
New York Supreme Court

Appellate Division—First Department

SJI RENEWABLE ENERGY VENTURES, LLC,

Plaintiff-Respondent,

– and –

SJI RNG DEVCO, LLC and RED RIVER RNG, LLC,

Plaintiffs,

– against –

REV LNG LLC, REV LNG HOLDINGS, LLC, E. DAVID KAILBOURNE
and JACOB DIGEL,

Defendants-Appellants.

**Appellate
Case No.:
2025-05726**

BRIEF FOR DEFENDANT-APPELLANT REV LNG LLC

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Defendant-Appellant REV LNG LLC (“REV LNG” or the “Company”), by its attorneys, Blank Rome LLP, respectfully submits this Brief in Support of its appeal from the Decision and Order of the Supreme Court of the State of New York, County of New York (Borrok, J.) (the “Trial Court”), dated and entered on September 5, 2025 (R. 9–13 (the “Order”)).¹ The Order, which wrongly granted the Motion for a Preliminary Injunction (the “Motion”) by Plaintiff-Respondent SJI Renewable Energy Ventures, LLC (the “SJI Member”), drastically upended the *status quo* by terminating E. David Kailbourne (“Kailbourne”) as the Company’s CEO.

PRELIMINARY STATEMENT

This appeal seeks to correct the Trial Court’s erroneous decision permitting the *minority* member of a manager-managed LLC to unilaterally terminate the only CEO the Company has ever known, despite no likelihood of success on the merits and literally zero evidence of any immediate, irreparable (or even future) harm. The Motion was filed—not due to any legitimate gripe with the CEO’s conduct—but because the SJI Member believes that, if it removes the CEO, this can be used to make an end-run around its contractual obligation to acquire the Company, an obligation potentially valued at more than \$800 million.

¹ Numbers preceded by “R” refer to the Record on Appeal.

Since early 2024, the Company has been at the center of a contentious dispute between its two members, REV LNG Holdings, LLC (the “RH Member”), which owns a 65% majority interest in the Company (and appoints four of the seven Managers of the Board of Managers), and the SJI Member, which owns a 35% minority interest (and appoints the remaining three Managers) (collectively, the “Members”). The dispute arises out of the SJI Member’s contractual obligation, pursuant to the terms of the Company’s Fourth Amended and Restated Limited Liability Company Agreement (the “LLCA”), to buy out the RH Member’s interest once the Company achieved certain financial milestones, all of which were exceeded, by far, in 2023.

But ever since the buyout obligation was triggered, the SJI Member sought ways to avoid it, and this Motion is its latest effort. Ostensibly, the Motion is based on the SJI Member’s alleged “dissatisfaction” with Kailbourne’s performance as CEO. But the SJI Member’s criticisms of Kailbourne’s actions, or its claims that the Company is somehow “failing” under his leadership—all of which could be litigated in due course with no need for any injunction—are nothing more than a ruse. In fact, by any measure, the Company, which Kailbourne co-founded in 2012, has only thrived under his leadership.

This lawsuit is instead the SJI Member’s most recent effort to harm the Company, by either renegotiating the terms of its buyout obligation or avoiding it

altogether. Specifically, this Motion is a contrived effort by the SJI Member to avoid its buyout obligation by arguing that Kailbourne’s “continued employment” is a precondition to the buyout, that it can conveniently—and unilaterally—cause to be unsatisfied, which would allow the SJI Member to back out of its obligation to acquire the Company.

This is the real purpose of the Motion. The SJI Member was not vocal about its dissatisfaction with Kailbourne’s leadership until early 2024, and even then the Motion was not filed until July 25, 2025. At its core, the Motion posits that, even though it had never taken this position before, two of its three *minority* Board Managers could unilaterally terminate Kailbourne at any time and for any (or no) reason. But this is in stark contrast to the plain language of the LLCA which states that Officers and Key Employees (and Kailbourne is both) could only be removed by a super-majority vote (5 out of 7) of the Board (R. 149 (LLCA Schedule D(iv))) and that Kailbourne, unlike other Key Employees, could not be replaced without unanimous Board approval.

The SJI Member relies solely on an isolated reading of Section 8.1(f) of the LLCA which generally applies to “Interested Member Matters.” (R. 33–35 (Mem.); R. 88 (LLCA § 8.1(f))). Even though Section 8.1(f) says nothing about the removal or replacement of Officers or Key Employees, the SJI Member argued that any vote on a matter relating to *any* officer or employee associated with the RH Member must

be considered an Interested Member Matter under Section 8.1(f)(iv). Accordingly, every one of the RH Member’s Managers was “interested” and blocked from voting on Kailbourne’s termination as CEO since he is (and always has been) associated with the RH Member.

Adopting the SJI Member’s myopic and isolated interpretation of Section 8.1(f)(iv), and either ignoring or failing to appreciate its true aim of escaping its buyout obligation, the Trial Court granted the Motion. This Order, which improperly upends the *status quo* by removing the Company’s founder and longtime CEO, puts the Company—and its multi-year run of extraordinary success—in serious jeopardy, and therefore must be reversed for multiple reasons.

First, the Trial Court abused its discretion by finding that the SJI Member was likely to succeed on the merits. After all, if Section 8.1(f)(iv) (relating to actions generally involving “officers, employees or other personnel” of the Company who are associated with a Member) precludes any of the RH Member’s Managers from voting on Kailbourne’s termination, then surely Section 8.1(f)(i) (relating to actions involving any agreement between a Company and a Member) must block the SJI Member’s Managers from voting as well given that the SJI Member believes Kailbourne’s removal permits it to avoid a potential \$800 million buyout obligation.²

² For the avoidance of doubt, as noted in its briefing below, the Company staunchly disagrees that the SJI Member can avoid its buyout obligation under the LLCA by orchestrating the termination of Kailbourne, even if such termination is not limited solely to his role as CEO.

This interpretation of Section 8.1(f)(iv) contradicts the entirety of the parties' years-long course of performance and runs afoul of basic canons of contract construction as it: (i) leads to the absurd result that the *minority* member can unilaterally (and without cause) terminate the CEO; (ii) elevates a general LLCA provision over others that specifically address how Officers and Key Employees can be removed or replaced; and (iii) fails to read the LLCA as a whole, thereby frustrating two of its fundamental purposes—effectuating the buyout and providing for Kailbourne's continued role at the Company.

Second, the Trial Court abused its discretion by concluding that the SJI Member established irreparable harm. In fact, the SJI Member did not (and cannot) establish *any* harm to the Company, which has only been *growing exponentially* under Kailbourne's leadership, much less any immediate or irreparable harm. Indeed, the SJI Member first began complaining about Kailbourne *in early 2024*—i.e., after the RH Member informed it of the purchase price and *more than a year* before seeking to remove him.

And there is no harm to the SJI Member's bargained-for voting rights. Rather, it is *the SJI Member* that seeks to ignore the negotiated balance of power regarding corporate management (requiring super-majority approval) by asserting that the SJI Member alone has the *unilateral* right to determine Company management, with no

input from the Company's *majority* Member, all to further the SJI Member's own self-interests.

Third, the Trial Court abused its discretion by summarily finding that the balance of the equities "unquestionably" favored granting what is effectively a mandatory injunction that upsets, rather than maintains, the *status quo*, especially when doing so removes the only CEO the Company has ever known, putting its continued growth in jeopardy.

For all of these reasons and those set forth in more detail below, this Court should restore the *status quo* by reversing the Order and vacating the injunction.

QUESTIONS PRESENTED³

1) Did the Trial Court abuse its discretion when it concluded that the SJI Member demonstrated a likelihood of success when its interpretation of Section 8.1(f): (a) requires that both Members be deemed "Interested Members" regarding Kailbourne's termination such that all Managers are conflicted; and (b) improperly contradicts established canons of contract construction by: (i) leading to an absurd result; (ii) elevating a general provision of the LLCA (Section 8.1(f)) over specific provisions regarding the appointment and removal of Key Employees and Officers like Kailbourne; and (iii) failing to consider the LLCA as whole, thereby frustrating

³ Appellant REV LNG also adopts and joins all Questions Presented, grounds for reversal, arguments, and authorities set forth in the Brief of Appellants the RH Member, Kailbourne, and Jacob Digel.

its two fundamental objectives (i.e., the SJI Member's buyout obligation and Kailbourne's remaining with the Company until after the buyout is completed)?

This question should be answered in the affirmative.

