EFiled: Oct 16 2026 02:34PM EDT
Filing ID 81066615
Case Number Multi-Case

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

REPLY AND ANSWERING BRIEF OF APPELLANT/CROSS-APPELLEE SHALOM (STEVEN) EAST

MCCARTER & ENGLISH, LLP

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

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

Dated: October 16, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

PRELIMINARY STATEMENT 1

ANSWER TO PLAINTIFFS' SUMMARY OF ARGUMENT ON CROSS-APPEAL 5

ARGUMENT 6

I. THE TRIAL COURT ERRED IN SAVING The NONCOMPETITION COVENANT DESPITE ITS CONCEDED OVERBREADTH. 6

A. Plaintiffs Cannot Escape the "Slew" of Decisions Rejecting Blue Penciling. 6

B. The Equities Weigh Against Rewarding Plaintiffs' Overreach. 9

C. The COD Carve-Out Independently Requires Reversal or Remand. 12

II. THE TRIAL COURT ERRED IN ENFORCING THE OVERBROAD NON-SOLICITATION RESTRICTION. 15

A. The Trial Court Improperly Salvaged the Employee Restriction After Finding It Overbroad. 15

B. The Conduct Found by the Trial Court Does Not Constitute Solicitation "For Hire." 17

III. PLAINTIFFS STILL DO NOT CONNECT EAST'S CONDUCT TO THE LOST-PROFIT AWARD. 21

A. Plaintiffs' Expert Assumed the Causal Link They Had to Prove. 21

B. The Trial Court's Discretion to Estimate Damages Does Not Dispense with Proof of Causation 23

C. Neither the Fifty-Percent Reduction Nor the Seventy-Five-Percent Allocation Has Adequate Evidentiary Support. 25

IV. THE FEE AWARD CANNOT BE SUSTAINED UNDER THE EAST IUA. 27

A. Reversal of the East-IUA Liability Finding Removes the Basis for Plaintiffs' Fee Award. 27

B. Plaintiffs Have Not Justified the Award of One-Third of the Entire Case's Fees Under a Provision Limited to the East IUA. 27

V. THE TRIAL COURT'S DENIAL OF EAST'S TAX PENALTIES AND INTEREST REQUIRES REVERSAL OR REMAND. 31

A. Section 5.3's Purpose Makes Penalties and Interest Foreseeable. 31

B. Plaintiffs' Mitigation Arguments Do Not Justify Denying the Entire Claim. 33

C. East's Current Net-Debtor Status Does Not Make an Erroneous Ruling Harmless. 34

VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CLARIFYING THE DAMAGES AWARD. 36

A. Question Presented 36

B. Scope of Review 36

C. Merits of Argument 36

1. The Opinion Separately Addressed Causation and Mitigation. 37

2. The Trial Court's Clarification Corrected the Calculation Without Revisiting the Merits. 39

3. Reassignment Did Not Prevent Correction of the Written Ruling. 40

VII. THE TRIAL COURT CORRECTLY REJECTED PLAINTIFFS' FIDUCIARY DUTY CLAIM. 41

A. Question Presented 41

B. Scope of Review 41

C. Merits of Argument 41

1. Section 6.6(c) Eliminated Default Fiduciary Duties 41

2. Section 6.6(a) Did Not Recreate Duties That Section 6.6(c) Eliminated. 42

3. The Alternative Bootstrapping Ruling Was Independently Correct. 44

4. Plaintiffs' Requested Appellate Remedy Has No Record Support. 45

CONCLUSION 47

TABLE OF AUTHORITIES

Page(s)

Cases

Bäcker v. Palisades Growth Capital II, LP,
246 A.3d 81 (Del. 2021) 41, 44, 45

Bako Pathology LP v. Bakotic,
288 A.3d 252 (Del. 2022) ..... *passim*

BluSky Restoration Contractors, LLC v. Robbins,
2026 WL 599148 (Del. Ch. Mar. 4, 2026) 8, 10, 16

BTG Int'l, Inc. v. Wellstat Therapeutics Corp.,
2017 WL 4151172 (Del. Ch. Sept. 19, 2017) 32, 34

Callahan v. iLight Techs., LLC,
2022 WL 2902810 (Del. Super. Ct. July 21, 2022) 18

Centurion Service Group, LLC v. Wilensky,
2023 WL 5624156 (Del. Ch. Aug. 31, 2023) 6

Cleveland Integrity Services, LLC v. Byers,
2025 WL 658369 (Del. Ch. Feb. 28, 2025) 7, 20

CMS Investment Holdings, LLC v. Castle,
2015 WL 3894021 (Del. Ch. June 23, 2015) 43

Delaware Elevator, Inc. v. Williams,
2011 WL 1005181 (Del. Ch. Mar. 16, 2011) 10

Doft & Co. v. Travelocity.com Inc.,
2004 WL 1366994 (Del. Ch. June 10, 2004) 39

HKA Global, LLC v. Beirise,
2025 WL 3639811 (Del. Ch. Dec. 16, 2025) 8, 9, 16

Holifield v. XRI Investment Holdings, LLC,
304 A.3d 896 (Del. 2023) 21

In re Kellett Aircraft Corp.,
186 F.2d 197 (3d Cir. 1950) 34

Intertek Testing Services NA, Inc. v. Eastman,
2023 WL 2544236 (Del. Ch. Mar. 16, 2023) 7, 9, 10

Kodiak Building Partners, LLC v. Adams,
2022 WL 5240507 (Del. Ch. Oct. 6, 2022) 9

Metro Storage Int'l LLC v. Harron,
275 A.3d 810 (Del. Ch. 2022) 25, 43, 44

Neem Int'l CV v. Shulman,
2026 WL 2199211 (Del. Ch. July 30, 2026) 29

Nemec v. Shrader,
991 A.2d 1120 (Del. 2010) 44

Ng v. Heng Sang Realty Corp.,
2004 WL 1192091 (Del. Ch. May 20, 2004).....39

Paul v. Deloitte & Touche, LLP,
974 A.2d 140 (Del. 2009) 32

Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Prods., Inc.,
1992 WL 251380 (Del. Ch. Sept. 29, 1992).....23, 25

Rsch. & Trading Corp. v. Pfuhl,
1992 WL 345465 (Del. Ch. Nov. 18, 1992) 6

Sorrento Therapeutics, Inc. v. Mack,
2025 WL 2172268 (Del. Ch. July 31, 2025) 24

Sunder Energy, LLC v. Jackson,
332 A.3d 472 (Del. 2024) .....*passim*

W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC,
2009 WL 458779 (Del. Ch. Feb. 23, 2009).....33

Weil Holdings II, LLC v. Alexander,
2025 WL 689191 (Del. Ch. Mar. 4, 2025) 8

Winklevoss Capital Fund, LLC v. Shaw,
2024 WL 3888757 (Del. Ch. Aug. 21, 2024).....23

Statutes

6 *Del. C.* § 18-1101 ..... 41, 43

Other Authorities

Court of Chancery Rule 54 29

Court of Chancery Rule 59 ..... 39, 40

Court of Chancery Rule 88 30

PRELIMINARY STATEMENT[1]

Plaintiffs' brief ("PAB") does not cure the errors in the judgment against East. Their accusations of competitive conduct do not establish that the covenants were enforceable, that East violated the language the court enforced, or that he caused the damages awarded. Their reasons for affirmance fail at each step.

First, Plaintiffs do not dispute that Section 9.1 of the PCA was unreasonable as written: it barred competition nationwide though CP operated in only six states. Op. 51. Their efforts to distinguish the "slew" of recent Delaware decisions declining to blue pencil do not explain why comparable geographic overreach warrants a different result. PAB 20–24. East's sophistication does not relieve Silver Oak, a sophisticated buyer, of the consequences of drafting an excessive restraint—which had already run beyond the negotiated five-year base period as a result of East's continued employment when the alleged misconduct occurred.

