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**New York Supreme Court**  
**Appellate Division—First Department**

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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**

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**BRIEF FOR DEFENDANTS-APPELLANTS  
REV LNG HOLDINGS, LLC, E. DAVID KAILBOURNE  
AND JACOB DIGEL**

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New York County Clerk's Index No. 652453/25

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## PRELIMINARY STATEMENT

This appeal arises from a preliminary injunction order of the New York County Supreme Court, Commercial Division Part 53 (Borrok, J.) erroneously terminating the founding CEO of a manager-run limited liability company. The granting of that order was both erroneous and an abuse of discretion. Fundamentally misreading the governing limited liability company agreement, it wrongly bestowed on the company's *minority* equity holder the unilateral authority to terminate the company's co-founder, the only CEO the company has ever had, while barring the *majority* member's own appointed managers from voting on the issue. The minority member undertook this purported termination in an effort to frustrate a "continued employment" closing condition for the minority member's agreed-upon purchase of the majority member's interests—a deal the minority member now wants to escape.

Because the injunction order misconstrues the LLC agreement, misapplies the preliminary injunction standards, upends rather than preserves the status quo, treats the minority member's purchase requirement as an option instead of an obligation, and effectively awards final merits relief at the case's inception on an issue that the minority member will attempt to use to obstruct its purchase obligation, the trial court's order should be reversed, and the injunction should be vacated.

## ***Background***

Appellant REV Holdings LNG, LLC (“REV Holdings” or “RH”), which formerly owned 100% of the LLC at issue, REV LNG, LLC (“REV LNG” or the “Company”), now owns 65%. This is because Appellee SJI Renewable Energy Ventures, LLC (“SJI”) made a deal in 2020 to acquire a 35% ownership interest from REV Holdings. As part of that deal, SJI committed to purchase RH’s remaining 65% interest in the Company if REV LNG met certain financial performance benchmarks and satisfied other closing conditions, including the continued employment of its founding CEO, Defendant E. David Kailbourne. SJI itself sought this “continued employment” condition to keep Kailbourne at the Company. The purchase obligation is structured as exactly that—an *obligation*, not an option.

The pertinent terms of the parties’ agreement—including the closing conditions and purchase price calculation for the 65% interest—are set forth in the Fourth Amended and Restated Limited Liability Company Agreement of REV LNG LLC dated July 21, 2022 (the “LLCA”). The LLCA provides that REV LNG is to be managed by seven “Managers,” with four appointed by RH as the majority equity holder and three appointed by SJI. In addition, the LLCA identifies Kailbourne by name as a “Key Employee” subject to specific protections, including a supermajority voting requirement for his dismissal.

Over the ensuing years, it became apparent that REV LNG would likely achieve the LLCA’s financial performance benchmarks and thus trigger SJI’s obligation to buy out RH’s interest. In January 2024, upon learning the price as calculated by the RH Member under the parties’ agreed-upon pricing formula, SJI decided that it no longer liked the deal it made and began looking for ways to avoid its purchase obligation. To that end, on June 17, 2025, the three SJI Managers purported to terminate Kailbourne as CEO, claiming that they had the unilateral authority to do so because Kailbourne was associated with RH and, as such, the RH-appointed Managers were supposedly disqualified from voting. This effort was part of a transparent attempt to prevent occurrence of the LLCA’s “continued employment” closing condition so SJI could try to avoid its purchase obligation.<sup>1</sup> When all Defendants disagreed with SJI’s position, SJI moved for a preliminary injunction. The trial court entered an injunction terminating Kailbourne as CEO.

***The Trial Court’s Injunction Order Misreads the LLCA***

The trial court erred as a matter of law in finding that the LLCA gives the minority SJI-appointed Managers the unilateral authority to terminate REV LNG’s

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<sup>1</sup> Appellants dispute that SJI’s purported termination of Kailbourne as CEO is effective to negate the satisfaction of the closing conditions under the facts of this case and believe the conditions have already been met. Nonetheless, the purpose of SJI’s actions is self-evident. While Appellants reserve all rights to argue that the conditions have been satisfied even with the injunction in place, the trial court’s “unilateral authority” interpretation of the LLCA remains inconsistent with the obligatory nature of SJI’s closing obligations and logically would allow SJI to block the “continued employment” closing condition under different factual circumstances.

founding CEO. SJI asserted that Section 8.1(f) of the LLCA—which restricts voting on certain “Interested Member Matters”—effectively gives SJI’s appointees the unfettered right to terminate REV LNG’s founding CEO because Kailbourne is also associated with RH, thus purportedly making RH an “Interested Member” with respect to any decision to hire or fire Kailbourne as CEO.

In accepting SJI’s view that the LLCA provides the minority member such sweeping and unchecked authority, the trial court focused exclusively on a single clause in Section 8.1(f) that 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.” (*See* R88 § 8.1(f).) The trial court found that this clause barred RH’s four Managers from voting and handed unfettered authority to SJI—despite only paying for and owning a 35% interest in REV LNG—to dismiss REV LNG’s first and only CEO.

The trial court’s mistaken “gotcha” interpretation of Section 8.1(f)’s “officers” clause perfectly illustrates why contract terms must be read together, not as isolated snippets taken out of context. When the provisions are properly considered in context, it is readily apparent the parties structured SJI’s purchase obligation to be exactly that: an *obligation* that SJI must complete if the milestones are achieved, and not merely an option that SJI could decline simply by firing the CEO. The LLCA contains a separate and more detailed “hiring and dismissal” provision (Schedule D)

that requires *supermajority* approval for terminating Kailbourne, who was not only an “Officer” of the Company, but whom the LLCA defines by name as a “Key Employee.” The intent and effect of this specific provision on termination—which, unlike the more generic Section 8.1(f) language relied upon by the trial court, expressly applies to “*hiring and dismissal decisions with respect to any Key Employee or Officer*”—is to require decisions about Kailbourne’s continued employment to be made mutually with RH’s support, not unilaterally by the minority Member. It makes no sense that the parties would single out Kailbourne by name for specific “Super-Majority” protection if SJI can, as the *minority* member, simply turn around and unilaterally remove him as CEO, defeating the whole point of having a supermajority voting requirement.

Further, if SJI were correct that Section 8.1(f) excludes all Managers appointed by “Interested Members” from voting on Kailbourne, it would disqualify *SJI’s own appointed Managers* from, for example, voting to terminate his employment, because Kailbourne’s continued employment at REV LNG is a specified closing condition in the LLCA for SJI’s obligation to purchase the rest of REV LNG. Section 8.1(f)(i) restricts Members from voting on any “action in respect of any agreement between a Company Entity and a Member or an Affiliate of a Member,” which would include the closing conditions for SJI’s purchase obligation.

Other provisions of the LLCA confirm that Section 8.1(f) does not give SJI the unilateral right to remove Kailbourne. Section 8.1(j), for example, requires “at least one RH Manager and one SJI Manager” to be present for a quorum prior to SJI’s purchase of RH’s interest in the Company, thus confirming that the LLCA does not (and was not intended to) allow SJI to oust the CEO unilaterally. The LLCA also enshrines a 4-3 Board majority in favor of RH and vests the Board with full “management” authority over REV LNG which is inconsistent with allowing SJI to unilaterally remove the highest-ranking member of the management team from his position or employment. The parties also used the singular word “Manager” instead of the plural form “Managers” in describing the scope of any potential disqualification under Section 8.1(f), further negating any interpretation that would disqualify all four RH Managers from voting.