2) Did the Trial Court abuse its discretion by concluding that the SJI Member demonstrated immediate and irreparable harm when: (a) it was *the SJI Member* that ignored the super-majority approval required by the LLCA to remove Officers, thereby preventing the RH Member from participating in the management of the Company; (b) the SJI Member waited for more than a year to seek to remove Kailbourne despite complaining about his conduct as CEO ever since its buyout obligation was triggered in early 2024; and (c) the LLCA's Section 15.13, which allows for specific performance, does not obviate the SJI Member's need to still establish immediate and irreparable harm?

This question should be answered in the affirmative.

3) Did the Trial Court abuse its discretion by concluding that the balance of equities favored a preliminary injunction where the SJI Member demonstrated no injury and the harm that Kailbourne's termination inflicts upon the Company is substantial?

This question should be answered in the affirmative.

4) Is the \$5,000 undertaking that the SJI Member was ordered to post by the Trial Court sufficient given that the Company's extraordinary year-over-year

revenue and EBITDA growth is placed at serious risk by the removal of Kailbourne as CEO?

This question should be answered in the negative.

STATEMENT OF FACTS

I. REV LNG.

The Company, co-founded by Kailbourne in 2012, is a renewable energy project development and mobile energy services company that specializes in providing liquified natural gas and compressed natural gas solutions for a wide variety of commercial, utility, and marine customers. (R. 738 (Digel Aff.) ¶ 12). It is also a leader in the development of renewable natural gas (“RNG”) projects, which convert large volumes of manure from dairy farms into RNG. (R. 738–739 (Digel Aff.) ¶¶ 12, 15).

Kailbourne built the enterprise from the ground up and supported the Company by providing his own capital and sweat equity. (R. 738, 747 (Digel Aff.) ¶¶ 14, 64). By 2020, as a result of Kailbourne’s strategic vision and efforts, the Company became a national leader in the energy services market. (R. 737–739, 747 (Digel Aff.) ¶¶ 7, 14, 15, 16, 64).

II. The SJI Member’s Investment and Voting Rights.

In 2020, the SJI Member, a wholly-owned subsidiary of South Jersey Industries, Inc. (“SJI”)—an energy infrastructure holding company—expressed

interest in expanding its own RNG business by partnering with the Company. (R. 740 (Digel Aff.) ¶¶ 25–28). As a result, on December 23, 2020, the parties executed the Third Amended and Restated Limited Liability Company Agreement (the “Third LLCA”), whereby the SJI Member formally acquired its 35% interest in the Company and three out of the seven seats on the Board of Managers, in exchange for \$10,500,000. (R. 154 (Am. Compl.) at ¶ 2; R. 741 (Digel Aff.) ¶ 29; *see generally* R. 954–1056 (Third LLCA)). The RH Member retained a 65% interest and the power to appoint the four remaining Managers. (R. 86 (LLCA § 8.1(b)); R. 117 (LLCA, Ex. A (Membership Information)); R. 990 (Third LLCA § 8.1(b)); R. 1022 (Third LLCA, Ex. A (Membership Information))).

The SJI Member’s initial investment was always intended to be the first part of its multi-stage acquisition of the entire Company. (R. 968–969 (Third LLCA § 1.1); R. 63–65 (LLCA § 1.1)). To that end, the Third LLCA included detailed provisions regarding when and how the SJI Member’s buyout obligations would be triggered. (R. 741 (Digel Aff.) ¶¶ 29–34; R. 887–888 (Coyle Aff.) ¶¶ 20–21; R. 967–969, 1010–1012 (Third LLCA §§ 1.1, 11.7)). These provisions were fundamental to the Members’ agreement and were therefore carried over, with further refinement and clarification, into the terms of the current (Fourth) LLCA, which was executed in 2022. (*Compare* R. 967–969 (Third LLCA § 1.1), *with* R. 63–65 (LLCA § 1.1)). Both the Third LLCA and the LLCA also contained multiple provisions emphasizing

the importance of Kailbourne to the Company's ongoing success and growth. (R. 888 (Coyle Aff.) ¶ 21).

The LLCA expressly states that the Company is to be managed by its Board of Managers, which shall make all decisions with respect to management, supervision, and control of, and the determination of all matters relating to the ownership and operation of the business. (R. 85–86 (LLCA § 8.1(a))). It also expressly provides for the protection of minority voting rights by identifying specific issues of particular importance that would require unanimous approval (R. 87, 148 (LLCA § 8.1(e)(i), Schedule C)) and super-majority approval (5 of 7 Board votes) (R. 87–88, 149 (LLCA § 8.1(e)(ii), Schedule D)). All other matters, unless specified otherwise, would be determined by a majority vote. (R. 88 (LLCA § 8.1(e)(iii))). Among the specified matters requiring a super-majority vote are Board decisions regarding “hiring and dismissal decisions with respect to any Key Employee or Officer.” (R. 149 (LLCA Schedule D(iv))). Since 2020, Kailbourne has been both the CEO and a Key Employee.

A. The Section 11.7 Buyout Process.

Pursuant to Section 11.7 of the LLCA, the SJI Member is required to purchase the RH Member's equity in the Company once two specified financial milestones are met. (R. 107 (LLCA § 11.7(c))). The purchase price for the RH Member's interests is calculated by, among other things, multiplying the Company's EBITDA

by a prescribed “FMV Multiple” (as defined by the LLCA). (R. 62–65, 105–108 (LLCA §§ 1.1, 11.7)).

The first milestone, or “Initial Financial Milestone,” is triggered once the Company achieves an annual EBITDA of \$10 million. (R. 65 (LLCA § 1.1)). At that point, pursuant to Section 11.7: (i) the SJI Member must purchase half of the RH Member’s equity interest; and (ii) one Manager appointment transfers from the RH Member to the SJI Member, which then assumes majority control. (*See* R. 65, 86, 107 (LLCA §§ 1.1, 8.1(b), 11.7(c))). The second, or “Final Financial Milestone,” is triggered once the Company achieves an annual EBITDA of \$20 million. (R. 63 (LLCA § 1.1)). At that point, the SJI Member is obligated to purchase the RH Member’s remaining equity interest, thereby taking complete control of the Company and all seven Board seats. (R. 63, 86, 107 (LLCA §§ 1.1, 8.1(b), 11.7(c))).

Pursuant to the LLCA, once these milestones are triggered, the RH Member must deliver to the SJI Member a FMV Calculation Statement, setting forth its determination of Company EBITDA and the FMV Multiple, to which the SJI Member has 30 days to object. (R. 105–107 (LLCA §§ 11.7(a)–(b))). In the event of any disagreement about how to calculate the purchase price, the parties agreed to engage in a multi-step alternative dispute resolution (“ADR”) process (the “11.7 Process”) to have any such disputes resolved without litigation. (R. 106–107 (LLCA § 11.7(b))).

B. The LLCA Recognizes Kailbourne’s Unique Value and Essential Role.

Since making its initial investment in 2020, the SJI Member has always recognized the value of Kailbourne’s continued involvement and leadership. Kailbourne is, quite literally, identified as the Company’s only key man responsible for the Company’s success. Indeed, both the Third LLCA and the operative LLCA require the Company to maintain ‘key man’ insurance only for Kailbourne. (R. 998 (Third LLCA § 8.7(d)); R. 94 (LLCA § 8.7(d))). The Third LLCA expressly named Kailbourne as the CEO and President of the Company. (R. 886 (Coyle Aff.) ¶ 18(b) n.3; R. 1020, 1051 (Third LLCA)). And his role as CEO was *unanimously* reaffirmed by the Board in April 2022, just a few months before the execution of the LLCA. (See R. 874–877 (Apr. 13. 2022 Unanimous Written Consent)).

In addition, when identifying the Company’s five Key Employees, both the Third LLCA and the LLCA single out Kailbourne as being unique and treat him differently from other Key Employees. Specifically, both versions of the agreement define Key Employees as: “(a) *E. David Kailbourne* and (b) Jacob Digel, Megan Volhejn, Brandon Otto and Sean Gleeson or a replacement of any of the employees in this clause (b) as agreed to by a vote of the Super-Majority in Interest of the Board of Managers.” (R. 66 (LLCA § 1.1) (emphasis added); R. 970 (Third LLCA § 1.1) (emphasis added)). This definition expressly provides that the Key Employees *listed in clause (b)* can be replaced by a Super-Majority vote. But this same language is

notably absent with respect to Kailbourne, the only Key Employee identified in *clause (a)*. Given his unique position and value to the Company, Kailbourne could only be replaced by amending the LLCA to change the definition of “Key Employee.” (R. 66 (LLCA § 1.1)). Doing so requires unanimous Board approval for an amendment, which must be signed, in writing, by both Members. (R. 112, 148 (LLCA § 15.3, Schedule C(v))).

