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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' REPLY BRIEF ON CROSS-APPEAL

Dated: October 30, 2026

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PRELIMINARY STATEMENT

There are two issues before this Court on cross-appeal: (1) whether the trial court abused its discretion in granting the Motion for Clarification reducing the damages awarded to Plaintiffs by fifty percent and (2) whether the trial court erred in rejecting Plaintiffs' breach of fiduciary duty claim.

In connection with the first issue, neither East nor Devine demonstrate in their answering briefs that the trial court misapprehended the applicable law or the facts of the case.[1] Their argument in support of the damages reduction rests on a single reading of the word "half" contained in the Opinion and an inference they draw from its connection to the word "also" in a subsequent sentence. That is not the showing Rule 59(f) requires. Senior Magistrate Molina presided over a four-day trial, issued a 79-page opinion, stated the damages award as $4.304 million four separate times, and allocated that exact figure between East and Devine in amounts that sum to it. (Op. at 1, 75, 76, 79). A successor magistrate who heard none of the evidence cut the award in half by choosing East and Devine's reading of an arguably ambiguous paragraph over the reading that the Opinion's ***own figures*** repeatedly confirm. That is an interpretive choice, rather than the correction of an inadvertent error, which constitutes an abuse of discretion.

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[1] All capitalized terms not otherwise defined herein shall carry the same meaning as in Caring People's Answering and Opening Brief ("POB"), Dkt. 18.

East's answering brief[2] fares no better on the second issue. His position can be summarized as an illogical, self-serving reading of the Holdco Agreement that renders key language superfluous. East contends that Section 6.6(c) of the Holdco Agreement eliminates all fiduciary duties, although language on the same page provides that he "shall not be released from liability" for "fraud, intentional misconduct, intentional violation of law, or bad faith violation of the implied contractual covenant of good faith and fair dealing." (A1904.) East's reading renders that carve-out meaningless, in direct conflict with the rules of contract construction. It would also leave Caring People with no remedy against a sitting board member who spent his tenure building a competitor using Caring People's employees, opportunities, and confidential information. Nor does the anti-bootstrapping rule save the ruling below. The trial court resolved this issue in under two pages, while the fiduciary duty claim rests on conduct and a remedy—disgorgement—that the contract claims do not reach. Regardless, if East succeeds in overturning the breach of contract judgments, there would be nothing left onto which the fiduciary claim could be "bootstrapped."

[2] Both East and Devine oppose Plaintiffs/Cross-Appellants on the Motion for Clarification Decision. Plaintiffs only brought the breach of fiduciary duty claim against East below, thus only East opposes this matter on appeal. East's answering brief is cited within as "EAB" and Devine's answering brief is cited as "DAB."

The Court should reverse the Letter Opinion and reinstate the $4.304 million award as written, and should reverse the dismissal of the fiduciary duty claim against East and remand for findings on breach and disgorgement.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MOTION FOR CLARIFICATION

A. East and Devine Concede the Governing Standard But Never Show It Was Met

The parties agree that the Letter Opinion is reviewed for abuse of discretion. (EAB at 36; DAB at 28 (citing *Richards v. Copes-Vulcan, Inc.*, 213 A.3d 1196, 1199–200 (Del. 2019)).) They also agree on the governing law. A motion for clarification is "treated, procedurally, as a motion for reargument under Court of Chancery Rule 59(f)." (Letter Op. at 2 (quoting *Naughty Monkey LLC v. MarineMax Ne. LLC*, 2011 WL 684626, at *1 (Del. Ch. Feb. 17, 2011)).) Such 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), and clarification is confined to "inadvertent errors." *Ng v. Heng Sang Realty Corp.*, 2004 WL 1192091, at *1 (Del. Ch. May 20, 2004). East invokes both cases himself. (EAB at 39.)