When read together, the LLCA’s provisions refute SJI’s newfound interpretation of Section 8.1(f) as a trump card that gives it the unchecked right to remove Kailbourne as CEO. Such an interpretation would make the “continued employment” condition the only closing condition in the LLCA that SJI could attempt to simply block on its own, making it incongruent with the other conditions. Again, the parties structured SJI’s purchase commitment to be an obligation, not merely an option. The trial court erred in accepting SJI’s erroneous interpretation.

It is thus unsurprising that SJI has never previously claimed to have the unilateral right to decide whether Kailbourne should remain as CEO, including in connection with SJI's initial investment in the Company and during the vote by the Managers to reappoint him (which SJI supported, and on which RH's Managers voted without any objection from SJI). The RH-appointed Managers voted on multiple other personnel matters involving defined "Officers" and "Key Employees" during this time without objection. The course-of-dealing evidence confirms the parties' unsurprising view that the "officers" snippet from Section 8.1(f) was never intended to bestow (and does not vest) SJI with unilateral authority to terminate the Company's founding CEO from his position. Extraordinary claims usually require extraordinary evidence, and contracting parties do not typically hide "elephants in mouseholes" by slipping extraordinary powers into generalized provisions to nullify specific rights conferred in other provisions. The trial court erred in construing Section 8.1(f)'s generalized language about decisions "in respect" of "officers, employees and other personnel" as giving the minority Member the extraordinary authority to terminate the Company's founding CEO from his position with no input from RH.

***The Record Does Not Support a Preliminary Injunction***

The trial court also misapplied the criteria for injunctive relief and incorrectly determined that the applicable standards had been met. As set forth above, there is

no “likelihood of success” on the merits, as the trial court misinterpreted the LLCA and ignored the parties’ course-of-dealing evidence. Courts have no discretion to make fundamental errors of law, including erroneously interpreting a contract. Nor did SJI produce any evidence of irreparable harm, which is unsurprising because the LLCA provides that the Managers retain authority to govern REV LNG going forward, with RH retaining its 4-3 majority.

The equities also tip decisively in Appellants’ favor. The implied duty of good faith and fair dealing prohibits SJI from interpreting the LLCA in a way that would obstruct the “continued employment” closing condition by cynically (and improperly) allowing it as the minority member to attempt to fire the CEO. The injunction also goes far beyond merely preserving the status quo, but is instead a disfavored mandatory injunction that purports to create a new status quo by ousting the only CEO in REV LNG’s history, thus effectively giving SJI ultimate merits relief at the inception of the case and handing SJI an unwarranted leverage point in its efforts to block or retrade its buyout obligation. The injunction also harms REV LNG and RH by interfering with Kailbourne’s ability to lead the Company that he founded and has led from its inception, especially after exceeding the very financial benchmarks SJI agreed to as the trigger for its repurchase rights.

The Appellate Division should thus reverse the trial court’s order, vacate the preliminary injunction, and award all other relief to which RH is justly entitled.

## QUESTIONS PRESENTED

1. Whether the trial court misinterpreted the LLCA as allowing SJI to terminate REV LNG's founding CEO from his position unilaterally, thereby committing an error of law requiring that the injunction order be reversed and the injunction vacated.

2. Whether the trial court abused its discretion and committed reversible error in granting a mandatory injunction removing REV LNG's founding CEO when the record fails to show a likelihood of success on the merits, irreparable harm, or that the balance of equities favors granting an injunction.

Appellants also adopt and join all Questions Presented set forth in the Brief of Appellant REV LNG.

## NATURE OF THE CASE

### **I. David Kailbourne Founded REV LNG in 2012 and Served as CEO Until the Trial Court Improperly Removed Him.**

Kailbourne founded the company that became REV LNG in 2012 and has served as the Company's CEO from its inception (R608 ¶ 5.) until September 5, 2025, when the trial court improperly removed him through the preliminary injunction order at issue. (R12) While Kailbourne initially put his own funds into the Company and began with a single tanker truck, over time he successfully grew REV LNG into a nationally recognized energy services company specializing in the supply, transportation, distribution, and handling of liquefied natural gas ("LNG"),

compressed natural gas (“CNG”), and renewable natural gas (“RNG”). (R607 ¶¶ 6-7.) Under his leadership, the Company expanded into the upstream LNG market and began to develop liquefaction facilities, including a joint venture with a Berkshire Hathaway portfolio company. (R607 ¶ 8.) The Company has received numerous awards and grants, including developing a project that eventually won the American Biogas Council’s 2019 Project of the Year. (R739 ¶ 16). Today, the Company specializes in providing LNG and compressed natural gas (“CNG”) and RNG solutions to customers throughout North America. (R608 ¶ 9.)

## **II. SJI Acquired a 35% Interest in REV LNG and Agreed To Purchase the Remaining 65% Upon the Occurrence of Specified Financial Milestones and the Satisfaction of Certain Closing Conditions.**

In 2020, SJI—which was then a subsidiary of a publicly traded company—agreed to purchase a 35% interest in REV LNG for \$10.5 million, with RH continuing to hold the remaining 65%. (R154 ¶ 2; R608 ¶ 10.). SJI expressly agreed in connection with its investment that it would purchase RH’s remaining interest upon the occurrence of certain specified financial performance milestones, at a price determined by a contractually-specified formula. (R608 ¶ 11.)

To memorialize this agreement, the parties entered into the Third Amended and Restated Limited Liability Company Agreement dated December 23, 2020 (the “Third LLCA”), which set forth the specific milestones and pricing with respect to SJI’s purchase obligation. (R608 ¶¶ 10-11; R887-88 ¶¶ 20–21; R967, R969, R1010

§§ 1.1, 11.7.) The “Initial” milestone would be triggered when the Company achieved \$10 million more of “EBITDA” in a calendar year, which would obligate SJI to purchase half of RH’s 65% interest upon satisfaction of the specified closing conditions. (R969 § 1.1.) The second and “Final” milestone would be triggered when the Company reached \$20 million of “EBITDA” during a calendar year, which would obligate SJI to purchase the rest of RH’s 65% interest upon completion of the applicable closing conditions. (R967 § 1.1.) The Third LLCA also provided that Kailbourne would be the Company’s CEO, and that “[t]he management of the business and affairs of the Company shall be vested in” a seven-member “Board of Managers,” with RH appointing four Managers and SJI appointing three prior to the occurrence of the milestones. (R990 § 8.1(a) and (b)).

On July 21, 2022, the parties entered the Fourth Amended and Restated Limited Liability Company Agreement, which is the “LLCA” at issue in this suit. (R744 ¶¶ 45-46; R888-89 ¶¶ 22-25). The LLCA clarified that the two milestones could be achieved during the same calendar year, which the parties viewed as a significant likelihood based on the strong foundation laid by the Company under Kailbourne’s leadership during 2020-22. (R888-89 ¶¶ 22-24; compare R107 § 11.7(c), with R1010-11 § 11.7.) The LLCA contains the same operative provisions as the Third LLCA regarding Kailbourne’s role, the seven-Manager governance, the

milestone amounts, and the calculation of the buyout price for RH's interest. (Compare R63-66, R85-86 to R967-70, R990.)

