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(of the bar of the
Commonwealth of Pennsylvania)
by permission of the Court
(Time Requested: 15 Minutes)

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**

REPLY BRIEF FOR DEFENDANT-APPELLANT REV LNG LLC

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

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The Company respectfully submits this Reply Brief in further support of its appeal from the Order.¹

PRELIMINARY STATEMENT

The SJI Member’s fifty-page Opposition continues to bury the lead. This case has only ever been about one thing: the SJI Member’s attempt to avoid its buyout obligation. This Court need look no further than the very first paragraph of the SJI Member’s own Amended Complaint, which describes the “Nature of the Action” as the SJI Member’s objection to the sale of the RH Member’s 65% ownership interest to the SJI Member because it now complains about the “jaw-dropping price” it might have to pay. R. 153 (Am. Compl. ¶ 1). Yet, the Opposition barely even references the buyout obligation and, oddly, argues that this issue is somehow not even in the record, although it was the primary focus of the Company’s briefing before the Trial Court and argued at both the TRO and preliminary injunction hearings.

Perhaps most notable is what the Opposition does *not* contain. Nowhere in it does the SJI Member refute that the Company has achieved extraordinary financial success—indeed, from 2019 (the year before the SJI Member acquired its minority interest in the Company) to 2024, Company revenue grew from \$8.8 million to over

¹ Terms previously defined in Defendant-Appellant REV LNG LLC’s opening brief (the “Opening Brief” or “Company Br.,” NYSCEF Doc. No. 9) have the same meanings assigned to them there. References to the “Opposition” or “Opp.” are to the “Brief for Plaintiff-Respondent,” NYSCEF Doc. No. 16.

\$190 million, and EBITDA increased from approximately \$2.55 million to over \$96 million. R. 611 (Kailbourne Aff. ¶¶ 24–25); R. 739–740 (Digel Aff. ¶¶ 21, 23). Nor does the SJI Member deny that the LLCA ties the buyout purchase price directly to the Company’s EBITDA, or even that the financial milestones in the LLCA were achieved in 2023, triggering the buyout process to begin in early 2024. It similarly does not deny that, once the buyout was triggered, the SJI Member began serially complaining about Kailbourne’s alleged “mismanagement” and “incompetence,” for the very same reasons it sought to terminate him 1.5 years later in June 2025. Nor does the SJI Member explain why, even though it filed suit in April 2025, it waited another three months to seek injunctive relief. But perhaps most tellingly, the Opposition fails to identify any harm at all—let alone immediate or irreparable harm—that would result if Kailbourne remains CEO during the pendency of this litigation. The Opposition does not offer any evidence of harm that would befall the SJI Member or the Company (which has only thrived under Kailbourne’s leadership) if Kailbourne should remain CEO while this case proceeds apace. The reason why the Opposition is silent on these key issues is simple: each one alone (let alone collectively) shows that the SJI Member is not entitled to any injunctive relief, and certainly not the extraordinary mandatory injunctive relief it seeks to remove the Company’s long-time CEO.

Rather than addressing any of these dispositive issues, the Opposition instead focuses entirely on the SJI Member's narrow and isolated interpretation of Section 8.1, which it claims permits two of its minority Managers to unilaterally remove Kailbourne as CEO at any time and for any reason, or no reason. This is despite the fact that Section 8.1 says nothing about the termination of Officers or Key Employees, as these issues are expressly and specifically covered by Schedule D(iv) and the definition of Key Employees. The Opposition argues that these other provisions should be ignored, as should the entirety of the parties' years-long course of performance, which makes plain that the SJI Member itself never interpreted Section 8.1(f) the way it does now, and in fact *always* interpreted it precisely as the Company asserts now.

Nor does Section 8.1(f) refer in any way to "minority rights" or protections, as the SJI Member suggests. That is because Section 8.1 relates to interested member transactions and is intended to protect both Members, not just the minority. Yet, the SJI Member brushes aside that, even under its own interpretation of Section 8.1(f) (that one Member can block all the Managers from the other Member from voting on certain actions), Section 8.1(f)(i) would similarly prohibit any SJI Manager from voting on Kailbourne's termination, which the SJI Member believes would moot its buyout obligation. There could be no clearer example of an Interested Member

Matter than one where the SJI Member seeks to avoid paying a “jaw-dropping price” it now wants to avoid.