Having accepted this standard, East never satisfies it.[3] East does not identify any fact the trial court misunderstood, any market or referral source it confused, any calculation in Thompson's report it misread, or any principle of damages law it

[3] East argued in opposition on this issue in his answering brief. Devine joined East's argument and incorporated it by reference without making any other unique arguments on this point.

misapplied. (*See* POB at 69.) Instead, East relabels the motion as fixing a "calculation error." (EAB at 40.) But that relabeling does not alter the underlying facts. The Motion for Clarification asked a different judge to reinterpret the damages paragraph in a way the presiding judge did not write it, and, based on that reading alone, to cut the award by more than $2 million. That request disregards both the facts of the case and the governing law. It does not seek to correct a clerical error; it seeks reconsideration of the damages award on the merits.

East's own authority illustrates the distinction. In *Ng*, the clarification corrected what East described as the court's mistaken references to "gross revenue," where the opinion otherwise plainly meant "net operating income." (EAB at 39; A1779). That correction exemplifies the "inadvertent errors" to which Delaware limits motions for clarification under Rule 59(f). *Ng*, 2004 WL 1192091, at *1. Though *Ng* fixed what amounted to a typo based on the court's reasoning, nothing comparable happened here. The Opinion never lists $4.304 million as an amount it intended to halve, and never inadvertently labeled one figure differently than how it was referenced in Thompson's report. Instead, the Letter Opinion halved the $4.304 million damages award expressly stated, calculated, allocated, and ultimately awarded in the Opinion.

Doft is no different. East cites this case as granting relief under Rule 59(f) "on computational points after considering competing positions." (EAB at 39 (citing

Doft, 2004 WL 1366994, at *1)). But there, the court stated a computational method for its damages figure, and it was "unclear from the record whether the [correct] figure was calculated on the basis of the correct number of outstanding shares." *Doft*, 2004 WL 1366994, at *1. That is also an appropriate application of Rule 59(f), because the court misapprehended the facts of the case when deciding what figure to use in computing damages. But nothing of the sort happened below. East and Devine's arguments rest on interpretations of the words "half" and "also" with no relationship to either the facts of the case or relevant law.

B. Read as a Whole, the Opinion Plainly Awards $4.304 Million in Damages

The Opinion must be read as a whole, not with specific sentences isolated from one another. And when it is, the $4.304 million award is not an anomaly that dissatisfied parties can merely explain away. The figure appears four times: in the introduction, in the damages discussion, in the allocation, and in the conclusion. (Op. at 1, 75, 76, 79.) The trial court allocated 75% of that figure to East ($3.228 million) and 25% to Devine ($1.076 million), totaling exactly $4.304 million. (Op. at 76.) An inadvertent error would not recur identically throughout a 79-page opinion and then survive a separate allocation calculation. (POB at 70.)

East's only answer is that "the same unadjusted total" is carried across the Opinion, and that the 75%/25% split "matched the mistaken starting figure." (EAB at 39.) But that concession proves the point further. The Opinion consistently

identified total damages as $4.304 million. A figure used in every calculation reflects the trial court's intended decision, not an inadvertent slip. Had the trial court intended to award $2.152 million, it would have had to repeat the same mistake at every step without once stating the intended amount. The more natural inference is that the court repeatedly wrote $4.304 million because that was the award it intended.

The Opinion's own explanation confirms that rationale. The trial court expressed skepticism over Thompson's full $12.4 million damages calculation, and found the alternative, segmented approach by timeframe and region "much more palatable." (Op. at 74–75.) Thompson divided New York lost profits into two segments of roughly equivalent duration: $4.304 million from Q3 2023 through Q2 2025, and $3.980 million from Q3 2025 through Q1 2027. (B0411; POB at 69.) The trial court then tied its Q2 2025 cutoff to mitigation, explaining that after that date, the Plaintiffs "should have had mitigation efforts well under way." (Op. at 75.) That reasoning tracks Thompson's report, which itself applied a 50% mitigation reduction beginning after Q2 2025 because Caring People "is able to mitigate a portion of its losses" from that point forward. (B0403–04; POB at 70.) The trial court selected the earlier of Thompson's two New York segments—one half of his New York time horizon—and awarded the figure for that segment. The Opinion's text, its numbers, and the expert report on which it relied all point to the same result: $4.304 million is the intended award.