Plaintiffs' reliance on East's alleged misconduct is equally misplaced. PAB 18, 23–24. *Sunder Energy, LLC v. Jackson* recognizes a trial court's discretion to narrow an overbroad covenant but makes clear that whether to rewrite one cannot turn on the egregiousness of the defendant's conduct; the inquiry concerns the restraint and the circumstances of its adoption. 332 A.3d 472, 490 (Del. 2024).

[1] Capitalized terms undefined herein have the meaning ascribed to them in East's Opening Brief ("EOB"). Dkt. 16.

Accordingly, Plaintiffs' invocation of abuse-of-discretion review (PAB 18) does not shield the judgment, because a court abuses its discretion when it rests a discretionary choice on an incorrect legal standard.

Second, even if Section 9.1 could be narrowed, the court had to give effect to its express exception for COD, which the parties agreed was not engaged in a Restricted Business at closing. A1860. The court did not find that COD crossed the contractual line into a Restricted Business; it concluded that COD's activities exceeded what the parties "originally contemplated," Op. 50 n.288—a limitation the contract does not impose.

Third, the breach findings under the employee non-solicitation provisions rest on a similar failure to apply the contractual language. The court held the prohibition on *encouraging* departures (Section 9.2(a)(ii)) overbroad, removed it, and purported to enforce only the narrower *hiring* restriction (Section 9.2(a)(i)), extending the same reasoning to East IUA Section 19. A1860; A1943; Op. 56–58. But it then relied on conduct that could amount only to encouragement at best, without connecting his actions to recruitment for hire.

Fourth, the damages award rests on no loss tied to East. Plaintiffs could not "specify any diverted clients or referral sources, and the revenue lost thereby," Op. at 75 n.353; their CEO could not name a single client Beacon or Polaris took, *see* A599–600; and Plaintiffs offered no testimony from any referral source. Meanwhile,

the court catalogued other causes of the decline: sales-team turnover, wage pressure, lost staffing contracts and the Amsterdam's bankruptcy. Op. at 36–38, 74 n.349. A $2.152 million award, $1.614 million of it charged to East, cannot rest on an "assumption" about losses no one could trace to him. Op. at 75 n.354.

Fifth, Plaintiffs have not justified shifting one-third of the entire case's fees to East under Section 18 of the East IUA, which authorizes fees only in an action "to interpret or enforce" that agreement. A1943. Reversal of the East-IUA breach finding would eliminate Plaintiffs' asserted prevailing-party status. Even if that finding survives, the court shifted one-third of Plaintiffs' fees and expenses, ultimately fixed at $1,430,646.79, without explaining why that allocation reflected work within the scope of the IUAs. Op. 76–77; EOB Ex. 3 ¶ 11. The existence of some factual overlap between claims does not excuse that failure.

Sixth, the court denied the tax penalties and interest arising from CP's failure to make required distributions. Section 5.3 of the Holdco Agreement required distributions to fund members' tax liabilities, A1684; the court found that obligation breached and awarded the $355,533 principal but denied $875,785.44 in penalties and interest without justifying her conclusion on foreseeability and without addressing mitigation. Op. 65–66, 78. Such charges are foreseeable consequences of withholding funds promised for timely tax payment, and Plaintiffs' harmlessness

argument fails because an erroneous denial would leave East owing that much more even if he remained a net debtor. PAB 65.

While Plaintiffs fail to answer East's grounds for reversal, their cross-appeal seeks to expand the judgment by reinstating an uncorrected damages figure and reviving their fiduciary duty claim. Neither has merit. The Opinion imposed a 50% reduction for other causes of loss and a Q2 2025 cutoff for mitigation; the initial $4.304 million award omitted the 50% reduction, and the clarified $2.152 million amount implements the court's stated methodology.

The fiduciary duty cross-appeal likewise fails. Section 6.6(c) of the Holdco Agreement expressly eliminated default fiduciary duties, and Section 6.6(a)'s exceptions to its limitation on liability did not recreate them. A1904. Plaintiffs' allegations of broader misconduct and requests for different remedies do not supply the missing duty, and must also be assessed against the court's alternative finding that the fiduciary theory duplicated the contract claims. Op. 59–60. Neither distinct facts nor different remedies permit Plaintiffs to bypass the agreement's express elimination of default duties, and the judgment rejecting that claim should be affirmed.

ANSWER TO PLAINTIFFS' SUMMARY OF ARGUMENT ON CROSS-APPEAL

1. Denied. The trial court acted within its discretion by correcting the damages calculation. The Opinion imposed a 50% reduction for other causes of loss and a separate temporal limitation. The original $4.304 million amount implemented the temporal limitation but omitted the percentage reduction; the clarified $2.152 million figure applies both.

2. Denied. The trial court correctly rejected Plaintiffs' fiduciary duty claim against East. Section 6.6(c) of the Holdco Agreement expressly eliminated default fiduciary duties, and the exceptions to Section 6.6(a)'s limitation on liability did not recreate them. Even apart from that elimination, the court found the claim duplicative after considering the conduct at issue. Plaintiffs' arguments about additional conduct and different remedies do not overcome that elimination or support the requested appellate disgorgement.

ARGUMENT

I. THE TRIAL COURT ERRED IN SAVING THE NONCOMPETITION COVENANT DESPITE ITS CONCEDED OVERBREADTH.

Plaintiffs do not dispute Section 9.1 was unreasonable as written; they accept that nationwide protection was broader than necessary for a six-state business. PAB 24; Op. 51. They instead ask this Court to uphold saving that restraint despite this Court's ruling in *Sunder,* 332 A.3d at 490, and Delaware's public policy favoring competition. *See Centurion Service Group, LLC v. Wilensky*, 2023 WL 5624156, at *2 (Del. Ch. Aug. 31, 2023). Plaintiffs argue that the PCA was a "specifically negotiated document[]" intended "to protect Caring People's legitimate business interests." PAB 18. But the question is not whether Plaintiffs could have bargained for a reasonable restraint, *see Rsch. & Trading Corp. v. Pfuhl*, 1992 WL 345465, at *12 (Del. Ch. Nov. 18, 1992) (goodwill "*in a particular market*" is what equity protects); it is whether equity should supply the restraint they failed to obtain. The answer is no.

A. Plaintiffs Cannot Escape the "Slew" of Decisions Rejecting Blue Penciling.

Plaintiffs expressly acknowledge the "slew of recent Delaware decisions declining to blue pencil." PAB 20–23. Their distinctions do not explain why

comparable geographic restraints were denied judicial rescue while this one should receive it.

The closest cases involve the same geographic mismatch. In *Intertek Testing Services NA, Inc. v. Eastman*, the acquired business operated nationwide, but the covenant prohibited competition worldwide; the court held the geographic restriction overbroad and refused to narrow it. 2023 WL 2544236, at *4–5 (Del. Ch. Mar. 16, 2023). Similarly, in *Cleveland Integrity Services, LLC v. Byers*, a negotiated sale-of-business covenant prohibited competition throughout North America even though the business operated in the United States, and the court again refused to blue pencil. 2025 WL 658369, at *10–12 (Del. Ch. Feb. 28, 2025). Section 9.1 presents the same mismatch: nationwide protection for a six-state business. A1859–60; Op. 51. Plaintiffs treat differences in geographic degree as meaningful. PAB 22. But a worldwide restraint for a nationwide business, a continental restraint for a domestic business, and a nationwide restraint for a six-state business all restrict competition beyond the interests the covenantee may legitimately protect. Even where the overreach is arguably only "in the margins," affirmance would "create[] confusion," "encourage[] overreach, and encourage[] litigation 'by building a degree of uncertainty into" every restrictive covenant. *Cleveland Integrity Servs., LLC*, 2025 WL 658369, at *12 (explaining that "enforcing an overbroad noncompete carries systemic costs").

Plaintiffs' attempt to distinguish *HKA Global, LLC v. Beirise* is equally unpersuasive. They emphasize that the covenant there protected an entire corporate group, whereas Section 9.1 required only a geographic revision. PAB 20–21. But *HKA Global* focused on substantive overreach that careful drafting could have avoided. 2025 WL 3639811, at *6 (Del. Ch. Dec. 16, 2025). It does not support Plaintiffs' suggestion that the ease of deleting or substituting words establishes that equity warrants the change.