This Court should recognize the SJI Member’s action for what it is: a self-interested effort by the SJI Member to frustrate a closing condition and avoid the buyout which, given the Company’s incredible success, requires a purchase price much higher than the SJI Member now wants to pay. This Court should reject the contention that, even though the SJI Member acknowledges that both Members agreed that Kailbourne would continue to serve as CEO in 2020 when they executed the Third LLCA (when the SJI Member first acquired its minority interest), and re-affirmed him as CEO in 2022 (when the parties revised the LLCA recognizing that the financial milestones were likely to be met in 2023), two minority-appointed Managers, at their whim, can now unilaterally remove him as CEO and none of the majority Managers would even be permitted to vote on the issue. Such an absurd result is directly contradicted by the plain language of the LLCA, is inconsistent with the parties’ long-standing course of performance, and unquestionably disrupts the years-long status quo that led to the Company’s incredible financial success.²

² Notably, on November 3, 2025, Justice Manuel Mendez granted the Appellants’ application for an interim stay of the Order pending review by a full panel of this Court. NYSCEF Doc. No. 18.

ARGUMENT

The SJI Member grounds its request for injunctive relief entirely on the argument that Section 8.1(f) permits it to remove Kailbourne with the votes of two out of the three minority Managers it appoints to the Board. But Kailbourne’s removal—as well as the removal of any other Officer or Key Employee—is explicitly addressed elsewhere in the LLCA, specifically in Schedule D(iv) and in the definition of “Key Employee.” These provisions make it clear that Kailbourne’s removal as CEO requires super-majority approval, while his removal as a Key Employee requires unanimous consent to amend the LLCA itself.

Claiming that both of these specific provisions regarding Kailbourne’s removal are overruled by the more general language in Section 8.1(f)(iv)—thereby turning a well-settled canon of contract construction on its head—the SJI Member claims the power to remove Kailbourne unilaterally. To arrive at this outcome, the SJI Member argues that Section 8.1(f)(iv) applies to virtually any Board action as it references any “meeting or action or decision” of the Board “regarding any matter or action in respect of . . . (iv) officers, employees or other personnel of [REV LNG]” Opp. at 24. Indeed, it is hard to fathom any Board action that would not somehow impact an officer, employee, or other personnel of the Company. But Section 8.1(f)(iv) says nothing about termination or removal of Officers. The SJI Member’s tortured interpretation that it could, at any time, simply have two of its

Managers unilaterally remove Kailbourne as CEO, even though it acknowledges a super-majority Board vote was required to appoint him to that position, is nothing short of absurd. And the SJI Member’s claim that this was all somehow contemplated by the parties when drafting Section 8.1 is wholly unsupported and, in fact, baseless.

I. The SJI Member Cannot Carry the Heavy Burden Required to Obtain a Mandatory Injunction.

Under New York law, mandatory injunctions, which are injunctions that “grant some form of the ultimate relief,” may be “granted only in unusual situations” and “should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought.” *Spectrum Stamford, LLC v. 400 Atl. Title, LLC*, 162 A.D.3d 615, 617 (1st Dep’t 2018); *St. Paul Fire & Marine Ins. Co. v. York Claims Serv., Inc.*, 308 A.D.2d 347, 349 (1st Dep’t 2003). The status quo is the state of affairs that existed before the dispute prompting the litigation arose. *See N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (defining “the status quo” as “the last actual, peaceable uncontested status which preceded the pending controversy”); Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/status%20quo> (law accessed Nov. 6, 2025) (similarly defining “status

quo” to mean “the last actual and uncontested state of affairs that preceded a controversy”).

Here, the SJI Member filed suit on April 21, 2025. R. 891 (Coyle Aff. ¶ 35). Critically, however, while the initial Complaint was rife with complaints about the buyout and allegations regarding Kailbourne and his management of the Company, including accusations that he fraudulently sought to inflate the Company’s EBITDA to drive up the buyout purchase price, it said *nothing* about removing Kailbourne as CEO. *See generally SJI Renewable Energy Ventures, LLC, et al.*, Index No. 652453/2025 (Sup. Ct., New York Cnty.) (Dkt. 2 (Compl.)). It was not until *more than three months later* that the SJI Member amended its Complaint and for the first time included the claim (Count 18) that forms the basis of its request for injunctive relief related to Kailbourne’s removal, which the SJI Member contends occurred at a June 17, 2025 Board meeting. *See* R. 209–210 (Am. Compl. ¶¶ 265–277).

As a result, “the last actual, peaceable uncontested status which preceded the pending controversy” saw Kailbourne as the Company’s longtime CEO. His removal did not cause the pending controversy. Indeed, prior to the SJI Member’s purported “vote” on June 17, 2025—which took place two months after it filed suit—Kailbourne had been the CEO since he co-founded the Company twelve years prior. And to be clear, the Company achieved remarkable success under his leadership thanks to his deep understanding of the industry and his strategic vision

and relationships, all of which the SJI Member now simply dismisses as mere “puffery,” Opp. at 42 n.26, though it cannot (and does not even attempt to) contest the remarkable financial growth of the Company, *see* R. 739–740 (Digel Aff. ¶¶ 21–24); R. 749–845 (Ex. 1–4 to Digel Aff.).