Importantly, because the SJI Member wanted to ensure Kailbourne would remain with the Company until it was acquired, it insisted that the Initial Milestone Closing Conditions and Final Milestone Closing Conditions require that, among other things, “it shall be a condition to the RH Member’s and SJI Member’s obligation to proceed to the [Initial/Final] Milestone Closing that . . . E. David Kailbourne remains employed by the Company on a full-time basis.” (R. 63, 65 (LLCA § 1.1); R. 888 (Coyle Aff.) ¶ 21(c)). The Final Milestone Closing Conditions additionally require that Kailbourne “execute[] a non-compete agreement[] in form and substance satisfactory to the SJI Member.” (R. 63 (LLCA § 1.1)).

III. The SJI Member Tries to Evade Its Buyout Obligation.

Following the SJI Member’s investment, the business experienced tremendous success under Kailbourne’s leadership (including leaping from \$36 million EBITDA in 2023 to \$97 million EBITDA in 2024). (R. 739–740 (Digel Aff.) ¶¶ 20–24; R. 742–743 (Digel Aff.) ¶¶ 35–42). For the first few years,

communications between and among the Members were generally collaborative and the SJI Member's Managers often expressed excitement with the progress being made on relevant Company projects. (R. 743 (Digel Aff.) ¶ 41).

By early 2022, the Company was projected to reach an annual EBITDA of about \$36 million in calendar year 2023, and, as a result, the parties engaged in multiple discussions regarding the likelihood that the Company would meet *both* financial milestones in 2023. (R. 743–744 (Digel Aff.) ¶¶ 43–44). The parties amended the Third LLCA in 2022 to include additional language addressing how to proceed if/when both financial milestones were achieved in the same calendar year. (*Compare* R. 107 (LLCA § 11.7(c)), *with* R. 1010–1012 (Third LLCA § 11.7); *see also* R. 744 (Digel Aff.) ¶ 46; R. 888–889 (Coyle Aff.) ¶ 23).

As expected, the Company exceeded both financial milestones in 2023. (R. 744 (Digel Aff.) ¶ 47). Therefore, in early 2024, the RH Member informed the SJI Member that its buyout obligation had been triggered. (*See* R. 744 (Digel Aff.) ¶¶ 48–49). The RH Member also provided the SJI Member with the required FMV Calculation Statement, based upon the agreed-upon formula in the LLCA, arriving at a purchase price of more than \$800 million. (R. 744 (Digel Aff.) ¶ 49). Despite its initial excitement over the Company's success, the SJI Member balked at the RH Member's proposed buyout price. Since then, the SJI Member has sought to avoid the buyout. (*See* R. 744–747 (Digel Aff.) ¶¶ 50–57, 61–62).

First, the SJI Member objected that the RH Member’s buyout price was incorrect, and the parties began engaging in the agreed-upon ADR process set forth in Section 11.7. (R. 744–745 (Digel Aff.) ¶ 50). However, in mid-2024, the SJI Member declined to participate further and refused to provide a report from an independent appraiser, effectively stalling the ADR process and undermining the purposes of the LLCA. (R. 744–745 (Digel Aff.) ¶ 50).

In addition, since the buyout process was triggered in early 2024, the SJI Member and its Managers have repeatedly attacked Kailbourne, attempted to disrupt and impede Company business, and challenged nearly every action of the Board and management. (*See* R. 745–746 (Digel Aff.) ¶¶ 52–57, 61; R. (Coyle Aff.) 889–890 ¶¶ 28–33).

IV. The Current Dispute and the SJI Member’s Attempt to Unilaterally Terminate Kailbourne.

As noted above, after receiving the RH Member’s FMV Calculation Statement, the relationship between the RH Member and SJI Member deteriorated. Among other things, the SJI Member began sending letters and emails criticizing nearly every action by Kailbourne and the Company. (R. 746 (Digel Aff.) ¶ 61). On March 21, 2025, the RH Member filed a special proceeding in Ontario County to compel the SJI Member to engage in the 11.7 Process (the “Ontario Action”). (*See generally REV LNG Holdings, LLC*, Index No. 141175-2025 (Sup. Ct., Ontario Cnty.) (Dkt. 2 (Compl.))

In response, on April 21, 2025, the SJI Member and two affiliates sued Kailbourne, Jacob Digel (Company COO), the RH Member, and the Company in New York County.⁴ (*See* R. 868 (Ontario Sup. Ct. Dec.) (Doyle, J.); R. 891 (Coyle Aff.) ¶ 35). At the time, Plaintiffs asserted 17 counts alleging, among other things, irregularities in the Company’s 2023 EBITDA calculation, improper use of Company funds, improper distributions, mismanagement, and fraud. (*See generally* Compl.). All Defendants moved to dismiss. (*See* Dkts. 19, 24, 25, 26).

Critically, however, despite having commenced litigation, Plaintiffs’ initial complaint did not seek Kailbourne’s removal. Indeed, SJI Member made no mention of removing Kailbourne until over a month after the complaint was filed, on May 28, 2025, when it requested a series of three special Board meetings to discuss, among other things, Kailbourne’s removal. (R. 529 (Ex. 3 to Schempp Aff.) (“May Letter”)) at 1). Following that request, but before the issue was properly placed on any agenda pursuant to the LLCA’s requirements for special meetings, the Company held a previously scheduled special meeting on June 17, 2025, at which time the SJI Member’s appointed Managers invoked Section 8.1(f), asserting that it provided

⁴ At the same time, Plaintiffs moved to dismiss the Ontario County proceeding, arguing that all issues arising out of the LLCA should be litigated in New York County. On August 21, 2025, the Ontario Court granted the SJI Member’s motion. On September 22, 2025, the RH Member filed a motion in New York County to compel the SJI Member to comply with its obligations under Section 11.7, and to stay further proceedings in this case pending the outcome of that process. *See* NYSCEF Docs. No. 103 (Not. of Mot), 108 (“Memo. in Support of Mot. to Compel”).

them with the unilateral right to vote to terminate Kailbourne as CEO, which they then purported to do. (R. 893 (Coyle Aff.) ¶ 42).

V. The LLCA’s Voting Requirements and the Parties’ Prior Interpretation of Section 8.1(f).

As noted above, the plain language of the LLCA expressly states that a super-majority vote of the Board is required for “hiring and dismissal decisions with respect to any Key Employee or Officer.” (R. 149 (LLCA Schedule D(iv))). Section 8.1(f), on the other hand, is a general provision that identifies four broad categories of matters in which a Member could be considered “interested” and therefore, together with “the Manager appointed by [it], if any,” restricted from voting. One such category relates to actions taken regarding any agreement between a Company Entity and a Member. (R. 88–89 (LLCA § 8.1(f)(i)). Another refers generally to matters “in respect of” (but not specifically the hiring or removal of) “officers, employees or other personnel of any Company Entity.” (R. 88–89 (LLCA § 8.1(f)(iv))). In pertinent part, Interested Member Matters are defined as:

Interested Member Matters. With respect to any meeting or action or decision of the Board of Managers regarding any matter or action (an “Interested Member Matter”) in respect of (i) entering into, amending, modifying, terminating, exercising any of the rights or remedies of a Company Entity under or taking any other action in respect of any agreement between a Company Entity and a Member or an Affiliate of a Member (“Interested Party”), . . . or (iv) officers, employees or other personnel of any Company Entity employed by or otherwise associated with a Member or any of its Affiliates, (A) the

Member which is or which is an Affiliate of such Interested Party, or the applicable Member (in the case of any matter referred to in clause (iii) or (iv) above, shall be deemed to be an “Interested Member”), and (B) neither the Interested Member nor the Manager appointed by such Interested Member (the “Interested Member Manager”), if any, shall be entitled to vote or otherwise participate in any action or decision by the Board of Managers in respect of such Interested Member Matter; (R. 88–89 (LLCA § 8.1(f)).

Based on Section 8.1(f), the SJI Member contends that, because its vote involved the termination of Kailbourne (who is, and always has been, associated with the RH Member), all of the RH Member Managers were deemed “interested” and therefore prohibited from voting. (*See* R. 33 (Mem.)).⁵

Importantly, the LLCA does not address what to do if both Members are deemed to be “interested” under Section 8.1(f). But the parties have. As recently as December 2023, the SJI Member, speaking through one of its appointed Managers, Donna Schempp, took the position (as it must) that *both* Members are interested in issues related to Section 11.7. (R. 887 (Coyle Aff.) ¶ 19; R. 951 (Ex. 5 to Coyle Aff.)). Conceding that the LLCA is silent on what to do when *both* Members are interested pursuant to Section 8.1(f), the SJI Member argued that *all* Managers must

⁵ The SJI Member ignores that subsection 8.1(f)(iv) refers to “officers, employees or other personnel” but does not address the LLCA’s definition of Officers (R. 91 (LLCA § 8.2(a))) and the LLCA’s repeated references to “Officers” when referring to executive management, like the Company’s CEO, as opposed to officers of Company affiliates.

unanimously approve the contemplated action. (R. 887 (Coyle Aff.) ¶ 19; R. 951 (Ex. 5 to Coyle Aff.)).