**III. The Parties Agreed that Kailbourne Was an “Officer” and “Key Employee” Subject To Multiple Specific Contractual Protections, and that His Continued Employment Was a Closing Condition for SJI’s Purchase Obligation.**

One of the specified closing conditions for both milestones was Kailbourne’s continued employment. (See R63, R65 § 1.1 (listing “David Kailbourne remains employed by the Company on a full-time basis” as a closing condition for both milestones.)) The “continued employment” condition reflects SJI’s recognition (together with RH) that Kailbourne was a critical component of the Company’s success, which is why SJI insisted that he remain employed as a condition for closing. The LLCA specifically names Kailbourne as a “Key Employee” and, unlike with the other persons named as Key Employees, provides that his “Key Employee” status is *permanent* unless the LLCA itself is amended.<sup>2</sup> The LLCA likewise singles out Kailbourne as the only person for whom REV LNG is obligated to maintain “key man” insurance. (See R94 § 8.7(d).) The closing conditions for each milestone specify that Kailbourne “remains employed,” and the Final Milestone Closing Conditions also require Kailbourne and fellow executive Jacob Digel to “have each

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<sup>2</sup> “Key Employees” is defined to mean “(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.” (R66 § 1.1.) The definition thus provides for removal of the persons in subpart (b), but simply defines Kailbourne himself as a Key Employee, with no provision for removal of this designation.

executed non-compete agreements” satisfactory to SJI. (*See* R63, R65 § 1.1.) The other closing conditions are financial performance benchmarks for the Company.

Notably, outside of SJI’s erroneous contention that it could unilaterally terminate Kailbourne and thus control the occurrence of that condition, none of the closing conditions are matters exclusively within SJI’s control. The conditions either reflect financial performance benchmarks for the Company or the willingness of the Company’s officers to remain employed and to sign non-compete agreements. (*See id.*) This is consistent with the purchase requirement’s structure as an *obligation* that SJI must complete upon satisfaction of the conditions, not merely an option that SJI could decline by unilaterally terminating the founding CEO. SJI nonetheless argues that Section 8.1(f) should be interpreted as giving it the unilateral right to nullify its purchase obligation simply by terminating Kailbourne.

The LLCA also contains specific requirements for matters regarding Kailbourne’s compensation and status as CEO. Schedule D to the LLCA lists a series of matters requiring approval by a “Super-Majority in Interest of the Board of Managers,” which includes “hiring and dismissal decisions with respect to any Key Employee or Officer” and “determining compensation, bonuses and/or incentive plans for any Key Employee or Officer of the Company.” (R149, sections (iii) and (iv).) Section 1.1 of the LLCA defines “Super-Majority in Interest” as “at least

seventy percent (70%) of the Managers, or such other number of such Managers as the Managers shall determine by unanimous vote.” (R71 § 1.1.)

Notably, at the time SJI made its investment and at the time the LLCA and Third LLCA were entered, the parties knew Kailbourne had co-founded and was serving as REV LNG’s CEO. SJI was fully aware Kailbourne was associated with RH—*i.e.*, that he had been employed by the Company’s previous 100% owner before SJI acquired its minority interest. Despite knowing Kailbourne was associated with RH, SJI agreed that any “hiring and dismissal decisions” regarding Kailbourne were subject to Super-Majority approval.

In addition, Section 8.1(j) of the LLCA provides that “[a] quorum shall be present at a meeting of the Board of Managers if the Managers representing a Majority in Interest are present at the meeting in person or by proxy (*including at least one RH Manager and one SJI Manager, in each case prior to the second Financial Milestone Transfer*); provided that at any meeting at which an Interested Member Matter is the sole subject of such meeting, the applicable Interested Member Manager shall be excluded from the calculation of the Majority in Interest for purposes of determining a quorum” (R89-90 § 8.1(j) (emphasis added).) While Section 8.1(j) states that an “Interested Member Manager” is “excluded from the calculation of the Majority in Interest for purposes of determining a quorum,” it does not say that the requirement for “at least one RH Manager and one SJI manager” is

similarly vitiated. (*See id.*) And, while Section 8.1(f) does state that the “attendance” of an “Interested Member Manager appointed by an Interested Member shall not be required” for a Board of Managers meeting “to be duly called or convened” with respect to an Interested Member Matter, Section 8.1(f) does not purport to modify the separate quorum requirement in Section in Section 8.1(j). (R88 § 8.1(f)) The quorum requirement applies with full force and requires an RH Manager to be present.

#### **IV. Kailbourne Leads REV LNG To Achievement of LLCA Milestones**

During 2020-2024, under Kailbourne’s leadership, REV LNG continued to prosper and quickly progressed toward achieving the milestones. (R609 ¶¶ 14-16; R739-40, R742-43 ¶¶ 20–24, 35–42). As stated above, SJI and RH agreed to amend the Third LLCA in July 2022 precisely because they anticipated that the Company was likely to achieve both milestones in the same upcoming calendar year. (R743-44 ¶¶ 43– 46; R888-89 ¶¶ 22–25). Sure enough, in 2023, the Company achieved more than \$36 million of Company EBITDA, easily surpassing both milestones and triggering SJI’s repurchase obligation. (*See* R609 ¶¶ 14-15.)

Below is a table showing the significant revenue, net income, and members’ capital growth from 2019-2023 during Kailbourne’s tenure:

Year	Total Revenue	Net Income (Loss)	Members' Capital at Year End
2019	\$8,800,620	\$1,895,996	\$4,477,883
2020	\$18,499,406	\$7,721,978	\$2,689,280
2021	\$24,018,317	\$3,100,517	\$14,688,676
2022	\$53,339,350	(\$2,621,715)	\$12,599,236*
2023	\$81,817,470	\$22,237,406	\$37,875,785

(R610 ¶ 23.)

**V. RH's Appointed Managers Voted on Multiple Officer-Related Matters Without Objection from SJI's Managers**

As REV LNG surged toward achieving the milestones, SJI's Managers agreed in 2022 to reaffirm Kailbourne's appointment as CEO, with RH's Managers fully participating in the vote—just as SJI and RH agreed to appoint Mr. Kailbourne in 2020. (See R885-86 ¶ 18(b) & n.3). SJI made no assertion at either time that it had the unilateral right to make appointment or dismissal decisions regarding Kailbourne's tenure or position (*see id.*), nor did they voice any significant objections or concerns regarding Kailbourne's leadership. SJI also worked collaboratively with RH during 2023 in preparation to exercise its purchase obligation. The parties conducted multiple integration meetings throughout 2023 to prepare REV LNG's employees for SJI's impending takeover. (R609 ¶ 17.) SJI also asked Kailbourne to take leadership positions in other entities for purpose of transacting business with REV LNG, including to serve as Chairman and CEO of an RNG operations business called Renewable Operations Company, LLC ("ROC") and to serve on the Board of Red River RNG, LLC, a joint venture between RH, an

SJI affiliate, and Riverview Dairy LLP, one of the country's largest dairy farm operations. (R606, R611-12 ¶¶ 1, 28-30.)

In addition to the unanimous appointment and reappointment of Kailbourne in 2020 and 2022, SJI participated in multiple other votes without contending that Section 8.1(f) disqualifies all four RH-appointed Managers from voting. For example, all seven Managers unanimously voted to approve a compensation bonus for Jacob Digel, who (like Kailbourne) was a defined "Officer" of REV LNG who was also associated with RH. (R886 ¶ 18(a) & R896.) And, when voting to approve an asset sale and administrative services agreement with ROC, SJI did not object when only Kailbourne recused himself, allowing the three other RH-appointed Managers to vote. (R886, ¶ 18(c) & R905; R611 ¶ 29.)