C. Neither the Word "Also" nor Footnote 354 Converts a Deliberate Award into a Clerical Error

East's principal argument is that the word "also" signals a second, independent limitation, and that footnote 354 of the Opinion ties the "½ reduction" to "other disruption to the business," not to the time period. (EAB at 37.) He adds that the Opinion states "I have discounted recovery," which allegedly supports his interpretation. (EAB at 37 n.6 (quoting Op. at 75 n.353).) None of this demonstrates a misapprehension of fact or law.

First, the trial court discounted damages for causation by selecting segments, not by further halving a previously listed amount. The court rejected the $12.4 million model. (Op. at 74.) It excluded New Jersey entirely because Plaintiffs' showing of causation there "was weaker." (Op. at 75 n.354.) The trial court also excluded the later New York segment. Selecting one of two New York segments *is* the "half," and that choice is itself the discount for other causes. Footnote 353 of the Opinion confirms this: the trial court stated that it had "discounted recovery" for Plaintiffs' inability to trace specific diverted clients and had "discounted those appropriately to reduce external factors." (Op. at 75 n.353.) Those discounts are fully reflected in an award that eliminates New Jersey and more than half of Thompson's total model. Nothing in footnote 353 or 354 requires a second, unstated halving on top of them.

Second, footnote 354 explains *why* the trial court limited recovery to half of the New York lost profits—"the non-negligible level of other disruption to the business" and "the inevitable loss with two rainmakers"—but it does not say *how* that half was to be measured. (Op. at 75 n.354.) The court's explanation is entirely consistent with awarding one of two New York segments proffered by Plaintiffs' expert. The court found that Plaintiffs suffered "significant loss [] from the breaching conduct and not mere attrition," and valued that loss "at ½." (Op. at 75 n.354.) Awarding Plaintiffs the first half of the New York damages period, and denying the second, gives effect to precisely that valuation. Moreover, the word "also" simply identifies which half the court meant. Having decided to award half of the New York losses, the trial court designated the recoverable half as Q3 2023 through Q2 2025, when mitigation should already have been under way. (Op. at 75.) At ***most***, East offers one plausible reading of the word "also" among several. An alternative reading does not establish a misapprehension of law or fact, much less the clear, inadvertent error required by Rule 59(f).

Third, Defendants' reliance on the word "half" is misplaced. East and the Letter Opinion emphasize that the first New York damages segment cannot be "half" because the two segments differ in value—$4.304 million and $3.980 million. (EAB at 38; Letter Op. at 3.) But "half" naturally refers to one of two time-based segments, not necessarily equal dollar amounts. Plaintiffs never argued otherwise. Plaintiffs'

opening brief described the segments as "roughly equivalent" 7-to-8-quarter periods. (POB at 69.) Read in context with Thompson's damages report, the Opinion reasonably describes the $4.304 million award as "half" of Plaintiffs' damages by timeframe. Even if "half" referred to the dollar amount of Plaintiffs' New York damages, that description remains reasonable given the small difference in value between the periods. East and Devine's overly technical reading ignores the common use of "half" to mean one of two portions, not precisely 50%, in a last-ditch effort to limit liability for their brazen contractual breaches. This interpretive disagreement does not establish a misapprehension of law or fact warranting relief under Rule 59(f).

Fourth, East argues that omitting the later segment "does nothing to account for unrelated disruption or ordinary attrition within the earlier one." (EAB at 38.) East does not identify an error with this argument. Instead, he once again states his disagreement with how the trial court weighed the evidence. The court was entitled to make a "responsible estimate" of damages without mathematical certainty, and it did so. *Red Sail Easter Ltd. Partners, L.P. v. Radio City Music Hall Prods., Inc.*, 1992 WL 251380, at *7 (Del. Ch. Sept. 29, 1992). Whether a different factfinder might have discounted the earlier segment further is a merits question, properly raised—if at all—on reargument or appeal. It is not a basis for a Rule 59(f) clarification.

D. A Successor Judge Who Did Not Hear the Evidence Should Not Have Reinterpreted the Award

East responds to Plaintiffs' reassignment argument by noting that no authority "bar[s] correction upon reassignment." (EAB at 40.) That misses the point. Plaintiffs do not argue that a successor judge can never correct a genuine clerical error, such as a transposed digit or a mislabeled term. But where the operative language reasonably supports the presiding judge's stated figure, a successor judge who did not preside at trial has no basis to find clear error. (POB at 71.) Rule 59(f) requires a genuine misapprehension, not a successor's preference between competing readings. *Doft*, 2004 WL 1366994, at *1.