Moreover, since the SJI Member's initial investment, the Company has entered into numerous agreements with its Members and their affiliates and engaged in numerous transactions involving Managers that trigger the application of Section 8.1(f). In fact, there is a long course of performance regarding the parties' interpretation of Section 8.1(f). And never once has either Member attempted to invoke Section 8.1(f) to exclude all of the other Member's Managers from voting on any matter requiring Board approval.

The following examples, all of which implicate Section 8.1(f), are instructive:

- When voting to reaffirm Kailbourne as the Company's CEO and appoint Digel as the COO, *all Managers voted* (including Kailbourne and Digel who are RH Managers and equity-holders in the RH Member) without objection from the SJI Member.⁶ (R. 874–877 (Apr. 13, 2022 Unanimous Written Consent); R. 886 (Coyle Aff.) ¶ 18(b)).
- When voting to approve a compensation bonus to Digel (an Officer of the Company and equity-holder in the RH Member), *all Managers voted* without objection from the SJI Member. (R. 886 (Coyle Aff.) ¶ 18(a); R. 896–904 (Ex. 1 to Coyle Aff.)).
- When voting to approve (i) the Company's sale of ~\$5 million in assets to Renewable Operations Company, LLC ("ROC"), a company owned and operated by Kailbourne, and (ii) an

⁶ If the SJI Member agreed that all of the RH Managers were permitted to vote to *reaffirm* Kailbourne as CEO in 2022, there is no basis to argue that those same Managers are now disqualified from voting on whether he should be *removed* as CEO.

administrative services agreement between the Company and ROC, Kailbourne recused himself, but *all other RH Managers voted* without objection from the SJI Member. (R. 886 (Coyle Aff.) ¶ 18(c); R. 905–927 (Ex. 2 to Coyle Aff.)).

- When the Company contracted to purchase a 50% interest in an airplane with an RH Member’s subsidiary, *all RH Managers voted* without objection from the SJI Member. (R. 886 (Coyle Aff.) ¶ 18(d); R. 931–950 (Ex. 4 to Coyle Aff.)).

These examples make clear that, when considering transactions or issues requiring Board action involving the Company and agreements with its Members, Managers, or Officers, no Member has *ever* taken the position that Section 8.1(f) prohibits *all* of one Member’s Managers from voting on any particular issue.

VI. Plaintiffs’ Amended Complaint and the SJI Member’s Motion.

On June 18, 2025, the SJI Member sent the Company a letter requesting confirmation of the Company’s efforts to remove Kailbourne as CEO and install Mr. Digel as interim CEO. (R. 555–556 (Ex. 10 to Schempp Aff.)). On June 23, 2025, the Company responded that the vote was invalid under the LLCA and “will not be recognized.” (R. 557 (Ex. 11 to Schempp Aff.)). The Company contested the SJI Member’s position that the three SJI Member Managers “can unilaterally dictate . . . the CEO of the Company, and thus by extension . . . ‘all elements of [the] [C]ompany’” as “not only illogical” but as contravening Schedule D, which requires written, super-majority approval for all “hiring and dismissal decisions” regarding

“any Key Employee or Officer” like Mr. Kailbourne, who is both. (R. 557–558 (Ex. 11 to Schempp Aff.) (quoting R. 529 (May Letter))).

On July 2, 2025, the SJI Member reiterated its view that the vote was effective under the general provisions of Section 8.1(f) and additionally argued that when all of one Member’s Managers are blocked from voting on a matter identified on Schedule D, the language in Section 8.1(e)(ii) stating that ““all less one of the Managers entitled to vote”” means that only two of the SJI Member’s three Managers were needed to remove Kailbourne. (R. 559–560 (Ex. 12 to Schempp Aff.) (quoting R. 87–88 (LLCA § 8.1(e)(ii))). For the next week and a half, the SJI Member and the Company exchanged correspondence debating the legitimacy of the vote and the SJI Member’s purported right to terminate Kailbourne as CEO. (*See* R. 566–575 (Ex.’s 13–16 to Schempp Aff.)).

It was not until six weeks later, on July 25, 2025, that Plaintiffs filed an Amended Complaint that includes a claim for breach of contract and specific performance based on the SJI Member’s efforts to unilaterally remove Kailbourne and that seeks a declaration that he is not the Company’s CEO. (R. 209–210, 213 (Ex. 2 to Schempp Aff. (Am. Compl.)) ¶¶ 265–277). In connection with this newly added claim, the SJI Member filed its Motion seeking a temporary restraining order and preliminary injunction to affirmatively remove Kailbourne as CEO. (*See* R. 14–15 (Order to Show Cause)).

On July 28, 2025, the parties appeared before the Trial Court (Borrok, J.). (*See generally* R. 580–605 (July 28, 2025 Tr.)). Over Defendants’ objections, the Trial Court issued the TRO, established a briefing schedule, and set a hearing date for the portions of the SJI Member’s Motion seeking a preliminary injunction. (R. 591–600, 602–605 (July 28, 2025 Tr.)).

VII. The Trial Court’s Decision and Order.

The Trial Court held a hearing on September 4, 2025. (*See generally* R. 1057–1094 (Sept. 4, 2025 Tr.)). Following the hearing, the SJI Member submitted a proposed order which did not limit Kailbourne’s termination to his role as CEO. (R. 880–881 (Proposed Order)). The SJI Member’s proposed order sought to enjoin Kailbourne not only from purporting to act as CEO but also from “exercis[ing] signing authority on behalf of REV LNG, caus[ing] any payments to be made from REV LNG’s bank accounts, and/or retain[ing] access to REV LNG’s credit cards.” (R. 880 (Proposed Order)). The Trial Court rejected this proposed language. Instead, on September 5, 2025, the Trial Court issued its Order, which only enjoins Kailbourne from “purporting to act as CEO” of the Company during the pendency of the litigation. (R. 12 (Order)). The Trial Court reached this decision after concluding that the SJI Member had shown “(i) a probability of success on the

merits, (ii) danger of irreparable harm in the absence of an injunction, and (iii) a balance of the equities in [the SJI Member’s] favor.” (R. 9 (Order)).

For all of the reasons set forth below, the Trial Court’s Order was an abuse of discretion and must be reversed.

STANDARD OF REVIEW ON APPEAL

This Court reviews a trial court’s decision granting a preliminary injunction for an abuse of discretion. *See Sussman Educ., Inc. v. Gorenstein*, 175 A.D.3d 1188, 1189 (1st Dep’t 2019). A trial court abuses its discretion in issuing a preliminary injunction where the moving party fails to satisfy any of the three required elements. *Doe v. Axelrod*, 73 N.Y.2d 748, 751 (1988).

To obtain a preliminary injunction, the moving party must ““demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant’s favor.”” *Uber Techs., Inc. v. Am. Arb. Ass’n, Inc.*, 204 A.D.3d 506, 508 (1st Dep’t 2022) (quoting *Gilliland v. Acquafredda Enters., LLC*, 92 A.D.3d 19, 24–25 (1st Dep’t 2011)).⁷ “Preliminary injunctive relief is a drastic remedy and will only be granted if the movant establishes a clear right to

⁷ The Company is a Pennsylvania LLC (R. 55 (LLCA Preamble)). Although the LLCA is governed by the substantive laws of Pennsylvania (R. 112 (LLCA § 15.6)), the law of the forum (in this case, New York law) applies to procedural matters, including the grant of provisional remedies. *Kilberg v. Ne. Airlines, Inc.*, 9 N.Y.2d 34, 41 (1961); *see Tanges v. Heidelberg N. Am., Inc.*, 93 N.Y.2d 48, 53 (1999) (“[M]atters of procedure are governed by the law of the forum”).

it under the law and the undisputed facts found in the moving papers.” *Koultukis v. Phillips*, 285 A.D.2d 433, 435 (1st Dep’t 2001); *cf. SportsChannel Am. Assocs. v. Nat’l Hockey League*, 186 A.D.2d 417, 418 (1st Dep’t 1992) (“Injunctive relief is inappropriate when sought upon contractual language that leaves the rights of the parties open to doubt and uncertainty.”).