Accordingly, until the purported 2025 termination giving rise to this suit, SJI had never taken the position that the RH-appointed Managers could not vote on "Officer" or "Key Employee" personnel matters, or that Section 8.1(f) prohibits all RH-appointed "Managers" from voting just because Kailbourne purportedly has an interest in the matter at issues. Section 8.1(f) provides as follows:

8.1(f) 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"), (ii) any agreement between a Company Entity and a Person, other than such Interested Party, that replaces any

such agreement (a “Replacement Agreement”), (iii) the exercise by the Company of its rights under this LLC Agreement with respect to any Member 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; provided that the Interested Member Manager may observe, attend or otherwise participate in any meeting of the Board of Managers for the limited purpose of expressing the views of such Interested Member Manager with respect to such Interested Member Matter. Subject to the foregoing provisions of this Section 8.1(f), the attendance of the Interested Member Manager appointed by an Interested Member shall not be required in order (i) for any meeting of the Board of Managers to be duly called or convened to the extent such meeting is limited to discussing or taking action on the Interested Member Matters with respect to such Interested Member, provided that the Interested Member Manager of such Interested Member shall be entitled to prior notice of such meeting in accordance with this LLC Agreement, or (ii) for any Board of Managers’ action or decision with respect to the Interested Member Matters related to such Interested Member. Notwithstanding the foregoing or any other provision of this LLC Agreement, and for the avoidance of doubt, this Section 8.1(f) shall not exclude any Interested Member Manager from voting on any Replacement Agreement if prior to such vote the Interested Member executes and delivers to the Company Entities a written agreement, in form and substance reasonably satisfactory to the Board of Managers, that waives all claims or causes of action, then existing or thereafter arising under the agreement between a Company Entity and an Interested Party that is being replaced by the Replacement Agreement, other than the payment of any liquidated undisputed termination payment due thereunder and any bona fide dispute that is limited to the termination payment due thereunder and such Interested Party shall cease to be an Interested Party or an Interested Member with

respect to such matter upon the delivery of such written agreement. Nothing in this Section 8.1(f) shall limit the provisions of Section 8.4.<sup>3</sup>

This Section certainly does not say expressly what SJI now claims. Nor is SJI's current interpretation consistent with the fact that SJI and its Managers have never before taken the position that this Section's provisions apply to decisions regarding Kailbourne's status as CEO, that it effectively negates the express supermajority requirement for such decisions, and that all four RH-appointed Managers would be disqualified from voting.

SJI's Member Manager Donna Schempp moreover had previously taken the position that *SJI itself* is "interested" with respect to the LLCA's procedure for enforcing SJI's buyout obligation, and that the proper approach is for the appointed Managers of *both* entities to vote unanimously for approval of buyout-related issues. (See R887, ¶ 19, R951 (stating that "both members are technically interested" with respect to the Section 11.7 process and that it was reasonable to require a "unanimous" vote of both entities' appointed Managers for these issues).) Schempp's acknowledgement that SJI is "interested" with respect to the buyout process confirms that SJI would likewise be "interested" with respect to the occurrence of the closing conditions for the buyout obligation, which would necessarily include the "continued employment" condition.

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<sup>3</sup> R88-89 § 8.1(f) (emphasis added).

## **VI. After Receiving RH's Calculation of the Repurchase Price, SJI Has Buyer's Remorse and Tries To Retrade Its Deal**

In early 2022, SJI's parent company was acquired by a private equity company in a going-private transaction. Despite the change, SJI continued to work collaboratively with RH throughout 2022 and the majority of 2023. (R742 ¶ 35.)

In January 2024, RH delivered its "FMV Calculation Statement" for 2023 to SJI, which reflected that RH had achieved both milestones and had thus triggered SJI's obligation to purchase RH's 65% interest. (R744 ¶¶ 48-49.) The statement also reflected RH's calculation of the purchase price based on the agreed-upon formula in the LLCA for calculating what SJI was obligated to pay. (*See id.*)

After receiving RH's calculation of the purchase price, SJI served a written objection to RH's calculation and abruptly changed its tune regarding its cooperation with RH and its views of Kailbourne's leadership. Section 11.7 of the LLCA provides a mandatory multi-step resolution process for addressing disagreements about the purchase price calculation, including a meet-and-confer period followed by the retention of appraisal experts by each side and the exchange of their reports on the disputed issues, culminating with the submission of any remaining disputed items to an "Independent Appraiser" for a "final and binding" determination. (*See* R106 § 11.7(b).) SJI, however, has abandoned the compulsory resolution process and has refused to share an appraisal report. (R744-45 ¶ 50).

Coinciding with its refusal to follow the contractually-mandated appraisal procedure, SJI has also launched a defamation and obstruction campaign against Kailbourne and the Company's management team. In February 2024, SJI abruptly announced with no prior warning that it would no longer make loans to the Company, despite the fact that SJI had made loans on 14 prior occasions over a 37-month period, had acted as REV LNG's sole funding source, and had previously insisted on having a right of first offer with respect to the funding of REV LNG. (R7742, R745 ¶¶ 36, 52.) SJI's Managers have also refused to approve annual budgets, operating and financial plans, or compensation plans for the Company's management. (R745-46 ¶¶ 55-56.) SJI's subsidiaries have also refused to pay more than \$12 million owed under their transportation and delivery agreements with the Company. (See R745 ¶ 53; R889-90 ¶ 29.) And SJI has launched a series of broadsides against Kailbourne's leadership, including numerous unfounded emails and letters critical of the management team and, ultimately, the lawsuit giving rise to the improper injunction order. (See R745, R746 ¶¶ 51, 61; R891 ¶ 34.) SJI did not begin its defamation campaign or raise these allegations until after being apprised of the contractually-mandated price it would need to pay for RH's interest.

## **VII. The Purported Unilateral Termination of Kailbourne as CEO**

On May 28, 2025, SJI requested a series of special Board of Managers meetings to address various items—which, for the first time, included Kailbourne's

potential removal as CEO. (*See* R529 (“May Letter”) at 1.) SJI also circulated a letter disparaging Kailbourne’s record as CEO. (*See* R44 ¶ 11 & R529.) REV LNG, Kailbourne, and RH responded to the letter and rebutted SJI’s allegations. (*See* R44 ¶ 13 & R538; R613 ¶ 40 & R649.)

On June 17, 2025, at a previously-scheduled special meeting for which SJI had provided no prior notice regarding its intention to consider a potential removal of Kailbourne, the three SJI-appointed Managers purported to vote unilaterally for Mr. Kailbourne’s removal. (*See* R46 ¶ 20 & R555, at 1.) The SJI Managers asserted that all four RH-appointed Managers were “interested” and thus “excluded from any vote on this issue” under Section 8.1(f) of the LLCA (*See* R555) This was the first time SJI or its Managers ever took the position that RH’s appointed Managers were disqualified from voting on matters pertaining to Kailbourne’s service as CEO, or that all four RH-appointed Managers were disqualified based on Kailbourne’s alleged interestedness. After the Company’s management protested the purported vote, SJI circulated a written consent resolution purporting to remove Kailbourne. (*See* R563.) The consent was again signed only by SJI’s three appointed Managers. (*See* R565)

### **VIII. Procedural History and the Trial Court’s Improper Injunction Order**

Because SJI remained resolute in its abandonment of the LLCA’s compulsory dispute resolution process for calculating the buyout price, RH filed

suit in Ontario County, New York, to compel SJI's compliance with the contractually-mandated process. *See REV LNG Holdings, LLC v. SJI Renewable Energy Ventures, LLC*, No. 141175-2025 (Sup. Ct., Ontario Cnty.) (the "Ontario Action"). SJI thereafter filed the instant suit in New York County, asserting a host of claims against RH, the Company, Kailbourne, and another contractually-defined Officer of REV LNG, Jacob Digel. The current operative Amended Complaint was filed on July 25, 2025. (R153.)

On July 28, 2025, the trial court issued a temporary restraining order and set a briefing schedule and hearing date for SJI's motion for preliminary injunction. (R. 600, 602, 604–605).

On August 21, 2025, the Ontario court granted SJI's motion to dismiss the action in that court on the theory that it should be heard in New York County with SJI's suit there. (*See* R873.)