East's account of Magistrate Hume's ruling underscores the problem. According to East, Magistrate Hume "could reconcile" the Opinion's damages paragraph with Thompson's expert report and Plaintiffs' post-trial request "without reopening the record." (EAB at 40.) The Letter Opinion likewise framed the question as whether the stated figure "accurately represents the Court's analysis," and answered it by drawing inferences about what the presiding judge "could have and would have said" had she meant something else. (Letter Op. at 2, 4.) Piecing together a paper record to infer a retired judge's unstated intent is precisely the type of interpretive exercise that Rule 59(f) does not contemplate. Senior Magistrate Molina heard four days of testimony, weighed Thompson's report and cross-examination, and stated her award repeatedly. (Op. at 1, 74–76, 79.) Magistrate

Hume had only the paper record. (POB at 71.) When the presiding judge's written words and figures are internally consistent, a successor's competing reconstruction cannot meet the clear-error standard.

E. Affirmance Would Undermine Finality

East characterizes the relief he obtained as "limited." (EAB at 40.) A 50% reduction in a post-trial damages award, of more than $2 million, is not limited. Affirming the Letter Opinion would invite losing parties to scour detailed post-trial opinions for arguable ambiguities, recast disagreements as "inadvertent errors," and obtain substantive reductions without moving for reargument on the merits or taking an appeal. (POB at 72.) That incentive is especially troubling where, as here, the case is reassigned and the successor judge must reconstruct the presiding judge's intent from a cold record. Rule 59(f) preserves the ability to correct genuine mistakes. East and Devine's motion would have been appropriate if the Opinion, for example, listed varying total damages amounts on different pages, or if the two amounts allocated to East and Devine did not total $4.304 million. Rule 59(f) does not, however, authorize a second judge to substitute a different damages figure for the one the trial judge chose.[4]

[4] East expressly states that, by defending the Letter Opinion, he does not concede that any award against him is warranted. (EAB at 36-37). His defense of the reduced figure therefore depends on his own appeal on the merits, which fails for the reasons stated in Plaintiffs' Answering Brief on Appeal and Opening Brief on Cross-Appeal.

This Court should therefore reverse the Letter Opinion and reinstate the full $4.304 million award, allocated as $3.228 million to East and $1.076 million to Devine. (Op. at 76.)

II. THE TRIAL COURT ERRED IN REJECTING THE FIDUCIARY DUTY CLAIM

A. Section 6.6 Must Be Read as a Whole

East's argument begins and ends with Section 6.6(c) of the Holdco Agreement. He contends that subsection (c) "defines which duties exist," while subsection (a) merely "limits when a Covered Person may be liable," so that an exception to exculpation "does not create an underlying cause of action." (EAB at 42–43.) That reading cannot be squared with the text of Section 6.6 when read as a whole.

Section 6.6(a) provides that, "[t]o the fullest extent permitted by applicable law, no Covered Person shall be liable to the Company" or others bound by the Holdco 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." (A1904.) The parties thus agreed that a Covered Person would remain liable for intentional misconduct. That carve-out presupposes a duty capable of being breached by intentional misconduct. If, as East argues, Section 6.6(c) eliminated every duty a Covered Person could owe, there would be nothing for which a Covered Person could ever be "liable" by reason of intentional misconduct, and the carve-out the parties negotiated in subsection (a) would mean nothing.

East argues that Plaintiffs' reading creates surplusage: if the intentional-misconduct exception "automatically resurrected the duty of loyalty," Section 6.6(c)'s elimination of "any fiduciary duty" would have no effect whenever intentional conduct is alleged. (EAB at 43–44.) This "surplusage" argument instead supports Plaintiffs' interpretation, which gives effect to both subsections—whereas East's proposition does not. Section 6.6(c) eliminates default duties and the standards of care that would otherwise govern ordinary business judgments, and Section 6.6(a) eliminates liability for grossly negligent or good-faith conduct. Neither, however, shields a Covered Person from liability for fraud or intentional misconduct. This reading creates a coherent, layered allocation of risk. East's reading, by contrast, nullifies Section 6.6(a)'s preservation of liability for intentional misconduct in every case. It is East's interpretation—not Plaintiffs'—that guts an entire provision.