Kailbourne therefore was the CEO when the SJI Member first started to complain about his alleged “incompetence” and mismanagement once its buyout obligation was triggered in early 2024. Opp. at 7; R. 746 (Digel Aff. ¶ 61). He was the CEO when the SJI Member filed this lawsuit in April 2025. He was the CEO when the SJI Member, having first concocted its plan to unilaterally remove Kailbourne, sent the May Letter. And he was the CEO on June 17, 2025, when the SJI Member commandeered a special board meeting scheduled for other purposes and insisted on holding its unilateral “vote,” from which the RH Member was excluded, to purportedly terminate Kailbourne.

The SJI Member’s argument that “[i]t is not the termination itself that is the target of the injunction, rather it is Appellants’ repudiation of the same,” Opp. at 43, ignores this reality. Kailbourne had been the Company’s CEO for more than a decade. The Members both agreed Kailbourne would continue to serve as CEO when they executed the Third LLCA in 2020, and he was re-appointed (unanimously) in 2022. *See* R. 886 (Coyle Aff. ¶ 18(b) & n.3). It was not until the SJI Member’s Managers purported to “vote” to remove Kailbourne on June 17, 2025 that all of this

changed. The SJI Member’s attempt to argue that the status quo is only what existed after its contrived vote on June 17, 2025 ignores the twelve-year status quo that existed before June 17, 2025, which the SJI Member completely upended that day.

The SJI Member has not (and cannot) establish the existence of any “extraordinary circumstances” that would justify the disruption of the status quo and/or granting it the ultimate relief which it seeks in connection with Count 18. The Order should therefore be vacated so that Kailbourne can resume his role as CEO of the Company, thereby restoring the status quo, pending the outcome of this case.

II. The SJI Member Is Not Likely to Succeed on the Merits.

A. The SJI Member’s Claim That the “Buyout Argument” Has Somehow Been Waived Is Baseless.

The SJI Member seeks to have this Court ignore that its true motivation for removing Kailbourne is to avoid its buyout obligation by asserting that this argument has somehow been waived. Opp. at 19–20, 46–50. The SJI Member asserts that this is a “new theory” being raised for “the first time on appeal” that, as a result, was not properly preserved. Opp. at 46–50. The SJI Member further claims that this “new theory” is somehow based on new allegations that are “not found in the record.” Opp. at 46. But any suggestion that this issue was somehow “waived” is belied by the record and is contradicted even within the Opposition itself.

The issue of the buyout is not only referenced throughout the record on appeal but is front and center *in the SJI Member’s own filings*—e.g., it is referenced in the

very first Paragraph of the operative complaint. *See* R. 153 (Am. Compl. ¶ 1) (“Together, Defendants are attempting to force a sale of REV Holdings’ interest in REV LNG to SJI Renewable at a jaw-dropping price of \$1.3 billion before the facts necessary to calculate an accurate price are known.”). Moreover, in its brief before the Trial Court, the Company directly asserted that the Motion was “the latest salvo in the SJI Member’s effort to litigate its way out of its buyout obligation.” R. 708 (Company Trial Br. at 2). The Company also went on to explain that, by terminating Kailbourne, the SJI Member hoped to frustrate a fundamental condition of proceeding to closing on the buyout to avoid paying the RH Member’s proposed purchase price. *Id.*

As if that were not enough to preserve the issue for appeal, the Company argued at the TRO hearing held on July 28, 2025 that the buyout was fundamental to the LLCA and that the SJI Member was seeking to remove Kailbourne because his continued employment is “critical to that buyout process.” *See* R. 600–601 (July 28, 2025 Tr.). Moreover, notwithstanding its argument that this was somehow waived, the SJI Member itself concedes that counsel for the Company and counsel for the RH Member *both* reiterated this same point during the September 4, 2025 hearing on the Motion itself. Counsel for the RH Member explained:

MR. MASON: . . . we heard it today for the first time with great clarity. *We believe that the point of what they’re doing here is to try to avoid ever having to buy the 65-*

percent interest they promised to buy from REV LNG Holdings. Why?

THE COURT: But you want to buy and sell; that's what you want ultimately.

MR. MASON: We want to sell to them. That's what they agreed to do. *They agreed to buy it, and they don't want to do that anymore and they're trying to avoid it by having Mr. Kailbourne not be an employee because a closing condition of that sale is that he be an employee. That's what this is all about.* It's . . . not about his performance as CEO. He's been a great CEO. He's had spectacular results. You can read the facts. They don't like it because he's now asked to be bought out. *That's what they don't like and they're trying to avoid the buyout by having him not be an employee.* R. 1086–1087 (Sept. 4, 2025 Tr.) (emphases added).