Nor does it matter that *BluSky Restoration Contractors, LLC v. Robbins* involved geographic, temporal, and substantive overbreadth, or that *Weil Holdings II, LLC v. Alexander* also involved an indefinite duration. PAB 21–23. Those additional defects explain why those covenants were unreasonable; they do not make multiple defects a prerequisite to denying reformation. *BluSky*, 2026 WL 599148, at *5, *15 (Del. Ch. Mar. 4, 2026); *Weil Holdings*, 2025 WL 689191, at *5–7 (Del. Ch. Mar. 4, 2025). Plaintiffs do not defend Section 9.1 as reasonable as written; they accept the trial court's finding that a nationwide restraint was broader than necessary for a six-state business and defend only the court's decision to narrow it. Op. 51; PAB 24. The question on appeal is therefore not whether the covenant was overbroad, which the court found and Plaintiffs do not contest, but whether equity should have supplied the narrower restraint Plaintiffs failed to obtain.

B. The Equities Weigh Against Rewarding Plaintiffs' Overreach.

Plaintiffs principally invoke East's sophistication, the consideration he received, and his allegedly "blatantly competitive" conduct to justify reforming a covenant they concede was unreasonable. PAB 19–20. Those arguments neither explain why equity should relieve a sophisticated buyer of its drafting choices nor justify using later conduct to save an overbroad restraint.

Plaintiffs' reliance on sophistication considers only East's side of the transaction. Silver Oak is more sophisticated, and it conducted diligence, knew CP's licensed footprint, and negotiated the covenant and COD carve-out. A1082–83; A1089; A1859–60; Op. 51, 54. A party capable of valuing the acquired goodwill was equally capable of limiting the restraint to the interests it was entitled to protect, so its sophistication is a reason to hold it to the consequences of its drafting, not to supply the limitations it failed to include. *See Intertek*, 2023 WL 2544236, at *5 (revising an overbroad non-compete to save a sophisticated party "would be inequitable"); *HKA Global*, 2025 WL 3639811, at *6 (requiring a sophisticated party to bear the consequences of its overbroad drafting).

The consideration East received does not change that analysis. In *Kodiak Building Partners, LLC v. Adams*, the court rejected the seller's asserted sophistication and substantial sale proceeds as bases to reform an overbroad covenant; despite the seller's executive position and approximately $900,000

payment, it declined to enforce the restraint even in part because the restraint exceeded the interests the buyer acquired. 2022 WL 5240507, at *13 & n.108 (Del. Ch. Oct. 6, 2022). Likewise, the amount paid to East does not enlarge the goodwill Plaintiffs acquired or entitle them to protection beyond CP's geographic reach.

Reforming the covenant on those grounds would reward the very overreach that careful drafting should prevent. *Delaware Elevator, Inc. v. Williams* described the resulting "no-lose position": the enforcing party benefits from an overbroad restriction unless challenged and obtains a narrower one if challenged. 2011 WL 1005181, at *10 (Del. Ch. Mar. 16, 2011). Although Plaintiffs note the case applied Maryland law (PAB 21), *Intertek* adopted that reasoning under Delaware law and this Court cited it approvingly in *Sunder*, so the choice-of-law distinction does not answer the incentive problem those decisions recognized. *Intertek*, 2023 WL 2544236, at *5 & n.47; *Sunder*, 332 A.3d at 487–88 & n.126.

BluSky confirms the same principle. Rewriting an overbroad covenant would undermine the obligation to draft restrictions tailored to legitimate interests and make the court a "safety net for any overreach." 2026 WL 599148, at *15. That concern carries particular force here, where a sophisticated buyer knew the acquired business's geographic reach yet sought a nationwide restraint it now concedes was unreasonable. Upholding reformation because the transaction was negotiated and well compensated would turn those circumstances into an excuse for overreach.

Plaintiffs' emphasis on East's allegedly "blatantly competitive" and "disloyal" conduct is equally misplaced. PAB 18, 20, 23–24. *Sunder* makes clear that whether to blue pencil "cannot turn on the egregiousness of the employee's conduct"; the inquiry concerns the covenant and the circumstances of its adoption. 332 A.3d at 490. Plaintiffs therefore cannot justify rewriting Section 9.1 by emphasizing the conduct they seek to prohibit, which would let accusations of later wrongdoing excuse an unreasonable restraint at its inception and perpetuate the incentive to overreach *Sunder* condemned.

Nor does refusing reformation allow East to select which promises to honor, as Plaintiffs contend. PAB 20. East's receipt of the transaction's benefits does not dispense with the independent requirement of a reasonable restraint. The covenant's actual duration further undermines Plaintiffs' reliance on the sale bargain. Section 9.1 ends on "the later of" the fifth anniversary of the First Closing Date or two years after East's employment ends. A1859. Had East left the day after closing, the restraint would have run five years—the period the parties fixed for the sale itself. The purchase price was set at closing and did not increase with East's years of service. The restraint did. By the time of the challenged conduct, East had observed the covenant for the full five years after the March 2017 closing, and it remained in force only because its end date moved with his continued employment. A1859.

The court did not separately explain the reasonableness of the later-of formulation and its cumulative duration. It simply found reasonable a period of "5 years from execution or 2 years from separation," Op. 55, which does not address the contract's requirement that the later date control. It then reinstated the covenant through March 10, 2028, approximately eleven years after closing. Op. 71, 78–79.[2] Plaintiffs' suggestion that refusing reformation would deprive them of the entire sale bargain therefore overstates what is at issue. The question is whether equity should supply a reasonable restraint for that additional period, and the consideration paid, the parties' sophistication, and East's alleged misconduct do not justify doing so.

C. The COD Carve-Out Independently Requires Reversal or Remand.

Even if judicial narrowing of Section 9.1 was warranted, the resulting restraint remained subject to the exception for COD. Section 9.1 preserves COD's "business activities" so long as COD is not engaged in a Restricted Business and confirms it was not so engaged at closing. A1860. The carve-out turns on the nature of COD's activities, not whether its business grew after closing; it does not freeze COD at its

[2] Plaintiffs assert that East waived any challenge to reinstatement. PAB 42 n.2. But East does not seek review of the injunction as a freestanding remedy. He argued that Section 9.1 should not have been reformed and enforced, including because the restraint remained operative only by reason of his continued employment. EOB 27–28. Plaintiffs themselves treat reformation and reinstatement as one exercise of discretion, arguing that the court "properly exercised its discretion to blue pencil and reinstate it." PAB 18. If the underlying liability rulings are reversed, the injunction enforcing them falls with them.

closing-date size or confine it to "back-end technical development," as Plaintiffs suggest. PAB 46.

Plaintiffs' evidence of COD's expansion does not establish that its activities crossed that contractual line. They emphasize that COD expanded its platform, contracted with patients, collected payments, and entered provider relationships. PAB 44–46. But those activities required analysis under the definition of Restricted Business and the carve-out, including the distinction between providing regulated home care and supplying technology and support to a licensed provider. Plaintiffs' reliance on East's SBA loan documents (PAB 46) does not establish that COD engaged in a Restricted Business. A loan application's shorthand label is not a finding about the regulated activities the carve-out turns on.

The court did not find that COD obtained a home-care license, employed caregivers, or delivered regulated care; it concluded that East's activities exceeded COD's "originally contemplated" business. Op. 50 n.288. That substitutes a limitation the parties did not adopt for the one they did. Section 9.1 does not prohibit COD from exceeding its original business model; it conditions the exception on COD's remaining outside a Restricted Business.

