $3.228 million and $1.076 million, respectively—which total $4.304 million. (Op. at 76.) Individual liabilities that failed to total the full award would be a true scrivener's error worthy of clarification. Repeating the same figure four times, and then allocating it 75/25% in amounts that add up to that figure, is not clear error.

3. A Different Judge Decided the Motion for Clarification Without the Benefit of Presiding Over Trial

Senior Magistrate Molina presided over trial and retired immediately after issuing the Opinion, so the post-trial docket, including the Motion for Clarification, was reassigned to Magistrate Hume. A different judge thus clarified a prior judge's Opinion. Magistrate Hume had not presided over trial, reviewed the evidence, or analyzed Thompson's report, and had no other prior involvement; he had only the paper record to assess what Senior Magistrate Molina intended. As noted *supra*, Magistrate Molina's language, read in the full context of the case and Thompson's report, makes clear that $4.304 million is a reasonable award for "half" of Plaintiffs' New York damages.

Even assuming, *arguendo*, a reasonable ambiguity in the award, that cuts heavily against granting the motion. Rule 59(f) requires clear error or misapprehension. *Doft & Co. v. Travelocity.com*, 2004 WL 1366994, at *1 (Del. Ch. June 10, 2004). A reassigned post-trial magistrate should be especially hesitant to grant clarification absent any doubt that clear error occurred. Read most favorably to Defendants, the Opinion at best offers a somewhat muddled justification, with ample evidence against their interpretation. But clarification turns on whether there was "clear error," not on any party's reading of the language. *Ng*, 2004 WL 1192091, at *1. No such error exists, and slashing the award on anything less is a plain abuse of discretion.

4. Policy Considerations Weigh Against Granting the Motion for Clarification

Affirming the Motion for Clarification creates a dangerous incentive and undermines finality. A detailed post-trial judgment should not be reduced by over $2 million because the losing party recharacterizes one sentence, particularly where the court resolved a complex record and stated the award four times. Rule 59(f) preserves the ability to correct genuine mistakes, but granting a motion based solely on a competing interpretation of one portion of the explanation falls far outside its scope. Sustaining this approach would invite losing parties to scour opinions for arguable ambiguities, recast disagreements with the language as "clear error" requiring "clarification," and obtain substantive reductions without following the procedures for reconsideration or appeal—letting successor judges second-guess trial judges who heard the evidence. This Court should reject that course and reinstate the $4.304 million damages award as plainly stated in the Opinion.

IX. THE TRIAL COURT ERRED IN DISMISSING THE BREACH OF FIDUCIARY DUTY CLAIM AS "BOOTSTRAPPED"

A. Questions Presented

Whether the trial court erred in holding that the Holdco Agreement "eliminated" East's fiduciary duties, and in holding that in the alternative, Plaintiffs' breach of fiduciary duty claim was impermissibly "bootstrapped" to the breach of contract claims. (A1728-30; Op. at 59-60.)

B. Scope of Review

This Court reviews questions of law *de novo*. *Bäcker*, 246 A.3d at 94.

C. Merits Of Argument

Without examining East's conduct, the trial court found, *sua sponte*, that Plaintiffs' breach of fiduciary duty claim was "impermissibly bootstrapped onto the primary contract claim." (Op. at 59). But the court gave no weight to the fact that East built a competing enterprise, using Plaintiffs' confidential information, while sitting on Plaintiffs' Board—conduct, which is qualitatively different from his contractual obligations under the PCA.

Such scenarios are common in change-of-control transactions, where the surviving company often retains legacy management to ensure a smooth transition. The Opinion's rule that an individual can be liable under only one cause of action regardless of the other legal and ethical obligations binding them prevents a harmed party from being made whole and should be reversed. The concern is especially

pressing here: if the contract findings are reversed, Plaintiffs would have no redress for East's blatantly competitive conduct. Accordingly, to the extent this Court finds the trial court abused its discretion in blue-penciling the covenants and erred in finding the fiduciary claim bootstrapped, it should find East breached his fiduciary duties and award Plaintiffs the resulting damages.

1. The Trial Court Erred in Finding that East's Fiduciary Duties were Waived and, in the alternative, were Duplicative

Delaware courts have recognized that where a claim for breach of contract and for breach of fiduciary duties arise, "[t]he operative question 'is whether there exists an independent basis for the fiduciary duty claims apart from the contractual claims, even if both are related to the same or similar conduct.'" *Metro Storage*, 275 A.3d at 842; *see also Bäcker*, 246 A.3d at 109 ("[B]ootstrapping case law only requires dismissal where a fiduciary duty claim wholly overlaps with a concurrent breach of contract claim."); *In re Mobileactive Media, LLC*, 2013 WL 297950, at *20 n.219 (Del. Ch. Jan. 25, 2013) (holding plaintiff's breach of fiduciary duty claim not duplicative of the breach of contract claim where the "the remedies for breach of contract and breach of fiduciary duty [] are different").