Later on, counsel for the Company similarly explained to the Court:

MR. SNYDERMAN: . . . Today, for the first time [the SJI Member's counsel] said 'I want to have clarity, your Honor. It is not just that he's being terminated as CEO; he's being terminated in full.' Why is she saying 'in full?' *Because a closing condition requires him to be a full-time employee.*" R. 1088–1089 (Sept. 4, 2025 Tr.) (emphasis added).³

To be sure, as the SJI Member notes in its Opposition, the Trial Court even acknowledged these arguments relating to the buyout but dismissed them. Opp. at

³ Even though it contends that this argument was not preserved, the Opposition itself acknowledges otherwise, conceding that it was raised in the hearing but only "at the eleventh hour" and not "until the latter stages" of the hearing. Opp. at 19, 47. It's hard to fathom how counsel for the SJI Member could acknowledge that the issue was, in fact, argued at the hearing, yet still somehow claim it is not preserved for appeal. And notably, the timestamps on the hearing transcript show that the entire hearing lasted a total of only 55 minutes. R. 1059–1093 (showing argument lasted from 11:50:44-12:45:04).

48 n.29. But the fact that the Trial Court was not persuaded by the claim that the SJI Member's conduct is designed to avoid its buyout obligation, or that this would constitute an Interested Member Matter under Section 8.1(f)(i) given that avoiding the buyout would clearly be in the SJI Member's self-interest, in no way suggests that this argument was somehow not preserved for appeal. Rather, what matters for purposes of the issue of waiver is whether an argument is being raised for the first time on appeal. *See Bingham v. N.Y.C. Transit Auth.*, 99 N.Y.2d 355, 359 (2003) (arguments improperly raised for the first time on appeal are waived).

Here, the issue of whether avoiding the buyout obligation was the SJI Member's true goal is plainly not being raised for the first time. And not only was the issue properly preserved, but Justice Borrok's fundamental misunderstanding of this issue is itself a reason to reverse the Trial Court's Order. Specifically, Justice Borrok's statement on the record that, "But you want to buy and sell; that's what you want ultimately[?]," R. 1087 (Sept. 4, 2025 Tr.), makes clear that he thought the two Members were contemplating a potential *future* sale of the RH Member's 65% ownership interest, and not that the SJI Member had already contractually agreed to the buyout in the LLCA, which the SJI Member is now seeking to renegotiate or avoid by attempting to remove Kailbourne. The buyout is not only the core issue on this appeal, but—even according to the SJI Member itself—the fundamental issue in this entire case. R. 153–157 (Am. Compl. ¶¶ 1–15). Because this issue was the

centerpiece of the Company’s briefing below, and was argued during both hearings before the Trial Court, it most certainly was not waived.

B. The SJI Member’s Interpretation of Section 8.1(f) Is Wrong.

1. Schedule D(iv) Specifically Governs Removal of Officers and Key Employees.

In this controversy concerning termination of the Company’s founder and CEO, the SJI Member offers no persuasive reason for elevating the LLCA’s general provisions governing Interested Member Matters—Section 8.1(f)—over its specific provision governing the removal of Officers and Key Employees—Schedule D(iv). *See Opp.* at 24–27. As explained in the Company’s opening brief, it is settled Pennsylvania law that ““when interpreting a contract, the specific controls over the general,”” Company Br. at 33 (quoting *Nitardy v. Chabot*, 195 A.3d 941, 952 (Pa. Super. Ct. 2018)), and here, Schedule D(iv) directly provides that “dismissal decisions with respect to *any Key Employee or Officer*” require super-majority approval, *id.* at 34 (quoting R. 149 (LLCA Schedule D(iv) (emphasis added))). Separately, Section 1.1 of the LLCA specifically defines the Key Employees who can be replaced and makes clear that, unlike the others, Kailbourne cannot be replaced by super-majority approval. R. 66 (LLCA § 1.1). Rather, Kailbourne could be removed as a Key Employee only by amending the definition of “Key Employee,” which requires a unanimous vote of the Board. R. 148 (LLCA, Schedule C(v)).

The SJI Member attempts to claim the specific-over-general mantle for itself, pivoting to Section 8.1(e)(ii) and claiming that it specifically addresses a point at which Section 8.1(f) and Schedule D(iv) “intersect.” Opp. at 26. But Section 8.1(e)(ii) is not a more “specific provision covering the same subject matter.” *Slomowitz v. Kessler*, 268 A.3d 1081, 1108 (Pa. Super. Ct. 2021). That is because—as the Company argued in its principal brief, *see* Company Br. at 35—Section 8.1(e)(ii) fails to address the circumstance the SJI Member created here by excluding *all Managers of the other Member* from voting under Section 8.1(f). Indeed, there has never been an instance in the Company’s history where one Member ever even attempted to exclude all the Managers from the other Member from participating in any required Board vote. R. 885 (Coyle Aff. ¶ 17).