Section 6.6(c) also contains its own limitation. It eliminates duties "other than such obligations specifically provided in this Agreement." (A1904.) Section 12.19 of the Holdco Agreement—the confidentiality covenant the trial court found East breached (Op. at 57)—is one of those obligations. (A1930–31.) Section 6.6(c) thus preserves, by its terms, the very duty of confidentiality that sits at the core of the fiduciary claim. And Delaware law recognizes that the misuse of a principal's confidential information is "a specific application of an agent's basic fiduciary duty"

of loyalty. *Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 848 (Del. Ch. 2022). Consistent with that understanding, Delaware courts treat a contractual duty to refrain from "willful misconduct" or "bad faith" as corresponding to "the traditional duty of loyalty." *In re Cadira Grp. Hldgs., LLC Litig.*, 2021 WL 2912479, at *11 (Del. Ch. July 12, 2021). The Holdco Agreement does exactly that.

East's attempts to distinguish Plaintiffs' authorities are unavailing. He argues that *CMS Investment Holdings, LLC v. Castle* addressed only a liability limitation and did not hold that a carve-out "overrides a separate, express elimination of duties." (EAB at 43 (discussing 2015 WL 3894021, at *18 (Del. Ch. June 23, 2015)).) But *CMS* recognized that fiduciary claims survived where the operative contract's limitation 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[.]" 2015 WL 3894021, at *18. *Metro Storage* contains similar findings: the court there held that the operative contract's limitation of fiduciary duties, by its own language, did not reach losses caused by "fraud, gross negligence, or willful misconduct." 275 A.3d at 847. East's observation that the LLC Act separately authorizes modification of duties and limitation of liability, *see* 6 *Del. C.* § 18-1101(c), (e), supports Plaintiffs' reading. The drafters of the Holdco Agreement used both tools, and they expressly chose to preserve liability for intentional

misconduct. Reading Section 6.6(c) to override that choice would, in East's own words, "erase the parties' deliberate separation." (EAB at 43.)

There is also an independent reason Section 6.6(c) does not dispose of the claim. East's fiduciary obligations to Caring People did not arise solely from his status as a Covered Person under the Holdco Agreement. East served as CEO of the Caring People Companies until May 2022, and then as Chairman under a separate Employment Agreement that paid him $500,000 annually and required him to inform the Board of "any new, or change in any existing, outside employment or business activities." (B0093–94; A327–28; POB at 7.) He never did so. (POB at 7.) Officers "act as agents for the entity," and an officer's duty of loyalty "has additional dimensions" as a result. *Metro Storage*, 275 A.3d at 843. East's brief acknowledges that these "default duties . . . would ordinarily accompany his roles," (EAB at 42), but never explains how Section 6.6(c)—which addresses duties of persons "bound by this Agreement" in their capacities under it (A1904)—extinguished duties East assumed as an agent and employee under a separate agreement that independently obligated him to disclose his competing activities. The trial court did not address that question at all. (Op. at 59–60.)

B. The Anti-Bootstrapping Rule Does Not Apply

East defends the trial court's alternative bootstrapping ruling by invoking *Nemec v. Shrader*, 991 A.2d 1120, 1129 (Del. 2010), and by asserting that the court

found no broader factual basis for the claim "after trial." (EAB at 44–45.) Neither point supports affirmance.

First, the trial court's "finding" was not the product of a considered post-trial analysis of the fiduciary record. The court disposed of the claim in a conclusory manner, raised the bootstrapping issue on its own, and did so without any briefing from the parties on that question. (Op. at 59–60; POB at 73, 77.) Its single sentence of analysis—that the fiduciary claim was "parallel to the contract claim, lacking any additional or broader scope of facts" (Op. at 59–60)—relied on *Mckenzie v. Bdo USA, P.C.*, a motion to dismiss decision in which both claims sought "the same remedy." 2026 WL 191010, at *7 (Del. Ch. Jan. 26, 2026). Here, the trial court did not identify which facts it considered, did not compare them to the elements of the contract claims, and did not address disgorgement at all except to reject it as "premised on [Plaintiffs'] unsuccessful fiduciary claim." (Op. at 76–77.) This is a legal conclusion, reviewed *de novo*, rather than a factual finding entitled to deference.