Plaintiffs' knowledge that COD would serve other home-care agencies further undermines Plaintiffs' attempt to treat those relationships as prohibited competition. A1082–83; A1089. The carve-out contemplated that COD would support providers

other than CP. Treating that support as prohibited merely because a provider competed with CP would deprive the negotiated exception of its intended function. Plaintiffs had to identify what made the challenged activities fall outside the carve-out; pointing to COD's growth and its work with competing providers does not answer that question. Because the court measured the challenged activities against an "originally contemplated" limitation absent from the agreement, the Court should reverse the Section 9.1 judgment or, at minimum, remand for application of the carve-out as written.[3]

[3] Plaintiffs contend East exceeded the scope of the COD carve-out and violated Section 9.1 in his personal capacity through his activities with Polaris and Beacon. PAB 44-46. They reference the trial court's footnote to that effect in defending the damages award. *Id.* at 46. But the court did not explain how East's assistance with basic formation activities ran afoul of Section 9.1. Indeed, Plaintiffs offer no record citation for their conclusory assertion that "East then used COD as an intermediary to directly compete with Caring People by having Polaris, using Beacon's home healthcare license, service patients." PAB 45. They note only that "*Devine* and *Feder* began competitive activity shortly before their departures." PAB 47 (emphasis added).

II. THE TRIAL COURT ERRED IN ENFORCING THE OVERBROAD NON-SOLICITATION RESTRICTION.

Plaintiffs do not dispute that the PCA employee non-solicitation restriction was overbroad as written. They do not challenge the determination that Section 9.2(a)(ii), which prohibited diverting, persuading, or encouraging employees to leave CP, exceeded Plaintiffs' legitimate interests. Instead, they defend enforcement only after that language is removed. PAB 39–41; Op. 56.

Regardless of how Plaintiffs' describe the court's decision to preserve a narrower covenant (PAB 39), the court still had to apply the surviving language to the conduct proved. It retained the prohibition on hiring, offering to hire, and soliciting "for hire," but relied on East's role in the employees' departures and new ventures. Op. 56–58. The issue is whether those findings establish recruitment for hire, rather than the broader encouragement the court held unenforceable. They do not.

A. The Trial Court Improperly Salvaged the Employee Restriction After Finding It Overbroad.

Section 9.2(a)(i) prohibits hiring, offering to hire, soliciting for hire, or attempting those acts. Subsection (a)(ii) separately prohibits diverting, enticing, persuading, or encouraging employees to leave CP, accept employment elsewhere, or engage in restricted activity. A1860. The court held the latter overbroad because it reached encouragement unrelated to unfair competition. It then purported to

enforce subsection (a)(i) and extended that reasoning to Section 19 of the East IUA for the same reasons. Op. 56–58; A1943.

Plaintiffs insist that retaining a separately numbered subsection differs from blue penciling. PAB 39–41. But deleting the offending language is precisely how the court narrowed the restriction to make it enforceable. The fact that the deletion follows a subsection boundary does not eliminate the equitable decision whether to save the remainder. The concern is substantive overreach, not the mechanics of editing. *See HKA Global, LLC*, 2025 WL 3639811, at *5–6 (rejecting excision of overbroad language as an improper exercise of equitable discretion).

Plaintiffs' observation that subsection (a)(i) is narrower therefore answers the wrong question. PAB 39. East does not equate solicitation for hire with all encouragement to leave. The question is whether the court properly salvaged one part of the restriction after concluding that another exceeded Plaintiffs' legitimate interests. *BluSky* rejected employee restrictions in a substantial sale transaction encompassing noncompetitive inducement and refused to narrow the covenants because allowing a sophisticated drafter to obtain the benefit of an excessive restriction until challenged, and a narrower one afterward, rewards the overreach discussed in Section I. 2026 WL 599148, at *6–7, *15.

Section 9.5 did not require a different result. The court stated that the severability clause "compels me to segregate and separately enforce the enforceable

portion of Section 9.2." Op. 56. But a contractual severability clause cannot displace the court's equitable judgment. *Sunder*, 332 A.3d at 486, 490. Plaintiffs cite the court's discussion of discretion when narrowing Section 9.1. PAB 41–42. That does not cure its treatment of severance under Section 9.2 as compulsory. A court cannot exercise equitable discretion over one covenant while treating contractual severability as eliminating that discretion over another. Nor does the parallel East IUA avoid the problem: the court enforced it on the same reasoning. Op. 58.

Plaintiffs also cite the trial court's adverse credibility finding and its conclusion that East helped the employees leave and pursue new ventures. PAB 42. But those assertions concern the alleged breach, not whether the covenant should be saved. *Sunder* directs the equitable inquiry to the restraint and the circumstances of its adoption, not the perceived egregiousness of later conduct. 332 A.3d at 490.

B. The Conduct Found by the Trial Court Does Not Constitute Solicitation "For Hire."

Even if the narrower restriction were enforceable, Plaintiffs still had to prove conduct within it, and their argument fails on its own terms. After quoting the prohibition on hiring, offering to hire, and soliciting for hire, Plaintiffs say East violated it by soliciting Devine and Feder "to cease their Caring People employment." PAB 46. But soliciting an employee to leave describes the discarded restriction; the surviving language required proof that East sought to obtain the

employee's services *for hire*. Plaintiffs cannot prove a violation of the surviving clause through conduct that falls only within the clause the court refused to enforce.

Plaintiffs agree that "Section (a)(i) concerns direct employment measures." PAB 39. The court noted that "both Devine and Feder deny being employed with COD," recited contrary evidence, and declined to expressly resolve the question, concluding only that "[i]n whatever capacity they were taken, the team's efforts increased COD and Polaris' profits." Op. 44. As to Devine, it also found that East assisted her "in becoming the 50% owner of a newly created company." Op. 33. But assistance in obtaining an ownership interest does not itself establish a hire. *See Callahan v. iLight Techs., LLC*, 2022 WL 2902810, at *7 (Del. Super. Ct. July 21, 2022) ("[T]he non-solicitation clause's plain language controls[.]").

After discovery and trial, Plaintiffs identified no employment agreement, no offer of employment by East, and no compensation paid by East or COD to either Devine or Feder. Their only cited compensation document is a COD salary chart they themselves describe as "marked 'unpaid.'" PAB 10. The document was a pro forma. A819–21. Plaintiffs also acknowledge that both women denied being compensated and defend the finding because the two were "actively pursuing business, whether receiving conventional compensation or not." PAB 10. The Opinion likewise found that East "solicited Devine and Feder to join the 'Polaris+Beacon+COD' Team," Op. 56, a phrase taken from the greeting of a June

19, 2023 email. Op. 40. A greeting does not establish an offer of employment. Treating participation in a business venture as sufficient restores the substance of subsection (a)(ii) after rejecting its text.[4]

Plaintiffs' further evidence does not resolve that problem. They emphasize that East helped form Polaris, provided email addresses and a laptop, and assisted ventures in which Devine and Feder participated. PAB 46–47. But any such assistance to a later venture does not by itself supply the missing act of recruitment for hire. Their assertion that he facilitated the activities and "thereby" solicited professional services assumes the very connection they must prove. PAB 47. "Thereby" is not evidence of solicitation.

The contemporaneous evidence also weighs against Plaintiffs' inference. East urged CP to retain Devine and advocated sufficient equity to keep her there. A746–48; A417–18. Devine attributed her departure to increasing family demands, and Feder testified that East did not encourage her to leave. A1235–36; A1390. The court could assess that testimony and reject explanations it found unpersuasive. But an adverse credibility finding does not expand the covenant or relieve Plaintiffs of

[4] The tortious-interference ruling rests on the same finding that East solicited Devine and Feder. Op. 58. Plaintiffs again rely on his facilitation of their activities and assert that those actions also constitute interference with their CP agreements. PAB 47. That assertion does not identify an independent act by East causing a contractual breach that would sustain the ruling if the solicitation finding fails.

proving the conduct its remaining terms prohibit; disbelieving East's testimony is not affirmative proof that he solicited either employee for hire.

Cleveland Integrity Services, LLC v. Byers illustrates the distinction. Although the court upheld a separate non-solicitation covenant, it held that participation in a competing business, standing alone, did not establish solicitation under that covenant, and that other employees' conduct could not be attributed to the defendant merely because they worked for his company. 2025 WL 658369, at *17. The court recognized that providing information or support in furtherance of an actual solicitation could constitute indirect solicitation under the express language of the covenant. *Id.* That identifies what is missing here: Plaintiffs must connect East's assistance to an actual effort to recruit Devine or Feder for hire, not treat competitive association as its equivalent. Their reliance on the women's subsequent activity does not make that connection; at most it shows assistance in connection with their departures—not the solicitation for hire subsection (a)(i) requires.