2. Section 8.1(f) Is Not a Minority-Rights Provision.

The SJI Member insists that “Section 8.1(f) was designed to protect the minority [M]ember” from oppression. Opp. at 40. However, Section 8.1(f) makes no reference to the minority Member, nor to minority voting rights. *See* R. 88–89 (LLCA § 8.1(f)). The protections for the minority Member’s voting rights are found in provisions that require unanimous approval for some matters (R. 87, 148 (LLCA § 8.1(e)(i), Schedule C)) and super-majority approval for others (5 of 7 Board votes) (R. 87–88, 149 (LLCA § 8.1(e)(ii), Schedule D)). Section 8.1(f), on the other hand, generally covers Interested Member Matters in a manner that protects *either* Member

when the other Member (or any of its Managers) is interested. *See* R. 88–89 (LLCA § 8.1(f)).

C. Section 8.1(f)(i) Precludes the SJI Member from Unilaterally Terminating Kailbourne.

Despite the SJI Member’s arguments to the contrary, *see* Opp. at 30–31, Section 8.1(f)(i) of the LLCA is implicated where a Board action impacts “any agreement between a Company Entity and a Member,” R. 88 (LLCA § 8.1(f)(i)), which necessarily includes the LLCA, the single most important agreement between the Company and its Members. Although the SJI Member feigns confusion regarding this argument, *see* Opp. at 30, it is very simple. Section 8.1(f)(iv) plainly states that Interested Member Matters include any matter or action relating to the exercising of rights or remedies relating to any agreement between the Company and a Member. R. 88 (LLCA § 8.1(f)(iv)). It cannot be reasonably disputed that the SJI Member’s vote to remove Kailbourne in order to avoid paying a “jaw-dropping price” pursuant to its buyout obligation under the LLCA is an Interested Member Matter and, according to the SJI Member’s own interpretation of Section 8.1(f), prevents any of the SJI Member’s Managers from voting.

The SJI Member offers no principled reason for carving out the LLCA—the most significant agreement the parties have between them—from Section 8.1(f)(i)’s plenary class of covered agreements that render Members interested. Put another way, the SJI Member never explains how or why it should not be considered

“interested” pursuant to Section 8.1(f)(i). Nor can it, given the SJI Member’s obvious interest in frustrating a condition of the buyout by terminating Kailbourne.

Instead, it argues that affirmations submitted by the Company do not provide evidence of the SJI Member’s real motivations, such that there is no way to support an argument that the SJI Member is in fact interested in Kailbourne’s removal. Opp. at 46–47. This is a red herring. None of the individuals who submitted affirmations on behalf of the Company or the SJI Member could possibly opine regarding the SJI Member’s true intentions, nor was there any reason to submit affirmations on this issue. The SJI Member is inherently an “interested” party given the potential impact of Kailbourne’s termination on its buyout obligations under the LLCA.

The SJI Member also contends that reading Section 8.1(f)(i) to include actions related to the LLCA would render any action taken by the Board with respect to the LLCA an “Interested Member Matter” and, consequently, would require all Managers to recuse themselves from any decision under the LLCA, so the Managers would no longer be able to run the Company. Opp. at 31. According to the SJI Member, this would lead to this “absurd result.” *Id.* The Court should ignore this straw man argument. In the first instance, the Company has never taken the position that every decision made by the Board would necessarily equate to taking action in respect of any agreement between a Company Entity and a Member. More importantly though, what is at stake here is not a routine matter relating to day-to-

day management; rather, the SJI Member seeks to altogether avoid an express, fundamental obligation under the LLCA to acquire the Company.

But the same “absurdity” argument proffered by the SJI Member with respect to Section 8.1(f)(i) would apply equally to the SJI Member’s own interpretation of Section 8.1(f)(iv), as it, too, could be read to apply to practically any action the Board takes, since all actions in some way affect “officers, employees or other personnel of any Company Entity employed by or otherwise associate with a Member or any of its Affiliates.” *See* Opp. 24; R. 88 (LLCA § 8.1(f)). The most important inquiry is not whether these various subsections are implicated, but what happens when they are. The SJI Member argues that, if Section 8.1(f)(iv) applies, then none of the RH Member’s majority Managers could vote as they are all blocked as a group. Opp. at 24. Under this logic, if Section 8.1(f)(i) applies, then none of the SJI Member’s minority Managers could vote, as they, too, would all be blocked as a group.

The LLCA does not provide how the Board must resolve matters where both Members are interested, but as the Company argued in its principal brief, *see* Company Br. at 18–19, 26–27, the Board has dealt with double-disqualification in the past by requiring unanimity. Specifically, in December 2023 the SJI Member’s own Manager, Donna Schempp, conveyed the SJI Member’s position that, when both Members are interested and disqualified from voting, unanimity is required. *See* R. 887 (Coyle Aff. ¶ 19); R. 951 (Ex. 5 to Coyle Aff.)). In its Opposition, the