It is well-settled that "the duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the stockholders generally." *Metro Storage,* 275 A.3d at 842 (quoting *Cede & Co. v. Technicolor,*

Inc., 634 A.2d 345, 361 (Del. 1993)*; see also Tatum v. Fairstead Affordable LLC*, 347 A.3d 1221, 1276 (Del. Ch. 2025) ("Most basically, the duty of loyalty proscribes a fiduciary from any means of misappropriation of assets entrusted to his management and supervision."). "[A] contractual duty to refrain from 'willful misconduct' or 'bad faith' corresponds with the traditional duty of loyalty, and a contractual duty to refrain from 'gross negligence' corresponds with the traditional duty of care.'" *In re Cadira Grp. Hldgs., LLC Litig.*, 2021 WL 2912479, at *11 (Del. Ch. July 12, 2021).

Metro Storage is particularly instructive. There, the Court of Chancery noted that "[c]orporate fiduciaries–both officers and directors–'are not permitted to use their position of trust and confidence to further their private interests,'" and held that an "officer's duty of loyalty" "has additional dimensions, precisely because officers act as agents for the entity." 275 A.3d at 842-43. As here, the fiduciary argued the operating agreement limited his duties, but the court disagreed, finding the limitation did not extend to "liability or damage [that] 'was caused by . . . fraud, gross negligence, or willful misconduct.'" *Id*. at 847. The *Metro Storage* Court also rejected the argument that a confidentiality provision made the fiduciary claim duplicative, holding that "[u]nder settled principles of agency law, an agent has a duty . . . not to use or communicate confidential information of the principal for the agent's own purpose or those of a third party," a duty that "is a specific application

of the agent's basic fiduciary duty of loyalty." *Id*. at 848. The relevant inquiry, the court held, is whether "the plaintiff also would have a claim under general fiduciary principles," or "[p]ut differently, . . . whether the plaintiff could bring an independent cause of action for breach of fiduciary duty if the parties had not signed a contract." *Id*. at 858. The claim stood separately because, contract or not, "[a] fiduciary breaches its duty of loyalty by improperly using confidential information to advance its own personal interests and not those of its beneficiary." *Id*. (cleaned up).

Here too, the duties East owed to Caring People stand on their own. East was the CEO and, after resigning, continued as Board chairman with a $500,000 salary. (Op. at 24.) As found at trial, East misused and abused his Board position—forwarding acquisition opportunities to COD instead of Caring People, and bad-mouthing Caring People's new CEO while sowing discontent and fear within the Company. (*See, e.g.,* A1721-23.) While still employed and salaried, East also met directly with competitors for the sole purpose of reducing their business with Caring People in favor of COD, all while hiding his actions from the Board. (Op. at 26.)

Critically, East also helped create an entirely new entity to compete with Caring People and disclosed its confidential information for the express purpose of competing—all while chairman of Caring People. (*See, e.g.,* B0308.) As *Metro Storage* noted, "[t]he misuse of confidential information is inherently a breach of fiduciary duty." 275 A.3d at 858 (internal quotations omitted). For that reason,

Metro Storage holds that "a fiduciary can face both a claim for breach of contract and a claim for breach of fiduciary duty" arising from the same conduct, because the overlap "provide[s] the principal with alternative remedies." *Id.* at 858 (quoting Restatement (Third) of Agency § 8.08 cmt. b). East's contractual covenants therefore do not render the parallel fiduciary claim duplicative.

Nevertheless, in less than two pages, the trial court held that Caring People waived East's fiduciary duties and that the fiduciary claim failed—not because of East's conduct, but because it was "impermissibly bootstrapped onto the primary contract claim." (Op. at 59.) Despite the absence of argument or briefing on any supposed bootstrapping, the court found "the fiduciary claim is parallel to the contract claim, lacking any additional or broader scope of facts upon which it would be appropriate to consider an independent fiduciary claim or different potential remedies." (Op. at 59-60.)

The trial court relied on *Mckenzie v. Bdo USA, P.C.*, which, on a motion to dismiss, dismissed a breach of fiduciary duty claim because "[t]here [was] no meaningful distinction between the fiduciary duty claim and the contract claim, and both seek the same remedy: damages for loss of the VSP unit value." 2026 WL 191010, at *7 (Del. Ch. Jan. 26, 2026).