The purpose of a preliminary injunction is to preserve the status quo between the parties until the merits of the underlying action can be resolved. *New York Auto. Ins. Plan v. New York Sch. Ins. Reciprocal*, 241 A.D.2d 313, 314 (1st Dep’t 1997). A mandatory injunction—*i.e.*, one which compels the defendant to perform an affirmative act—“is granted only in unusual situations, where the granting of the relief is essential to maintain the *status quo* pending trial of the action.” *Second on Second Cafe, Inc. v. Hing Sing Trading, Inc.*, 66 A.D.3d 255, 264 (1st Dep’t 2009) (Friedman, J.) (internal quotation marks omitted). Where “the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, *pendente lite*,” not only do the usual, strict requirements apply, but an injunction “should not be granted, absent extraordinary circumstances.” *St. Paul Fire & Marine Ins. Co. v. York Claims Serv., Inc.*, 308 A.D.2d 347, 349 (1st Dep’t 2003) (internal quotation marks omitted).

ARGUMENT

I. The Trial Court Abused Its Discretion in Determining that the SJI Member Was Likely to Succeed on the Merits.

A. Interpreting Section 8.1(f)(iv) to Preclude the RH Member’s Managers from Voting on Kailbourne’s Termination Requires Interpreting Section 8.1(f)(i) to Preclude the SJI Member’s Managers from Voting on Kailbourne’s Termination.

The Trial Court interpreted Section 8.1(f)(iv), which restricts voting on actions “in respect” of “officers, employees or other personnel of any Company Entity employed by or otherwise associated with a Member of any of its Affiliates,” as disqualifying all RH Member Managers from voting on Kailbourne’s removal as CEO. (R. 10 (Order)). As a result, the Trial Court concluded that the SJI Member was likely to succeed on the merits of Claim 18 of the Amended Complaint—i.e., the SJI Member will likely succeed in proving that it is unilaterally able to remove Kailbourne as CEO.⁸ But the Trial Court ignored the fact that its interpretation of Section 8.1(f), if applied uniformly, would disqualify the *SJI Member’s* Managers

⁸ The Motion is based solely on Claim 18 of the Amended Complaint asserted against the RH Member, the Company, and Kailbourne, alleging breach of contract and seeking specific performance and declaratory relief with respect to the SJI Member’s June 17, 2025 vote to remove Kailbourne as CEO unilaterally pursuant to Section 8.1(f). (R. 209–210 (Am. Compl.)).

from voting on the same issue pursuant to Section 8.1(f)(i). (*See* R. 88 (LLCA § 8.1(f)(i))).

Section 8.1(f)(i) defines “Interested Member Matters” to include any Board action “in respect of any agreement between a Company Entity and a Member.” (R. 88 (LLCA § 8.1(f)(i))). The LLCA itself falls squarely within this definition because it is unquestionably an agreement between the Company and the Members. (*See* R. 116 (LLCA Execution)). A vote to terminate Kailbourne, whose continued employment with the Company is a pre-condition for the SJI Member’s obligation to proceed to closing under Section 11.7 of the LLCA (*see* R. 63, 65 (LLCA § 1.1)), clearly relates to an agreement (the LLCA) between the Company and a Member. Put another way, to the extent the SJI Member believes Kailbourne’s termination provides it with a means to avoid its buyout obligation, the SJI Member is undeniably an “Interested Member” regarding any vote to terminate Kailbourne.

Admittedly, the LLCA does not expressly provide for how the parties are to decide Interested Member Matters where both Members are interested and therefore excluded from voting. But where, as here, an agreement is silent on a particular situation, the court looks to how the parties previously dealt with such a situation for guidance. *See, e.g., IAP Worldwide Servs., Inc. v. UTi United States, Inc.*, No. Civ. A 04–4218, 2006 WL 305443, at *8 (E.D. Pa. Feb. 8, 2006) (“Where an agreement is silent on a particular term, a course of dealing may fill the void.”); *Tax Matrix*

Techs., LLC v. Wegmans Food Markets, Inc., 154 F. Supp. 3d 157, 179 (E.D. Pa. 2016) (“The actual performance of the parties under a contract tends to ‘make definite that which was previously unclear.’”) (quoting *Greene v. Oliver Realty*, 526 A.2d 1192, 1194 (Pa. Super. Ct. 1987)); *Langer v. Monarch Life Ins. Co.*, 879 F.2d 75, 81 (3d Cir. 1989) (finding agreement ambiguous and considering course of performance evidence because “the agreement makes no statement at all as to who will bear the loss if the coverage is not obtained.”).

As recently as December 2023, in connection with a vote that implicated Section 11.7, the parties agreed (at the SJI Member’s suggestion) that, because both Members were necessarily interested under Section 8.1(f), the transaction could only be approved by a unanimous vote of the Board. Specifically, in a December 22, 2023 email to Kailbourne, SJI Member manager, Donna Schempp, asserted: “Since . . . *both members are technically Interested Members*” with respect to issues related to Section 11.7 and “the [LLCA] doesn’t specify how to handle this,” it was reasonable to require that any vote on the issue be “unanimous.” (R. 951 (Coyle Aff., Ex. 5)). The RH Member agreed, and the transaction was, in fact, authorized by unanimous approval. (R. 887 (Coyle Aff.) ¶ 19).

Here, too, since both Members are interested in Kailbourne’s termination pursuant to Section 8.1(f), his termination should only be approved by a *unanimous* vote of the Board. This approach not only aligns with the parties’ prior conduct, but

with the fact that unanimity is required to amend the LLCA—which is the only way to replace Kailbourne as a Key Employee. (R. 66 (LLCA § 1.1), 148 (LLCA, Schedule C)). This is because the Key Employee provision of the LLCA does not expressly provide for any method of replacing Kailbourne. (*See* R. 66 (LLCA § 1.1)). This is in stark contrast to the four other individuals identified as “Key Employees,” all of whom the LLCA expressly states *can* be replaced as Key Employees by super-majority approval consistent with Schedule D of the LLCA. (R. 66 (LLCA § 1.1), 149 (LLCA, Schedule D)). As a result, the only way to terminate Kailbourne as a Key Employee would be to amend the definition of “Key Employee” to exclude Kailbourne, which requires unanimous Board approval and must be in writing and signed by both Members. (R. 66, 87 (LLCA §§ 1.1, 8.1(e)(i))).

Applying the Trial Court’s rationale that all of the RH Member’s Managers are prohibited from voting on this Interested Member Matter pursuant to Section 8.1(f)(iv) requires that the same rationale be used such that the SJI Member’s Managers are similarly prohibited from voting on this Interested Member Matter pursuant to Section 8.1(f)(i). And given that the LLCA is silent on how to handle such instances of double-disqualification, the parties’ course of performance in such situations controls. *IAP Worldwide Servs., Inc.*, 2006 WL 305443, at *8; *Tax Matrix Techs., LLC*, 154 F. Supp. 3d at 179.

Accordingly, the Trial Court’s Order, which blocks only the RH Member’s Managers from voting on this Interested Member Matter, must be reversed.

B. The Trial Court’s Narrow Focus Solely on Section 8.1(f) Contradicts Basic Canons of Contract Construction.

Even if Kailbourne’s removal as an Officer (or as a Key Employee) were not a matter in which both Members are interested (and it is), the LLCA cannot be interpreted to permit the SJI Member, as the minority member, to remove Kailbourne unilaterally. By holding otherwise, the Trial Court ignored three basic principles of contract construction.

1. The Trial Court’s Interpretation Absurdly Permits Just Two *Minority*-Appointed Managers to Unilaterally Remove the CEO.

It is axiomatic that “[b]efore a court will interpret a provision . . . in a contract in such a way as to lead to an absurdity or make the . . . contract ineffective to accomplish its purpose, it will endeavor to find an interpretation which will effectuate the reasonable result intended.” *Binswanger of Pa., Inc. v. TSG Real Est. LLC*, 217 A.3d 256, 262 (Pa. 2019). If “the plain meaning of a contract term would lead to an interpretation that is absurd and unreasonable, . . . courts should construe the contract otherwise in order to reach ‘the only sensible and reasonable interpretation’ of the contract.” *Allure Hair Designs & Mini Spa, Inc. v. George*, 248 A.3d 488 (Pa. Super. Ct. 2021) (internal quotation marks omitted).