Accordingly, this Court should reverse the findings against East under PCA Section 9.2 and East IUA Section 19, and the tortious-interference determination resting on the same unsupported premise.

III. PLAINTIFFS STILL DO NOT CONNECT EAST'S CONDUCT TO THE LOST-PROFIT AWARD.

Plaintiffs defend the lost-profit award by emphasizing the magnitude of CP's decline and the court's discretion to estimate damages. PAB 50–55. Neither establishes that East's alleged breaches caused the losses awarded. Before fixing the amount, the trial court needed an evidentiary basis for attributing those losses to actionable conduct, and the standard of review does not insulate a finding unsupported by the record. Proximate cause is reviewed for clear error, and the legal standards governing damages *de novo*. *See Bako Pathology LP v. Bakotic*, 288 A.3d 252, 275 (Del. 2022); *Holifield v. XRI Investment Holdings, LLC*, 304 A.3d 896, 937 (Del. 2023).

A. Plaintiffs' Expert Assumed the Causal Link They Had to Prove.

Plaintiffs confirm that "Thompson did not opine on causation." PAB 53. They describe his model as resting on "excess attrition (exceeding 90%) of Caring People's referral sources," PAB 51, and defend the award on the ground that "Defendants competed with Caring People in soliciting clients from existing referral sources, establishing liability." PAB 53. But as to East, the trial court found that "[t]he record does not reflect that East violated" the referral-source covenant. Op. 56 n.304; *see* PAB 41. Plaintiffs cannot supply the model's missing causal premise by attributing to East a breach the court did not find.

Thompson's yardstick and but-for analyses compared CP's results to national CMS benchmarks and calculated the profits it might have earned absent a decline. B0394–410. Those calculations estimated the shortfall under his assumptions; they did not establish how much resulted from East's alleged breaches. Op. 73; A1503; A1517–20. The Opinion confirms the distinction. Thompson "originally examined data in five states," but "only included New York and New Jersey in his damages model because the rest did not meet the criteria he employed." Op. 73. Both states qualified on the same criteria: "excess attrition of Caring People's referral sources and a significant decline in revenue." *Id.* Yet the court excluded New Jersey because "the Plaintiffs' causation showing was weaker." Op. 75 n.354. If those criteria did not establish causation in New Jersey, satisfying them in New York did not, by itself, establish it there either.

Plaintiffs answer that Thompson testified to "likely competition" after hearing trial evidence. PAB 51. But that general observation does not establish which losses East's alleged competition caused or validate a model attributing the decline to the alleged breaches. The court itself recognized that Thompson "failed to address" the Amsterdam's bankruptcy, competition by other former employees, and cancellation of staffing contracts, Op. 74 n.349, and could not quantify the lower damages that would follow if liability concerned only a handful of clients. Op. 73–74.

The nonexclusive nature of CP's referral relationships makes that missing proof particularly significant. Its own CEO agreed that the company "doesn't have an exclusive relationship with any referral source," that each source "can send its clients to other competing home care companies," and that "[p]atients get to choose where they want to get care." A597–98; A633–34; A636. In that market, a decline in referrals does not show why referrals declined. Plaintiffs offered no testimony from any referral source attributing a decision to East. A1673; A1676–78. The court acknowledged that Plaintiffs could not "specify any diverted clients or referral sources, and the revenue lost thereby." Op. 75 n.353. Those omissions leave the model without a supported basis for separating losses caused by East's alleged breaches from other causes.

Plaintiffs' failure to connect claimed harms to the causes of action is fatal to the damages judgment. *See Winklevoss Capital Fund, LLC v. Shaw*, 2024 WL 3888757, at *9 (Del. Ch. Aug. 21, 2024).

B. The Trial Court's Discretion to Estimate Damages Does Not Dispense with Proof of Causation.

Plaintiffs invoke the principle that uncertainty in the amount of damages is resolved against a wrongdoer. PAB 53, 55. But that principle addresses how to measure a loss caused by a breach—not whether the breach caused the loss in the first place. Before a factfinder may estimate damages, there must be a basis to conclude that the breach caused injury. *See Red Sail Easter Ltd. Partners, L.P. v.*

Radio City Music Hall Productions, Inc., 1992 WL 251380, at *7 (Del. Ch. Sept. 29, 1992). The law does not permit speculation where a plaintiff fails to prove damages. *See Sorrento Therapeutics, Inc. v. Mack*, 2025 WL 2172268, at *7 (Del. Ch. July 31, 2025).

That distinction matters here because the court identified substantial alternative explanations for the decline: sales-team turnover, wage pressure and tight labor markets, lost staffing contracts, the Amsterdam's bankruptcy and move-in freeze, client dissatisfaction, other employee departures, and limited mitigation. Op. 36–38, 74 & n.349, 75 n.354. It further recognized that even absent competition, East's and Devine's departures likely would reduce revenue. Op. 75 n.354. Those findings required the court to distinguish losses attributable to the alleged breaches from losses CP would have suffered anyway, and a reduction acknowledging other causes is insufficient unless the record supports the amount attributed to actionable conduct.

Plaintiffs say CMS benchmark data already accounts for morbidity, facility closures, and other market forces. PAB 53. But accounting for an industry-wide trend is not the same as accounting for a particular company's experience. Plaintiffs identify no analysis showing how the national benchmark reflected the Amsterdam's bankruptcy, CP's staffing-contract losses, its employee turnover, or its specific client dissatisfaction and mitigation decisions, and their expert did not show that the

benchmark isolated those effects. Plaintiffs therefore cannot assume his calculations already excluded the alternative causes the court identified.

Plaintiffs' reliance on *Metro Storage International LLC v. Harron* to suggest otherwise is misplaced. The court in *Metro Storage* required the plaintiffs to prove that the fiduciary's breach caused the business failure and rejected a multimillion-dollar damages theory when they did not. 275 A.3d 810, 859–60 (Del. Ch. 2022). The principle resolving uncertainty against a proven wrongdoer did not excuse proof of causation there, and cannot justify attributing CP's losses to East without that proof here.

C. Neither the Fifty-Percent Reduction Nor the Seventy-Five-Percent Allocation Has Adequate Evidentiary Support.

The court expressly held that it "cannot adopt Thompson's opinion" because doing so "would result in an unsupported windfall to the Plaintiffs and falls far short of the reasonable estimate required." Op. 74. It then accepted Plaintiffs' post-trial alternative of "a segmented award by geographic region," *id.*, and began with the New York figure from that same model, awarding half for Q3 2023 through Q2 2025. Op. 75. That the court rejected the model's total yet selected half of one state's figure on what it called "a reasonable assumption," Op. 73–75 & n.354, does not supply the causal analysis the model lacked.

Delaware law permits "[r]esponsible estimates that lack [mathematical] certainty," Op. 75 n.353 (quoting *Red Sail*, 1992 WL 251380, at *7), but only when

the court has a basis to estimate the loss the breach caused. Here, the court identified no testimony, calculation, or other evidentiary basis explaining why the alleged breaches caused half of the selected New York losses. An assumption applied to a model the court declined to adopt is not a supported estimate. Nor did the temporal cutoff cure the problem: it rested on when mitigation "should have" been underway, not evidence establishing the share of losses caused by breach within the retained period. Op. 75.

The two percentages used by the court cannot repair the absence of a supported causal foundation. Because Plaintiffs failed to establish that foundation, the award should be vacated, or at minimum remanded for an explanation of the calculation and allocation grounded in the existing record. The trial court's discretion to estimate damages does not permit an unexplained division of losses among alleged breaches, other causes, and individual defendants. *See Bako*, 288 A.3d at 279.