SJI Member attempts to relegate this issue to a footnote, claiming that the double-disqualification there was different because both Members were going to be signatories to the purchase and sale agreement at issue there, and any suggestion that this related to the buyout was “simply false.” *See Opp.* at 37 n.20. But it makes no sense to suggest that a side agreement between the parties and the Company could implicate Section 8.1(f)(i) while the LLCA itself does not. Moreover, Schempp herself stated that since both Members were interested, all Managers should “vote unanimously to authorize REV LNG to ‘acknowledge and agree’ to the Section 11.7 side letter.” R. 951 (Ex. 5 to Coyle Aff.). Notwithstanding the SJI Member’s claim that this example has nothing to do with the buyout, Section 11.7, which Schempp directly references, is entitled “Purchase of Acquired Interests from the RH Member; Procedures Applicable to Determination of the Initial Milestone Purchase Price and the Final Milestone Purchase Price; Milestone Date Closings,” and relates entirely to the buyout obligations. R. 105–108 (LLCA § 11.7).

D. The SJI Member Is Correct That Post-Contract Course of Performance *Is* Directly Relevant to Contract Interpretation.

The SJI Member acknowledges that the parties’ course of performance can fill gaps by shedding lights on the parties’ post-formation construction of contractual provisions, *see Opp.* at 34 n.17, but makes several meritless arguments why Section 8.1(f) is not among them, *see id.* at 35–37. First, the SJI Member contends that the prior course of performance can be entirely ignored given the LLCA’s non-waiver

provision at Section 15.3. *Id.* at 35–36. The Company, however, does not seek to introduce course of performance as evidence that the SJI Member waived its rights under Section 8.1(f). Nor does the Company contend that the parties’ prior conduct alters or modifies any terms in the LLCA. On the contrary, the course of performance evidence demonstrates how the parties themselves understood their agreement.

The SJI Member also contends that the Company’s course of performance with respect to the Board’s voting procedures is irrelevant because none of the examples cited by the Company related to employee termination or any contested matter. Opp. at 36. But that course of performance included many examples of how the parties dealt with matters where both Members or their Managers were interested under Section 8.1(f), including the re-appointment of Kailbourne as CEO. R. 874–877 (Ex. D to Snyderman Aff.). The LLCA makes no distinction between how an Officer is hired or dismissed. *See* R. 149 (LLCA, Schedule D(iv)). There is no dispute that both Members agreed that Kailbourne would continue to serve as CEO when they executed the Third LLCA in 2020, or that super-majority approval was required when Kailbourne was re-affirmed as CEO in 2022. And the SJI Member failed to cite a single contrary example in which any Board decision was ever rendered by blocking the votes of *all* of the Managers of any Member. In short, the Board’s prior method of voting is clear evidence of the parties’ intent and establishes how the vote on Kailbourne’s termination should have occurred. *See J.W.S. Delavau*

v. E. Am. Transp. & Warehousing, Inc., 810 A.2d 672, 683–684 (Pa. Super. Ct. 2002) (recognizing that course-of-performance evidence demonstrates the meaning that parties give to specific provisions of their agreement as they performed on it, rather than establishing how the parties resolved a specific type of matter).

Finally, the SJI Member oddly contends that each example cited by the Company should be disregarded because they “involved [measures] that were unanimously approved by all members of the Board and so the issue of who could or could not vote never arose.” Opp. at 37. This does not make any sense. The fact that the Board unanimously approved the actions cited by the Company only supports the Company’s position because the unanimous votes make clear that the Board members agreed that all Managers were entitled to cast votes. The fact that they all voted the same way is no reason to ignore their course of performance which makes clear that they all agreed that each Manager was permitted to vote. This course of performance cannot be ignored.

E. The Company Has Never Contended Kailbourne Is a Perpetual Employee.

The SJI Member claims that the Company is making the “drastic” argument that Kailbourne’s status as a Key Employee in the LLCA “guarantees him perpetual employment.” Opp. at 29. But the Company has never suggested that the LLCA provides that Kailbourne is a permanent employee who cannot be replaced. Rather, the Company contends that Kailbourne *can* be removed by amending the definition

of “Key Employee” through a unanimous vote of the Board and written agreement of the Members. R. 112, 148 (LLCA § 15.3, Schedule C(v)).⁴

III. The SJI Member Has Not Established Irreparable Harm.

The SJI Member falls well short of making “a clear showing that [it] would suffer irreparable injury” that “an award of monetary damages would not adequately compensate” it absent an injunction. *Zodkevitch v. Feibush*, 49 A.D.3d 424, 425 (1st Dep’t 2008).