On September 5, 2025, following a hearing the previous day, Justice Borrok entered a four-page Decision and Order (the "Injunction Order") granting SJI's motion for preliminary injunction, which enjoins Kailbourne "from purporting to act as CEO of REV LNG following his termination therefrom" until conclusion of the suit. (*See* R12; R1091-92; R16; R675; R703.) The Injunction Order states that "pursuant to Section 8.1(f) of the LLCA, the parties agreed that neither Interested Members nor Managers appointed by Interested Members[] are entitled to vote or

otherwise participate in any action or decision of the Board of Managers in an Interested Member Manager,” which “indisputably includes the decision to terminate Mr. Kailbourne’s employment as CEO.” (R9-10.) The order further states that “it is irrelevant that the managers appointed by SJI may have previously failed to object to prior Interested Member Matters because the parties agreed to a broad non-waiver provision . . . .” (R12.) The Injunction Order does not address whether SJI would itself be “interested” under Section 8.1(f) in light of the “continued employment” closing condition, nor does it address the other provisions of the LLCA other than Section 8.1(f) cited in Section III above. (*See* R9-13.) RH, Kailbourne, Digel, and the Company thereafter timely appealed. (*See* R3, R6.)

### **STANDARD OF REVIEW**

A preliminary injunction order is subject to immediate appeal and may be vacated or reversed “on the law and on the facts and in the exercise of discretion” by the Appellate Division. *CMB Export Infrastructure Inv. Grp. 48, LP v. Motcomb Estates, Ltd.*, 223 A.D.3d 513, 513-14 (1st Dep’t 2024) (reversing preliminary injunction); *R&G Brenner Income Tax Consultants v. Fonts*, 206 A.D.3d 943, 944 (2d Dep’t 2022) (reversing injunction order); *Gama Aviation Inc. v. Sandton Capital Partners, L.P.*, 93 A.D.3d 570, 570-71 (1st Dep’t 2012) (same).

“The Appellate Division has the same discretion as does Special Term in deciding whether an injunction order should be vacated and may, by way of

reviewing the action of Special Term, modify its order in the exercise of discretion even though it cannot be said the Special Term abused its discretion” (though, as set forth below, the injunction at issue here far exceeded any discretion the trial court had). *Attorney-General of State of N.Y. v. Katz*, 434 N.E.2d 712, 713 (N.Y. 1982); *O’Neill v. Poitras*, 158 A.D.2d 928, 928-29 (4th Dep’t 1990) (“[T]his Court has the same discretion as Special Term in deciding whether to vacate or modify the previously issued preliminary injunction”).

“Preliminary injunctive relief is a drastic remedy and will only be granted if the movant establishes a clear right to 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) (reversing grant of preliminary injunction) (citation omitted); *accord Scotto v. Mei*, 219 A.D.2d 181, 182, 185 (1st Dep’t 1996) (similar; preliminary injunction order “should be reversed, on the law and the facts”); *see also CMB Export*, 223 A.D.3d at 513; *R&G Brenner*, 206 A.D.3d at 944; *Shake Shack Fulton St. Brooklyn, LLC v. Allied Prop. Group, LLC*, 177 A.D.3d 924, 926 (2d Dep’t 2019)). An injunction is properly reversed or vacated on appeal when the plaintiff “failed to demonstrate a clear right to relief” or “failed to demonstrate that it would suffer irreparable injury in the absence of a preliminary injunction, nor did it establish a balancing of the equities in its favor.” *R&G Brenner*, 206 A.D. 3d at 944; *see also Koultukis*, 285 A.D.2d at 435 (trial court’s injunction was “abuse of the court’s discretion as a matter

of law, inasmuch as the movants failed to establish the prerequisites for a preliminary injunction and in any event failed to exhaust their administrative remedies”).

The LLCA states that it is to be governed and construed under Pennsylvania law. (*See* R112 § 15.6.) Contractual interpretation presents a question of law subject to *de novo* review. *See Gardiner v. City of Philadelphia*, 311 A.3d 54, 2023 WL 8359632, at \*5 (Pa. Commw. Ct. 2023) (“It is axiomatic in Pennsylvania that questions involving the interpretation of a contract are questions of law for the Court, and not questions of fact”) (citing *Wert v. Manorcare of Carlisle PA, LLC*, 124 A.3d 1248, 1259 (Pa. 2015)); *accord, Picone/WDF, JV v. City of New York*, 193 A.D.3d 433 (1st Dep’t 2021) (recognizing that “contract interpretation presents a question of law for the court”); *MPEG LA, LLC v. Samsung Elec. Co., Ltd.*, 166 A.D.3d 13, 17 (1st Dep’t 2018) (“When engaging in contract interpretation, ‘the standard of review is for this Court to examine the contract’s language *de novo*’”) (quoting *Duane Read, Inc. v. Cardtronics, LP*, 54 A.D.3d 137, 140 (1st Dep’t 2008)).

## **ARGUMENT**

The trial court fundamentally misinterpreted the LLCA and abused its discretion in forcibly removing the Company’s first and only CEO through a preliminary injunction order. The LLCA’s terms and the evidentiary record simply do not support SJI’s newly-claimed unilateral authority to oust Kailbourne as CEO. Nor does the record establish anything close to a “clear right” to preliminary

injunctive relief. There is no likelihood of success on the merits, no irreparable injury, and the balance of equities tips heavily against the forcible removal of REV LNG’s co-founder from his position as CEO, particularly in light of SJI’s self-evident campaign to avoid its purchase obligation. This is precisely the situation where a preliminary injunction should be reversed.

**I. The Injunction Order Fundamentally Misconstrues the LLCA**

As reflected in the Injunction Order, the trial premised its injunction almost entirely on a single clause in Section 8.1(f)—the prohibition in subpart (iv) against a “Member” or “the Manager appointed by such Interested Member voting “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.” (*See* R88 § 8.1(f).) The trial court erred as a matter of law and abused any discretion it had by construing this clause as conferring a unilateral right upon SJI and its Managers to remove Kailbourne as CEO, and by entering an injunction on this basis. The terms of the LLCA and the parties’ course of dealing confirm that this was error.

**A. The LLCA’s Terms Do Not Authorize SJI’s Purported Unilateral Termination of Kailbourne**

Under Pennsylvania law, when interpreting a contract, a court must ascertain and give effect to the intention of the parties. *See Binswanger of Pa., Inc. v. TSG Real Estate LLC*, 217 A.3d 256, 262 (Pa. 2019) (citing *Murphy v. Duquesne Univ. of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001)). “[T]he entire contract should

be read as a whole ... to give effect to its true purpose.” *Com. Ex. Rel. Kane v. UPMC*, 129 A.3d 441, 463-64 (Pa. 2015) (citing *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962)). A contract should be interpreted in a manner giving effect to all provisions. *Id.* at 464 (citing *Murphy*, 777 A.2d at 429). Courts typically “will not interpret one provision of a contract in a manner which results in another portion being annulled.” *Id.* (citing *LJL Transp. v. Pilot Air Freight*, 962 A.2d 639, 648 (2009)). “Before 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.” *Biswanger*, 217 A.3d at 262. 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, 2021 WL 211464, at \*6 (Pa. Super. Ct. 2021) (quotation omitted).

It is also well-settled that “when interpreting a contract, the specific controls over the general.” *Nitardy v. Chabot*, 195 A.3d 941, 952 (Pa. Super. Ct. 2018); *see also Musko v. Musko*, 548 Pa. 378, 381 (Pa. 1997). Drafters do not ordinarily “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). A contract instead “should be interpreted as a whole in a manner which does

not render the contract internally inconsistent.” *Manzella v. Paul Revere Life Ins. Co.*, No. Civ. A. 93–5455, 1994 WL 137003, at \*3 (E.D. Pa. Apr. 19, 1994); *Binswanger*, 217 A.3d at 262 (rejecting interpretation that would make agreement “internally inconsistent”).