IV. THE FEE AWARD CANNOT BE SUSTAINED UNDER THE EAST IUA.

A. Reversal of the East-IUA Liability Finding Removes the Basis for Plaintiffs' Fee Award.

Section 18 awards reasonable fees and costs to the prevailing party in an action "to interpret or enforce" the East IUA. A1943. The trial court based Plaintiffs' prevailing-party status on its finding that East breached Section 19 by soliciting Devine and Feder. Op. 68–69, 76–77. Reversal of that finding would eliminate Plaintiffs' only merits victory under the East IUA and that contractual basis for their fee award. Broader litigation success does not change that result. PAB 57; *see Bako*, 288 A.3d at 280–82 (distinguishing provisions governing the overall dispute from those focused on a particular agreement).

As to East's own entitlement, Plaintiffs' insistence on "affirmative relief" overlooks that Section 18 awards fees to the "prevailing party," without limiting recovery to one that successfully prosecutes a claim. A1943; PAB 57. If the sole East-IUA breach finding is reversed, East will have defeated Plaintiffs' effort to enforce that agreement against him, and that successful defense supports his request for prevailing-party fees. EOB 47–48.

B. Plaintiffs Have Not Justified the Award of One-Third of the Entire Case's Fees Under a Provision Limited to the East IUA.

Even if the East-IUA liability finding survives, it does not justify shifting one-third of the entire case's fees and expenses. As East's opening brief explains,

Plaintiffs asserted eleven counts involving separate agreements and distinct theories, and East and COD asserted multiple counterclaims. EOB 48–49. Those claims included the PCA's noncompetition, non-solicitation, and confidentiality provisions; the Holdco Agreement's confidentiality provision; separate agreements governing Devine; fiduciary duties; the implied covenant; and tortious interference. The East IUA supplied only one claim against East, and the PCA—on which part of Plaintiffs' damages recovery rested—contains no prevailing-party provision. The trial court nevertheless awarded one-third of all fees and expenses, or $1,430,646.79, without explaining why that fraction represented work reasonably incurred to interpret or enforce the East IUA against East. Op. 76–77.

Plaintiffs answer that the court did not stray from *Bako* because it identified the East IUA as the source of fee entitlement and found a breach of that agreement. PAB 57–58. Yet, *Bako* required attention to the language of each fee provision and limited recovery under the narrower employment-agreement provisions to claims arising under those agreements. 288 A.3d at 280–82. Merely naming the East IUA as the source of authority does not make a percentage of the entire litigation's fees and expenses recoverable. The trial court still had to connect the selected share to work within Section 18.[5]

[5] Plaintiffs attribute to the trial court a finding that the IUA claims "shared the same nucleus of facts" and that the shifted fees "bear a reasonable relationship to East IUA-related work." PAB 58–59 (citing Op. 76–77). The Opinion says only

Plaintiffs' reliance on shared facts does not eliminate that requirement. East does not seek automatic exclusion of fees and expenses incurred supporting the combined claims. But the trial court still needed to distinguish work reasonably attributable to the East-IUA claim, including appropriate common work, from work outside Section 18, which it did not do.

The court's description of the outcome as a "mixed bag" does not explain the one-third figure either. Op. 77 n.356. Plaintiffs want to dismiss that the court declined to shift costs under Rule 54(d). But the court's acknowledgment of mixed success confirms the problem. Recognizing that the IUAs covered only a part of the case explains why all fees should not be shifted, not why one-third should be.

Plaintiffs' reliance on *Neem International CV v. Shulman* is misplaced. PAB 59. *Neem* apportioned fees under the bad-faith exception to the American Rule after finding extraordinary prelitigation fabrication and discovery misconduct. 2026 WL 2199211, at *2–5 (Del. Ch. July 30, 2026). It did not construe a narrow contractual clause or hold that factual overlap enlarges one. Discretion under that equitable exception does not establish which fees the parties authorized under Section 18, and does not excuse the contractual analysis *Bako* required.

---

that "the IUAs were only a portion of this much larger case." Op. 76. It does not make the intertwinement finding Plaintiffs invoke or explain how shared work supports the selected fraction. That rationale is Plaintiffs', not the trial court's.

Plaintiffs' waiver argument also fails. East challenged the contractual scope of the award and the absence of findings tying the shifted fees to East-IUA work. A1679–80; EOB 47–49. He does not demand the "surgical precision" or "atomized re-billing exercise" Plaintiffs attribute to him. PAB 60. A reasonable allocation may account for common work without assigning every billing entry to a single claim, but the court must explain why the allocation reflects work recoverable under Section 18. The Opinion selected one-third before any Rule 88 submission, and Plaintiffs' authority requiring specific objections to billing entries does not answer that antecedent objection. Op. 77. A later review of whether individual charges were reasonable cannot substitute for determining whether the contract authorizes shifting the selected share at all.

The Court should vacate Plaintiffs' fee award. If it reverses the sole East-IUA breach finding, it should recognize East's resulting success under that agreement and remand for consideration of his preserved request for fees and expenses. If the liability finding survives, it should remand for a supported allocation of fees and costs reasonably incurred to interpret or enforce the East IUA.

V. THE TRIAL COURT'S DENIAL OF EAST'S TAX PENALTIES AND INTEREST REQUIRES REVERSAL OR REMAND.

A. Section 5.3's Purpose Makes Penalties and Interest Foreseeable.

Section 5.3 required Silver Oak to fund the tax on income it allocated to East by April 10, 2022. The court found it failed to pay "timely and fully," Op. at 66, but the judgment remedies only the second failure: the $355,533 of principal still unpaid at trial, Op. at 78. Plaintiffs have not shown that East could have paid his taxes with his own funds to stop interest and penalties from accruing, nor is that a defense to the foreseeability of the harm resulting from the breach.

Silver Oak, which had to deliver East's K-1 by March 31, 2022, *see* A1918–19, did not issue it until the summer of 2022, *see* A1024, after the April 18, 2022 federal tax-payment deadline. No distribution for East's 2021 taxes was made during 2022, and partial distributions did not begin until March 2023, A1017–18, A1021, A1025, because Silver Oak chose "to distribute cash as each payment came," PAB 16. Those installments paid principal only, while penalties and interest of $875,785.44 accrued on the tax the distribution was meant to fund. A1684. That sum measures how long the breach lasted, and the judgment compensates none of it. Prejudgment interest on the balance remaining at trial does not compensate for this loss.

A nonbreaching party is entitled to recover "damages that arise naturally from the breach or that were reasonably foreseeable at the time the contract was made."

Paul v. Deloitte & Touche, LLP, 974 A.2d 140, 146 (Del. 2009). Because Section 5.3 required cash to be distributed so members could pay tax on pass-through income when due, penalties and interest for late payment are at least a foreseeable category of harm from withholding the promised funds—following from the obligation's express tax-funding purpose, not from an unusual circumstance Plaintiffs could not have anticipated.

Plaintiffs call the charges "personal" because East was the taxpayer. PAB 62–64. But Section 5.3 required distributions precisely because the income allocations generated tax liabilities for individual members. Plaintiffs also acknowledge that other members "incurred penalties and interest from the delayed distributions." PAB 64. That shared experience supports treating the charges as an ordinary result of the breach, not a loss peculiar to East's choices.

Plaintiffs' contention that East could have paid his taxes with other funds raises failure to mitigate, an affirmative defense on which they bear the burden. *BTG Int'l, Inc. v. Wellstat Therapeutics Corp.*, 2017 WL 4151172, at *20 (Del. Ch. Sept. 19, 2017). They had to establish both that East acted unreasonably and what portion of the charges reasonable efforts would have avoided. Their suggestion that East should have used other funds also ignores the basic fact that CP had them and chose not to pay. A1025–27.

B. Plaintiffs' Mitigation Arguments Do Not Justify Denying the Entire Claim.

Plaintiffs rely on an interest-free loan, East's closing proceeds, and the experience of other members to argue that he could have avoided the charges. PAB 63–65. The question is whether those alternatives were reasonable and which charges they could have prevented. *See W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2009 WL 458779, at *8 (Del. Ch. Feb. 23, 2009) (requiring reasonable mitigation, not measures involving undue risk or burden).