Second, East accepts the governing standard. He acknowledges that *Bäcker v. Palisades Growth Capital II, L.P.*, "describes the rule as applying when the fiduciary claim wholly overlaps the concurrent contract claim." (EAB at 44 (citing 246 A.3d 81, 108–09 (Del. 2021)).) That is correct: the "bootstrapping case law only requires dismissal where a fiduciary duty claim wholly overlaps with a

concurrent breach of contract claim." *Bäcker*, 246 A.3d at 109. *Nemec* does not hold otherwise; it addresses disputes that "arise[] from obligations that are expressly addressed by contract." 991 A.2d at 1129. The "operative question" here remains "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 858.

Here, the fiduciary claim does not wholly overlap the contract claims. The restrictive covenants address competition, solicitation of employees and referral sources, and disclosure of confidential information. (A1859–61; A1930–31; A1943.) East's disloyalty extended well beyond those subjects. While serving on the Board, and while drawing a $500,000 salary as Chairman, East:

- Steered acquisition opportunities to COD, his own company, instead of Caring People (A1721–23; POB at 76);
- Disparaged Caring People's new CEO and sowed discontent and fear within the Company (A1721–23; POB at 76);
- Met directly with a competitor (Beacon) to facilitate its purchase and reduce their business with Caring People in favor of COD, while concealing those meetings from the Board (Op. 26; POB at 76); and
- Used Caring People employees, including Devine and Feder, to perform work for COD while they were still employed and salaried by Caring People—conduct of which Caring People's

CEO, Anthony Spero, was unaware and would not have approved (B0125–26; B0143; A490–94; POB at 15).

None of that conduct depends on the restrictive covenants. Diverting corporate opportunities, undermining management, concealing meetings with competitors from the Board, and appropriating the company's own employees for a fiduciary's separate business are classic breaches of the duty of loyalty, which "mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director, officer or controlling shareholder." *Metro Storage*, 275 A.3d at 842 (quoting *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 361 (Del. 1993)). Even where the fiduciary and contract claims "share a common nucleus of operative facts," the fiduciary claim survives where it "depend[s] on additional facts as well, [is] broader in scope, and involve[s] different considerations in terms of a potential remedy." *Schuss v. Penfield Partners, L.P.*, 2008 WL 2433842, at *10 (Del. Ch. June 13, 2008). And even as to the confidential-information conduct the covenants do address, "a fiduciary can face both a claim for breach of contract and a claim for breach of fiduciary duty" because the overlap "provide[s] the principal with alternative remedies[.]" *Metro Storage*, 275 A.3d at 858.

East's effort to distinguish *Metro Storage* on the ground that the operating agreements there did not eliminate duties and the fiduciary case involved "broader

agent duties and outside . . . conduct" only underscores the parallel. (EAB at 44.) As shown above, Section 6.6 does not eliminate liability for intentional misconduct, and East, like the officer in *Metro Storage*, acted as an agent of the Company whose disloyal conduct extended beyond the four corners of his covenants.

The remedy is distinct as well. East reads *Bäcker* as treating remedy as merely one factor that cannot alone "transform[] a contract claim into a fiduciary claim." (EAB at 45.) However, Plaintiffs do not rely on remedy alone. Plaintiffs' fiduciary duty claim rests on *both* distinct facts *and* a distinct remedy. Disgorgement is available only through the fiduciary claim: "[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." *Arxada Holdings NA Inc. v. Harvey*, 351 A.3d 519, 574 (Del. Ch. 2026) (quoting *Ban v. Manheim*, 339 A.3d 41, 77 (Del. Ch. 2025)). The trial court confirmed the point when it rejected disgorgement precisely because that remedy was "premised on [the] unsuccessful fiduciary claim." (Op. at 76–77.) Where the remedies differ, the claims are not duplicative. *See In re Mobileactive Media, LLC*, 2013 WL 297950, at *20 n.219 (Del. Ch. Jan. 25, 2013); *Swipe Acquisition Corp. v. Krauss*, 2020 WL 5015863, at *12 (Del. Ch. Aug. 25, 2020).