The trial court violated each of these principles in misconstruing Section 8.1(f) as giving SJI the right to remove Kailbourne unilaterally. *First*, this interpretation effectively annuls the far more specific “Super-Majority” requirement in Schedule D for “hiring and dismissal decisions with respect to any Key Employee or Officer.” (R149, sections (iii) and (iv).) Kailbourne was defined *by name* as a “Key Employee” and singled out for special protections, including by making his “Key Employee” status permanent—and requiring “key man” insurance at all times—barring an amendment of the LLCA, and by subjecting decisions on his potential termination to a “Super-Majority” vote. (*See supra* at 11). Section 1.1 defines “Super-Majority in Interest” as “at least seventy percent (70%) of the Mangers, or such other number of such Managers as the Managers shall determine by unanimous vote.” (R71 § 1.1.) Unlike the generalized language in clause (iv) of Section 8.1(f) (which does not use the words “hiring,” “dismissal,” or any defined terms, and instead uses the general undefined terms “officers, employees or other personnel”), Schedule D uses *specific* language requiring “Super-Majority” approval of “*hiring and dismissal decisions with respect to any Key Employee or Officer.*”

Again, “the specific controls over the general,” *Nitardy*, 195 A.3d at 952, and contracts should not be interpreted such that key terms are effectively “annulled.” *LJL*, 962 A.2d at 648. It makes no sense to interpret clause (iv)’s nonspecific language as effectively annulling the Super-Majority protection and allowing the *minority* member and its Managers the unchecked right to remove Kailbourne as CEO on their own. As a matter of common sense and arithmetic, a 35% ownership interest (or three Managers out of seven) is not a majority, let alone a “Super-Majority.” There would be no practical reason to require a “Super-Majority” for “hiring and dismissal decisions” as to Kailbourne under Schedule D if SJI could simply turn around and remove Kailbourne from his position unilaterally under Section 8.1(f). The purpose of requiring a “Super” majority is to make it *more* difficult to take the action at issue, not less. Interpreting the nonspecific language in clause (iv) as allowing the minority 35% member to remove Kailbourne unilaterally would override—and effectively “annul”—the far more specific language in Schedule D requiring *greater* than a majority vote to remove a Key Employee. *See Nitardy*, 195 A.3d at 952 (specific terms control over general terms); *LJL*, 962 A.2d at 648 (annulments of contractual terms disfavored); *Biswanger*, 217 A.3d at 262 (if proposed reading would render contract “ineffective to accomplish its purpose, it will endeavor to find an interpretation which will effectuate the reasonable result intended”).

*Second*, if Section 8.1(f) were intended to apply to votes on Kailbourne’s “hiring or dismissal,” clause (i) of Section 8.1(f) would make SJI itself an “Interested Member” with respect to any effort to terminate Kailbourne. Clause (i) restricts a Member and its appointed “Manager” from voting on any “action in respect of any agreement between a Company Entity and a Member or an Affiliate of a Member.” (See R88 § 8.1(f).) Kailbourne’s continued employment is a specified closing condition for both of the LLCA’s buyout milestones. (See *supra* at 11; R88 § 8.1(f).) The LLCA’s closing conditions plainly involve an “agreement” between a “Company Entity” (here, REV LNG, which is a party to the LLCA) and a “Member” (SJI). (See R60 § 1.1.) These conditions pertain to a matter of hot dispute between SJI, RH, and REV LNG. Once again, SJI’s Member Manager Donna Schempp previously acknowledged that SJI was “interested” with respect to the buyout process under Section 11.7 of the LLCA. (R887 ¶ 19, R951 (stating that “both members are technically [i]nterested” with respect to the Section 11.7 process and that it was reasonable to require a “unanimous” vote of both entities’ appointed Managers for these issues).); see also *Com. ex rel. Kane*, 129 A.3d at 464 (“a party’s performance under the terms of a contract is evidence of the meaning of those terms.”). SJI is currently *suing* both REV LNG and RH in this very litigation to *block* them from requiring SJI to complete the buyout. The satisfaction of the buyout

conditions are part and parcel of the parties' dispute. The buyout, in turn, is a central feature of the LLCA.

Accordingly, SJI itself would be an "Interested Member" with respect to Kailbourne's potential termination if, as SJI contends, Section 8.1(f) was intended to cover votes on his termination. If all of RH's appointed Managers would be disqualified under clause (iv), then SJI's Managers would also be disqualified under clause (i). This further confirms that the trial court erred in construing Section 8.1(f) as granting SJI the unilateral right to fire Kailbourne.

*Third*, the LLCA's provisions confirm that the parties did not intend for RH to be completely sidelined from any vote on Kailbourne's termination. Section 8.1(j), for example, requires "at least one RH Manager and one SJI Manager" to be present for a quorum prior to SJI's purchase of RH's interest in the Company, thus further evidencing the parties' intent not to exclude RH's appointed Managers from the decision process. (*See* R89-90 § 8.1(j).)

The parties also used the singular word "Manager" in Section 8.1(f) to describe the scope of the exclusion from voting, which further undercuts the inference that the parties intended to disqualify all of RH's Managers from voting on his job status. (*See* R88 § 8.1(f) (stating that "the Manager" (not Managers) "appointed by such Interested Member" is not entitled to vote).) Section 8.1(f) also contemplates that an Interested Member Matter may involve no "Interested Member

Manager” at all, stating that no Interested Member Manager—“*if any*”—may vote on an Interested Member Matter. (*See id.*) SJI’s interpretation that all four RH-appointed Managers are disqualified from voting on the hiring or dismissal of a single person—Kailbourne—would effectively read the use of the singular word “Manager” and the words “if any” out of the agreement, violating the “fundamental principle of contract interpretation that every phrase of a contract must be given meaning and none should be treated as surplusage if any other construction is rationally possible.” *Equitrans Servs., LLC v. Precision Pipeline, LLC*, 154 F. Supp. 3d 189, 199 (W.D. Pa. 2015). Thus, even if SJI were correct that Section 8.1(f) applies to hiring or dismissal of Kailbourne as CEO (or otherwise) and that Kailbourne himself were disqualified from voting, the trial court still erred by globally disqualifying all of RH’s appointed Managers and entering an injunction on that basis.

Handing SJI a unilateral termination right as to Key Employees and Officers is also inconsistent with Section 8.1(a), which makes clear that “[t]he *management of the business* and affairs of the Company *shall be vested* in a Board of Managers.” (*See* R85-86 § 8.1(a).) RH’s 4-3 Board majority is specifically enshrined in Section 8.1(b) until SJI purchases RH’s interest or the LLCA is amended. (*See* R86 § 8.1(b).) RH’s Managers thus *already have* the right to “manage” the business by virtue of their 4-3 majority and the LLCA’s vesting of full-blown “management” rights—and

not merely oversight or strategic responsibility—in the Board. Allowing SJI to remove Kailbourne as CEO unilaterally is inconsistent with RH’s contractual right to “manage” the Company through its Board majority. It is also inconsistent with the fundamental premise of the deal memorialized in the LLCA: that RH would keep its majority “management” rights until SJI paid to buy its interests.