Plaintiffs' proposed loan illustrates the missing analysis. A loan was no substitute for the distribution Section 5.3 required. It would have substituted debt to the breaching party for funds the agreement obligated it to provide, and East was not required to assume that new obligation as mitigation. *See W. Willow-Bay Ct.*, 2009 WL 458779, at *8. The loan's asserted "interest-free" terms do not change that distinction. PAB 63–65. The loan was also not offered until roughly a year after the April 2022 distribution deadline, *see* A1069, so it could not prevent charges already incurred, and the Opinion does not quantify what later charges would have been avoided.

Plaintiffs' reliance on East's closing proceeds presents the same problem. That amount does not establish what funds were available when the taxes came due or which charges he could reasonably have avoided. PAB 63–64. Section 5.3 contemplated that the distributions would fund those liabilities, and Plaintiffs'

assertion that East "had the means to pay regardless of the distribution timing," PAB 63, does not excuse the breach. As the trial court found, "[t]he contract does not provide any such delay mechanism or 'out.'" Op. 65–66. Nor may "[t]he rule of mitigation of damages . . . be invoked by a contract breaker as a basis for hypercritical examination of the conduct of the injured party, or merely for the purpose of showing that the injured person might have taken steps which seemed wiser or would have been more advantageous to the defaulter." *In re Kellett Aircraft Corp.*, 186 F.2d 197, 198–99 (3d Cir. 1950).

Other members' experiences likewise do not establish any failure by East. Plaintiffs do not show when those members paid, what resources they used, or what charges East could have avoided. PAB 64. Their own penalties and interest confirm the foreseeable effects of delayed funding, and the court's one-sentence denial identified no reasonably avoidable loss.

Plaintiffs also identify no calculation of the penalties or interest East would have avoided by accepting the loan or using other funds. That omission reflects a failure of proof. *See BTG*, 2017 WL 4151172, at *20 (rejecting a mitigation defense unsupported by evidence quantifying potential mitigation impact).

C. East's Current Net-Debtor Status Does Not Make an Erroneous Ruling Harmless.

Plaintiffs argue that any error was harmless because East would still owe them money after the penalties and interest were added to his offset. They acknowledge

that including the claimed $875,785.44 would reduce the net judgment against him to roughly $383,000 before interest adjustments. PAB 65. Even assuming the judgment survives East's separate challenges, that argument fails. The question is how much East owes, not whether he remains a net debtor. An erroneous denial of recoverable tax damages would leave him owing that much more, which is not harmless. The Court should reverse and remand to include the penalties and interest proven on the existing record or, at minimum, for findings on causation and mitigation.

VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CLARIFYING THE DAMAGES AWARD.

A. QUESTION PRESENTED

Whether the court abused its discretion by correcting a calculation awarding all New York lost profits for the selected period even though the Opinion expressly awarded only half to account for other causes.

B. SCOPE OF REVIEW

The parties agree the trial court's clarification is reviewed for abuse of discretion. PAB 67.

C. MERITS OF ARGUMENT

Plaintiffs seek to restore an award that does not implement the court's stated reasoning. The Opinion imposed two distinct limitations: it awarded only half of the New York losses because other causes contributed to the decline, and separately ended recovery at Q2 2025 because mitigation should have been underway thereafter. Op. 75 & n.354. The original $4.304 million figure implemented only the second; the April 23 clarification supplied the omitted 50% reduction, yielding $2.152 million. Ltr. Op. 4–5; *see also* EOB Ex. 3 ¶¶ 5, 7. East challenges the underlying award and does not, by defending this correction, concede that any award against him is warranted.

1. The Opinion Separately Addressed Causation and Mitigation.

The Opinion explained that the decline could not be attributed solely to Defendants and awarded Plaintiffs "half of their New York lost profits." It then stated: "I will ***also*** limit the recovery from Q3 2023 through Q2 2025," after which mitigation should have been well underway. Op. 75 (emphasis added). "Also" identifies an additional limitation. Reducing recoverable losses for other causes and limiting the recovery period for mitigation perform different functions; selecting the period does not accomplish both.

Footnote 354 removes any doubt about the purpose of the percentage reduction. The court explained that "[t]he ½ reduction of the New York amount accounts for the non-negligible level of other disruption to the business" and for revenue that would have been lost through the departures of two rainmakers even without competition. Op. 75 n.354. It then valued the portion attributable to the proven misconduct "at ½." *Id.* Those statements concern the causes of the losses, not the length of the damages period, and Plaintiffs' interpretation leaves this express allocation between actionable conduct and other causes without effect.[6]

[6] On Plaintiffs' reading, the trial court rejected the model as an "unsupported windfall," Op. 74, and then awarded all of its output for the selected period, with none of the reduction the court said it had made. That reading cannot be reconciled with the Opinion's express statement, "I have discounted recovery," or its explanation that the one-half reduction accounted for other causes. Op. 75 n.353–354.

The figures confirm the distinction. Plaintiffs' own brief identifies $4.304 million as Thompson's entire New York figure for Q3 2023 through Q2 2025. PAB 51. The expert's schedules identify the same subtotal, B0414–15, and Plaintiffs requested that amount for that period in their post-trial brief. *See* A1781 ¶ 7. An award of "half of their New York lost profits" for that period, Op. 75, cannot equal the whole; applying the announced 50% reduction produces $2.152 million. East's motion asked the court to perform that calculation, not to reconsider the period or percentage it had chosen. A1779–82.

Plaintiffs now contend that "half" meant the first segment of their expert's projected time horizon. PAB 69–70. But the Opinion refers to half of the New York lost profits, not half of the reporting periods, and the two segments were not equal: Plaintiffs' expert calculated $4.304 million for the earlier period and $3.980 million for the later. B0414–15. More fundamentally, omitting the later segment does nothing to account for unrelated disruption or ordinary attrition within the earlier one, which the court expressly found significant. *See* Op. 75 n.354.

Plaintiffs' reliance on their expert's anticipated mitigation adjustment after Q2 2025 does not close that gap. PAB 70. That adjustment concerns later losses, which the trial court excluded altogether. The retained $4.304 million subtotal still attributed the historical decline entirely to Defendants, the very premise the Opinion rejected. Op. 74–75; B0402–04.

2. The Trial Court's Clarification Corrected the Calculation Without Revisiting the Merits.

Plaintiffs characterize East's motion for clarification as relitigating the award through an isolated word. PAB 68–69, 72. The motion placed the damages paragraph, its explanatory footnote, the expert's schedule, and Plaintiffs' own requested subtotal side by side. A1780–81. Those materials establish an objective inconsistency: the Opinion awarded half, but the number represented the whole.

The authorities Plaintiffs invoke permit precisely this correction. *Ng v. Heng Sang Realty Corp*. recognizes clarification of inadvertent errors, and East's motion identified its correction of references to gross revenue where the court intended net operating income. 2004 WL 1192091, at *1 (Del. Ch. May 20, 2004); A1779. *Doft & Co. v. Travelocity.com Inc*. similarly granted Rule 59(f) relief on computational points after considering competing positions. 2004 WL 1366994, at *1 (Del. Ch. June 10, 2004).

The trial court repeating the $4.304 million figure throughout the Opinion does not erase the inconsistency. PAB 68, 70. The introduction, damages discussion, allocation, and conclusion all carry forward the same unadjusted subtotal. Op. 1, 75–76, 79. That the 75% and 25% allocations add to that subtotal shows only that the allocation arithmetic matched the mistaken starting figure, not that the court applied its antecedent 50% causation reduction. East's motion accordingly identified each affected amount to ensure the correction would be consistent

throughout the Opinion. A1781–82. East's 75% share of the corrected total is $1.614 million.

3. Reassignment Did Not Prevent Correction of the Written Ruling.

Plaintiffs emphasize that Magistrate Hume resolved the motion after Senior Magistrate Molina's retirement and did not preside over trial. PAB 71. But the correction did not require him to reassess a witness or resolve conflicting trial evidence. The original findings were already written: other causes contributed to the decline, half of the New York losses were recoverable, and recovery ended at Q2 2025. Op. 75 & n.354. The amount assigned to that period was established by the expert's schedule and Plaintiffs' own request. *See* B0414–15, A1781. Magistrate Hume could reconcile those materials with the court's written findings without reopening the record. Ltr. Op. 2–5.