Respectfully, the trial court's reliance on this case was misplaced. As a threshold matter the trial court erred in holding that Section 6.6 of the Holdco

Agreement "eliminated" East's fiduciary duties. Under Delaware law, officers owe default fiduciary duties which may be waived or modified in an LLC Agreement. *See* 6 *Del. C.* § 18-1101(c). Section 6.6(c) of the Holdco Agreement states that:

> No Covered Person shall have any duty (including any fiduciary duty or any other duty or standard of care that may arise by default principles of law) to the Company or any Subsidiary or the Company's Members, Managers or to other Persons that are party to or otherwise bound by this Agreement **other than such obligations specifically provided in this Agreement**, provided, however, that nothing in this Agreement eliminates the implied contractual covenant of good faith and fair dealing ….

(A1904. (emphasis added).)

Section 6.6(a) of the Holdco Agreement provides that "[t]o the fullest extent permitted by applicable law, no Covered Person shall be liable to the Company or any other Covered Person, Member or other Person that is a party to or otherwise bound by this Agreement … except that a Covered Person shall not be released from liability to the Company … for any such loss, damage or claim incurred by reason of such **Covered Person's fraud, intentional misconduct, intentional violation of law, or bad faith violation of the implied contractual covenant of good faith and fair dealing**[.]" (*Id.* (emphasis added).)

Section 6.6(a) of the Holdco Agreement expressly preserves the duty of loyalty. *See, e.g., CMS Investment Holdings, LLC v. Castle*, 2015 WL 3894021, at *18 (Del. Ch. June 23, 2015) (holding that fiduciary duties survive under Delaware law because the limitation of liability clause in question did "not apply to the extent

the act or omission was attributable to such Person's gross negligence, willful misconduct or knowing violation of law").

Second, the trial court erred in holding that the fiduciary claim lacked any additional or broader scope of facts or damages beyond the contract claim. East's breaches of duty extend past his breaches of the PCA and Holdco Agreement, and, critically, entitled Plaintiffs to a broader set of damages arising from his breaches of loyalty. *See, e.g., Schuss v. Penfield Partners, L.P.,* 2008 WL 2433842, at *10 (Del. Ch. June 13, 2008) (although "fiduciary duty claims share a common nucleus of operative facts with Plaintiffs' breach of contract claim, they depend on additional facts as well, are broader in scope, and involve different considerations in terms of a potential remedy").

Plaintiffs can recover not only attorneys' fees as damages for East's breach of fiduciary duty, but also disgorgement. Because the fiduciary claim centers on East building a competing business while on Caring People's Board, an appropriate measure of damages would be disgorgement of Beacon/Polaris' revenue (*see* A1744-45)—a remedy available only under the fiduciary claim. *See, e.g., Arxada Holdings NA Inc. v. Harvey*, 351 A.3d 519, 574 (Del. Ch. 2026) ("A breach of fiduciary action is not an action for breach of contract where the plaintiff can only recover its own loss; instead, the fiduciary can be forced to disgorge its gain even when the gain did not come at the beneficiary's expense.") (quoting *Ban v. Manheim*,

339 A.3d 41, 77 (Del. Ch. 2025); *see also Swipe Acquisition Corp. v. Krauss*, 2020 WL 5015863, at *12 (Del. Ch. Aug. 25, 2020) ("The anti-bootstrapping rule also does not apply here because [p]laintiff might be entitled to greater damages through its fraud claim than its breach of contract claim.").

2. To the Extent the Trial Court's Decision is Reversed, Plaintiffs' Fiduciary Duty Claim Cannot be Bootstrapped

The trial court denied the fiduciary claim because it found East's conduct redressed by the contract claims on his restrictive covenants. As discussed above, that rests on unsupported conclusions that the contract and fiduciary claims overlap. But should this Court find the contract claims fail as a matter of law, then, by definition, the fiduciary claim cannot be bootstrapped to them. *See, e.g., Levy Family Inv'rs, LLC v. Oars + Alps LLC*, 2022 WL 245543, at *8 (Del. Ch. Jan. 27, 2022) ("Thus, the anti-bootstrapping rule does not prevent parties from bringing a fraud claim if . . . the breach of contract claim is not well-pled such that there is no breach claim on which to 'bootstrap' the fraud claim."). If the contract claims are reversed and the fiduciary claim is abandoned, Plaintiffs would have no redress for East's blatantly competitive and disloyal conduct—contrary to Delaware public policy. *See, e.g., Arxada*, 351 A.3d at 573-74 ("Once disloyalty has been established, [Delaware remedial] standards . . . require that a fiduciary not profit personally from his conduct, and that the beneficiary not be harmed by such conduct.") (quoting *Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 445 (Del. 1996)).

East engaged in blatantly competitive and harmful conduct while serving on Caring People's board thereby breaching his fiduciary duties, as such "equity requires disgorgement." *Arxada*, 351 A.3d at 574.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny East and Devine's appeal, and reverse the trial court's rulings with respect to the Motion for Clarification and Plaintiffs' breach of fiduciary duty claim.

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