*Fourth*, interpreting Section 8.1(f) as vesting SJI with unilateral authority to remove the CEO creates an anomalous situation where SJI could purportedly escape its obligation to purchase RH’s interests simply by terminating Kailbourne and preventing occurrence of the “continued employment” closing condition. The other closing conditions involve financial performance metrics and the willingness of the Company’s executives to sign non-compete agreements (and of Kailbourne to remain employed). (*See* R63, R65 § 1.1.) Those items make sense as closing conditions, as they logically relate to the value being received for the purchase. Again, the contractual requirement that SJI purchase RH’s remaining interests upon occurrence of the closing conditions is structured as an *obligation*, not merely an option that SJI can avoid at its sole election. By contrast, construing the “continued employment” condition as one that SJI itself could unilaterally prevent simply by firing Kailbourne does not make sense and would be incongruent with the other conditions and with the obligatory structure of the purchase requirement. *See UPMC*, 129 A.3d at 463-64 (“[T]he entire contract should be read as a whole ... to

give effect to its true purpose”); *Com. Ex rel. Fisher v. Philip Morris, Inc.*, 4 A.3d 749, 756 & n. 8-9 (Pa. Commw. Ct. 2010) (discussing contractual interpretation principles of *eiusdem generis* and *noscitur a sociis* in interpreting prongs of a consent decree as having consistent meanings).

Likewise, the “officers” provision in clause (iv) of Section 8.1(f) is part of a list of items that involve related-party transactions. It was understood when the LLCA was executed that certain SJI affiliates would be customers of the Company, and that the Company may conduct other business with affiliated entities. (*See* R742 ¶ 37). For example, as stated above, SJI asked Kailbourne to serve as an officer or Board member of other entities that transacted business with the Company. (*See supra* at 15-16.) The first three clauses of Section 8.1(f) address agreements with related parties or Members. Under well-settled principles of contract interpretation, clause (iv) should be construed as applying to similar contractual relationships rather than to internal personnel matters—including “hiring and dismissal” of Key Employees and Officers—that are already specifically addressed in Schedule D. *See UPMC*, 129 A.3d at 463-64; *Com. Ex rel. Fisher*, 4 A.3d 749, 756 & n. 8-9.

The implied duty of good faith and fair dealing likewise prohibits contracting parties from unreasonably exercising contractual discretion to frustrate the other party’s reasonable expectations, which is precisely what would occur if SJI were allowed to escape its purchase obligation simply by firing Kailbourne. *See Henry v.*

*PNC Bank, N.A.*, 31 Pa. D. &C. 5th 101, 2013 WL 10253091, at \*5 (Pa. Ct. C.P. 2013) (“A party exercising its discretion is subject to an implied obligation of good faith and fair dealing”); 15 PA CONS. STAT. § 8849.2 (d) (imposing “contractual obligation of good faith and fair dealing” on LLC managers). Once again, interpreting the LLCA as giving SJI unilateral authority to remove Kailbourne makes no sense in the context of an agreement that also makes Kailbourne’s continued employment a closing condition for SJI’s purchase obligation. Such an interpretation would undermine the “true purpose” of the agreement and is therefore inconsistent with the implied obligation of good faith and fair dealing. *See UPMC*, 129 A.3d at 463-64.

*Fifth*, the clause on which the trial court and SJI have rested their position—the clause regarding “officers” in subpart (iv) of Section 8.1(f)—was drafted by SJI. R884-85 ¶¶ 12-14. Under Pennsylvania law, contractual language “is construed most strongly against the drafter thereof,” *Rusiski v. Pribonic*, 515 A.2d 507, 510 (Pa. 1986) (citation omitted), and “in favor of the other party if the latter’s interpretation is reasonable,” *Commonw. of Pa., State Pub. Sch. Bldg. Auth. v. Noble C. Quandel Co.*, 585 A.2d 1136, 1144 (Pa. Commw. Ct. 1991). Had SJI wanted to provide that subpart (iv) overrides the “Super-Majority” requirement, SJI could have drafted subpart (iv) far more specifically to match the specificity of Schedule D, such as by clarifying that subpart (iv) applies to “dismissal” decisions pertaining to

Kailbourne and using the defined terms “Officer” and “Key Employee.” Because SJI did not do so, the trial court erred in construing subpart (iv) as allowing unilateral termination.

In sum, the trial court missed the proverbial “forest” for the single SJI-drafted “tree” in subpart (iv) of Section 8.1(f). When viewed together with the rest of the LLCA and considered in light of its overall context and purpose, that “tree” simply cannot bear the load heaped upon it by SJI and the trial court. The fact that SJI’s own Managers would be excluded from voting if Section 8.1(f) applies to votes on Kailbourne’s job status makes clear that subpart (iv) cannot support the injunction.

**B. The Trial Court Erred in Failing To Consider the Parties’ Course of Dealing**

The trial court also erroneously refused to consider the prior conduct of SJI and its managers in allowing RH’s Managers to vote on other matters relating to Key Employees or Kailbourne-associated entities. The Injunction Order held that this prior conduct was “irrelevant” because the LLCA has a general non-waiver clause. (*See* R12.)

This is simply incorrect. Course-of-conduct evidence is not merely relevant to questions of waiver. Under Pennsylvania law, it is probative of the parties’ intent regarding the meaning of the LLCA. Indeed, under Pennsylvania law, the parties’ course of performance is “perhaps the strongest indication of what [a] writing means.” *Atlantic Richfield Co. v. Razumic*, 480 Pa. 366, 376 (Pa. 1978). “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.” *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 566 Pa. 494, 501 (Pa. 2001) (quotation omitted).

As stated previously, SJI repeatedly and consistently allowed RH and its appointed Managers to vote on Kailbourne’s service as CEO, including his appointment and re-appointment to serve in that role, as well as decisions affecting Jacob Digel and Kailbourne-associated entities. (*See supra* at 14-18.) SJI’s Member Manager Donna Schempp also previously acknowledged that SJI itself was “interested” with respect to the buyout process under Section 11.7 of the LLCA. (R887 ¶ 19, R951 (stating that “both members are technically interested” with respect to the Section 11.7 process and that it was reasonable to require a “unanimous” vote of both entities’ appointed Managers for these issues).) The parties’ own course of dealing confirms that SJI did not view Section 8.1(f) as giving it unilateral authority over Kailbourne’s tenure or with respect to the closing conditions, and that SJI regarded itself as “interested” under Section 8.1(f) regarding its buyout obligation. To the extent Section 8.1(f) applies to votes regarding Kailbourne’s “hiring or dismissal,” SJI would also be an Interested Member with respect to the “continued employment” closing condition and would itself be barred

under Section 8.1(f) from having its Managers vote. The trial court erred by disregarding this evidence.

## **II. The Trial Court’s Application of the Preliminary Injunction Standards Was Erroneous and Unsupported by the Record**

A preliminary injunction is also properly reversed or vacated on appeal when the plaintiff “failed to demonstrate a clear right to relief” or “failed to demonstrate that it would suffer irreparable injury in the absence of a preliminary injunction, nor did it establish a balancing of the equities in its favor.” *R&G Brenner*, 206 A.D. 3d at 944. SJI did not come close to carrying its burden on these requirements, let alone for the disfavored mandatory-injunctive relief that the trial court ordered.