Plaintiffs cite no authority barring correction upon reassignment or imposing a heightened standard for a successor. PAB 71–72. Their finality argument overlooks the limited relief sought. East's Rule 59(f) motion identified a calculation error and the corresponding corrections, without reopening the evidence or seeking a new causation percentage. A1779–82. Upholding the correction preserves the court's stated methodology, while reinstating the original amount would eliminate its express reduction for other causes. The Court should affirm the clarification, subject to East's independent grounds for reversing the damages award.

VII. THE TRIAL COURT CORRECTLY REJECTED PLAINTIFFS' FIDUCIARY DUTY CLAIM.

A. QUESTION PRESENTED

Whether the court correctly rejected Plaintiffs' fiduciary duty claim because the Holdco Agreement eliminated the asserted default duties and the claim duplicated their contractual theories.

B. SCOPE OF REVIEW

The parties agree that this Court reviews questions of contract interpretation and the legal sufficiency of a fiduciary duty claim *de novo*. PAB 73. The court's factual findings remain subject to clear-error review. *Bäcker v. Palisades Growth Capital II, LP*, 246 A.3d 81, 96 (Del. 2021).

C. MERITS OF ARGUMENT

1. Section 6.6(c) Eliminated Default Fiduciary Duties.

Delaware's LLC Act permits an agreement to expand, restrict, or eliminate duties, including fiduciary duties, while preserving the implied contractual covenant of good faith and fair dealing. 6 *Del. C.* § 18-1101(c). Section 6.6(c) uses that statutory vocabulary:

> 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. The clause expressly eliminates default duties while retaining obligations specifically provided in the agreement and the nonwaivable implied covenant. Plaintiffs rely on Section 6.6(a) to supply a surviving duty of loyalty. PAB 77–79. That provision addresses exceptions to a limitation on liability; it does not affirmatively impose the fiduciary duties subsection (c) eliminates.

Plaintiffs also rely on East's service as CEO and Board chairman, the duties of officers as agents, and his alleged misuse of those positions. PAB 73–77. Those arguments identify the default duties that would ordinarily accompany his roles, but do not address the express contractual elimination of duties to CP. Giving effect to Section 6.6(c) leaves East subject to his agreed obligations and the implied covenant; it does not restore default duties because Plaintiffs recast the same conduct as disloyal.

2. Section 6.6(a) Did Not Recreate Duties That Section 6.6(c) Eliminated.

Plaintiffs argue Section 6.6(a)'s exception from release for fraud, intentional misconduct, intentional violation of law, or bad-faith violation of the implied covenant "preserves the duty of loyalty." PAB 77–79. That conflates duty with liability. Subsection (a) limits when a Covered Person may be liable for an otherwise

cognizable loss; subsection (c) defines which duties exist. An exception to exculpation does not create an underlying cause of action.

Metro Storage draws the exact distinction. 275 A.3d at 846–48. The LLC Act separately authorizes modification of duties under Section 18-1101(c) and limitation of liability under Section 18-1101(e). *Id.* at 846. A clause addressing only liability does not eliminate the underlying duty. *Id.* at 847. But the Holdco Agreement has both kinds of clauses: subsection (a) addresses liability, and subsection (c) expressly says no fiduciary duty exists. Reading the former to nullify the latter would erase the parties' deliberate separation.

CMS Investment Holdings, LLC v. Castle likewise addressed a liability limitation with exceptions for gross negligence, willful misconduct, and knowing violation of law. 2015 WL 3894021, at *18 (Del. Ch. June 23, 2015). Its treatment of those exceptions does not establish that a liability carve-out overrides a separate, express elimination of duties. Section 6.6(c) performs that separate function. It states that no Covered Person shall have any default fiduciary duty.

Plaintiffs' reading also creates surplusage. If an exception for intentional misconduct automatically resurrected the duty of loyalty, Section 6.6(c)'s elimination of "any fiduciary duty" would vanish whenever conduct was alleged to be intentional—the circumstance in which fiduciary claims most often arise.

Delaware law does not permit an exculpation carve-out to swallow an adjacent no-duty clause.

3. The Alternative Bootstrapping Ruling Was Independently Correct.

Apart from the agreement's elimination of duties, the court found after trial that the fiduciary theory was "parallel to the contract claim," without additional or broader facts warranting an independent claim or different remedy. Op. 59–60. The competition, solicitation, and misuse-of-information theories concern subjects addressed by PCA Sections 9.1–9.3, East IUA Section 19, and Holdco Section 12.19. A1859–61; A1930–31; A1943.

Under *Nemec v. Shrader*, disputes arising from express contractual obligations are treated as contract claims, and fiduciary claims arising from the same facts are "superfluous." 991 A.2d 1120, 1129 (Del. 2010). *Bäcker* describes the rule as applying when the fiduciary claim wholly overlaps the concurrent contract claim. 246 A.3d at 108–09. This one does.

Plaintiffs invoke *Metro Storage* because it allowed a fiduciary claim and a contractual confidentiality claim to coexist. PAB 74–77. But there the operating agreements did not eliminate duties, the defendant conceded officer status, and the fiduciary case included broader agent duties and outside consulting conduct. 275 A.3d at 842–48, 858. Here, Section 6.6(c) eliminates the independent default source, and the trial court found no broader factual basis after trial.

A different remedy does not alone create a different duty. Plaintiffs suggest that disgorgement distinguishes their fiduciary theory. PAB 78–80. But *Bäcker* considered remedy together with distinct facts and a separate equitable wrong; it did not hold that adding a disgorgement demand transforms a contract claim into a fiduciary claim. 246 A.3d at 108–10. Otherwise, the anti-bootstrapping rule would disappear whenever a plaintiff requests equitable relief.

Nor does reversal of a contract judgment revive an eliminated or duplicative duty. PAB 79–80. The overlap turns on the source and substance of the alleged obligation, not whether the plaintiff ultimately proves breach. A failed contract theory cannot manufacture a default duty the LLC agreement eliminated.

4. Plaintiffs' Requested Appellate Remedy Has No Record Support.

Plaintiffs ask this Court to find breach and order disgorgement of Beacon/Polaris revenue. PAB 73, 79–80. The trial court made no fiduciary-breach findings, no findings identifying an East profit, and no calculation of a disgorgement amount. East had no ownership in Polaris and received no compensation from Polaris or Beacon. A1654; A1670; A1552–53. Gross revenue earned by different entities is not an amount subject to disgorgement from East.

Even if this Court rejected both legal grounds below, the appropriate disposition would be a remand for findings. But because Section 6.6(c) eliminated

the asserted duties and the claim independently duplicates the contracts, the judgment should be affirmed.

CONCLUSION

East respectfully requests that this Court reverse the trial court's rulings as requested in East's appellate brief and deny Plaintiffs' cross-appeal.

Dated: October 16, 2026

MCCARTER & ENGLISH, LLP

/s/ *Sarah E. Delia*

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

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

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2026, true and correct copies of the foregoing **Reply and Answering Brief of Appellant/Cross-Appellee Shalom (Steven) East** were served on the following individuals via File & ServeXpress:

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

Alexandra G. Lancey
Troutman Pepper Locke LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201

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

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

Multi-Case Filing Detail: The document above has been filed and/or served into multiple cases, see the details below including the case number and name.

Transaction Details

Court: DE Supreme Court

Transaction ID: 81066615

Submitted Date & Time: Oct 16 2026 2:34PM

Document Type: Reply brief on appeal/answering on cross-appeal

Document Title: Reply and Answering Brief of Appellant -- Cross-Appellee Shalom (Steven) East. (eserved) (rl)

Case Details

Case Number	Case Name
264,2026C	Shalom (Steven) East vs Caring People Holdco, LLC, et al
268,2026C	Jennifer Devine vs Caring People Holdco, LLC, et al.