Although the SJI Member acknowledges that, under Schedule D of the LLCA, Kailbourne’s removal as CEO requires a super-majority vote (R. 24 (Mem.)), the Trial Court nevertheless accepted the SJI Member’s argument that Sections 8.1(e)(ii) and 8.1(f)(iv) together trump the plain language of Schedule D. (*See* R. 10–11; (Order); R. 24, 33 (Mem.)). But that interpretation leads to an absurd and unreasonable result whereby only *two* of the three Managers appointed by the SJI Member could unilaterally fire the CEO for any reason at any time. This cannot possibly be what the parties intended—particularly where, as discussed *infra*, they specifically agreed that decisions involving Key Employees and Officers are subject to super-majority approval. Indeed, permitting *two* Managers (appointed by the *minority* member) of a seven-member Board of a manager-managed LLC to remove a CEO for any reason—or, indeed, no reason—is an objectively unreasonable way to run a business.

The absurdity of this result is underscored by the fact that in 2020, both Members agreed to, and then much later *all Managers unanimously voted* to re-affirm, Kailbourne’s appointment as CEO. (*See* R. 886 ¶ 18(b) & n. 3 (Coyle Aff.)). Specifically, when the SJI Member first acquired its interest in the Company, both Members executed the Third LLCA, requiring that Kailbourne would serve as CEO. (R. 1020–1021, 1051 (Third LLCA)). Then, in April 2022, *all seven Managers* unanimously voted to re-affirm Kailbourne as the Company’s CEO. (R. 874–877

(Apr. 13, 2022 Unanimous Written Consent); R. 886 (Coyle Aff.) ¶ 18(b)). Imagine the absurdity if, pursuant to Section 8.1(f)(iv), the day after all seven Managers unanimously affirmed the election of the Company’s CEO, two of the *minority* Member’s Managers could simply decide to unilaterally change the CEO for any (or no) reason at all. And the SJI Member knows this is absurd. After all, surely if the SJI Member really believed that it “bargained for” the right to unilaterally terminate Kailbourne as CEO, it would have done so when it began sending “scathing letters” in early 2024 complaining about his conduct and leadership once the buyout obligation was triggered, and regularly ever since. (R. 890 ¶ 31 (Coyle Aff.); *see also* R. 745–746 ¶¶ 51–57 (Digel Aff.)).

The parties’ longstanding course of performance also reflects the absurdity of Trial Court’s result. Over the years, there have been many matters between the Company and its Members or their affiliates that required Board approval, each one arguably implicating Section 8.1(f). And *never once* has any Member claimed that, when voting on these matters, all of the other Member’s Managers were blocked from voting.

For example, *all Managers voted* not only to re-affirm Kailbourne as CEO but to appoint Digel (who is also an RH Manager and equity-holder in the RH Member) as the COO. (R. 874–877 (Unanimous Written Consent); R. 886, ¶ 18(b) (Coyle Aff.)). Similarly, *all Managers voted* to approve Digel’s compensation bonus (R.

886, ¶ 18(a) (Coyle Aff.), 896–904 (Ex. 1)) and *all Managers voted* when the Company purchased a 50% interest in an airplane with an RH Member’s subsidiary (R. 886, ¶ 18(d) (Coyle Aff.), 931–950 (Ex. 4)). Further, *every manager* except Kailbourne (who recused himself) voted to approve: (i) the Company’s sale of ~\$5 million in assets to ROC, owned and operated by Kailbourne, and (ii) an administrative services agreement between the Company and ROC. (R. 886, ¶ 18(c) (Coyle Aff.), 905–927 (Ex. 2)).

The Trial Court dismissed all of this history out of hand, stating that it was all “irrelevant” given the non-waiver provision at Section 15.13 of the LLCA. (R. 12 (Order)). But Pennsylvania law is well-settled that course-of-conduct evidence *is* relevant, not only to the question of waiver, but on the issue of the parties’ intent. *See Atlantic Richfield Co. v. Razumic*, 390 A.2d 736, 741 & n.6 (Pa. 1978) (the parties’ course of performance is “perhaps the strongest indication of what [a] writing means”); *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1189, 1193 (Pa. 2001) (“Wherever reasonable, the manifestations of intention of the parties to a promise or agreement are interpreted as consistent with each other and with any relevant course of performance.”) (internal quotation marks omitted).

Here, the parties’ course of performance is relevant to the extent it provides guidance regarding the parties’ intent with respect to Section 8.1(f) and shows that the parties did not intend for Section 8.1(f) to be used to block all of one Member’s

Managers from voting on any Interested Member Matter. The parties' course of conduct is directly relevant and properly considered given the ambiguity that exists as a result of the LLCA being silent on instances of double-disqualification. *See IAP Worldwide Servs., Inc.*, 2006 WL 305443, at *8; *Tax Matrix Techs., LLC*, 154 F. Supp. 3d at 179. It is also directly relevant when deciding what the parties would consider to be an absurd outcome.⁹

Here, the parties' prior course of conduct makes clear that they never intended (or ever even tried) to use Section 8.1(f) to completely block all of the other Member's Managers from voting on any Interested Member Matter. The Trial Court erred by wholly disregarding the parties' longstanding course of conduct evidencing its intent, particularly when doing so would lead to an absurd result.

2. The Trial Court's Interpretation Improperly Permits a General Provision to Supplant More Specific Ones.

It is well-settled that under Pennsylvania law, "when interpreting a contract, the specific controls over the general[.]" *Nitardy v. Chabot*, 195 A.3d 941, 952 (Pa.

⁹ Section 15.3 relates to modifications and waivers and states that any delay in exercising any right, power or privilege shall not waive any other rights. (R. 112 (LLCA § 15.3)). But no one has asserted that the SJI Member has waived anything, so Section 15.3 has no application here. And a non-waiver provision certainly does not require the Court to ignore the parties' course of conduct or evidence of the parties' intent.

Super. Ct. 2018); *see also Baltic Dev. Co. v. Jiffy Enters., Inc.*, 257 A.2d 541, 543 (Pa. 1969) (explaining that “the specific controls the general”).

As noted above, the LLCA very specifically addresses the removal of Officers and Key Employees. Schedule D(iv) makes plain that “dismissal decisions with respect to *any Key Employee or Officer*” requires super-majority approval. (R. 149 (emphasis added)). The LLCA also specifically addresses how Key Employees can be replaced, stating that Kailbourne, unlike the other Key Employees identified, cannot be replaced, except by amending the LLCA. (*See* R. 66 (LLCA § 1.1)).

Despite these clear directives, the Trial Court zeroed in on a single, more general provision—Section 8.1(f)(iv)—which applies, presumably, to *any* matter relating to (and not specifically the removal of) “officers, employees or other personnel of any Company Entity.” (R. 88 (LLCA § 8.1(f)(iv))). This is indisputably a much more general provision than Schedule D(iv), which deals directly with “dismissal decisions with respect to any . . . Officer.” (R. 149 (LLCA, Schedule D(iv))).¹⁰

¹⁰ The SJI Member and the Trial Court completely disregard that Section 8.1(f)(iv) refers generally to “officers, employees and other personnel” but not to “Officers,” a defined term used throughout the LLCA. (*See* R. 67 (LLCA § 1.1)). The language of Section 8.1(f)(iv) was drafted entirely by the SJI Member (R. 885 (Coyle Aff.) ¶ 13), and the differences between “officers” and “Officers” is presumed to be intentional. *See Rogers v. Allstate Prop. & Cas. Ins. Co.*, No. 161 EDA 2015, 2015 WL 9320139, at *6 (Pa. Super. Ct. Dec. 22, 2015) (“the mention of a particular item [in a contract] implies the purposeful exclusion of other items of the same general character.”). And, under Pennsylvania law, the Court must resolve any ambiguity against the drafter of the language. *Rusiski v. Pribonic*, 515 A.2d 507, 510 (Pa. 1986); *Sun Co., Inc. (R&M) v. Pa. Turnpike Comm’n*,

To avoid application of Schedule D, the SJI Member argued before the Trial Court that Section 8.1(e)(ii) prescribes a method for determining a super-majority “[i]n the event that one or more Managers” are “excluded from voting” under Section 8.1(f). (R. 25 (Mem.)). But Section 8.1(e)(ii) does not address situations where, as here, a Member seeks to exclude *all Managers of the other Member* from voting under Section 8.1(f). And while the last sentence of Section 8.1(e)(ii) provides that, when one or more Managers are excluded under Section 8.1(f), such decisions will “require the vote of all less one of the Managers entitled to vote with respect to such matter” (R. 88 (LLCA § 8.1(e)(ii))), this only makes sense when some, but not all, Managers are excluded from voting. A contrary reading would undermine Section 8.1(e)(ii)’s entire purpose of requiring at least super-majority approval for the matters identified in that subsection.