### **A. No Likelihood of Success on the Merits**

The record fails to show any reasonable likelihood of SJI succeeding on the merits of its unilateral-termination claim, let alone a “clear right to relief.” *See R&G Brenner*, 206 A.D. 3d at 944. As set forth in Section I *supra*, the LLCA’s terms and the course of dealing evidence preclude SJI’s interpretation. The mere fact that a contract is susceptible to even a *plausible* alternative reading is itself enough to defeat preliminary relief. *SportsChannel Am. Assocs. v. Nat’l Hockey League*, 186 A.D.2d 417, 418 (1st Dep’t 1992) (movant “failed to demonstrate that it is likely to succeed on the merits” because the contractual language in question was “too imprecise and ambiguous” and “[i]njunctive relief is inappropriate when sought upon contractual language that leaves the rights of the parties open to doubt and

uncertainty.”); *Gulf & W. Corp. v. N.Y. Times Co.*, 81 A.D.2d 772, 773 (1st Dep’t 1981) (reversing preliminary injunction because “[s]ubstantial questions exist as to the construction” of the contract); *Silverstrim v. Loonhaven Realty, LLC*, 60 Misc.3d 1225(A), \*5 (Sup. Ct., Warren Cnty. 2018) (“Given these ambiguities plaintiffs have failed to demonstrate a likelihood of success on the merits”). SJI failed to establish a right to terminate Kailbourne under the LLCA, let alone a “clear right.”

Further, as stated above, SJI would still be subject to a duty of good faith and fair dealing even if it did have the right to remove Kailbourne unilaterally. (*See supra* at 32; *Henry*, 2013 WL 10253091, at \*5 (“A party exercising its discretion is subject to an implied obligation of good faith and fair dealing”); 15 PA Cons Stat § 8849.2 (d).) The trial court did not address whether SJI’s actions complied with this obligation. The circumstances raise substantial concern that SJI’s real purpose was part of an effort to obstruct the closing condition for SJI’s purchase obligation rather than to address any legitimate concern over Kailbourne’s performance. It is thus doubly improper to decide the removal issue through the drastic remedy of a preliminary injunction order at the inception of the case, before any inquiry is made regarding the reasons behind SJI’s actions. *See Lehey v. Goldburt*, 90 A.D.3d 410, 411 (1st Dep’t 2011) (“The functional of a provisional remedy is ‘not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits,’” and “the issuance of a mandatory injunction is

appropriate only when such extraordinary relief is essential to maintaining the status quo”; reversing portion of injunction appointing plaintiff to manage LLC) (internal citations omitted); *Rosa Hair Stylists, Inc. v. Jaber Food Corp.*, 218 A.D.2d 793, 794 (2d Dep’t 1995) (holding that mandatory injunctions that resolve key merits issues “should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite”). The trial court erred by granting such an injunction here.

**B. No Imminent and Irreparable Injury**

The trial court also erred in finding irreparable injury from Kailbourne’s continued service as CEO. 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); *see also Lehey*, 90 A.D.3d at 411 (plaintiff “did not clearly establish that he would be irreparably harmed in the absence of a preliminary injunction” regarding management of LLC).

As stated above, the LLCA vests “management” authority—rather than merely “oversight” or “strategic” authority—in the Board of Managers, which has a contractually-enshrined 4-3 majority in RH’s favor. (*See* R85-86 § 8.1(a).) While removing Kailbourne as CEO is injurious to REV LNG by obstructing *Kailbourne’s* ability to lead the Company and is injurious to Kailbourne himself by impairing his ability to serve as CEO of the company he co-founded and has led from its inception,

it does not change the fact that *RH itself* will continue to have “management” authority over REV LNG by virtue of its Board majority. SJI does not and cannot claim that it has unilateral authority to *hire* a new CEO in his place, or that RH’s Board majority cannot directly exercise management authority over the Company after Kailbourne’s firing. The fact that the Board will continue to have management authority not only diminishes any conceivable showing of irreparable harm from Kailbourne’s continued service as CEO, but it also underscores again what this termination is really about: a step by SJI toward frustrating the closing conditions for its buyout obligation.

Accordingly, the trial court’s focus on purported harms from Kailbourne continuing to “hold [himself] out as CEO of the company when in fact they are not” (Injunction Order at 3) fails to show irreparable harm. (R11.) This is not a situation where there are (or likely will be) “dueling CEOs,” as SJI lacks the authority to appoint a new CEO on its own. SJI furnished no evidence that Kailbourne was acting inappropriately as CEO, or that his continued presence threatened the Company’s existence. The Injunction Order’s citation to the LLCA’s specific performance provision (*see id.*) is equally unavailing, as the mere presence of a specific performance remedy “does *not* render the alleged harm irreparable.” *LDC USA Holdings, Inc. v. Taly Diamonds, LLC*, 121 A.D.3d 529, 530 (1st Dep’t 2014)

(emphasis added). The trial court thus erred and exceeded its discretion in finding irreparable harm.

**C. The Balance of Equities Weighs Heavily Against Injunctive Relief**

The trial court also abused its discretion in issuing the Injunction Order because the balance of equities tips overwhelmingly against granting such an injunction. SJI must show by clear and convincing evidence 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).

SJI again has failed to articulate any injury other than the denial of its purported—and nonexistent—“right” to remove Kailbourne unilaterally from his position (and the purported confusion of having Kailbourne then holding himself out as CEO). Again, SJI has no right to remove Kailbourne, and it cannot credibly claim irreparable injury from Kailbourne continuing to act as CEO when SJI lacks the power to appoint a replacement. By contrast, the trial court’s forcible removal of Kailbourne harms the Company as well as RH and Kailbourne by unjustifiably interfering with REV LNG’s governance and obstructing the ability of the Company’s first and only CEO to serve in that role—a CEO who again has presided over substantial growth in REV LNG’s revenue and profitability during the parties’ relationship. (*See supra* at 13-14.) That removal also harms RH and REV LNG by

improperly aiding SJI's efforts to obstruct the occurrence of the "continued employment" closing condition. (*See supra* at 11-12.) The Injunction Order does not simply maintain the status quo, but instead forcibly *alters* the status quo by removing the only CEO the Company has ever had. As courts have frequently recognized, "mandatory preliminary injunctions are not favored." *SHS Baisley, LLC v. Res Land, Inc.*, 18 A.D.3d 727, 728 (2d Dep't 2005). The record is entirely bereft of the "extraordinary circumstances" necessary to force out the Company's founding CEO at the inception of the case. *See Rosa Hair Stylists*, 218 A.D.2d at 794 (holding that mandatory preliminary injunctions that resolve key merits issues particularly "should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite").

### **III. Adoption of REV LNG's Arguments**

Defendants-Appellants REV LNG Holdings, LLC, E. David Kailbourne, and Jacob Digel also adopt and join all Questions Presented, grounds for reversal, arguments, and authorities set forth in the Brief of Appellant REV LNG.

### **CONCLUSION**

For the foregoing reasons, this Court should reverse the Injunction Order, vacate the trial court's preliminary injunction, and award RH, Kailbourne, and Digel all further relief to which they are justly entitled.

Dated: New York, New York

September 26, 2025

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## PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

*Type.* A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman  
Point size: 14  
Line spacing: Double

*Word Count.* The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, and this Statement, is 10,791

*Attorneys for Defendants REV LNG  
Holdings LLC, E. David  
Kailbourne, and Jacob Digel*

STATEMENT PURSUANT TO CPLR § 5531

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**New York Supreme Court**  
**Appellate Division—First Department**

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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.*

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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

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.

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

ss.:

**AFFIDAVIT OF SERVICE  
BY OVERNIGHT FEDERAL  
EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

**On September 26, 2025**

deponent served the within: **BRIEF FOR DEFENDANTS-APPELLANTS  
REV LNG HOLDINGS, LLC, E. DAVID  
KAILBOURNE and JACOB DIGEL**

**upon:**

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the address(es) designated by said attorney(s) for that purpose by depositing 1 true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

**Sworn to before me on this 26<sup>th</sup> day of September 2025**



**MARIANA BRAYLOVSKIY**  
Notary Public State of New York  
No. 01BR6004935  
Qualified in Richmond County  
Commission Expires March 30, 2026



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**Job# 385953**