C. If the Contract Claims Fail, the Fiduciary Duty Claim Has Nothing to Bootstrap Onto

East contends that reversal of the contract judgment would not revive the fiduciary claim because the overlap "turns on the source and substance of the alleged obligation, not whether the plaintiff ultimately proves breach." (EAB at 45.) East tries to have it both ways by arguing this point, which cannot be permitted. On his own appeal, he argues that the restrictive covenants are unenforceable as written and should not have been narrowed or enforced at all. (*See* EAB at 6–20.) Having asked this Court to hold that those covenants impose no enforceable obligation, East cannot simultaneously invoke the same covenants as the "source" of an obligation that displaces his fiduciary duties. If the covenants fall, there is no concurrent contract claim with which the fiduciary claim could "wholly overlap." *Bäcker*, 246 A.3d at 109.

Delaware law recognizes exactly that result. The anti-bootstrapping rule does not bar a claim where "the breach of contract claim is not well-pled such that there is no breach claim on which to 'bootstrap'" the other claim. *Levy Family Inv'rs, LLC v. Oars + Alps LLC*, 2022 WL 245543, at *8 (Del. Ch. Jan. 27, 2022). The same logic applies with greater force if the contract claim fails as a matter of law on appeal. East's contrary position would allow a fiduciary to escape accountability for disloyalty altogether: the covenants would be unenforceable, and the fiduciary claim

would be barred because of those same unenforceable covenants. That outcome cannot be reconciled with the settled principle that, "[o]nce disloyalty has been established," Delaware's remedial standards "require that a fiduciary not profit personally from his conduct, and that the beneficiary not be harmed by such conduct." *Arxada*, 351 A.3d at 574 (quoting *Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 445 (Del. 1996)). Indeed, "the scope of recovery for a breach of the duty of loyalty is not to be determined narrowly." *Thorpe*, 676 A.2d at 445.

D. The Proper Disposition Is Reversal and Remand

Finally, East argues that Plaintiffs' requested remedy lacks record support because the trial court made no fiduciary breach findings, East "had no ownership in Polaris," and he "received no compensation from Polaris or Beacon." (EAB at 45.) But East concedes that, if this Court rejects both legal grounds for the ruling below, "the appropriate disposition would be a remand for findings." (EAB at 45.) Plaintiffs agree. Because the trial court rejected the claim on legal grounds, it never made findings on breach or on the measure of disgorgement. This Court should reverse and remand for those findings.

East's assertion that there is nothing to disgorge is, in any event, belied by the record, which the trial court can evaluate on remand. East orchestrated Polaris's creation and its acquisition of Beacon's home health care license, conducted the diligence, paid the legal fees, and drafted the letter of intent. (B0130–38; B0155–

59; B0564; POB at 45.) He loaned Polaris $110,000 for its operations. (B0568–70; A439; A797.) He controls Polaris's bank accounts and credit cards, maintains administrator access to its e-mail system, authorizes payments from its accounts, and participates in its personnel decisions. (B0230; B0262–64; B0348–49; B0354; B0574–75; POB at 11, 45.) East is the CEO of COD, the company he owns and through which much of the competitive conduct ran. (Op. at 25–30; POB at 54.) And the revenue generated by the scheme flowed through COD: between April 2024 and April 2025, COD paid Beacon/Polaris approximately $1.1 million for patient care services, after retaining its 20% share of approximately $1.38 million in gross patient payments, and COD continued sending Polaris payments averaging over $100,000 per month after May 2025. (A189; B0477; POB at 13–14.) Polaris generated $2.1 million in gross revenue in 2024. (A189; B0476.) Whether and to what extent East's gains from that enterprise, including through COD, are subject to disgorgement is a question for the trial court in the first instance. That narrower request eliminates East's "no record support" objection entirely.

CONCLUSION

For the foregoing reasons and those set forth in Plaintiffs' opening brief on cross-appeal, 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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