3. The Trial Court’s Interpretation Also Fails to Consider the LLCA as a Whole.

A “contract should be read as a whole . . . to give effect to its true purpose.” *Toth v. Toth*, 324 A.3d 469, 486 (Pa. Super. Ct. 2024) (quoting *Commonwealth ex rel. Kane v. UPMC*, 129 A.3d 441, 463–464 (Pa. 2015)). As noted above, the LLCA includes two interrelated objectives: (i) laying out the parameters of the SJI Member’s gradually-increased control of the Board and eventual acquisition of the

708 A.2d 875, 878–879 (Pa. Commw. Ct. 1998); *Commonw. of Pa., State Pub. Sch. Bldg. Auth. v. Noble C. Quandt Co.*, 585 A.2d 1136, 1144 (Pa. Commw. Ct. 1991).

Company; and (ii) ensuring Kailbourne’s continued involvement and leadership throughout. Fixated solely on Section 8.1(f), the Trial Court completely ignores both fundamental objectives.

Multiple provisions in the LLCA confirm and emphasize that the second objective—*i.e.*, Kailbourne’s ongoing involvement—was particularly important to the SJI Member. For example, the LLCA provides that, unlike other Key Employees, Kailbourne cannot be replaced as a Key Employee in the same way as other Key Employees. (*See* R. 66 (LLCA § 1.1)). It also requires the Company to “at all times keep ‘key man’ insurance” for Kailbourne—and only Kailbourne. (R. 94 (LLCA § 8.7(d)). And, of course, in connection with its obligation to acquire the Company, the SJI Member required that Kailbourne remain employed as an Initial Milestone Closing Condition and Final Milestone Closing Condition. (R. 63, 65, 105–108 (LLCA §§ 1.1, 11.7)). The emphasis on Kailbourne’s role and continued involvement makes sense as the SJI Member has no experience running a transportation logistics company and lacks the relationships and expertise that only Kailbourne brings. (*See* R. 740 ¶ 27, 747 (Digel Aff.) ¶¶ 64, 67).

The Trial Court likewise overlooked that the buyout was fundamental to the LLCA. Indeed, references to the SJI Member’s buyout obligations are peppered throughout Section 1.1 of the LLCA, and the buyout is at the heart of Article 11. The

buyout was also detailed extensively in the Company’s briefing below.¹¹ Yet, despite its obvious centrality to the LLCA, and the fact that the SJI Member’s injunction effort is being used to thwart its buyout obligations, the Trial Court failed to even mention the existence of the buyout obligation anywhere in its Decision and Order. (*See generally* R. 9–12 (Order)).

Indeed, the Trial Court expressed surprise about the buyout during the hearing, at one point even asking counsel for the RH Member: “But [the RH Member] want[s] to buy and sell; that’s what [the RH Member] want[s] ultimately[?]” (R. 1087 (Sept. 4, 2025 Tr.)). In response, counsel for the RH Member confirmed that the goal of the LLCA is the SJI Member’s acquisition of 100% of the Company and reiterated the Company’s and the RH Member’s position that the SJI Member was “trying to avoid” its buyout obligation “by having Mr. Kailbourne not be an employee because a closing condition of that sale is that he be an employee.” (R. 1087 (Sept. 4, 2025 Tr.)).

The LLCA must be read as a whole. *Toth*, 324 A.3d at 486. When doing so, it is clear that the SJI Member’s obligation to acquire the Company, and Kailbourne’s continuing role in the Company, are both fundamental to the LLCA. The Trial Court’s conclusion that SJI is likely to succeed on the merits based exclusively on a

¹¹ The RH Member, Kailbourne, and Digel likewise extensively discussed the buyout in their briefing (R. 680–681, 683–684 (Mem.)), which the Company incorporated by reference (*see* R. 707 (Mem.)).

flawed construction of an isolated provision of Section 8.1(f) frustrates these fundamental purposes of the LLCA.

For all of these reasons, the Trial Court abused its discretion in finding that the SJI Member established by clear and convincing evidence that it is likely to succeed on the merits. This Court should therefore reverse.

II. The Trial Court Abused Its Discretion in Finding that SJI Established Immediate, Irreparable Harm.

“[A] clear showing that [the movant] would suffer irreparable injury” that “an award of monetary damages would not adequately compensate” is “a necessary element on a motion for a preliminary injunction.” *Zodkevitch v. Feibush*, 49 A.D.3d 424, 425 (1st Dep’t 2008). Indeed, courts have regarded it as “the single most important prerequisite for the issuance of a preliminary injunction.” *Trump v. Trump*, 69 Misc. 3d 285, 300 (Sup. Ct., New York Cnty. 2020) (internal quotation marks omitted); *see also Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (irreparable harm is “the single most important prerequisite” for preliminary injunctive relief) (internal quotation marks omitted). To qualify as “irreparable,” the “harm must be shown by the moving party to be imminent, not remote or speculative.” *Golden v. Steam Heat, Inc.*, 216 A.D.2d 440, 442 (2d Dep’t 1995).

The SJI Member argued below that it would suffer irreparable harm because:

(i) its “bargained-for minority rights” and ability to participate in Company

management were frustrated by Appellants' purported failure to recognize the legitimacy of the "vote" terminating Kailbourne; and (ii) Section 15.13 of the LLCA states that for any breach of Section 8.1 there is no adequate remedy at law. (*See* R. 35–37 (Mem.)). The Trial Court erroneously adopted both contentions. (R. 11 (Order)).

First, the SJI Member never bargained for a unilateral right to remove Kailbourne in the way it now claims. (And, tellingly, as noted *supra*, the SJI Member never even claimed to have done so before May 2025.) Again, Section 8.1(f) says nothing about the removal of Officers at all, which is expressly addressed elsewhere in the LLCA. (R. 149 (LLCA, Schedule D)). The balance of power between the Members is instead addressed in Sections 8.1(e)(i)–(ii), which protect minority rights by respectively requiring super-majority and unanimous Board approval for select matters of particular importance. (*See* R. 87–88 (LLCA §§ 8.1(e)(i)–(ii))). While Section 8.1(f) excludes Interested Member Manager votes on certain matters, once again, it is silent as to how the Managers are to proceed when all of them are interested. (*See* R. 88–89 (LLCA § 8.1(f))). As a result, either the parties' prior course of conduct, requiring unanimous consent of all Managers, or the express terms of the LLCA, requiring super-majority approval, must govern here.

The SJI Member's claim that its bargained-for rights have somehow been infringed completely misses the mark. Neither the Company nor the RH Member

ever attempted to prevent the SJI Member from participating in a duly held vote on Kailbourne's termination. In fact, in response to the SJI Member's request, the Company attempted to schedule a designated special meeting to specifically address the issue. (R. 539 (June 6, 2025 Ltr.)). Nor was the SJI Member ever *precluded* from voting on the matter. To the contrary, the SJI Member is the *only* Member whose Managers cast any vote on Kailbourne's termination. In fact, it is the SJI Member which is seeking to exclude others from voting, not the other way around.

The Trial Court improperly relied on *Wisdom Import Sales Co., L.L.C. v. Labatt Brewing Co., Ltd.* (R. 11 (Order) (citing 339 F.3d 101, 114 (2d Cir. 2003))). The SJI Member also relied heavily on *Wisdom* as an example of a minority member being improperly denied its bargained-for minority rights and upsetting the agreed-upon balance of power relating to participation in corporate management. (R. 21–22, 35–37 (Mem.)).

But *Wisdom* actually undercuts, rather than supports, the SJI Member's position. Unlike here, the minority member in *Wisdom* had its bargained-for rights infringed because a vote was taken that required super-majority approval (thus at least one vote from the minority member—essentially giving it a veto right). *See Wisdom*, 339 F.3d at 107. But the company there refused to require super-majority approval for that matter, instead insisting that only a simple majority was required, thereby taking away the minority member's veto right. *See id.* at 107, 112–113.

The exact opposite is true here, where the LLCAs *requires* a super-majority vote to remove Officers. (*See* R. 149 (Schedule D(iv))). But unlike the minority member in *Wisdom*, whose rights were infringed because a super-majority vote was *not* held, the SJI Member here is the one *seeking to prevent a super-majority vote from being held*, insisting that only it can vote despite the parties bargained-for balance of power requiring super-majority approval to remove Officers. As a result, only the RH Member is actually harmed, as its bargained-for rights are those being ignored by the SJI Member’s conduct in this case.¹²

The Trial Court also wrongly concluded that, contrary to controlling precedent, Section 15.13 of the LLCAs relieves the SJI Member of its heavy affirmative burden to establish irreparable harm. (*See* R. 36–37 (Mem.)).

Section 15.13 provides, in pertinent part,

Each party hereto acknowledges that the provisions of Section 8.1 . . . shall be specifically enforceable, it being agreed by the parties that any remedy at law, including monetary damages, for breach of any such provision shall not be an adequate remedy and that any defense in any action for specific performance of any such provision that a remedy at law would be adequate is waived. (R. 114 (LLCA § 15.13)).