A. The SJI Member’s Unreasonable Delay Bars Injunctive Relief.

The SJI Member has been criticizing Kailbourne’s actions as CEO since *early 2024*, *see* R. 746 (Digel Aff. ¶ 61), and does not (and cannot) even attempt to justify its nearly two-year delay in seeking an injunction, *see Mercury Serv. Sys., Inc. v. Schmidt*, 50 A.D.2d 533, 533 (1st Dep’t 1975) (“Denial of an injunction pendente lite against solicitation of plaintiff-appellant’s customers is amply justified by delay of three and one-half months in seeking this relief.”). The SJI Member contends that it did not delay because it moved for its injunction shortly after the Company refused to acknowledge the June 17, 2025 vote to remove Kailbourne. Opp. at 38 n.23. But the purported basis for that removal was the same conduct that the SJI Member had

⁴ The SJI Member relies on *McPherson v. U.S. Clearing Corp.* for the proposition that Kailbourne’s “permanent employment would need to be express to override the undisputed fact that he was an at-will employee.” Opp. at 29–30 (citing 214 A.D.2d 340, 341 (1st Dep’t 1995)). But as noted above, the Company has never contended that Kailbourne is a permanent employee.

been complaining about since early 2024. The fact that the SJI Member chose to wait eighteen months before manufacturing its unilateral “vote” to remove Kailbourne does not mean that it timely acted or that the alleged impetus to remove Kailbourne required any immediacy. And the SJI Member fails to identify any in its Opposition.

B. The SJI Member Has Not Identified Any Harm to Its Minority Voting Rights That Would Justify Injunctive Relief.

Section 8.1(f) also does not provide the “bargained-for minority shareholder voting rights” protections the SJI Member claims, and the case law it relies on is inapposite here. First, the SJI Member continues to rely on *Wisdom*. Opp. at 38. But in *Wisdom*, the minority member was prevented from exercising its right to vote on an issue requiring super-majority approval. *Wisdom Import Sales Co., L.L.C. v. Labatt Brewing Co., Ltd.*, 339 F.3d 101, 107, 112–113 (2d Cir. 2003). As a result, the minority member’s “veto right” was denied. *Id.* at 107, 112–113. Here, unlike in *Wisdom*, the minority Member is not being denied the right to vote regarding Kailbourne’s termination, an issue subject to super-majority approval pursuant to Schedule D(iv). Instead, the SJI Member contends that only its Managers are entitled to vote and the RH Member’s Managers cannot vote at all. Put another way, the *Wisdom* minority sued so that both members there could vote. The SJI Member here sued to prevent both Members from voting. This is directly the opposite of what occurred in *Wisdom*. In a footnote, the SJI Member concedes this point before calling

it a “distinction without a difference.” Opp. at 38 n.21. But the distinction, in fact, is everything. In *Wisdom*, the minority was being silenced and therefore irreparably harmed. Here, the minority is seeking to silence the majority—i.e., it is the one causing harm to another Member’s interest, not the party being silenced or otherwise oppressed.

The SJI Member also relies on *Audubon Levy Investors, LP v. East West Realty Ventures, LLC*, which, like *Wisdom*, held that conduct that hinders participation in company management *may*—not *must*—constitute irreparable harm. CV09-4576 (ADS) (WDW), 2010 WL 11651600, at *3 (E.D.N.Y. Feb. 18, 2010) (quoting *Wisdom*, 339 F.3d at 114–115). Again, however, the Company is not seeking to hinder the SJI Member’s participation in company management. And unlike the agreement in *Audubon*, which allowed for “the immediate right to remove East West as manager” in the event of default, *see id.* at *1, the LLCA does not expressly allow the SJI Member to unilaterally remove Kailbourne as CEO, so that case has no bearing here.

C. Section 15.13 of the LLCA Does Not Automatically Entitle the SJI Member to Injunctive Relief Without Any Showing of Harm.

The SJI Member next contends that, under Pennsylvania law, specific performance clauses such as Section 15.13 in the LLCA can show that the parties intended certain breaches to constitute irreparable harm. Opp. at 39. But as the SJI

Member itself admits, *New York law*, not Pennsylvania law, governs the determination of irreparable harm here. *See Opp.* at 20.

In any event, the Pennsylvania case law the SJI Member cites does not support its position. Rather, in *CKHS, Inc. v. Prospect Medical Holdings, Inc.*, the Pennsylvania Supreme Court held that trial courts may consider contract terms providing that “*irreparable damage* would occur in the event that any provision of th[e] Agreement is not performed in accordance with its specific terms or is otherwise breached” as one factor in determining whether irreparable harm has been established. 329 A.3d 1204, 1208, 1216–17 (Pa. 2025) (emphasis added). No such contract term exists here, however, as no similar language appears anywhere in Section 15.13 of the LLCA. Moreover, “a contractual provision alone cannot compel a court to issue injunctive relief” because that decision rests within the sound discretion of the trial court, and an injunction can only be issued when permitted by law. *Id.* at 1217. As a result, even if Section 15.13 stated that a breach of the LLCA would constitute irreparable harm—which it does not—Pennsylvania law still does not hold that such language in and of itself would be sufficient to establish this element.

The SJI Member also misconstrues New York case law on this point. Contrary to the SJI Member’s assertions, *see Opp.* 39, *Noyak Medical Partners, LLC v. OSK IX, LLC*, 206 A.D.3d 429, 430 (1st Dep’t 2022) did not narrow the holding in

LGC USA Holdings, Inc. v. Taly Diamonds, LLC, 121 A.D.3d 529, 530 (1st Dep’t 2014). In fact, *Noyak* actually relied on *LGC* to hold that when a contractual provision does not specify that damage resulting from a breach is irreparable, it cannot be presumed that such damage is irreparable. *Noyak*, 206 A.D.3d at 430. As a result, Section 15.13, which does not state that any harm resulting from a breach of the LLCA is irreparable, cannot establish irreparable harm here. The SJI Member also relies on *Seitzman v. Hudson River Associates*, 126 A.D.2d 211, 213 (1st Dep’t 1987). *Opp.* at 7, 39 n.24. But *Seitzman* also does not support the SJI Member’s specific performance argument because, while the agreement there contained a specific performance provision, the Court did not rely on it in granting injunctive relief and instead looked to the specific nature and circumstances of the parties’ situations. *Seitzman*, 126 A.D.2d at 213–214.⁵ Section 15.13 alone therefore cannot establish irreparable harm.

IV. The Balance of Equities Favors Reversal, and It Is Not Even a Close Call.

Despite the SJI Member’s bold claim that the prejudice to it is “significant, immediate, irreparable and clear,” *Opp.* at 41, the SJI Member actually fails to identify *any* harm to it or to the Company if Kailbourne remains CEO pending the outcome of this litigation.

⁵ As Section 15.13 does not apply in the way the SJI Member claims, its attempt to distinguish the Company’s remaining case law by simply claiming that it is “moot” is likewise unavailing. *See Opp.* at 39–40.

On the other hand, the abrupt removal of the Company’s co-founder and longtime CEO—who is undisputedly the designated “key man” pursuant to the LLCA—and who is not only responsible for the Company’s incredible success, but also integral to many of its relationships with customers, employees, and vendors, will cause obvious harm to the Company. R. 747 (Digel Aff. ¶¶ 64-67) (testifying, among other things, that “it would damage the Company’s ongoing success to remove Mr. Kailbourne from serving as CEO” as his “leadership and strategic vision remain critical to the Company’s stability and growth.”).

The SJI Member claims that this harm is merely “puffery” and “hypothetical and amorphous.” Opp. at 42 & n.26. But this defies common sense. Indeed, it is difficult to imagine how a decapitation strike that abruptly removes a Company’s long-time CEO—who built the Company from the ground up and is largely responsible for the Company’s success and continued financial growth—could not cause disruption and injury.

The SJI Member also wrongly asserts that the Company’s briefing takes “unnecessary and partisan” positions that favor Kailbourne and the RH Member by arguing that “the LLCA exists solely to ensure that SJI will favorably buyout REV Holdings.” See Opp. at 3–4 n.1 (citing Company Br. at 35–37). But the Company took no such position in these pages of its brief. Rather, the Company merely pointed out that the buyout obligations were fundamental to the LLCA, a proposition that

even the SJI Member cannot reasonably dispute. It is not partisan, or in any way improper, for the Company to explain the purpose of the LLCA or how its provisions have been interpreted by the parties' course of performance over the years. And the Company is not somehow obliged to stay silent when one of its Members is directly attacking the Company and seeking to harm it by improperly removing the Company's CEO to further its own self-interests, placing the entire future of the Company in jeopardy.⁶

The SJI Member relies on *In re Aerojet Rocketdyne Holdings, Inc.*, C.A. No. 2022-0127-LWW, 2022 WL 2180240 (Del. Ch. June 16, 2022) a Delaware case involving a corporation (not an LLC) to argue that the Company "cannot take sides." *See Opp.* at 3–4 n.1. But the Company has not taken a side here. Indeed, the Company's actions are solely concerned with preserving the terms of its own operating agreement and protecting *all* its Members' rights to vote on a matter where both Members are interested, consistent with the terms of the LLCA and the parties' prior course of performance.

⁶ In fact, contrary to the SJI Member's assertions, this harm is exactly why the Company has an "o[a]r' in the fight." *Opp.* 43 n.27 (quoting R. 599 (July 28, 2025 Tr.)).

CONCLUSION

For the foregoing reasons and those set forth in the Company's opening brief, the Company respectfully requests that the Court reverse the Order and vacate the preliminary injunction removing Kailbourne.⁷

Dated: November 7, 2025
New York, New York

Respectfully submitted,

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⁷ The Company also adopts and joins in all the arguments set forth in the Reply Brief of Defendants-Appellants REV LNG Holdings, LLC, E. David Kailbourne, and Jacob Digel.

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I hereby certify pursuant to 22 N.Y.C.R.R. 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 Point

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 Authorities, Proof of Service and this Statement is 6,935.