¹² Moreover, *Wisdom* holds only that “the denial of bargained-for minority rights, standing alone, may constitute irreparable harm . . . where such rights are *central to preserving an agreed-upon balance of power* (e.g., *preserving the management role of the minority directors*) in corporate management.” 339 F. 3d at 114 (emphasis added). Here, the balance of power is set forth in Section 8.1(e)(i)-(iii) setting forth which issues require approval by unanimity, super-majority or simple majority. And Section 8.1(e)(ii) explicitly incorporates Schedule D, requiring super-majority approval for the removal of Officers. (R. 87–88 (LLCA § 8.1(e)(ii)), 149 (LLCA, Schedule D)).

But as this Court explained in *LGC USA Holdings, Inc. v. Taly Diamonds, LLC*, there is a legally-significant difference between agreements requiring specific performance as a remedy for breaches (like Section 15.13 does) and those which “provide that any loss resulting from a breach is irreplaceable or that the damage is irreparable.” 121 A.D.3d 529, 530 (1st Dep’t 2014). Merely alleging—as the SJI Member has—that there is a “provision in [an] operating agreement entitling a party to specific performance in the event of the other’s breach does not render the alleged harm irreparable.” *Id.* Section 15.13 therefore does not eliminate the need to establish irreparable harm; rather, the burden remains with the SJI Member to show irreparable harm by clear and convincing evidence. The SJI Member has made no such showing, particularly in light of the Company’s undeniable success under Kailbourne’s leadership which, of course, inures to its benefit as a 35% owner. (*See* R. 738–740 ¶¶ 15–24, 743–744 ¶¶ 43, 47, 49 (Digel Aff.)).

Finally, even had the SJI Member suffered some harm here—which it did not—it still has not shown that Kailbourne’s continuing as CEO would cause any imminent or emergent damage. The SJI Member has been criticizing Kailbourne’s leadership since receiving the FMV Calculation Statement in early 2024. Yet, it waited a year and a half, until April 2025, to commence this action, and did not even begin taking steps to actually remove Kailbourne as CEO until over a month later,

on May 28, 2025. And the SJI Member has not even attempted to argue that Kailbourne's remaining as CEO would somehow harm its interests going forward.

In light of its own inexplicably long delay and its failure to identify any future harm, the SJI Member cannot possibly establish by clear and convincing evidence that it has suffered or will suffer some imminent harm absent an injunction. *See Mercury Serv. Sys., Inc. v. Schmidt*, 50 A.D.2d 533 (1st Dep't 1975) (affirming denial of a preliminary injunction where the plaintiff had not "moved with dispatch consonant with a threat of truly irreparable harm"). The Court therefore abused its discretion when holding otherwise, and its decision should be reversed.

III. The Trial Court Abused Its Discretion in Concluding that the Balance of Equities Favored Issuance of the Injunction, Which Causes Far Greater Harm to the Company than the SJI Member.

To secure a preliminary injunction, the party seeking it must show by clear and convincing evidence, not only the prospect of an imminent, irreparable injury, but that the balance of equities favors an injunction such that "any injury [it] is likely to sustain will be more burdensome to it than the harm likely to be caused defendants through the imposition of an injunction." *Credit Index, L.L.C. v. Riskwise Int'l L.L.C.*, 282 A.D.2d 246, 247 (1st Dep't 2001); *see also J.S.I.K. Int'l LLC v. Schuster*, 225 A.D.3d 472, 473 (1st Dep't 2024) (holding that relief was properly denied where, among other things, the moving party "failed to show by clear and convincing evidence" that there was "a balance of equities in their favor") (internal quotation

marks, citations, and alterations omitted). Thus, even if a plaintiff shows irreparable harm, “where it is demonstrated . . . that the defendant[] would likely suffer more damage than the plaintiff[], a preliminary injunction should not be issued.” *Price Paper & Twine Co. v. Miller*, 182 A.D.2d 748, 750 (2d Dep’t 1992). The Trial Court failed to fully consider this element, instead concluding *with no analysis* that “under the circumstances, the balance of equities favors granting the injunction.” (R. 11 (Order)). This, too, was an abuse of discretion.

In fact, the SJI Member has suffered no injury. As set forth above, its bargained-for minority voting rights have not been infringed in any way (indeed, only the RH Member’s rights have been infringed). And by any objective measure, the Company has thrived under Kailbourne’s leadership. (R. 747 (Digel Aff. ¶ 64)). Removing the CEO whose leadership has propelled the Company to national prominence and success, particularly without any identified harm to the SJI Member, could seriously damage the Company’s continued growth and prosperity. (*See* R. 747 (Digel Aff.) ¶ 67).

The balance of the equities therefore plainly favors denial of the preliminary injunction and the Trial Court abused its discretion by concluding otherwise.

* * *

The SJI Member fell well short of its burden to establish by clear and convincing evidence each of the three criteria required to obtain a preliminary

injunction, let alone the “extraordinary circumstances” necessary to disrupt the status quo of Kailbourne’s role as CEO of the Company. *St. Paul Fire & Marine Ins. Co., Inc.*, 308 A.D.2d at 349. This Court should therefore reverse the Trial Court’s Order.

IV. At the Very Least, Requiring the SJI Member To Post Only a \$5,000 Undertaking To Support the Preliminary Injunction Was an Abuse of Discretion.

Pursuant to CPLR 6312(b), where a plaintiff seeks a preliminary injunction, it must “give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction.” CPLR 6312(b). The undertaking must be “rationally related” to the potential damages recoverable if the preliminary injunction is later determined to have been unwarranted. *Spivak v. Bertrand*, 147 A.D.3d 650, 652 (1st Dep’t 2017).

The \$5,000 undertaking that the Trial Court required the SJI Member to post below was wholly inadequate in light of the potential harm the Company may face without Kailbourne. (*See* R. 12 (Order)). Kailbourne built the Company from the ground up and turned it into a nationally recognized leader in the mobile energy services market and the renewable energy sector. (R. 738–739 (Digel Aff.) ¶¶ 15–16). Under Kailbourne’s leadership, the Company’s financial performance skyrocketed, with Company EBITDA reaching over \$36 million in 2023 and over

\$97 million in 2024. (R. 739–740 (Digel Aff.) ¶¶ 22, 24). Kailbourne’s removal may stunt or halt this success and a \$5,000 peppercorn is hardly sufficient to cover the potentially massive harm to the Company that could result from Kailbourne’s removal as the only leader it has ever had.

CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Court reverse the order, deny the Motion, and vacate the preliminary injunction removing Kailbourne.

Dated: September 29, 2025
New York, New York

Respectfully submitted,

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STATEMENT PURSUANT TO CPLR § 5531

New York Supreme Court
Appellate Division—First Department

SJI RENEWABLE ENERGY VENTURES, LLC,

Plaintiff-Respondent,

– and –

SJI RNG DEVCO, LLC and RED RIVER RNG, LLC,

Plaintiffs,

– against –

REV LNG LLC, REV LNG HOLDINGS, LLC,
E. DAVID KAILBOURNE and JACOB DIGEL,

Defendants-Appellants.

1. The index number of the case in the court below is 652453/25.
2. The full names of the original parties in this action are stated in the above caption. There have been no changes in the parties.
3. This action began in the Commercial Division of the Supreme Court, New York County.
4. Plaintiffs SJI Renewable Energy Ventures, LLC, SJI RNG DevCo, LLC and Red River RNG, LLC, began this action on April 21, 2025. Plaintiffs served the summons and complaint on April 22, 2025. Defendants REV LNG

LLC, REV LNG Holdings, LLC, E. David Kailbourne, and Jacob Digel served a motion to dismiss on July 18, 2025. Plaintiffs SJI Renewable Energy Ventures, LLC, SJI RNG DevCo, LLC and Red River RNG, LLC filed an amended complaint on July 25, 2025. Defendants' response to Plaintiffs' amended complaint is due on September 30, 2025.

5. This is an action for damages for alleged breaches of contract and fiduciary duty, for declaratory judgment, and also seeks injunctive relief to compel the removal of Defendant E. David Kailbourne as Chief Executive Officer of REV LNG LLC.
6. This appeal is from the Decision and Order of the Honorable Andrew Borrok, dated September 5, 2025, which granted Plaintiff SJI Renewable Energy Ventures, LLC's motion for a preliminary injunction enjoining Defendant E. David Kailbourne, during the pendency of litigation, from purporting to act as CEO of REV LNG LLC.
7. This appeal is on the full reproduced joint record.